

MINUTES
OF THE
SACRAMENTO CITY COUNCIL
REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
HOUSING AUTHORITY OF THE CITY OF SACRAMENTO
ECONOMIC DEVELOPMENT COMMISSION
PARKING AUTHORITY OF THE CITY OF SACRAMENTO
SACRAMENTO CITY FINANCING AUTHORITY

REGULAR MEETING

December 9, 1997

CALL TO ORDER

The Regular Meeting of the Sacramento City Council was called to order by Mayor Serna at 4:35 p.m. on the above date in the City Council Chamber located at 915 I Street.

ROLL CALL

Present: Councilmembers Cohn, Fargo, Hammond, Kerth, Waters, Steinberg, Yee and Mayor Serna

Absent: None

1.0 CONSENT CALENDAR (Items 1.1 through 1.11)

A motion was made by Councilmember Kerth, seconded by Councilmember Fargo, to waive the reading and adopt the Consent Calendar, items 1.1 through 1.11. The motion carried with an 8-0 vote.

Public Review Items - Informational Only

None

Sacramento Housing and Redevelopment

None

City Council

- 1.1 Formalize ownership of North Natomas AD No.88-03 Public Facilities Fee and Land Acquisition Program credits from the land to direct ownership by the property owners as of January 1, 1997. (D-1)

Adopted Resolution 97-662.

RESOLUTION NO. 97-662

A RESOLUTION ESTABLISHING OWNERSHIP OF THE
RIGHTS TO REIMBURSEMENTS AND FEE CREDITS
RELATING TO ASSESSMENT DISTRICT 88-03 AS OF
JANUARY 1, 1997

- 1.2 Bid #1764 Janitorial Services - Adopt specifications and award bid to River City Maintenance, Inc., in an amount not to exceed \$280,000 per contract year. (D-All)
-

Adopted staff recommendation.

- 1.3 Approval of Change Order No. 3 in the amount of \$18,696.75 with Granite Construction for the Truxel Road Extension Project (PN:TG06), located at Truxel Road between Pebblewood Drive and Interstate 80; ratify the City Manager's execution of previous change orders for the Truxel Road Extension Project. (D-1)
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Adopted staff recommendation.

- 1.4 Ordinance amending Title 24 [Minors], of the Sacramento City Code, adding Sections 24.04.041 through 24.04.044, and repealing Section 24.01.001 and 24.01.002, relating to juvenile curfew. (PFP'D 12-2-97, item 1.10) (Law and Legislation 11-18-97) (D-All)
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Adopted Ordinance 97-072.

ORDINANCE NO. 97-072

AN ORDINANCE ADDING CHAPTER 24.04, CONSISTING OF SECTIONS 24.04.041 THROUGH 24.04.044, TO TITLE 24 OF THE SACRAMENTO CITY CODE, AND REPEALING SECTIONS 24.01.001 AND 24.01.002, RELATING TO JUVENILE CURFEW

- 1.5 Amendments to the Cable Commission ordinances. (D-All)
A. Citrus Heights representation on Commission
B. Updated insurance requirements for Commission and Cable Companies
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Passed for publication of title and continued to December 16, 1997.

- 1.6 Discussion of issues regarding bagging of green waste during wet weather. (D-All)
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For Council information; received and filed.

- 1.7 Ordinance amending Title 61 [Nuisance Code], of the Sacramento City Code, Section 61.09.904 and Chapter 61.17, relating to Graffiti Abatement. (PFP'D 12-2-97, item 1.7) (Law and Legislation 11-18-97) (D-All)
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Adopted Ordinance 97-073.

ORDINANCE NO. 97-073

AN ORDINANCE AMENDING SECTION 61.09.904 OF TITLE 61, RELATING TO THE SUMMARY ABATEMENT OF GRAFFITI, AND CHAPTER 61.17 OF TITLE 61 OF THE SACRAMENTO CITY CODE, RELATING TO GRAFFITI ABATEMENT

- 1.8 Request to open an application period for the Joint City/County Accommodations for the Physically Handicapped Persons Appeals Board for one opening due to the 02-27-98 term expiration scheduled for J. Farley. (D-All)
-

Application period opened; applications due January 9, 1998.

- 1.9 Request to open an application period for the Sacramento Commission of History and Science for two openings due to the 02-27-97 terms expirations scheduled for L. Freeman and M. Conover. (D-All)
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Application period opened; applications due January 9, 1998.

- 1.10 Nomination of Karen Tomine-Sonada to the Minority and Women Business Enterprise Advisory Committee [Nomination made 12-2-97]
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Confirmed nomination.

