

CITY OF OAKLAND OFFICE OF THE CITY CLERK
AGENDA REPORT

2006 MAY 11 PM 4:29

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Public Works Agency and Contract Compliance and Employment Services
DATE: May 23, 2006

RE: **Informational Report And Update On the Seismic Retrofitting Project On the Police Administration Building And The Local Hiring Policy And Number of Local Contractors And Local Small Businesses Hired On The Project**

SUMMARY

An informational report has been prepared to provide an update on the local hiring policy and the utilization of local contractors and local small businesses on the Police Administration Building ("PAB") Weak Story Seismic Retrofit Project ("project").

On July 20, 2004, the City Council approved Resolution No. 78752 C.M.S. (Attachment A) to contract with Swinerton Builders, a certified local business, to provide Construction Manager At-Risk Services during the pre-construction and construction phases of the seismic retrofit project. The seismic retrofit project corrected the building's most significant structural weaknesses by correcting the "weak stories" between the basement and the third floor. The project also involved the abatement of hazardous materials, interior modifications, disability access improvements, and major seismic construction in a fully occupied facility that houses critical police functions and serves the public on a round-the-clock basis.

The project is located in Council District 3.

FISCAL IMPACT

The original construction contract to Swinerton Builders was for \$7,380,672.00. Change orders in the amount of \$165,231.00 were necessary for unforeseen and hidden conditions, bringing the total contract amount to \$7,545,903.00. Funding for this contract was provided primarily by a \$7.5 million grant from the Federal Emergency Management Agency ("FEMA") within the California Emergency Services Grant Fund (2146). The remaining amount was funded with Measure I Funds (5008).

BACKGROUND

A 1995 report from Paul F. Fratessa Associates, Inc., a structural engineering firm, stated that the PAB was seismically unfit. The City applied for a grant under the Hazard Mitigation Grant Program administered by FEMA and was approved for a \$7.5 million grant in December 1998 to mitigate the hazard. In July 2000, the City Council approved the Police Facilities Plan that included a seismic upgrade of the PAB to an "essential services" standard in two phases of

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construction that required the temporary relocation of all PAB occupants to the Oakland Army Base. During negotiations for relocation and tenant improvements at the Oakland Army Base, site contamination from hazardous materials was discovered, rendering the plan for relocation cost prohibitive and infeasible. In April 2003, the City Council approved entering into an Exclusive Negotiating Agreement (“ENA”) with the Lennar Swinerton Group to develop a new Oakland Police Department complex. Staff was directed by the City Manager’s Office to put the seismic project on hold while the possibility of a new facility was being investigated. The ENA was ultimately not signed, and in October 2003, staff was directed to resume efforts to relocate the PAB occupants throughout the City in order to seismically upgrade the existing PAB. A suitable site to relocate all PAB occupants could not be found. Recognizing that further delay in mitigating the seismic hazard of the PAB would put the FEMA funds in jeopardy, the Mayor directed Public Works Agency (“PWA”) staff in June 2004 to move forward with phase one of the seismic upgrade, the weak story seismic retrofit, because this work did not require the relocation of all PAB occupants. PWA has now completed the project and has met all the deadlines required by FEMA.

The original deadline to complete the project using FEMA funds was September 30, 2000. However, FEMA was kept fully informed of the complex issues the City faced that posed many challenges to meeting the deadline. Through the course of the project, FEMA approved several time extensions. The first approval extended the deadline to December 31, 2003, then to October 31, 2005 and lastly, to April 6, 2006. When FEMA approved the October 31, 2005 extension, it set very specific milestone deadlines that, if not met by the City, would jeopardize the grant. FEMA required that a Notice to Proceed with the seismic project be issued no later than November 29, 2004. (See Attachment B)

In July 2004, the City Council had approved Resolution No. 78752 C.M.S., hiring Swinerton Builders to provide pre-construction and construction phase services for the seismic retrofit of the PAB. During the bidding process, Swinerton Builders endeavored in good faith to exceed minimum bid participation by certified local business enterprise (LBE) and small local business enterprise (SLBE) subcontractors. Swinerton Builders advertised the project, sent plans and specifications to public plan rooms, sent invitations to all local and small local subcontractors, and held two pre-bid job walks and pre-bid meetings. In addition, the original bid due date was extended to October 6, 2004 to allow additional time for potential bidders to participate.

