

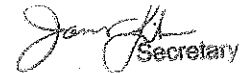
Department of Public Works

Bureau of Engineering  
Bureau of Contract Administration  
Joint Report No. 2

June 12, 2009  
CD No. 11

ADOPTED BY THE BOARD OF  
PUBLIC WORKS OF THE CITY  
of Los Angeles, California

JUN 12 2009

  
Secretary

**174384**

**HYPERION TREATMENT PLANT (HTP) ENVIRONMENTAL LEARNING CENTER - WEST, CAPITAL IMPROVEMENT PROJECT (CIP) 2366 - CONTRACT AWARD (W.O. SZW00043)**

**RECOMMENDATIONS**

1. Approve the request of Perera Construction & Design, Inc., first low bidder, to withdraw their bids for this project as discussed in this report.
2. Declare Ford E. C., Inc., second low bidder, to be the lowest responsive, responsible bidder for this project and award them a contract for \$9,500,000.
3. Receive and file Transmittal Nos. 3, 4 and 5.
4. Authorize the President or two members of the Board to execute the contract after approval as to form by the City Attorney has been obtained.

**TRANSMITTALS**

1. Summary of bids received on April 8, 2009.
2. Communication No. 120647, a copy of a letter dated April 9, 2009, from Mr. Hank Perera, Jr., Perera Construction & Design, Inc., 2890 Inland Empire Boulevard, No. 102, Ontario, CA 91764.
3. Communication No. 120644, copy of a letter dated April 9, 2009, from Mr. Sia Daghighian, Ford E. C. Inc., 2116 Wilshire Boulevard, No. 275, Santa Monica, CA 90403.
4. Communication No. 120662, a copy of a letter dated April 21, 2009, from Mr. Bernard Ashkar, Icon West Inc., 520 S. La Fayette Park Place, No. 503, Los Angeles, CA 90057.
5. Communication No. 120659, a copy of a letter dated April 20, 2009, from Mr. Al Salm, Pacific Studio, Inc., 5311 Shilshole Avenue NW, Seattle, WA 98017.

**DISCUSSION**

***Background***

This project will renovate the existing two-story Administration Building at HTP to accommodate two exhibit halls, an auditorium, and a multipurpose classroom. In addition, external features will include a water feature, wetlands and landscaping. The renovation work utilizes Leadership in Energy and Environmental Design (LEED™) criteria, with high environmental standards, and is targeting a LEED™ Gold Level rating from the US Green Building Council. The construction contract duration is 535 calendar days.

The project has been reviewed for environmental considerations. It was determined to be categorically exempt from the provisions of the California Environmental Quality Act of 1970, under Article III of the City's Environmental Quality Act Guidelines.

The three lowest of the sixteen bids received (Transmittal No. 1) compared with the City Engineer's estimate of \$10,430,000 are:

Bid No.	Contractor's Name	Bid Amount	(%) High/Low	(%) Pledged		
				MBE	WBE	OBE
Low Bid	Perera Construction & Design, Inc. (Perera)	*\$8,350,000	19.94% Low	0.78	0	46.71
2nd Bid	Ford E. C., Inc. (Ford )	\$9,500,000	8.92% Low	0.32	0	60.23
3rd Bid	Icon West, Inc. (Icon)	*\$9,765,765	6.37% Low	0	0	0

\* Corrected bid amount

Perera and Icon, first and third low bidders respectively, listed their Total Bid Amount incorrectly. Staff corrected their Total Bid Amount in accordance with the procedures set forth in the General Instructions and Information for Bidders. Both Perera and Icon were contacted and notified of the corrections. The corrections did not change the order of bids.

An evaluation of bids indicates that these three bids are reasonable. The contract may be awarded to any one of these three low bidders.

***Withdrawal Requests Received***

In a letter dated April 9, 2009 (Transmittal No. 2), Mr. Hank Perera, Jr., Vice President of Perera, first low bidder, requested that the Board allow them to withdraw their bid due to a clerical error. Staff reviewed his request and determined that the information provided by Mr. Perera substantiated his claim of clerical errors in filling out their final bid, thus making their bid substantially lower than their intended bid price. Mr. Perera's request complies with the Public Contracting Code §5103 for granting bid withdrawals as stipulated in the General Instructions and Information for Bidders. Therefore, staff recommends that Perera, first low bidder, be allowed to withdraw their bid with the understanding that, in accordance with the code, the Board will not accept a bid from them in the event this project is readvertised.

Consequently, Ford, second low bidder, becomes the lowest bidder. Staff recommends awarding this contract to Ford, subject to verification of all other bidding requirements.