- 1.11 Nomination of Kerry Willis and Lockwood Vogeli to the Human Rights and Fair Housing [Nominations made 12-2-97]
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Confirmed nominations.

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2.0 SPECIAL PRESENTATIONS/GENERAL COMMUNICATIONS

None

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3.0 PUBLIC HEARINGS

- 3.1 Abandonment of Public Water Easement between Argail Way and Sutterville Road; Summary Abandonment Proceeding No. AP97-04 (D-4)
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There was no discussion on this item.

A motion was made by Councilmember Yee, seconded by Councilmember Cohn, to continue this item to December 16, 1997. The motion carried with an 8-0 vote.

- 3.2 Abandonment of the 10' sewer easement on Parcel 1 of Metropolitan Center recorded in Book 86 of Parcel Map, page 5 between I-5 and Gateway Oaks Drive; Summary Abandonment Proceeding No. AP97-07. (D-1)
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There was no discussion on this item.

A motion was made by Councilmember Yee, seconded by Councilmember Cohn, to continue this item to December 16, 1997. The motion carried with an 8-0 vote.

4.0 STAFF REPORTS

- 4.1 Sump 128 Emergency Generator and Automatic Transfer Switch Installation (PN: WH36), located at Mack Road and Morrison Creek - accept bid and award contract to BRC Construction in the amount not to exceed \$178,558. (Cont'd from 12-2-97, item 4.4) (D-8)

Gary Reents, Engineering Services Manager, presented the report.

Mr. Reents advised Council that this item did not include price preferences. The engineer's construction estimate was \$175,000. Staff recommends the contract award to BRC Construction because Luppen and Hawley was non-responsive with their MBE/WBE Good Faith Effort.

Councilmember Hammond remarked that she had promised the constituents residing in District 8 that she and those other Councilmembers whose Districts border on District 8 would be supportive of their needs in the absence of the late Councilmember Sam Pannell, until such time as a new representative is elected.

A motion was made by Councilmember Hammond, seconded by Councilmember Steinberg, to adopt Resolution 97-663 awarding Contract 97-190.

Councilmember Yee questioned the reasons that Luppen and Hawley had not met the Good Faith Effort requirements? Mr. Reents explained that Luppen and Hawley had not submitted any GFEs; they maintained that they misunderstood the requirement, and did not conduct any GFE. Mr. Yee remarked that he could not comprehend how Luppen and Hawley did not understand the GFE requirement, since they have bid other City projects, and were aware that they must attend a pre-bid meeting.

Aaron Chong, MBE/WBE Coordinator, advised that Luppen and Hawley misunderstood Proposition 209 requirements, believing that the requirement was no longer in effect. Mr. Reents added that this was the first time that Luppen and Hawley had proposed as a prime contractor; normally they use subcontractors.

Ms. Hammond commented that this was a prime example of what occurs when the disadvantaged percentage is dispensed with; she said it was important that City Council send the message that in spite of the ruling, this body still believes in equal opportunity.

The motion carried with an 8-0 roll call vote.

RESOLUTION NO. 97-663

RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE A CONSTRUCTION CONTRACT WITH BRC CONSTRUCTION IN THE AMOUNT OF \$178,558 FOR THE SUMP 128 EMERGENCY GENERATOR AND AUTOMATIC TRANSFER SWITCH INSTALLATION PROJECT (PN:WH36)

- 4.2 Sump 35 Pump Station (PN:WG56), located at the end of Myrtle Vista Avenue near Pocket Road and Interstate 5 - transfer funds and award contract to Sierra National Construction, Inc., for an amount not to exceed \$528,205. (Cont'd from 12-2-97, item 4.2) (D-4)

Gary Reents, Engineering Services Manager, presented the report.

Mr. Reents advised that a similar situation occurred here as in Item 4.1, above. The apparent low bidder was EAI, but due to EAI's unresponsiveness regarding the GFE requirements, staff recommends award of the contract to Sierra National. Mr. Reents stressed that there were no preferences related to this project.

Councilmember Kerth confirmed with Mr. Reents that it was required for responsive bidders to attend one pre-bid meeting to learn about requirements. Mr. Reents advised Mr. Kerth that EAI had not attended a pre-bid meeting.

A motion was made by Councilmember Yee, seconded by Councilmember Hammond, to adopt staff recommendations.

Dan Esparza, Principal Corporate Officer, EAI International, argued that City staff had exceeded the 45 day time requirement to award contract. Mr. Esparza argued that the bid was awarded to Sierra National based solely on preferences, which were illegal at the time of the bid.

