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DEPARTMENT OF
UTILITIES

ENGINEERING SERVICES

CITY OF SACRAMENTO
CALIFORNIA

5770 FREEPORT BLVD.
SUITE 100
SACRAMENTO, CA
95822-2911

PH 916-433-6318
FAX 916-433-6652

June 11, 1996

City Council
Sacramento, California

Honorable Members in Session:

**SUBJECT: SEISMIC RETROFIT OF ELEVATED CONCRETE RESERVOIRS (PN: ZD91)
- CONSTRUCTION CONTRACT AWARD TO TRP CONSTRUCTION, INC.**

LOCATION AND COUNCIL DISTRICT:

- City College Reservoir - 23rd Street between 11th and 12th Avenues, (District 5).
- Medical Center Reservoir - Corner of V and 45th Streets, (District 5).

RECOMMENDATION:

This report recommends that the City Council approve the attached resolution authorizing the City Manager and City Clerk to accept the low bid from TRP Construction, Inc. in the amount of \$1,348,428 and award the contract.

CONTACT PERSON: Candace McGahan, Senior Engineer, 433-6617

FOR COUNCIL MEETING OF: June 25, 1996

SUMMARY:

Bids from eight contractors were received and opened by the City Clerk on May 22, 1996. TRP Construction, Inc., with minority bid preference, is the low bidder at \$1,348,428.

COMMITTEE/COMMISSION ACTION

None.



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BACKGROUND INFORMATION

A structural investigation determined that the City's elevated water storage tanks, also known as the Medical Center and City College Reservoirs, do not have the structural capacity to withstand a seismic event as defined by the current building codes. This project will increase the structure's ability to resist damage and possible structural failure and enhance public safety during a seismic event.

The following eight bids to perform the structural modification work were received on May 22:

Sierra National Construction	\$1,333,836
TRP Construction	\$1,348,428
Rutherford and Smith Construction	\$1,447,884
Allen L Bender	\$1,518,752
Johnson Western Gunite	\$1,524,775
Diede Construction	\$1,554,186
Shimmick Construction	\$1,549,350
John F. Otto	\$1,665,468

The engineer's estimate for the construction was \$1,600,000.

TRP Construction's bid was eligible for a price preference for meeting the contract's MBE participation goal. Including the price preference, TRP Construction's bid was \$1,323,428. TRP Construction becomes the low bidder for the purpose of awarding the construction contract.

The project is anticipated to begin construction in July 1996 and to be complete in January 1997.

FINANCIAL CONSIDERATIONS

Funds sufficient for this project are available in the Water Fund Capital Improvement Program (413-500-ZD91). The revised total estimated project cost, including design, construction, inspection and contingency is \$1,587,265. The unobligated balance as of May 29, 1996 is \$3,489,120.

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ENVIRONMENTAL DETERMINATION

In accordance with the State Guidelines for implementation of the California Environmental Quality Act (CEQA) of 1970, the Environmental Services Division of the City's Planning and Development Department, Planning Services Division has reviewed the Seismic Retrofit of the Medical Center and City College Reservoirs project. A determination was made that the proposed project is categorically exempt pursuant to Section 15301.

POLICY CONSIDERATIONS

This action is consistent with Chapter 58, Article III, Section 58.301 of the City Code concerning advertisement for bidding requirements and Resolution Number 93-619 relating to MBE/WBE participation goals and policies adopted by the City Council on November 2, 1993.

MBE/WBE

This project included MBE and WBE participation goals of 10.57% and 9.5% respectively, as required by Resolution 93-619 relating to MBE/WBE participation goals and policies, adopted by the City Council on November 2, 1993. TRP Construction exceeds the 10.57% MBE participation.

The MBE/WBE participation by the eight bidders as identified in their bids, is listed in the following table:

Bidder	Amount of Bid	MBE		WBE		Good Faith Documentation
		\$	%	\$	%	
Sierra National Construction	\$1,333,836	130,000	9.75	75,000	5.62	yes
TRP Construction	\$1,348,428	237,369	17.60	0	0	yes
Rutherford and Smith Construction	\$1,447,884	0	0	0	0	not submitted
Allen L Bender	\$1,518,752	125,000	8.23	44,645	2.94	not submitted
Johnson Western Gunite	\$1,524,775	105,000	6.89	0	0	not submitted
Diede Construction	\$1,554,186	157,452	10.31	0	0	not submitted

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Shimmick Construction	\$1,549,350	0	0	160,000	10.33	not submitted
John F. Otto	\$1,665,468	347,999	20.89	30,000	1.80	not submitted

By using greater than 10.57% MBE subcontractor participation, TRP Construction was eligible for 2% or a maximum of \$25,000 price preference. For evaluation purposes TRP Construction became the low bidder.

