

DEPARTMENT OF PUBLIC WORKS

BUREAU OF CONTRACT ADMINISTRATION  
BUREAU OF ENGINEERING  
JOINT REPORT NO. 1

NOV 18 2008  
C.D. No. 9

Honorable Board of Public Works

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RECOMMENDATIONS

1. Accept this contract.
2. Assess FEI Enterprises, Inc. (5749 Venice Boulevard, Los Angeles, CA 90019) (FEI) with a penalty in the amount of \$16,130.89 for the illegal subcontractor substitution of three bid-listed OBE subcontractors and the unauthorized subcontractor substitution of one bid-listed OBE supplier.
3. Assess FEI for labor compliance violations in the amount of \$152,142.42 in wage restitution, \$24,376.43 in penalties and \$1,866.69 in training fund contributions for their failure to pay the proper prevailing wages; for misclassifying their workers; and for underreporting their workers and hours worked on their certified payrolls (CPRs).
4. Assess FEI's subcontractor, Izhak's Custom Interiors (6824 Brynhurst Avenue, Los Angeles, CA 90043) (Izhak's), for labor compliance violations in the amount of \$16,549.65 in wage restitution, \$2,350.00 in penalties and \$235.45 in training fund contributions for their failure to pay the proper prevailing wages and for failure to report their CPRs correctly.
5. Assess FEI's subcontractor, M.H. Pacific (124 River Road, Corona, CA 92880-1434) (MHP), for labor compliance violations in the amount of \$26,892.96 in wage restitution, \$7,881.00 in penalties and \$226.04 in training fund contributions for their failure to pay the proper prevailing wages and for failure to report their CPRs correctly.
6. Assess FEI's subcontractor, J.A. Air Systems (481 North Waterman Avenue, #106, San Bernardino CA 92405) (JA Air), for labor compliance violations in the amount of \$6,444.01 in wage restitution, \$1,208.12 in penalties and \$88.65 in training fund contributions for their failure to pay the proper prevailing wages and for failure to report their CPRs correctly.

7. Assess FEI's subcontractor, Peyton Stewart Painting (7360 7th Street, Suite A, Rancho Cucamonga, CA 91730) (Peyton), for labor compliance violations in the amount of \$8,373.22 in wage restitution, \$1,875.00 in penalties and \$82.26 in training fund contributions for their failure to pay the proper prevailing wages and for misclassifying their workers.
8. Assess FEI's subcontractor, R&D Drywall (16200 Ventura Blvd., #409, Encino CA 91436) (R&D), for labor compliance violations in the amount of \$6,357.39 in wage restitution, \$2,001.50 in penalties and \$42.56 in training fund contributions for their failure to pay the proper prevailing wages.
9. Instruct the Director, Office of Accounting, to disencumber the recommended City penalties in the amount of \$16,130.89 from the project fund. This amount represents subcontractor outreach enforcement penalties for the illegal subcontractor substitution of three bid-listed OBE subcontractors (Peyton, R&D, and Pacific Coast Floor Covering) and the unauthorized subcontractor substitution of one bid-listed OBE supplier (Norton Electric Wholesale).
10. Instruct the Director, Office of Accounting, to prepare a draft in the amount of \$216,759.65 payable to the State of California. The draft to be forwarded to the Bureau of Contract Administration, Office of Contract Compliance (Attention: Sylvia Dungo) for processing to the California Labor Commission. This amount represents the total wage restitutions for the underpayment of wages by FEI, Izhak's, MHP, JA Air, Peyton, and R&D.
11. Instruct the Director, Office of Accounting, to prepare a draft in the amount of \$2,541.65 payable to the California Apprenticeship Council. The draft to be forwarded to the Bureau of Contract Administration, Office of Contract Compliance (Attention: Sylvia Dungo) for processing to the California Apprenticeship Council. This amount represents the non-payment of training fund contributions by FEI, Izhak's, MHP, JA Air, Peyton, and R&D.
12. Instruct the Director, Office of Accounting, to disencumber the recommended City penalties in the amount of \$39,692.05 from the project fund. This amount represents labor compliance penalties for the underpayment of wages by FEI, Izhak's, MHP, JA Air, Peyton, and R&D.