***Minority Business Enterprise/Women Business Enterprise/Other Business Enterprise (MBE/WBE/OBE) Subcontractor Outreach Program***

This project mandated bidders to perform their Good Faith Effort (GFE) via the internet on the Business Assistance Virtual Network (BAVN), a service provided by the Mayor's Office of Economic Development. The subcontractor outreach via the internet is less paper-intensive for bidders.

The project was advertised with MBE and WBE anticipated participation levels of 3 percent and 1 percent, respectively, and with mandatory GFE documentation requirements. The GFE requires bidders to provide MBE, WBE and OBE firms an equal opportunity to participate in the performance of all City Contracts. The Office of Contract Compliance (OCC), based on a review of the documents submitted by Ford, reported that the contractor pledged an MBE level of 0.32 percent, a WBE level of 0 percent, and complied with the GFE subcontractor outreach requirements of the bid. The Mandatory Subcontracting Minimum (MSM) requirement for this project is 6 percent and the contractor has complied by pledging a subcontractor participation level of 62.38 percent. This percentage was

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calculated after subtracting the fixed amount of \$280,000 for allowances from the total bid amount. Ford submitted the following MBE/OBE subcontractor information:

Gender/Ethnicity Codes:

AA=African American  
 SAA=Subcontinent Asian American  
 C=Caucasian  
 M=Male

HA=Hispanic American  
 APA=Asian Pacific American  
 NA=Native American  
 F=Female

Subcontractor	WBE/ OBE	Gender/ Ethnicity	(%) of Bid	Dollar (\$) Amount
J Colavin & Son, Inc.	MBE	F/HA	0.32	\$ 30,050
JA Concrete Construction	OBE		0.98	\$ 93,000
Glendale Metal & Steel Fabricators, Inc.	OBE		3.21	\$ 305,000
Matrix Environmental, Inc.	OBE		0.23	\$ 22,200
Advanced Landscape 2000, Inc.	OBE		0.69	\$ 65,600
Colman Plumbing Co.	OBE		3.22	\$ 306,000
Otis Elevator Company	OBE		1.84	\$ 175,000
California Fire Protection Sprinkler Co., Inc.	OBE		0.73	\$ 69,000
A-1 Electric Service Company, Inc.	OBE		5.79	\$ 550,000
RBH Multimedia, Inc.	OBE		12.92	\$1,226,959
Superior Exhibits & Design, Inc.	OBE		13.08	\$1,242,360
SWGI Southwest Group Inc.	OBE		1.74	\$ 165,000
Rainbow Glazing, Inc.	OBE		2.22	\$ 211,000
Air Flow Sheet Metal, Inc., dba, Air Flow Mechanical	OBE		12.11	\$1,150,000
Elljay Acoustics, Inc.	OBE		1.48	\$ 140,647

**Compliance with the City's Non-Discrimination Policies**

Ford has complied with the Affirmative Action, Equal Benefits Ordinance, and Slavery Disclosure Ordinance requirements of the bid.

**Previous Work Record**

Ford has compiled the following record of violations while performing construction contracts for the City:

	Infraction	Fine Amount	Date	Contract No.
1	<b>Project: Pio Pico Koreatown Branch Library (W.O. E1700380)</b>			
	Unauthorized substitution of Bid listed Subcontractor	\$3,584	03/26/08	C-101216
2	<b>Project: Palisades Branch Library(W.O. E1700427 &amp; E1700428)</b>			
	Unauthorized substitution of Bid listed Subcontractor	\$19,854.87	02/22/06	C-101331

The contractor has worked on several contracts issued by the Board of Public Works. Other than the aforementioned, no significant or unresolved problems in inspection or contract compliance by this contractor have been experienced by the Bureau of Contract Administration (BCA).

The following table summarizes past MBE/WBE/OBE participation levels pledged by Ford in the last five years:

No. of Contracts	Total Dollar Value of Contracts	Pledged MBE Amount	Pledged WBE Amount	Pledged OBE Amount
		Total MBE (%)	Total WBE (%)	Total OBE (%)
2	\$17,876,000	\$501,300	\$310,220	\$9,787,224
		2.80%	1.74%	54.75%

**Communications Received**

1. In a letter dated April 9, 2009 (Transmittal No. 3), Mr. Sia Daghighian, President of Ford protested the bid of Perera. Since Perera is not being considered for this project, staff recommends that Board receive and file Mr. Daghighian’s letter.
2. In a letter dated April 21, 2009 (Transmittal No. 4), Mr. Bernard Ashkar, President of Icon West, protested Ford’s bids for several specific items. Each item and staff’s response is presented as follows:

**Protest:** Exhibit Fabricators - Superior Exhibit and Design Inc. (Superior) listed by Ford has no license in the state of California. These exhibits involve metal studs, drywall, flooring, painting, electrical etc. where it is required to be licensed.

