

APPROVED
BY THE CITY COUNCIL

DEC 9 1997

OFFICE OF THE
CITY CLERK



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C097-190

DEPARTMENT OF
UTILITIES
ENGINEERING SERVICES

CITY OF SACRAMENTO
CALIFORNIA

PORT BLVD.

CA

November 12, 1997

FIG 910 18
433-6652

CONTINUED
FROM 12/2/97
TO 12/9/97

City Council
Sacramento, California

Honorable Members in Session:

**SUBJECT: SUMP 128 EMERGENCY GENERATOR AND AUTOMATIC TRANSFER SWITCH
INSTALLATION (PN: WH36) - CONTRACT AWARD TO BRC CONSTRUCTION,
FOR AN AMOUNT NOT TO EXCEED \$178,558**

LOCATION AND COUNCIL DISTRICT:

The construction funded by this contract will affect Sump 128 which is located at Mack Road and Morrison Creek within Council District 8, see enclosed map.

RECOMMENDATION:

Staff recommends that the City Council adopt the attached resolution, based on the City's current MBE/WBE policy which:

- Accepts the responsive low bid from BRC Construction in the amount of \$178,558 and awards the contract.

CONTACT PERSON: Gary Reents, Engineering Services Manager, 433-6633
Dave Hansen, Senior Engineer, 433-6627

FOR COUNCIL MEETING OF: December 2, 1997

SUMMARY

Bids were received and opened by the City Clerk on November 5, 1997; BRC Construction was the lowest responsive bidder.

COMMITTEE/COMMISSION ACTION

None.

City Council

November 12, 1997

Sump 128 Emergency Generator and Automatic Transfer Switch Installation - Contract Award
(PN: WH36)

BACKGROUND

Sump 128 is designed to collect and pump storm drainage water into Morrison Creek. As part of the City's effort to control flooding, an emergency generator and automatic transfer switch will be installed at this location. If there is a SMUD power failure, the generator will start automatically and the automatic transfer switch will connect the generator to the pumps. This will ensure that the pumping station can pump its rated capacity throughout an extended SMUD outage.

This project was advertised and bids were received on November 5, 1997. The bids are summarized below:

Contractor	Bid Amount
Luppen and Hawley	\$171,732
BRC Construction	\$178,558
Royal Electric	\$193,755
Syblon - Reid	\$248,177

- 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.
- The estimated completion date is May 1, 1998.

FINANCIAL CONSIDERATIONS

This project will be funded from the Storm Drainage Fund (Fund 425). The total construction cost including design, construction, inspection and contingency is \$218,306 based on the bid of \$178,558. As of November 12, 1997 the unobligated balance available for this project (425-500-WH36-4820) is \$288,011 which is sufficient for award.

ENVIRONMENTAL DETERMINATION

The Planning Services Division, Environmental Section, has reviewed the project and has determined that this project is exempt from CEQA under Section 15301(c) of the CEQA Guidelines.

A notice of categorical exemption was filed with the County Clerk on August 20, 1997.

City Council

November 12, 1997

Sump 128 Emergency Generator and Automatic Transfer Switch Installation - Contract Award
(PN: WH36)

POLICY CONSIDERATIONS

This action is in conformance with City Code sections, 58.03.304, & 58.03.301, which provides that the City Council may award competitively bid contracts to the lowest responsible bidder and "advertising for bidding" requirements respectively.

MBE/WBE

This project included participation goals of 10.75% MBE and 9.5% WBE as required by Resolution 93-619, relating to MBE/WBE participation goals and policies, adopted by the City Council on November 2, 1993. Award of the project is contingent upon the responsive low bidder either meeting these project MBE/WBE participation goals or making documented good faith efforts towards meeting the project goals. The responsive low bidder, BRC Construction, met the Good Faith Effort.

The low bidder, Luppen and Hawley, did not submit a Good Faith Effort and was determined by City Staff to be non-responsive. Therefore, BRC Construction became the qualified lowest bidder.

Plans and specifications were sent to nine (9) plan rooms and construction service 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 the outreach to MBE/WBE contractors.