#### TRANSMITTALS

1. Copy of the Settlement Agreement and Assignment of Funds, dated March 4, 2009, executed between FEI and the City of Los Angeles, for the settlement of its labor compliance violations and penalties in the amount of \$178,385.54.

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2. Copy of the Assignment of Funds, dated February 14, 2007, signed by FEI on behalf of its subcontractor, Izhak's, for the settlement of labor compliance violations and penalties assessed against Izhak's in the amount of \$22,135.10.
3. Copy of the Assignment of Funds, dated February 7, 2007, signed by FEI on behalf of its subcontractor, MHP, for the settlement of labor compliance violations and penalties assessed against MHP in the amount of \$35,000.00.
4. Copy of the Assignment of Funds, dated May 12, 2006, signed by FEI on behalf of its subcontractor, JA Air, for the settlement of labor compliance violations and penalties assessed against JA Air in the amount of \$7,740.79; on behalf of its subcontractor, Peyton, for the settlement of labor compliance violations and penalties assessed against Peyton in the amount of \$10,330.48; and on behalf of its subcontractor, R&D, for the settlement of labor compliance violations and penalties assessed against R&D in the amount of \$8,401.45
5. Letter dated January 27, 2006, to FEI from the Office of Contract Compliance (OCC).
6. Letter dated January 28, 2006, to OCC from FEI.
7. Letter dated May 6, 2004, from the Bureau of Contract Administration to FEI.

DISCUSSION

This contract was executed by your Board on July 21, 2003, in the amount of \$3,290,000.00. The construction, under Contract No. C-105313, Bond No. 103376, was completed on November 7, 2005, by FEI Enterprises, Inc. (FEI).

This project consisted of the construction of a new 13,000 square foot single-story branch library located at 203 S. Los Angeles Street. Work included clearing and grubbing, excavation, placement of reinforced concrete foundation, framing, roofing, exterior and interior covering, insulation, electrical wiring, plumbing, heating and air conditioning, painting, interior furnishing, and other related work.

This project was awarded for \$3,290,000.00 with a contingency of \$330,000.00 for a total authorized budget of \$3,620,000.00. On August 1, 2007, your Board adopted Bureau of Engineering's Motion, which increased the contingency funding of this project by an additional \$568,972.31 giving a revised authorized budget of \$4,188,972.31. Thirty (30) change orders

were issued increasing the contract amount by \$898,972.31, bringing the total cost of this project to \$4,188,972.31. The project was completed at 27.32 percent above the awarded amount and at its authorized budget. Approximately 63.00 percent of the increase in costs was due to the following: removal and disposal of excessive debris encountered during excavation, increase of the caissons concrete yardage and PSI due to caving encountered during the drilling operation, architectural, structural and mechanical modifications, fire life safety modification as required by the Department of Building and Safety, and additional work as requested by the Library Department. Approximately 37.00 percent of the increase in costs was for settlement of the Contractor's \$1,768,721.00 claim for delays in construction. This claim resulted in Change Order No. 30 in the amount of \$330,000.00.

Final corrections were completed on November 7, 2005. Requests for release of \$311,851.30, \$921.68 and \$3,000.00 in retention funds were processed on February 14, 2007; October 3, 2007; and May 6, 2009, via Progress Payment Nos. 25, 26 and 28 (final) from the Bureau of Contract Administration to the Office of Accounting. In addition, pursuant to Settlement Agreement dated March 4, 2009, \$125,000.00 of retention was released via Progress Payment No. 27 from the Bureau of Contract Administration to the Office of Accounting.

Disputed funds in the amount of \$275,124.25 were withheld pending action by your Board.