**Staff’s response:** The prime contractors have the responsibility of managing and utilizing subcontractors to complete the project. During the bidding phase of the project, the City has no contractual relationship with potential bidders to dictate their daily business practices. Whether bidders choose to list subcontractors licensed or not in their bid proposal, remains the choice of each bidder in order for them to submit the lowest bid. During the construction phase, the Inspector of Public Works shall approve all subcontractors who will be working on the project in writing prior to starting of their work. At such time, Superior must hold a proper license classifications for the work described.

**Protest:** Exhibit Fabricators – Superior’s proposal was a budget estimate (High End – Low End) and as mentioned in their proposal, the final price will be given on May 1<sup>st</sup> which is almost a month after the bid.

**Staff’s response:** What was quoted by Superior to potential bidders, including Ford, is irrelevant. Exhibit fabrication work as called for in the project specifications is included in the Ford’s bid price for the construction of this project. If Superior fails to fulfill their obligations to furnish material or equipment and perform all necessary labor to complete their work, Ford would still be required to complete exhibit fabrication work as called out in the project specifications at no additional cost to the City.

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**Protest:** Wetland Pond Exhibit & Metal Wall Panel System - Ford failed to list subcontractors to do the Wetlands Pond Exhibit and Metal Wall Panel System. Those two areas of work are more than ½ of 1 percent of Ford's bid amount.

**Staff's response:** § 4106 of the Public Contracting Code clearly states that "If a prime contractor fails to specify a subcontractor in excess of ½ of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself."

**Protest:** Ford failed to identify the items that will be self-performed to comply to the required 30% of the total amount.

**Staff's response:** There is no requirement in the project specifications for bidders to identify self-performed items.

3. In a letter dated April 20, 2009 (Transmittal No. 5), Mr. Al Salm, General Manager of Pacific Studio, protested all bids that listed Superior Exhibits and Design, Inc. as an exhibit fabricator. Each item of their concern and staff's response is presented as follows:

**Protest:** Mr. Al Salem quoted that "We are protesting on the grounds that Superior does not have a California Contractor's License. All bids that list Superior as a subcontractor should therefore be deemed non-responsive. The California Contractors State License Board (CSLB) website states: *"All businesses or individuals who construct or alter, or offer to construct or alter any building, highway, road, parking facility, railroad excavation, or other structure in California must be licensed by the CSLB if the total cost (labor and materials) of one or more contracts on the project is \$500 or more. Contractors, including subcontractors, specialty contractors, and persons engaged in the business of home improvement (with the exception of joint ventures and projects involving federal funding) must be licensed before submitting bids."* Superior clearly offered their services to General Contractors, in violation of this rule. If the General Contractors on the project needed Class B license in order to perform the work, the same standard should hold for any subcontractors who are altering the building. There are specific portions of the exhibit work that alter the building, such as the construction of partition walls and the flooring."

**Staff's response:** As discussed previously, the City has no contractual relationship with potential bidders to dictate their daily business practices during the bidding phase. Whether bidders choose to list subcontractors licensed or not in their bid proposal, remains as the choice of each bidder. However, during the construction phase, the Inspector of Public Works shall approve all subcontractors who will be working on the project in writing prior to starting of their work.

**Protest:** Mr. Al Salem quoting in part stated that "We are protesting on the grounds that during the pre-bid meeting the Project Manager for the project (Mr. Richard

Mayer) stated verbally that all bidders needed a class B license in order to bid the project, but that subcontractors did not need a California Contractor's License. This comment is inconsistent with California State Law, and placed those firms who hold California Contractor's License at a competitive disadvantage. We asked for clarification on this issue during the request for Information (RFI) process, and our question was specifically ignored by the City of Los Angeles."

**Staff's response:** All subcontractors who are licensed pursuant to California Business and Professions Code (§7000 et. seq.) must hold a proper contractor's license classification of their field prior to the start of their work. However, during the bidding phase of the project (as Mr. Mayer stated at the pre-bid meeting) the City does not dictate whether subcontractors being considered by potential bidders for the project hold a proper license or not. Therefore, staff did not respond to Mr. Salem's question in the addendum.

**Protest:** Mr. Al Salem quoting in part stated that "We are protesting on the grounds that it was Superior's intent to deviate from the specifications on the project and value engineer the job. Their pricing to contractors was given in "high-low" ranges, with an offer to firm up pricing on May 1<sup>st</sup>."