According to Swinerton Builders, several factors affected the participation level of SLBE subcontractors. For example, no SLBE subcontractors were available for some trades; in many cases, the low bidder was the only bidder for a particular bid package; and many subcontractors did not want to bid due to the complex nature of the project, the certified payroll requirement, and the Oakland Police Department’s background check/security requirements for all workers. Based upon the Contractor’s initial evaluations of local and small business participation levels, Swinerton Builders believed they had achieved 12.1 percent in SLBE participation and 15.9 percent in LBE subcontractor participation. However, upon subsequent evaluations by Contract Compliance and Employment Services, the level of SLBE participation was found to be below the 10 percent requirement. There was no time to rebid the project and still meet FEMA’s

deadline to issue a Notice to Proceed by November 29, 2004. Due to the nature and size of this project, there was no guarantee that the SLBE participation would be improved significantly. Staff also anticipated that the SLBE participation could be improved if some of the change order work during construction could be performed with small local subcontractors.

KEY ISSUES AND IMPACTS

This project was subject to the City's Local Hiring and Local Business participation policies.

At project end, approximately \$3,335,990.00 dollars were spent with certified local firms, representing 44 percent of the total project amount at a rate of 41 percent (\$3,076,400.00) local business participation and three percent (\$259,590.00) small local business participation. Current policy requires a minimum of ten percent small local business participation. Swinerton Builders made a concerted effort to reach the ten percent small local participation. However, at project end, there was a seven percent shortfall in small local business participation.

Under the City's current program, contractors and consultants have the option to make up for shortfalls by paying a monetary penalty or by hiring local residents and certified businesses on non-city-funded projects. The monetary penalty is viewed as the absolute last resort. The preferred resolution is to hire Oakland residents and local certified firms.

Swinerton Builders will make up for the shortfall in small local business participation in the amount of \$528,213.00, which is seven percent of the total contract amount. The general agreement (Attachment C), which outlines Swinerton Builders' commitment, will be augmented by a formal Memorandum of Understanding ("MOU") that must be completed by May 22, 2006. Items 1 and 2 as outlined in Attachment C have been completed. Item 3 is pending.

This project was also subject to the local hire policies in the form of the Local Employment Program ("LEP") and the 15 percent Apprenticeship Program. The LEP carries a 50 percent Oakland resident hiring goal and as the title suggests, the Apprenticeship Program seeks to engage apprentices on City-funded projects.

Both the LEP and 15 percent Apprenticeship Program allow contractors to designate up to 50 percent of their total project hours to be performed by 'core employees'. A core employee is defined as an apprentice or journey level employee who: possesses any license required by state or federal law for the project work to be performed; has worked a total of at least 1000 hours in the construction craft during the prior three years; was on the contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award; and has the ability to perform safely the basic functions of the applicable trade. Contractors are also allowed to achieve up to 50 percent of their local hire goal by employing Oakland residents on non-city projects. The summary reports below credit all contractors with 50 percent core employee utilization, pending submittal of certified payrolls to support core employee designations, and submittal of certified

summary reports below credit all contractors with 50 percent core employee utilization, pending submittal of certified payrolls to support core employee designations, and submittal of certified payrolls documenting employment of Oakland residents on non-city projects. Final compliance will be determined after submittal of all relevant documents.

Preliminary Summary of Local Employment Program (LEP)

Contractors	Total Hrs	Projected Oak Hrs*	Oak Hrs	Oak % of Total Hrs	Shortfall Hrs
All Contractors	27,632.10	6,908.02	4,947.00	17.90	1,961.02

*Projected Oakland hours credit contractors with 50% core employee utilization. Shortfall hour adjustments will be made pending submittal of certified payrolls identifying core employee participation.

Shortfall hours would generate approximately \$66,903.33 in journey-level wages and fringe benefits; and approximately \$7,085.89 in first period apprentice level wage and fringe benefits. Wages and fringe benefit figures are based on averaging wage and fringe benefits for Carpenters, Laborers, Iron Workers, Painters, and Cement Masons for both journey-level and first period apprentices.

Preliminary Summary of 15% Apprenticeship Program

Contractors	Total Hrs	Total App Hrs	Oak App Hrs	Oak % of Total Hrs	5:1 Ratio*	Shortfall Hrs**
All Contractors	27,632.10	779.50	304.50	39.06	4,615.75	3,157.31

*The number of apprentice work hours that would result from contractor compliance with the required ratio of journey-level to apprentice work hours for public works projects.

**Shortfall hours represent work hours for Oakland apprentices based on applying the 15% Apprenticeship Program which calls for 75% of all apprentice hours to be performed by Oakland residents, and subtracting actual work hours provided. Shortfall apprentice work hours would generate approximately \$68,450.48 in wages and fringe benefits for Oakland residents.