Other outreach efforts to MBE/WBE for this project included:

- Advertisement of the project on the City of Sacramento Construction Project Bid Line (916) 264-7000.
- Free access to review the project plans and specifications at the City of Sacramento, Architecture & Engineering Division Plan room at 927 10th Street.
- Provide notice of this project to three (3) minority chambers of commerce and three (3) minority and women community organizations directly involved with the outreach to MBE/WBEs.

City Council
 November 12, 1997
 Sump 128 Emergency Generator and Automatic Transfer Switch Installation - Contract Award
 (PN: WH36)

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

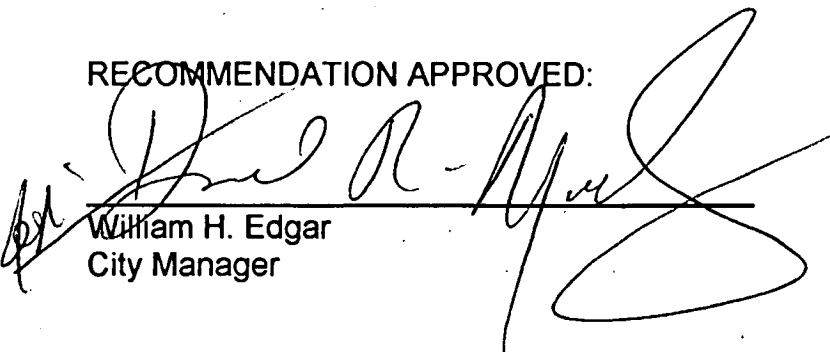
Contractor	Bid Amount	MBE		WBE		Good Faith Efforts Documented
		\$	%	\$	%	
Luppen and Hawley	\$171,732	0	0	0	0	NOT REC'D
BRC Construction	\$178,558	0	0	0	0	REC'D
Royal Electric	\$193,755	70,940	36.61	3,480	1.80	
Syblon - Reid	\$248,177	0	0	0	0	

The cumulative MBE and WBE participation goal for the Department of Utilities is 18.99% and 16.16% respectively.