**Staff's response:** As discussed previously, what was quoted by Superior to potential bidders is irrelevant. It is the responsibility of the successful bidder to complete exhibit fabrication work as called for in the project specifications.

Staff consulted above issues with Assistant City Attorney, Mr. Christopher Westhoff and he concurs with the recommendations contained in this report.

### ***Contractor Performance Evaluation***

In accordance with Article 13, Chapter 1, Division 10, of the City of Los Angeles Administrative Code (L.A.A.C.), the Project Manager and the City Inspector for this construction contract shall submit Contractor Performance Evaluation Reports to the Bureau of Contract Administration upon completion of this contract.

### ***Contractor Responsibility Ordinance***

All contractors participating in this program are subject to compliance with the requirements specified in the City of Los Angeles' Contractor Responsibility Ordinance No. 173677 (Article 14, Chapter 1, Division 10, L.A.A.C.). Failure to comply with all requirements specified in the Ordinance will render this bidder's contract subject to termination pursuant to the conditions expressed therein.

### ***Enhanced Electrical Safety Policy***

Because the estimated value of the electrical work for this project exceeds \$100,000, the electrical work will be performed and inspected under the conditions of the most current, amended Board of Public Works' Enhanced Electrical Safety Policy.

### ***Conclusion***

In view of the above findings, we recommend that the Board approve the request of Perera, first low bidder, to withdraw their bid; declare Ford, second low bidder, to be the lowest responsive, responsible bidder; receive and file Transmittal Nos. 3, 4 and 5; and award Ford the contract for this project.

***Program Review Committee (PRC) Approval***

The PRC approved a wastewater budget of \$9,900,000, including contingency, for this project on September 12, 2007 and a solid resources budget of \$1,643,000, including contingency, on January 9, 2008.

***Notification***

The Bureau of Engineering will have notified all concerned contractors prior to the meeting at which this report is presented.

**STATUS OF FINANCING**

Total funding for this project, including contingency, is \$10,450,000. Funds in the amount of \$1,100,000 for Bid Item No. 15 will be available in the Solid Waste Resources Fund No. 508 in an account to be established in FY 2009-10. The remaining amount of \$9,350,000 for the wastewater portion of the project as shown in Bid Items Nos. 1-14 will be available as shown in the table below. Funds for Bid Items Nos. 1-14 may be drawn from the Sewer Capital Fund No. 761, the WW Syst Comm Paper A Const Fund No. 70W, or any future funds established as a result of commercial paper or bond sales, at the discretion of the Director of the Bureau of Sanitation or appointed designee. The contract contains a "Financial Liability Clause" that states that "the City's liability under this contract shall only be to the extent of the present City appropriation to fund the contract. However, if the City shall appropriate funds for any succeeding years, the City's liability shall be extended to the extent of such appropriation, subject to the terms and conditions of the contract."

The following funding has been verified and approved by the Director of the Office of Accounting, subject to conditions described above:

<b>Account</b>	<b>Contract</b>	<b>Contingencies</b>	<b>Total</b>
Bid Items 1-14 (SZW00043)			
EGA8	\$1,084,817	\$ 0	<b>\$ 1,084,817</b>
FY 2009-10 WCIP Budget	\$5,200,000	\$584,000	<b>\$ 5,784,000</b>
FY 2010-11 WCIP Budget	\$2,215,183	\$266,000	<b>\$ 2,481,183</b>
<b>Total for SZW00043</b>	<b>\$8,500,000</b>	<b>\$850,000</b>	<b>\$ 9,350,000</b>
Bid Item 15			
FY 2009-10 Fund 508 budget	\$1,000,000	\$100,000	<b>\$ 1,100,000</b>
<b>Total</b>	<b>\$9,500,000</b>	<b>\$950,000</b>	<b>\$10,450,000</b>

( TSA KRR RTH WFB )

Report reviewed by:  
BOE (EED and PAC) and BOS (FMD)

Report prepared by:  
Contract Award Section



Ted S. Allen, P.E.  
Acting Division Engineer  
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Compliance Review Performed  
and Approved by:



Hannah Choi, Program Manager  
Office of Contract Compliance  
Bureau of Contract Administration

Statement as to Funds Approved by:

Craig V. Bloomquist, Director  
Office of Accounting  
Board of Public Works  
Date: 6/1/09

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Questions regarding this report  
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Respectfully submitted,



Gary Lee Moore, P.E.  
City Engineer



John L. Reamer, Jr.  
Inspector of Public Works