The Office of Contract Compliance (OCC) reviewed certified payroll reports submitted by the prime contractor, FEI. The OCC, after conducting a source document review and investigation, found that FEI underreported the number of hours worked by its workers and the numbers of workers it employed on the project. Therefore, FEI was found to be in violation of California Labor Code (CLC) Section 1776. In addition, FEI was also found to be in violation of California Labor Code Section 1774 for failure to pay the proper prevailing wage rates on this project.

The OCC reviewed certified payroll reports submitted by FEI's subcontractor Izhak's custom Interiors (Izhak's). The OCC investigation found Izhak's in violation of the following California Labor Codes: (i) Section 1773 when Izhak's deducted vacation, sick and holiday benefits from their workers' pay and deposited these funds back into their company; (ii) Section 1776 when Izhak's failed to appear on their scheduled source document review and provide accurate certified payrolls; and (iii) Section 1774 for failure to pay the proper prevailing wage rates on this project.

The OCC reviewed certified payroll reports submitted by FEI's subcontractor M.H. Pacific (MHP). After OCC conducted an investigation, it found MHP underreported the number of workers it employed and the number of days they worked on the project. Therefore, MHP was found to be in violation of CLC Section 1776. In addition, MHP was found to be in violation of CLC Section 1774 for failure to pay the proper prevailing wage rates on this project.

The OCC conducted an investigation on FEI's subcontractor J.A. Air Systems (JA Air), after receiving complaints from its workers for not getting paid for almost a month, a violation of

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CLC Section 204. The OCC's investigation further found JA Air in violation of CLC Section 1776 for underreporting the number of workers it employed and the number of days they worked on the project. In addition, JA Air was also found to be in violation of CLC Section 1774 for failure to pay the proper prevailing wage rates on this project.

The OCC reviewed certified payroll reports submitted by FEI's subcontractor Peyton Stewart Painting (Peyton). The OCC after conducting an investigation found that Peyton violated CLC Section 1776 for underreporting the number of workers it employed and the number of days they worked on the project. In addition, Peyton was also found to be in violation of CLC Section 1774 for failure to pay the proper prevailing wage rates on this project.

The OCC conducted an investigation on FEI's subcontractor, R&D Drywall (R&D), after receiving complaints from its workers. In its investigation, the OCC found R&D in violation of CLC Section 1778 when R&D demanded and received back portions of the wages it paid to its workers. R&D was also found to be in violation of CLC Section 1776 for intentionally underreporting the number of workers it employed on the project. Lastly, R&D was also found to be in violation of CLC Section 1774 for failure to pay the proper prevailing wage rates on this project.

In order to resolve the labor compliance and prevailing wage violation issues, FEI Enterprises, Inc. agreed to assign funds to the OCC (see Transmittal Nos. 1 through 4) from monies being held in retention by the City of Los Angeles to satisfy the amounts assessed for wage restitutions, penalties and training fund contributions as discussed above. Funds are provided in 15E General Obligation Bonds, Series 2001A Library Facility Construction Fund Account No. S213.

The contractor has complied with the Equal Employment and labor compliance requirements of the contract. The anticipated MBE/WBE/OBE subcontractor levels of participation for this project were 12.00 percent MBE and 5.00 percent WBE. The contract was awarded with bidder's pledge of 7.36 percent MBE, 0.00 percent WBE, and 54.03 percent OBE. The actual participation levels achieved were 4.60 percent MBE, 0.00 percent WBE, and 49.51 percent OBE. The Mandatory Subcontracting Minimum (MSM) requirement for this project was 19.00 percent. The contract was awarded with a bidder's pledge of 61.39 percent and actual participation level achieved was 54.11 percent.

The Final Subcontracting Report (FSR) shows that the contractor did not meet the MBE or OBE participation percentage levels pledged at the time of the award. Change orders increased

the final contract amount, which decreased participation levels achieved. The OBE participation levels were further reduced by the illegal substitutions of Peyton, R&D, and Pacific Coast Floor Covering (Pacific), and the unauthorized subcontractor substitution of Norton Electrical Wholesale (Norton). Therefore, the contractor may be assessed a potential penalty of \$16,130.89 for the illegal subcontractor substitution of three subcontractors and unauthorized substitution of one subcontractor.