As with the Local/Small Local Business participation, Swinerton Builders has committed to addressing resident employment shortfalls on non-city Oakland projects. The specifics of this commitment will be reflected in the formal Memorandum of Understanding and are summarized in the general agreement letter from Swinerton Builders attached to this report as Attachment C.

SUSTAINABLE OPPORTUNITIES

Economic: The project generated business tax, sales tax, and other revenues for the City from work on the project.

Environmental: The project abated significant amounts of hazardous materials during the construction phase. The contractor was required to comply with the City's Recycling and Waste Reduction program for construction projects. In addition, new energy-conserving light fixtures and water-conserving plumbing fixtures were installed.

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Social Equity: Employment and local business participation opportunities, as prescribed by City policy, will be enhanced through the proposed agreement with Swinerton Builders resulting in approximately \$670,600 to be earned by local businesses and residents.

DISABILITY AND SENIOR CITIZEN ACCESS

The project improves accessibility within the PAB for the disabled and senior citizen communities. On floors affected by construction, restrooms, drinking fountains, public telephones, elevator cabs, and path-of-travel were upgraded in accordance with applicable state accessibility standards and the Americans with Disabilities Act.

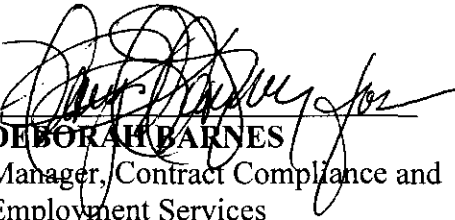
RECOMMENDATION (S) AND RATIONALE

Accept the attached "General Agreement" with the understanding that the Memorandum of Understanding will be completed by May 22, 2006 and allow staff to return to Council in November 2006 for an interim status report on the progress of the MOU.

ACTION REQUESTED OF THE CITY COUNCIL


Staff recommends that the City Council accept this informational report

Respectfully submitted,


DEBORAH BARNES
Manager, Contract Compliance and
Employment Services
Office of the City Administrator

Prepared by:
Shelley Darensburg
Contract Compliance Officer

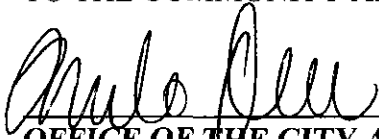
Jonothan Dumas
Local Employment Supervisor


RAUL GODINEZ II, P.E.
Director, Public Works Agency

Reviewed by:
David Lau, P.E., Division Manager

Prepared by:
Calvin Hao, AIA, CIP Coordinator
Project Management Section

APPROVED AND FORWARDED
TO THE COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE


OFFICE OF THE CITY ADMINISTRATOR

**Attachments: A – Resolution No. 78752 C.M.S.
B – FEMA letter dated June 24, 2004
C – Swinerton General Agreement dated May 3, 2006**

OAKLAND CITY COUNCIL
RESOLUTION NO. 78752 FILED
OFFICE OF THE CITY CLERK
OAKLAND
C.M.S.

INTRODUCED BY COUNCILMEMBER _____

2004 JUL - 1 PM 4:59

Requires the two-thirds vote of the Council

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO AMEND THE PROFESSIONAL SERVICES CONTRACT WITH SWINERTON BUILDERS FOR CONSTRUCTION MANAGER AT-RISK SERVICES TO INCLUDE THE CONSTRUCTION PHASE OF THE POLICE ADMINISTRATION BUILDING WEAK STORY SEISMIC RETROFIT PHASE 1 PROJECT AND TO EITHER (1) INCREASE THE CONTRACT COMPENSATION AMOUNT BY \$8 MILLION FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$8.5 MILLION IF THE FEDERAL GOVERNMENT APPROVES FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") GRANT FUNDS FOR THE PROJECT OR, (2) INCREASE THE CONTRACT COMPENSATION AMOUNT BY \$5.5 MILLION OF MEASURE I FUNDING (BOND FUNDING FOR PUBLIC SAFETY PURPOSES) FOR A TOTAL CONTRACT AMOUNT OF \$6 MILLION, IF FEMA GRANT FUNDS ARE NOT APPROVED

WHEREAS, the existing Police Administration Building ("PAB"), located at 455 Seventh Street is located in one of Oakland's most seismically active areas; and

WHEREAS, the PAB does not meet current seismic codes and was rated "POOR" in its seismic performance evaluation, which equates to significant structural and nonstructural damage and appreciable life hazards in a major seismic disturbance; and

