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DEPARTMENT OF
PLANNING AND DEVELOPMENT

CITY OF SACRAMENTO
CALIFORNIA

1231 I STREET
ROOM 200
SACRAMENTO, CA
95814-2998

BUILDING INSPECTIONS
916-449-5716

PLANNING
916-449-5604

January 19, 1990

Budget and Finance
Sacramento, California

Honorable Members in Session:

Subject: Exposition Center EIR (P89-181) --Termination of Negotiations

SUMMARY

On December 12, 1989, the City Council authorized staff to finalize negotiations and enter into a contract with Sedway-Cooke Associates for the preparation of an Environmental Impact Report (EIR) for the Exposition Center Project. As of this date, the parties have been unable to negotiate a mutually satisfactory contract. Staff believes it is in the City's best interest to terminate negotiations with Sedway Cooke Associates and to enter into negotiations with the next most qualified proposer. The attached resolution authorizes staff to formally terminate negotiations with Sedway-Cooke Associates for the preparation of the Exposition Center EIR and rescinds the previous contract authorization of December 12, 1989. In accordance with the City's existing policy, the City would then proceed to negotiate with the next most qualified consultant from the list of proposals submitted for the project. This contract is paid by a developer deposit and will have no impact on the General Fund.

BACKGROUND

The Exposition Center project, as proposed, includes 848,350 square feet of office use and 22,000 square feet of retail/commercial use on 15.75 ± acres at the intersection of Exposition Boulevard and Heritage Lane. An EIR is being required for the project.

Following a Request for Proposal (RFP) process for the preparation of the EIR, Sedway-Cooke Associates was chosen for initial contract negotiations. On December 12, 1989, the staff requested, and the City Council authorized, execution of a contract for Sedway-Cooke Associates in the amount of \$254,373 (including contingency) based on the consultant's original proposal as modified by the City and consultant to scope the alternatives to the project. On December 15, 1989, the Environmental Services Division received a letter from Sedway Cooke outlining their concerns with the proposed contract and requesting additional funding to prepare the document in accordance with the City's contract. Staff has met with Sedway-Cooke and analyzed their concerns and the needs of the City. Staff recommends that it is in the City's best interest to terminate negotiations with Sedway Cooke and to select the next proposer on the qualified list for negotiations on this project.

POLICY CONSIDERATIONS

It is existing City policy to seek outside consultants for the preparation of EIRs using competitive negotiation procedures. Under these procedures the City solicits qualifications and proposals and negotiates with the most qualified applicants. In the event negotiations fail with the first selected, the next most qualified firm is selected for negotiations. The selection criteria is based on cost plus other factors.

The recommended action conforms to the City's existing policies and procedures.

MBE/WBE CONSIDERATIONS

Sedway-Cooke Associates is not an MBE/WBE firm.

FINANCIAL INFORMATION

The requested action rescinds the previous resolution of December 12, 1989, authorizing a sum not-to-exceed \$254,373 for a Professional Services Contract with Sedway-Cooke Associates for the preparation of the Exposition Center EIR. This contract is funded by a developer deposit and has no impact on the General Fund.

RECOMMENDATION

It is recommended that the Budget and Finance Committee recommend that the City Council adopt the attached resolution to terminate negotiations with the firm of Sedway Cooke Associates for the preparation of an EIR for Exposition Center (thereby rescinding the action of December 12, 1989, authorizing a contract with Sedway Cooke for preparation of the subject EIR) and authorize staff to pursue negotiations with the

next most qualified firm on the list of proposers for this project. This report is scheduled to be heard by the Council at the January 30, 1990 meeting.