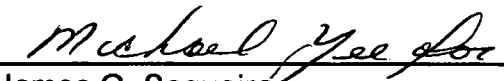
Respectfully submitted,

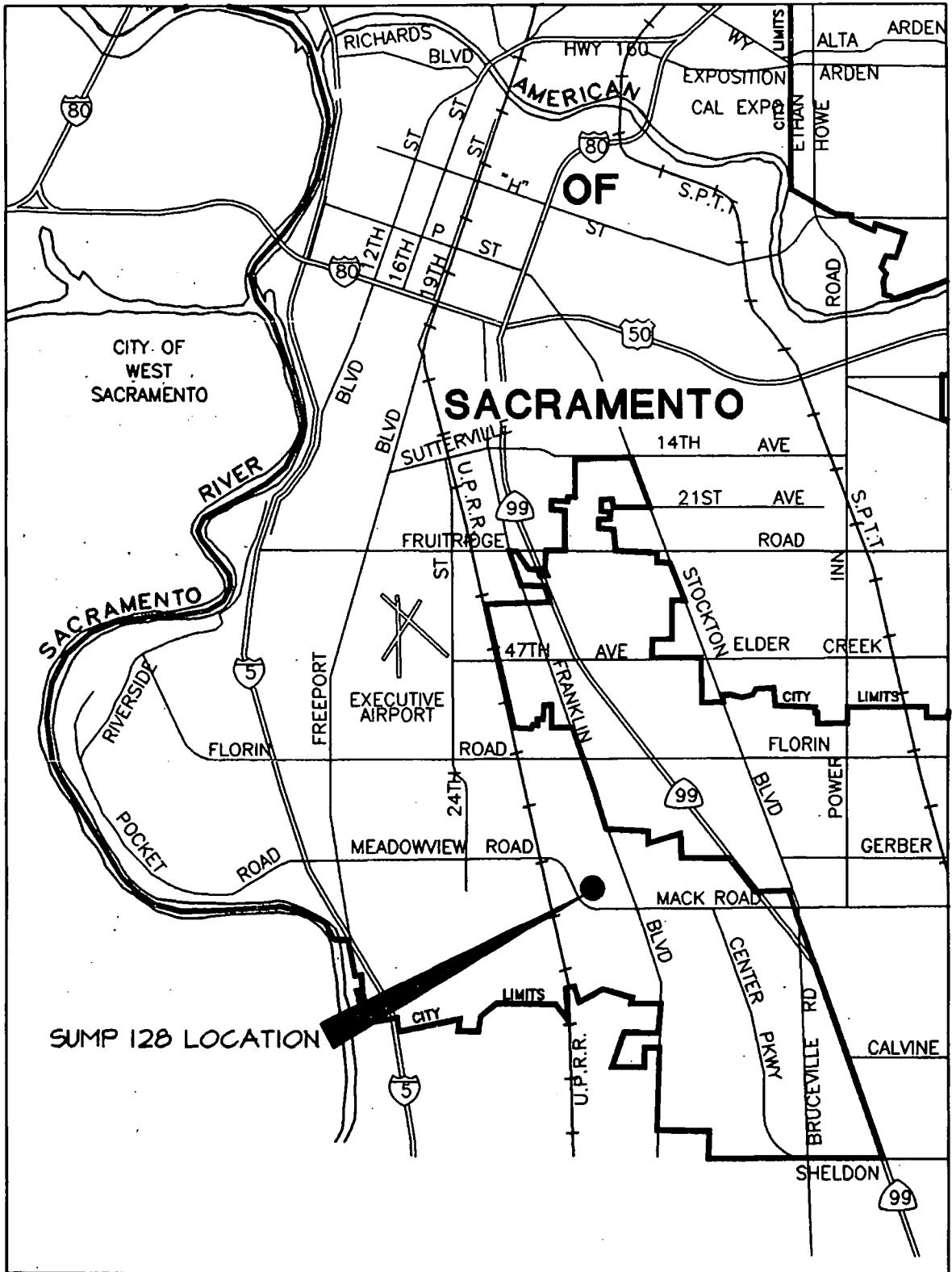

 Gary A. Reents
 Engineering Services Manager

RECOMMENDATION APPROVED:


 William H. Edgar
 City Manager

APPROVED:


 James G. Sequeira
 Director of Utilities



VICINITY MAP

5

APPROVED
BY THE CITY COUNCIL

RESOLUTION NO. 97-663

MEG 9 1997

ADOPTED BY THE SACRAMENTO CITY COUNCIL

OFFICE OF THE
CITY CLERK

ON DATE OF _____

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).

BE IT RESOLVED BY THE SACRAMENTO CITY COUNCIL THAT:

The City Manager and City Clerk are authorized to sign and execute a construction contract with BRC Construction for the Sump 128 Emergency Generator and Automatic Transfer Switch Project for an amount not to exceed \$178,558 (PN: WH36).

MAYOR

ATTEST:

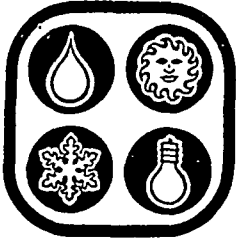
CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO. _____

DATE ADOPTED: _____

LUPPEN and HAWLEY, Inc.



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

95820-3538
95824-5008

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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

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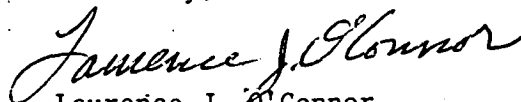
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governments save money "to the extent that they otherwise would have rejected a low bidder - because the bidder did not make a 'good faith effort' - and awarded the contract to a higher bidder."

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,

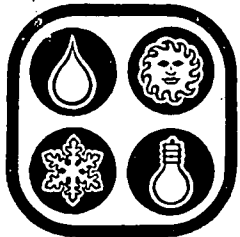


Laurence J. O'Connor
President

LJO:dhh

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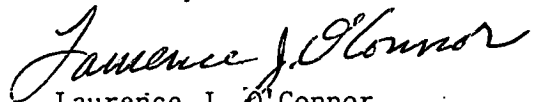
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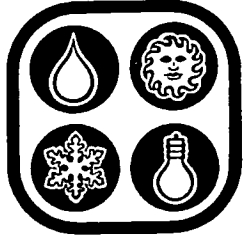
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Laurence J. O'Connor
President

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