WHEREAS, the PAB Weak Story Seismic Retrofit Project involves complex coordination issues such as the abatement of hazardous materials, major seismic construction, and interior modifications in a fully occupied facility; and

WHEREAS, the PAB is an essential services facility that serves the public on a round-the-clock basis, and that houses police functions crucial to the daily operations of the City and the well being of its citizens; and

WHEREAS, the PAB Weak Story Seismic Retrofit Project will correct the most significant structural weakness of the building -- the "weak stories" between the basement and the 3rd floor; and

WHEREAS, a project delivery method known as Construction Manager At-Risk is being used, and this method is also known as "CM/GC" (Construction Manager/General Contractor); and

WHEREAS, on June 17, 2003, Council authorized under Resolution No. 77891 C.M.S. a professional services contract with Swinerton Builders to provide CM/GC services for the seismic retrofit of the PAB; and

WHEREAS, Swinerton Builders has completed the Pre-Construction phase services and the Construction phase is ready to be implemented; and

WHEREAS, under the CM/GC arrangement, the CM/GC will advertise and solicit competitive bids for the construction work for the seismic retrofit project, and will pre-qualify pools of subcontractors by trade that will participate in this competitive bid process; and

WHEREAS, upon completion of the subcontractor bidding/negotiation process, the fixed price for subcontractor costs, as well as the fixed price for the entire project, will be established; and

WHEREAS, once the fixed price for the entire project has been established, a contract amendment to incorporate the CM/GC's commitment to deliver the project in accordance with the full construction price is necessary to transition to the construction phase; and

WHEREAS, funding for the contract amendment is available in Measure I (Org. 92290, Project No. C58690, Fund 5008); and

WHEREAS, the City has submitted a grant deadline extension request to the Federal Emergency Management Agency ("FEMA") for the Hazard Mitigation Grant, and if approved, the FEMA funding will be used first and the balance will be covered by the Measure I funds; and

WHEREAS, the City lacks the equipment and qualified personnel to perform the necessary work; and

WHEREAS, the City Council finds and determines that the performance of this contract is in the public interest because of economy; and

WHEREAS, the City Council finds that services under this contract will be temporary; and

WHEREAS, the City Council finds and determines that the performance of this contract shall not result in the loss of employment or salary by any person having permanent status in the competitive service; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Administrator, or her designee, to amend the professional services contract with Swinerton Builders to include the construction phase of the Police Administration Building Weak Story Seismic Retrofit Project for a total contract amount not to exceed \$8,500,000 contingent upon approval of the FEMA grant extension; alternatively if the FEMA grant extension is not approved, then the contract will be amended by only \$5,500,000 for a total contract amount not to exceed \$6,000,000 using Measure I funds; and, be it

FURTHER RESOLVED: That the City hereby finds and determines that pursuant to Chapter 2.04, Article I, section 2.04.050.I.5, it is in the best interests of the City to waive bidding requirements of 2.04.050; and be it

FURTHER RESOLVED: That the City Administrator, or his designee, is hereby authorized to approve any subsequent amendments to or extensions of the CM/GC's agreement with the exception of those related to an increase in the total dollar amount of the agreement, provided that such amendments or extensions shall be filed with the City Clerk's Office; and be it

FURTHER RESOLVED: That the contract shall be reviewed and approved by the City Attorney and placed on file in the Office of the City Clerk.

FURTHER RESOLVED: That the approval of this Resolution requires a two-thirds vote of the Council members.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 20 2004, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN and PRESIDENT DE LA FUENTE — 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST



CEDA FLOYD

City Clerk and Clerk of the Council
of the City of Oakland, California

C - Paul 510-298-1111

U.S. Department of Homeland Security
1111 Broadway, Suite 1200
Oakland, CA 94607-4052

**FEMA**

June 24, 2004

Mr. Paul Jacks
Governor's Authorized Representative
Governor's Office of Emergency Services
Post Office Box 419047
Rancho Cordova, California 95741-9047



Reference: Activity Completion Date Extension
HMGP Project #1008-6112
City of Oakland, FIPS #001-53000
Retrofit of Police Department Headquarters

Dear Mr. Jacks:

This letter is in response to your April 19, 2004 letter, forwarding information from the Subgrantee supporting the Subgrantee's request (dated 3/4/04) for an activity completion date extension, from December 31, 2003 to July 31, 2005. Your request does not include a change to the project budget or scope of work (SOW).

Since the work schedule has been interrupted by OES/FEMA reviews, we have adjusted the completion date by three months. We approve the activity completion date extension to October 31, 2005. We will also require your concurrence of this adjusted completion date by July 9, 2004.