Mayor Serna requested clarification of the situation from Aaron Chong, MBE/WBE Coordinator. Mr. Chong maintained that EAI met the goals after the bids were all open. Mr. Esparza referred to page 1 of 16 in the bid contract, which allows bidders 4 days to submit Good Faith Efforts for the MBE/WBE requirements. Mayor Serna asked the Deputy City Attorney, Joe Robinson, if that were true?

Mr. Robinson replied that the bidder has 4 days after the bid opening to produce documents which show efforts undertaken to meet GFE requirements prior to the bid opening, not efforts made after the bid opening.

Councilmember Yee remarked that, as a person familiar with contracting, he knew that "bid shopping" after the fact was not allowed. Mr. Esparza noted that often subcontractors do not respond until the very last minute, and admitted that at that point the complete list of subs was incomplete.

Mr. Yee inquired as to which, of all the subcontractors listed on the submittal, were submitted subsequent to the bid opening? Mr. Yee noted that it is a City requirement to submit the complete list of subs at the time of the bid.

Mayor Serna asked what specifically EAI was contesting? Mr. Esparza replied that he was contesting EAI's not getting the bid due to preferences, maintaining that EAI's GFE was adequate at the time of the bid.

Mayor Serna remarked that EAI was contesting because it was their position that they met the GFE. Further discussion between Mr. Yee and staff established that EAI understood that GFEs were required by all formally bid contracts; EAI had some, but not all, at the time of the bid.

Councilmember Hammond perceived that apparently EAI got the requirement for GFEs confused with price preferences.

Robert Esparza introduced attorney for EAI, Anthony Miranda, who advised that his client is an MBE/WBE contractor, minority owned. At the time of the bid, EAI believed preferences were illegal; the law of the State was that this program was illegal. On November 25, 1995, City Council enacted an outreach program, but the law is intermingled; the 9th Circuit Court did not reverse the earlier decision, thus this is a window in which the City program was illegal.

Robert Esparza noted that EAI was a minority contractor, the low responsible bidder, bonded, subcontractors ready to go, some of whom are minority contractors; further, Mr. Esparza noted that he was the only minority prime contractor that bid on this contract, yet now he was being denied the opportunity to bid. Mr. Esparza maintained that he did not change any of the subcontractors, but added to the original list. Mr. Esparza commented that he believed the City to be confused about its own practices, that the minority program has not helped.

Mr. Esparza stressed that EAI is a minority contractor, yet is being barred on the basis that it did not comply with Good Faith Efforts to employ minority contractors.

Mr. Yee asked how EAI qualified as a minority? Mr. Esparza advised that 51% of the company was owned by his son, 49% woman-owned.

Andy Hunt, Senior Engineer, advised that the contractor submitted evidence of outreach efforts made via faxes eliciting bids from subcontractors, which would have been part of the GFE, but did not qualify under all steps of the GFE.

Mr. Esparza responded that EAI was not yet certified as a minority contractor, but the process was underway in San Francisco, Sacramento, etc.

Mayor Serna observed that EAI appears to be caught in a Catch 22 situation; they are the lowest bidder, yet the report says they did not meet the Good Faith Effort. The second bidder met the goals, but is not a MBE/WBE contractor.

Aaron Chong, MBE/WBE Coordinator, commented that EAI did not provide documents to any agencies; EAI claimed they were in the process of getting certified with four agencies, yet when City staff checked with the agencies, none of the agencies had a record of EAI's having applied. Mayor Serna established with Mr. Chong that there was no documented evidence to support EAI's statement.

Mr. Yee commented that, in his own case, prior to the certification period he had avoided claiming that he was a minority contractor and did not do so until he received his certification. Mr. Esparza advised that he was certified with CalTrans, San Francisco, and San Jose prior to Proposition 209. Mr. Yee established with Mr. Esparza that Council's action to do away with preferences, but retain the Good Faith Effort, was the point of contention in this discussion. Mr. Esparza explained that at the time of the bid, because of confusion as to the status of Proposition 209, EAI interpreted that their bid proposal met requirements.

Mr. Miranda commented that he understood the position, but that the bid document at the time asks otherwise; he requested that Council consider a special window time between Proposition 209 and the old way.

Councilmember Kerth identified the options as:

1. The bidder argues the process changed due to Proposition 209 during the course of the bid, claiming that portions of the bid requirements were illegal.
2. A course of action for Council would be to:
 - A. Adopt staff recommendations, or;
 - B. Reject all bids and rebid the contract

Deputy City Attorney Robinson interjected that the City legal position is that the bid document is clear regarding the need to meet goals or perform Good Faith Efforts.

He stressed that there are no preferences involved here; that is not relevant. The options are to accept staff recommendations; reject all bids and rebid formally; or reject all bids and rebid in another way.