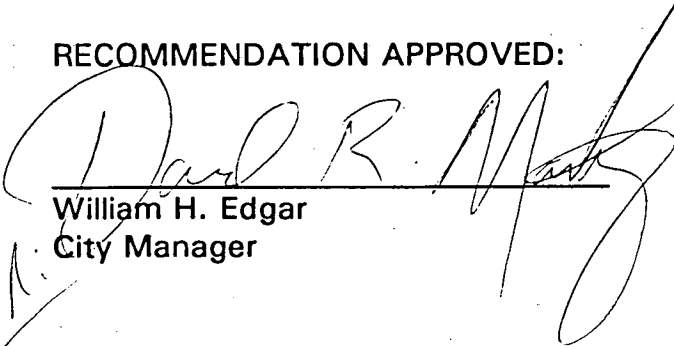
Plans and specifications were sent to nine (9) plan rooms and construction services organizations for publication and use by the construction industry of Northern California. There are four (4) organizations on the distribution list that are directly involved with MBE/WBE contractors.

Respectfully Submitted By:

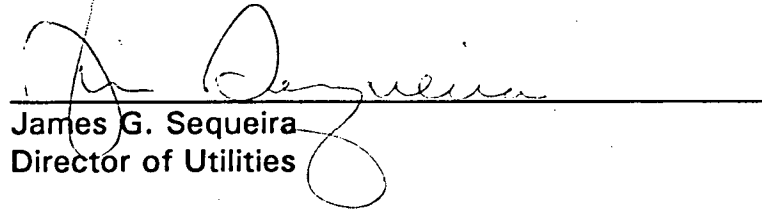


Gary A. Reents
Engineering Services Manager

RECOMMENDATION APPROVED:


William H. Edgar
City Manager

APPROVED:


James G. Sequeira
Director of Utilities

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE A CONTRACT WITH TRP CONSTRUCTION, INC. FOR AN AMOUNT NOT TO EXCEED \$1,348,428 FOR THE SEISMIC RETROFIT OF THE MEDICAL CENTER AND CITY COLLEGE RESERVOIRS PROJECT (PN:ZD91)

BE IT RESOLVED BY THE SACRAMENT CITY COUNCIL THAT:

The City Manager and City Clerk are authorized to sign and execute a construction contract with TRP Construction, Inc. for an amount not to exceed \$1,348,428 for the Seismic Retrofit of the Medical Center and City College Reservoirs Project (PN:ZD91)

MAYOR

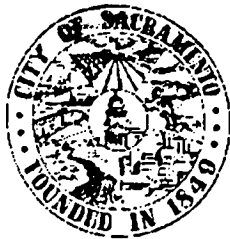
ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO. _____

DATE ADOPTED: _____



RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO

JUN 27 9 14 AM '96

DEPARTMENT OF UTILITIES
ENGINEERING SERVICES

CITY OF SACRAMENTO
CALIFORNIA


5770-FREEPORT BLVD.
SUITE 100
SACRAMENTO, CA 95822

916-433-6318
FAX 916-433-6652 or 6653

June 26, 1996

MEMORANDUM

TO: Valerie Burrowes, City Clerk

FROM:  Bill Zehnder, Associate Engineer

SUBJECT: **SEISMIC RETROFIT OF THE MEDICAL CENTER AND CITY
COLLEGE RESERVOIRS (PN:ZD91) - PROTEST OF CONTRACT
AWARD**

An item on the July 2, 1996 Council Agenda is the award of the construction contract for the subject project. City staff recommends awarding the contract to TRP Construction. Sierra National Construction (SNC) is protesting this award.

For background information, I have enclosed a letter from SNC's attorney which states their position on the protest. Please distribute this to the Council members prior to the meeting.

I appreciate your cooperation. If you have any questions please contact me at extension 6622.