Our approval is based on the following stipulations established in your letter:

- OES will monitor critical milestones through the Quarterly Report and site visits. If the milestone is not attained because of the Subgrantee's neglect, OES will withdraw the remaining project and close the grant for the eligible completed work.
- Eligible relocation expenses will be reimbursed to the limit of the grant upon completion of the project.

The submitted schedule indicates the next critical milestone is the Notice to Proceed, and based on our adjustment, the due date is November 29, 2004. We are requiring written confirmation by December 31, 2004 this milestone has been met.

Please provide a copy of the Subgrantee's detailed quarterly report which demonstrates progress of work, relative to the 10-month construction period. We are requiring this information in the following OES Quarterly Reports: December 2004, March 2005, June 2005, and September 2005.


The final milestone is Project Completion which will be October 29, 2005, based on our schedule adjustment. We are requiring written confirmation by November 29, 2005 when this milestone has been achieved.

Please advise the Subgrantee that federal funds may be de-obligated for work that is not completed within schedule, and for which no extension is approved. Any further change in the project's three elements: project budget, SOW or activity completion date, should contain a written recommendation addressing all three elements, plus supporting documentation by the Subgrantee.

In accordance with Title 44 of the Code of Federal Regulations (44 CFR 13.23) a Grantee must liquidate all obligations incurred under the award no later than 90 days after the end of the activity completion timeframe. Any work completed after the October 31, 2005 approved completion date for this project is not eligible for federal funding.

If you have any questions or need further assistance, please contact Susan Murray, Emergency Management Program Specialist at (510) 627-7048 or Clayton Pang, Hazard Mitigation Specialist at (510) 627-7218.

Sincerely,


for Sally Ziolkowski, Director
Mitigation Division

cc: John Rowden, OES

CITY OF OAKLAND



CONTRACT COMPLIANCE & EMPLOYMENT SERVICES • 250 FRANK H. OGAWA PLAZA, SUITE 3341 • OAKLAND, CA 94612

Office of the City Administrator

May 3, 2006

(510) 238-3970
FAX (510) 238-3363
TDD (510) 238-3724

Eric Foster, Senior Vice President
Swinerton Builders
260 Townsend Street
San Francisco, CA 94107

Dear Sir:

The purpose of this letter is to set forth the intent of the undersigned parties to establish a compliance strategy by which Swinerton can utilize local certified businesses and Oakland residents on non-City construction projects.

The Local and Small Local Business Enterprise Program with a 20% minimum participation requirement; a Local Employment Program with a 50% goal and the 15% Apprenticeship Program, on behalf of Oakland certified businesses and residents, allow businesses to satisfy shortfalls so that certified local businesses and residents may realize the full benefits of Oakland City Council's local hire and local business participation policies.

As such, Swinerton Builders commits to the provision of providing contracting opportunities equal to the contract dollar shortfall for Local/Small Local Businesses, as defined in City of Oakland policies, in and outside of the City of Oakland's jurisdiction.

Further, Swinerton commits to establishing resident hiring goals on non-City of Oakland projects to address resident employment shortfalls determined through a final review of project's local hiring goals and accomplishments.

As the next steps, three (3) immediate actions must take place:

- (1) Contract Compliance Office to forward a general letter of agreement to Swinerton by May 3, 2006.
- (2) Public Works Agency to provide change order amounts to Contract Compliance and to corroborate shortfall dollars with the Contract Compliance Officer; and
- (3) Swinerton to submit remaining certified payrolls and DE-6s in order to finalize local employment numbers.

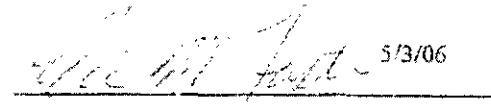
The specifics of this agreement will be spelled out in a formal MOU no later than May 22, 2006.

By signature, the City of Oakland, Contract Compliance and Employment Services Division, Office of the City Administrator, and Swinerton Builders agree.

Sincerely,

 5/3/06

Deborah Lusk-Barnes
CC & ES Manager

 5/3/06

Eric Foster, Sr. Vice President
Swinerton Builders

CC: Deborah Edgerly, City Administrator
Raul Godinez, Director, Public Works Agency
Rick Moore, Vice President, Community Affairs, Swinerton Builders
David, Lau, Supervising Civil Engineer, PWA
Calvin Hao, Project Manager, PWA
Shelley Darensburg, Contract Compliance Officer
Jonathan Dumas, Local Employment Supervisor