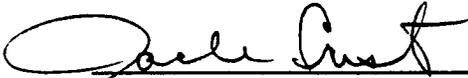
Respectfully submitted,



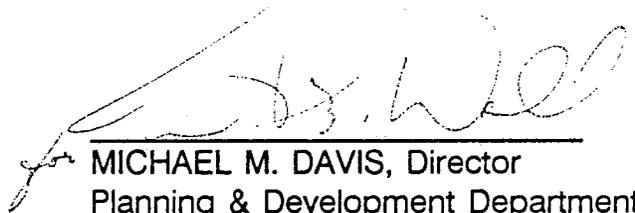
Carol Branan
Environmental Services
Manager

Recommendation Approved:

Approved:



JACK R. CRIST
Deputy City Manager



MICHAEL M. DAVIS, Director
Planning & Development Department

For questions contact:
Carol Branan 449-2037

District 3
January 30, 1990

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION TERMINATING NEGOTIATIONS WITH THE FIRM
OF SEDWAY-COOKE ASSOCIATES
FOR THE EXPOSITION CENTER EIR (P89-181)

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

The City Manager is hereby authorized to terminate negotiations with the firm of Sedway-Cooke for the preparation of an Environmental Impact Report on Exposition Center (P-89-181). Resolution 89-947 which authorized the City Manager to execute a contract with Sedway-Cooke for the Exposition Center EIR is hereby terminated.

The City Manager is authorized to pursue contract negotiations with the next most qualified firm on the list of proposers for this project.

MAYOR

ATTEST

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____



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**SACRAMENTO
HOUSING AND REDEVELOPMENT
AGENCY**



January 30, 1990

Budget and Finance Committee
of the City Council
Sacramento, CA

Honorable Members in Session:

SUBJECT: Policy Changes in the Sacramento Housing and
Redevelopment Agency Minority Business
Enterprise/Women Business Enterprise (M/WBE) Program
and Proposed Joint Venture Study with the County of
Sacramento

SUMMARY

The attached report is submitted to you for review and
recommendation prior to consideration by the Housing Authority,
Redevelopment Agency and City Council of the City of Sacramento.

RECOMMENDATION

The staff recommends approval of the attached resolution
approving the proposed recommendations.

Respectfully submitted,

ROBERT E. SMITH
Executive Director

TRANSMITTAL TO COMMITTEE:

JACK R. CRIST
Deputy City Manager

Attachment



**SACRAMENTO
HOUSING AND REDEVELOPMENT
AGENCY**



January 30, 1990

City Council and
Redevelopment Agency and
Housing Authority of the
City of Sacramento
Sacramento, California

Honorable Members in Session:

SUBJECT: Policy changes in the Sacramento Housing and
Redevelopment Agency Minority Business
Enterprise / Women Business Enterprise (M/WBE)
program and proposed joint venture study with City
and County.

SUMMARY

This report reviews the status of the Sacramento Housing and Redevelopment Agency M/WBE program and recommends adoption of appropriate policy changes in response to the effects of the U.S. Supreme Court decision in the case of the City of Richmond v. J. A. Croson Company.

In the Croson decision, the U.S. Supreme Court held that the use of a racially preferential program in awarding non-federally funded projects by a local government is illegal, unless a history of past discrimination is proven. The Court did not address federally funded projects in its decision.

Current federal law requires that awarding agencies make efforts to award at least 10 percent of federally-funded jobs to minorities. Therefore, changes in the M/WBE program proposed in this report are for locally-funded projects only. The program will continue as before on federally-funded jobs.

The elements being proposed are:

- I. Negotiate for a joint venture with the City and County of Sacramento to fund a study to develop the factual basis required to implement a M/WBE Program on non-federally-funded projects.
- II. Continue the currently established M/WBE goals program on all federally-funded contracts let by the Sacramento Housing and Redevelopment Agency. Reaffirm the goals of 20 percent minority and 5 percent women owned business participation.

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III. Expand outreach efforts to M/WBE firms and continue to monitor and report all Agency expenditures to track our use of M/WBE firms.

BACKGROUND

The federal Public Works Employment Act of 1977 (PWEA) mandates that at least 10 percent of federal funds granted for local public works projects be used to secure services or supplies from minority-owned businesses.