BZ:
tankpro1.mem



**WEINTRAUB
GENSHLEA
& SPROUL**
LAW CORPORATION

RECEIVED

JUN 11 1996

City Attorney's Office

June 10, 1996

Via Facsimile

Malcolm S. Weintraub
Joseph S. Genshlea
Curtis C. Sproul
Geoffrey Burroughs
L. Burda Gilbert
Kenneth M. Melovos
Michael L. Dillard
Dee Hartzog
Kenneth J. Sylva
Dale C. Campbell
Christopher Chedak
Thadd A. Bizzard
R. Todd Luoma
Robin L. Klomparens
Joan A. Jernegen
David W. Tyra
Audrey A. Millemans
Rosemary P. Kelley
Gary L. Bradus
Dennis T. Parkinson
David C. Adams
Kelly L. Boselli
Phillip J. Campbell
Edward J. Corey, Jr.
Jennifer M. Deming
Michelle D. Floyd
Louis A. Gonzales, Jr.
Elleen Hamilton
Russell B. Hildreth
Kevin R. Iams
Thomas M. Montes
Sandra P. Perelka
Charles L. Post
Stephen M. Reynolds
Sukhdev S. Rye
Chris J. Sioukas
Thomas G. Trost
William F. Webster
Amy J. Winn

Mr. Greg Hovious
Contract Officer
Architecture & Engineering Division
City of Sacramento
927 10th Street
Sacramento, CA 95814-2702

Re: Bid Protest: Seismic Retrofit of UC Medical Center and City College Reservoir

Dear Mr. Hovious:

With regard to our telephone conversation on June 6, 1996, please consider this letter Sierra National Construction Inc.'s bid protest for the seismic retrofit of the UC Medical Center and City College Reservoir.

It is Sierra National's contention that it is the lowest responsible and responsive bidder pursuant to the specifications provided for the job and the provisions of the California Public Contracts Code. Unfortunately, the Department of Utilities is wrongly recommending to the City Council that the contract be awarded to TRP Construction, the second low bidder.

Apparently, the Department of Utilities has chosen to provide TRP with a bid preference pursuant to MWBE requirements provided by the City of Sacramento. However, the same bid preference was not afforded to Sierra National even though its final bid qualified.

As you may know, Sierra National's initial bid contained an inadvertent clerical error by the designation of a subcontractor who should not have been listed. Sierra National notified the Department of Utilities of the error and provided a corrected bid within 48 hours of the submission of its original bid. The correction did not change one dollar of Sierra National's original bid and would

400 Capitol Mall
Eleventh Floor
Sacramento, CA 95814
916 538-6000
FAX 916 446-1611

Mailing Address
P.O. Box 19208
Sacramento, CA
95821-0208

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June 10, 1996
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therefore be considered an immaterial irregularity under the Public Contracts Code.

It is true the correction of the bid qualified Sierra National for the City's MWBE preference program. However, this did not result in an unfair advantage to Sierra National since Sierra had no prior knowledge of TRP's bid position and could not have avoided honoring its bid if the Department of Utilities had accepted. (See Menefee v. County of Fresno (1985) 163 Cal.App.3d, 1175.)

The only unfair advantage gained in this matter was by TRP Construction as the result of the Department of Utilities' decision to allow only TRP Construction to be eligible for the bid preference program.

It is incumbent upon the City and the Department of Utilities to uniformly apply the MWBE requirements. Here, the Department of Utilities has unfairly applied the preference to one bidder to the detriment of another bidder and to the detriment of the MWBE requirements whose goals are to increase the participation of MWBE contractors on public jobs.

Notwithstanding the above, it is Sierra National's position that if challenged, the City of Sacramento's preference program would be found illegal as contrary to the precepts of the Public Contracts Code relating to the right of a local agency to enact MWBE goals and requirements and acceptance of the lowest responsible bidders. (Pub. Util. Code, §§ 2000, 20783.)

Sierra National requests that the Department of Utilities uniformly apply the MWBE requirements to both Sierra National and TRP Construction or not apply them at all. If this is done, the Department of Utilities should recommend that Sierra National be awarded the contract. Alternatively, all bids should be rejected and the project be advertised with a new bid date.

WEINTRAUB
GENSHLEA
& SPROUL
LAW CORPORATION

June 10, 1996

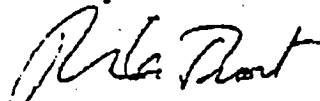
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Please notify this office as soon as you have had an opportunity to review this matter, as we would welcome the opportunity for further discussion. Also, please advise this office if there is any other administrative or regulatory remedy which must be exhausted prior to the City Council's decision on this matter.

Thank you for your consideration of this matter.

Very truly yours,

WEINTRAUB GENSHLEA & SPROUL
Law Corporation



Thomas G. Trost

TGT:lr

cc: Joe Robinson, City Attorney's Office
Kip Skidmore, Sierra National Construction

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