Mayor Serna commented that this was a bizarre situation; a MBE/WBE contractor was rejected because he did not meet Good Faith Effort requirements, yet he is a minority contractor himself.

Mr. Yee requested legal clarification of the options. Mr. Robinson replied: 1) accept staff recommendations; 2) reject all bids and rebid; 3) rebid, either through the formal bid process, or 4) Council could approve an informal bid process, rather than advertise, bids could be solicited from a select group, such as the top 3 of those who had already bid.

Mr. Reents remarked that these were strange circumstances; this was not the first time this had occurred, in which contractors were not qualified because they were not certified MBE/WBE firms at the time of the bid. Mr. Reents stressed the importance of the community's continuing to pursue MBE/WBE certification.

Councilmember Steinberg remarked that he understood the confusion, but at the time of the bid, Council had not changed either the Preference Policy or the GFE requirements. Mr. Steinberg asked what the contractor did to contact City staff to clarify the exact status of the City's policies, noting that the situation could have been made clear with a simple contact and discussion with staff.

Mr. Miranda opined that there was no easy way to remove confusion; at the time that these discussions could have occurred, the department felt the preferences were legal. It was prior to the denial of the legality of preferences by the Supreme Court.

Mayor Serna believed this issue to be sufficiently confusing, saying that the best approach appeared to be that of rejecting all bids and then rebid the project.

Mr. Kerth questioned the modified rebid process; Mr. Robinson explained that Council could direct staff to solicit bids from the three lowest bidders, saying that in this way, there would be less time consumed, yet it would still allow enough time to comply with GFEs. Mr. Kerth asked whether this would require an intent motion? Mr. Robinson responded that Council could move to reject all bids, direct staff to return; a provision in the Sacramento City Code allows suspension of competitive bidding in the event that all bids are rejected.

A substitute motion was made by Councilmember Kerth, seconded by Councilmember Fargo, to reject all bids, staff to initiate an alternate bidding process, allowing the top three low bidders to rebid.

Andy Hunt pointed out that if this is done, none of the three low bidders are presently certified MBE/WBE contractors.

Councilmember Fargo inquired as to how this alternate bidding approach would affect the project, and whether delay would put the community at risk during the rainy season? Mr. Hunt responded that even if the project were awarded under staff recommendations, it would not be completed until spring. The plan was to have a wet well available this winter to help handle the extra drain water; this delay would preclude that possibility.

Ms. Fargo established with Mr. Hunt that the affected area had flooded in the past, and that the wet well would not be available this winter if the project were delayed. Mr. Reents commented that the GFE would take about 4-6 weeks if rebid. Ms. Fargo agreed with EAI that the rule changes were confusing.

Councilmember Waters noted that the wet well would be the only thing related to the project which would be immediately advantageous to the City; the original project date was July, 1998. Mr. Yee advised that there was a problem in his district at that location; he noted that he did not believe the wet well would alleviate the problem that much, since the volume of water was extreme when flooding occurred in the

past.

Mr. Yee observed that since it was unlikely that at this juncture the wet well would make any difference as to how flooding would be abated, it would be best to allow the top 3 low bidders to rebid, while making it clear that the GFEs must be provided. Mr. Hunt and Mr. Kerth identified the 3rd bidder as Westcon.

The substitute motion carried with a 7-1 roll call vote, with Councilmembers Cohn, Fargo, Kerth, Steinberg, Waters, Yee, and Mayor Serna voting yes, and Councilmember Hammond voting no.

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5.0 SHRA

None

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6.0 CITIZENS ADDRESSING COUNCIL (MATTERS NOT ON AGENDA)

None

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7.0 COUNCIL IDEAS AND QUESTIONS

7.1 Mayor Serna advised that an article in the Wharton Business School Review, rating the Central Market Strength Business Index, placed New York City at #1. Sacramento ranked #20, one rank ahead of San Diego at #21. The Mayor was pleased to note that Sacramento was in that position, saying that San Diego is a fine city, in his estimation.

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8.0 CLOSED SESSION

None

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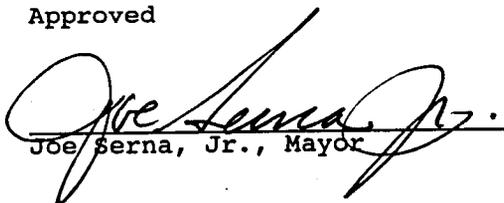
ADJOURNMENT at 5:40 p.m.

There being no further business to come before the City Council, the meeting was adjourned at 5:40 p.m.

Submitted


Valerie A. Burrowes, City Clerk

Approved


Joe Serna, Jr., Mayor