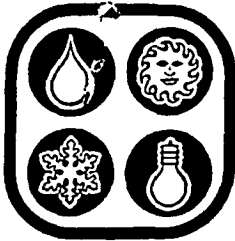


LUPPEN and HAWLEY, Inc.



7400 - 14th Avenue, 95820-3538
P.O. Box 245008, 95824-5008
Sacramento, California
Telephone (916) 456-7831
FAX (916) 456-0517
Calif. Lic. No. 100

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CITY OF SACRAMENTO

Nov 25 2 41 PM '97

November 25, 1997

City of Sacramento
City Clerk
915 I Street
Room 304
Sacramento, Ca 95814

COUNCIL AGENDA MATERIAL
MTG. DATE 12-2-97 ITEM NO. 1-2
FROM: CITY CLERK'S OFFICE

Subject: PROTEST OF BID AWARD

Dear City Clerk:

By this letter, Luppen & Hawley, Inc. formally protests the award of City Contract No. PN: WH36 for the Sump 128 Generator and Transfer Switch Installation Project to BRC Construction, Inc.

On November 5, 1997, Luppen & Hawley, Inc. submitted a bid for the above-referenced contract to the City of Sacramento, Department of Utilities. Upon the opening of the sealed bids, the City of Sacramento declared that Luppen & Hawley, Inc. was the low bidder. Notwithstanding its status as low bidder, Luppen & Hawley was informed, by letter dated November 20, 1997, that the Department of Utilities staff will recommend that the City Council award the the contract to BRC Construction, INC.

The Department of Utilities failed to provide any explanation for rejecting Luppen and Hawley's low bid. Consequently, Luppen & Hawley must assume that the reason for its rejection rests in its refusal to comply with the City's MBE/WBE requirements set forth in City Code S58.08.802.

On November 5, 1996, the people of the State of California adopted the Civil Rights Initiative ("Proposition 209") as an amendment to the California Constitution. The initiative provides, in pertinent part, that "the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, color, ethnicity, or national origin in the operation of public employment, public education, or contracting." In the ballot proposal that accompanied Proposition 209 proponents declared that the initiative would save state and local governments money because "bidders on contracts no longer would need to show 'good faith efforts' to use minority or women owned subcontractors." Accordingly, state and local

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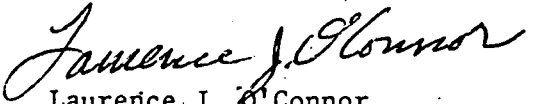
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governments save money "to the extent that they otherwise would have rejected a low bidder - because the bidder did not make a 'good faith effort' - and awarded the contract to a higher bidder."

On April 8, 1997, the Ninth Circuit Court upheld the Constitutionality of Proposition 209 in The Coalition for Economic Equality, et al. v Wilson, et al.- F.3d- (9th Cir.1997). The Supreme Court of the United States denied review on November 3, 1997.

In light of the foregoing, the City of Sacramento's MBE/MWE requirements for public contracts contained in City Code S58.08.802 contravene the California Constitution, as amended by Proposition 209. Moreover, the ordinance violates the Equal Protection Clause of the United States Constitution. As such, Luppen & Hawley's failure to comply with the unconstitutional ordinance cannot be made a basis for rejecting its low bid.

Sincerely,



Laurence J. O'Connor
President

LJO:dhh

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