

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

6/08/23
Item No.: 6.2
ERR/pcm

mcw

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO: (1) WAIVE FORMAL COMPETITIVE PROCUREMENT PROCEDURES; (2) EXECUTE A SINGLE SOURCE CONTRACT WITH POWER ENGINEERING CONSTRUCTION COMPANY FOR CONSTRUCTION OF JACK LONDON SQUARE BOARDWALK REPAIRS STRUCTURES 7 & 8, IN AN AMOUNT NOT-TO-EXCEED \$3,348,835; AND (3) EXECUTE CONTRACT CHANGE ORDERS IN AN AMOUNT NOT-TO-EXCEED \$838,000; AND FINDING THAT THE PROPOSED ACTION IS EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report for Agenda Item No. 6.2, dated June 8, 2023, and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, that in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in related agenda materials and in testimony received;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. Based upon the information contained in the Agenda Report, and testimony received, the Board finds and determines that:

A. The proposed action is categorically exempt from the California Environmental Quality Act under Section 15302 of the CEQA Guidelines because the proposed action is for replacement or reconstruction of existing facilities involving negligible or no expansion of capacity.

B. The proposed action is for the performance of general services by contract that are in the public interest because of economy or better performance, and will not result in the loss of employment or salary by any person having permanent status in the competitive service.

Section 2. The Board hereby approves the following concerning the Jack London Square Boardwalk Repairs Structures 7 & 8 Project ("Project"):

A. Waiver of formal competitive bidding and award of a contract ("Contract") for the construction of the Project to Power Engineering Construction Company ("Contractor"), in a total amount not to exceed \$3,348,835.

B. Authorize a maximum of \$838,000 (25% of the Contract) in change order authority to be used only to the extent necessary and subject to the approval of the Executive Director ("Executive Director") of the Port.

Section 3. The Board hereby authorizes the Executive Director to:

A. Execute the Contract in a total amount not to exceed \$3,616,285.

B. Execute change orders to the Contract, to the extent necessary, in an amount not to exceed \$838,000.

C. Make such additions, modifications, or corrections as necessary to issue the Contract or to correct errors, subject to the limitations set forth herein and provided that any such addition, modification, or correction does not materially differ from the terms and conditions set forth herein and in the Agenda Report and is approved as to form and legality by the Port Attorney.

Section 4. The Board further finds that:

A. The Chief Operating Officer or Principal Engineer of the Port is authorized to approve the project manual and plans for each instance of work performed under the Contract in advance of construction, pursuant to Government Code Section 830.6.

B. A bond for the faithful performance of the work, and a bond to guarantee the payment of all claims for labor and materials furnished and for amounts due under the Unemployment Insurance Code, each in the amount of one hundred percent (100%) of the Contract price shall be provided by Contractor as prescribed by applicable laws and regulations and the contract specifications.

C. The procedure prescribed by applicable laws, regulations, and the Contract specifications shall be taken for the execution of said contract.

Section 5. This resolution is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Port. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this resolution, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective agreement.

Section 6. This resolution shall be effective immediately upon adoption by the Board.