The contractor may be assessed a penalty in the amount of \$786.25 for the illegal substitution of Peyton with its own forces. Peyton was bid listed to perform \$23,000.00 worth of work. The OCC verified that Peyton had performed only \$15,137.50 worth of work. On January 27, 2006 (Transmittal No. 5), the contractor was informed of the total potential penalty and was asked to provide any additional information which would be considered relevant. In a letter dated January 28, 2006 (Transmittal No. 6), the contractor explained that Peyton was "non responsive and [breached] the contract or bankrupt," which entitled FEI to substitute the subcontractor. FEI completed Peyton's portion of work with its own forces. However, FEI did not submit any written documentation to show that a substitution request was either submitted or approved. Therefore, the contractor may be assessed a penalty in the amount of \$786.25 (10.00 percent of \$7,862.50, the illegally substituted portion of work).

The contractor may be assessed a penalty in the amount of \$11,355.56 for the illegal substitution of R&D with its own forces. R&D was bid listed to perform \$129,500.00 worth of work. The OCC verified that R&D had performed only \$15,944.40 worth of work. In a letter dated January 28, 2006 (Transmittal No. 6), the contractor submitted a copy of a substitution request dated July 26, 2004. However, FEI failed to submit all the necessary documentation to secure the approval for the substitution. Therefore, the contractor may be assessed a penalty in the amount of \$11,355.56 (10.00 percent of \$113,555.60, the illegally substituted portion of work).

The contractor may be assessed a penalty in the amount of \$3,789.08 for the illegal substitution of Pacific with the unapproved subcontractor M&M Floor Covering, Inc. (M&M). Pacific was bid listed to perform \$37,890.76 worth of flooring work. The OCC verified that M&M had completed Pacific's portion of work. FEI requested for the substitution of Pacific with M&M, but was denied (Transmittal No. 7). No additional efforts were documented to rectify this issue. Therefore, the contractor may be assessed a penalty in the amount of \$3,789.08 (10.00 percent of \$37,890.76, the illegally substituted portion of work).

The contractor may be assessed a penalty in the amount of \$200.00 for the unauthorized subcontractor substitution of Norton. Norton was bid-listed to provide \$60,000.00 worth of electrical supplies. The OCC verified that Norton had provided \$58,000.00 worth of supplies. Therefore, the contractor may be assessed a penalty in the amount of \$200.00 (10.00 percent of \$2,000.00, the difference between the bid-listed and the verified amount of supplies).

Gabriel Fedida of FEI Enterprises, Inc. was notified on September 16, 2009, of our recommendation to assess the penalties as stated above in this report and indicated that they are

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undecided whether they will appear before your Board. A copy of the report was sent to the contractor.

There are no unresolved property owners' complaints in connection with this project.

The Contractor Performance Evaluation Reports (CPERs) have been submitted to the Bureau of Contract Administration as required for compliance with Article 13, Chapter 1, Division 10 of the City of Los Angeles Administrative Code.

Except as noted, the Inspector of Public Works, John L. Reamer, Jr., in accordance with generally accepted quality assurance/control procedures and construction inspection methods and practices, including such special inspections that were deemed necessary and prudent, hereby attests that this project has been constructed in accordance with the plans, specifications, change orders, and contract provisions.


( DFT - HC - WFB - DJW )


Report prepared by:

D. Tang

GENERAL SERVICES DIVISION  
Russ Strazzella  
Division Manager  
213-847-2406

Respectfully submitted,

  
JOHN L. REAMER, JR.  
Inspector of Public Works

  
GARY LEE MOORE, P.E.  
City Engineer

Vincent Jones, Project Manager  
213-482-7302  
Mail Stop 295

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