With that law as a basis, the Sacramento Housing and Redevelopment Agency, in April 1985, created a M/WBE program aimed at increasing the participation of minority and women owned businesses in Agency CDBG and Public Housing construction projects. The program goals were 10 percent for MBE and 1 percent for WBE firms.

In January 1987, the Agency's program was expanded to include all purchases, professional services, all publicly-bid and many privately-bid construction projects. At the same time the Agency's goals were increased to 20 percent minority and 5 percent women owned business participation.

In January 1989, the United States Supreme Court rendered a decision in City of Richmond v. J. A. Croson Co., which requires substantial changes in our current M/WBE Program. The Court imposed new restrictions on the use of race-based preferences by state and local governments when using non-federal funds. In order to use a racial preference (even in the form of a goals program), a state or local government must document specific past discriminatory acts by clearly identified parties. Any remedial actions must then be "narrowly tailored" to the specific victims of the discrimination.

In their decision, the Court did not dispute Congress' power to establish the 1977 PWEA, referring to a previous Supreme Court decision (Fullilove v. Keutznick, 1980), which distinguished the broad powers of Congress to enact that Act from the limited Authority of a local government.

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Currently, the Agency M/WBE program is being implemented on all Agency projects, service contracts and purchases, including locally funded ones. Agency Counsel, however, recommends certain program adjustments (outlined below) regarding locally funded projects until appropriate studies can be made to establish the proper foundation for an M/WBE program in that area.

In summary, projects funded under the Public Works Employment Act of 1977 (federally-funded projects: Community Development Block Grant, Sec. 312, Rental Rehabilitation Grants, etc.) remain subject to Congressional requirements for minority set-asides. Conversely, the Croson decision prohibits any M/WBE set-aside program (including a goals program) by local governments when using non-federal funds, unless very specific conditions are met (those conditions are discussed below).

In March 1989, staff submitted the Agency's M/WBE participation statistics for the 1988 calendar year. The Agency's MBE participation was 13.2 percent and the WBE participation was 13.8 percent. The 1989 statistics will be submitted in a separate staff report in March 1990.

ANALYSIS

The Supreme Court stated in Croson that a racially-preferential program is appropriate only if the factual data show the need for it to remedy past discrimination. In its September 8, 1989 staff report to City Council of Sacramento, the City M/WBE Program Manager proposed negotiating a joint venture with the County of Sacramento and the Sacramento Housing and Redevelopment Agency to develop a Request for Proposals to select a consultant to develop a "factual predicate" for an M/WBE program on locally-funded contracts. This report recommends the staff of Sacramento Housing and Redevelopment Agency be given authority by Council to begin such negotiations.

The Agency's goals program (20 percent minority, 5 percent female) on federally-funded projects subject to the PWEA of 1977 will continue to be implemented as before. Additionally, HUD sets specific MBE utilization goals on Public Housing activities; the Agency will continue to monitor and report to HUD semi-annually on the attainment of those goals. About 51 percent of Agency funds are federal monies. Pursuant to advice of Counsel, M/WBE participation on locally-funded projects will continue to be tracked, but the MBE program requirements will not be implemented on such projects, until the study is completed and demonstrates what specific direction to take.

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We will continue to certify businesses as M/WBE and General Services will continue to notify minority vendors of bidding opportunities. To mitigate the impact of the recommended changes on our program, the Agency will explore the development of simplified bidding procedures, lower bonding and insurance requirements, providing seminars on bidding Agency projects, and expanded advertising to reach more minorities.

FINANCIAL CONSIDERATIONS

Costs for hiring an outside consultant for studies referred to in this report typically range from \$50,000 to \$100,000 depending on the market and data sources. If the City, County, and SHRA share the cost equally, SHRA would contribute about \$15,000 - \$35,000. SHRA's portion of the cost would be divided equally among the Housing Authorities and Redevelopment Agencies, for a maximum contribution of \$8,750 each. The policy changes recommended by this report will have no financial impact on the Agency budget.

MBE/WBE EFFORTS - This report recommends policy changes in the SHRA M/WBE program.

ENVIRONMENTAL REVIEW

The M/WBE program is exempt from environmental review in accordance with the California Environmental Quality Act and the National Environmental Protection Act.

POLICY IMPLICATIONS

SHRA current policy conforms with Federal requirements under the PWEA of 1977 and HUD regulations regarding M/WBE utilization goals on Public Housing and CDBG projects. New policy guidelines are being proposed regarding non-federally funded projects which merit substantial consideration.

VOTE AND RECOMMENDATION OF COMMISSION

At its regular meeting of January 22, 1990 the Sacramento Housing and Redevelopment Commission adopted a motion recommending approval of the attached resolution.

AYES:

NOES:

ABSENT:

SACRAMENTO HOUSING AND REDEVELOPMENT AGENCY

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RECOMMENDATION

The staff recommended that the City Council adopt the attached Resolution which:

1. Reaffirms the SHRA M/WBE goals in regard to federally-funded projects;
2. Directs staff to negotiate with the County and the City of Sacramento for a joint-venture to hire a consultant to develop a factual predicate for remedial preferential M/WBE programs on locally-funded projects.
3. Directs staff to continue tracking M/WBE participation on all Agency activities and explore new outreach possibilities to encourage minority firms to bid on Agency projects.
4. Authorizes the Executive Director to execute a contract with consultants selected by the City and County or with the City or County directly to conduct the necessary studies, provided SHRA's contribution does not exceed \$35,000.

Respectfully submitted,



ROBERT E. SMITH
Executive Director

TRANSMITTAL TO COUNCIL:

WALTER J. SLIPE
City Manager

Contact Person: John Molloy, 440-1333

379t

RESOLUTION NO.

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

ON DATE OF _____

MBE/WBE PROGRAM CHANGES

BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO:

Section 1: The Sacramento Housing and Redevelopment Agency goals of 20% minority and 5% women owned business participation are hereby affirmed for federally-funded projects.

Section 2: Sacramento Housing and Redevelopment Agency staff is authorized to negotiate with the County and City of Sacramento to jointly prepare and publicize a request for proposals for a study to determine the factual predicate for a remedial M/WBE program on locally-funded projects.

Section 3: The Sacramento Housing and Redevelopment Agency staff are hereby authorized to participate in the selection of the consultant to perform the above referenced study and the Executive Director is authorized to negotiate and enter into a contract with the consultant (or alternatively with the City or County), provided that the Housing Authority's financial obligation under the contract does not exceed \$8,750.00.

Section 4: Upon completion of the study, staff is authorized to design and implement a program for locally-funded projects, responding to the findings of the study and in accordance with the U.S. Supreme Court decision in City of Richmond v. J.A. Croson Co.

CHAIR

ATTEST:

SECRETARY

1100WPP2(538)

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

RESOLUTION NO.

ADOPTED BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO

ON DATE OF _____

MBE/WBE PROGRAM CHANGES

BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY OF SACRAMENTO:

Section 1: The Sacramento Housing and Redevelopment Agency goals of 20% minority and 5% women owned business participation are hereby affirmed for federally-funded projects.

Section 2: Sacramento Housing and Redevelopment Agency staff is authorized to negotiate with the County and City of Sacramento to jointly prepare and publicize a request for proposals for a study to determine the factual predicate for a remedial M/WBE program on locally-funded projects.

Section 3: The Sacramento Housing and Redevelopment Agency staff are hereby authorized to participate in the selection of the consultant to perform the above referenced study and the Executive Director is authorized to negotiate and enter into a contract with the consultant (or alternatively with the City or County), provided that the Housing Authority's financial obligation under the contract does not exceed \$8,750.00.

Section 4: Upon completion of the study, staff is authorized to design and implement a program for locally-funded projects, responding to the findings of the study and in accordance with the U.S. Supreme Court decision in City of Richmond v. J.A. Croson Co.

CHAIR

ATTEST:

SECRETARY

1100WPP2(538)

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

