

# CITY OF OAKLAND

## AGENDA REPORT

2011 JUN -2 PM 6:23

TO: Office of the City Administrator  
ATTN: P. Lamont Ewell  
FROM: Department of Contracting and Purchasing (DCP)  
DATE: June 7, 2011

RE: A Supplemental Informational Report On Project No. C312210 – The Rehabilitation of Sanitary Sewers in an Area Bounded by MacArthur Boulevard, 64<sup>th</sup> Avenue, Simson Street and 72<sup>nd</sup> Avenue (Sub-Basin 84-104)

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### SUMMARY

At the May 24<sup>th</sup> presentation of a report on compliance with the Local and Small Local Business Enterprise (L/SLBE) Program regarding the above referenced project, Committee members requested additional information specifically regarding:

1. A copy of the May 24, 2011 revised compliance analysis correcting the April 7, 2011 analysis included in the agenda packet.
2. How L/SLBE compliance is established when participation appears in compliance when rounding up.

### KEY ISSUES AND IMPACT

On April 7, 2011, the Department of Contracting & Purchasing forwarded a compliance analysis to the Public Works Agency (PWA) for the above referenced project. The April 7, 2011 compliance analysis indicated Pacific Trenchless as the lowest responsive and responsible bidder with a bid amount of \$3,064,854 and a total of 90.59% Small Local Business Enterprise (SLBE) participation.

Another bidder, D'Arcy and Harty submitted a bid in the amount of \$2,624,832 and the Department of Contracting and Purchasing (DCP) reported a participation level of 17.96% SLBE participation. D'Arcy and Harty's bid was deemed non-responsive for failing to meet the minimum 20% L/SLBE participation requirement.

On May 23, 2011, D'Arcy and Harty asked DCP to recheck the subcontractor participation. Staff realized that a subcontractor's work was inadvertently left out of the analysis in the amount of \$50,000. The correction was made immediately and the adjustment verbally reported to the PWA Committee. Even with including the additional SLBE participation, D'Arcy and Harty's participation level fell short of the minimum 20% participation by .04% and therefore deemed non-responsive to the minimum 20% L/SLBE participation requirement.

Item: \_\_\_\_\_  
City Council  
June 7, 2011

As a matter of standard practice, compliance calculations are reported out to two decimal points in order to establish a clear distinction between one bidder and another. All bidders are keenly aware of not only their own participation levels but those of their competitors as well. Rounding up distorts actual participation levels particularly when the levels are close. In addition this approach provides the using agency with a clear picture of which firms met the requirement.

If we round up levels of participation, we will be inviting protests from those responsive and responsible bidders who actually meet the City's minimum 20% participation requirement. Moreover, if we round up, we are actually dropping the minimum level of participation and awarding at a level lower than the minimum 20%.

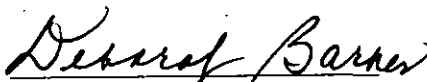
In closing, while there was a considerable difference between the apparent low bidder and the most responsive and responsible low bidder, it is important to note that the most responsible and responsive bidder was \$392,951 below the City's engineer's estimate.

As an alternative, the Council may direct staff to reject all bids and negotiate participation with the lowest bidder.

#### RECOMMENDATION AND RATIONALE

Staff recommends that Council accept this informational report.

Respectfully submitted,



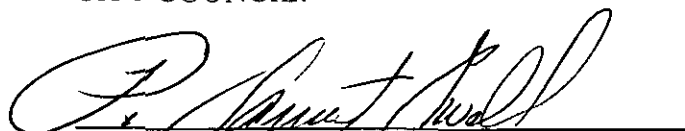
Deborah Barnes, Director

Department of Contracting and Purchasing

Prepared by:

Shelley Darensburg, Sr. Compliance Officer  
Department of Contracting and Purchasing

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
Office of the City Administrator

Item: \_\_\_\_\_  
City Council  
June 7, 2011



# Memo

Department of Contracting and Purchasing  
Social Equity Division

To: Jimmy Mach - Project Manager  
 From: Sophany Hang - Acting Contract Compliance Officer  
 Through: Deborah Barnes - DCP Director *Deborah Barnes*  
 Shelley Darensburg - Sr. Contract Compliance Officer  
 CC: Gwen McCormick - Contract Administration Supervisor  
 Date: April 7, 2011 (Revised 5/24/11)  
 Re: C312210 – The Rehabilitation of Sanitary Sewers in an Area Bounded by MacArthur Boulevard, 64<sup>th</sup> Avenue, Simson Street and 72<sup>nd</sup> Avenue (Sub-Basin 84-104)

The Department of Contracting and Purchasing (DC&P), Division of Social Equity, reviewed three(3) bids in response to the above referenced project. Below is the outcome of the compliance evaluation for the minimum 20% Local and Small Local Business Enterprise (L/SLBE) participation requirement, a preliminary review for compliance with the Equal Benefits Ordinance (EBO), and a brief overview of the lowest responsible bidder's compliance with the 50% Local Employment Program (LEP) and the 15% Oakland Apprenticeship Program on the bidder's most recently completed City of Oakland project.

The above referenced project contains Cured in Place Pipe (CIPP) specialty work. The Standard Specifications for Public Works Construction, "Greenbook", page 10 section 2-3.2 (Attachment A) describes how specialty work may be addressed. Based upon the Greenbook and per the specifications, the CIPP specialty items have been excluded from the contractor's bid price for purposes of determining compliance with the minimum 20% L/SLBE requirement.

The spreadsheet below is a revised format specifically for this analysis. The spreadsheet shows: Column A - Original Bid Amount; Column B - Specialty Dollar Amount submitted by the contractor; Column C - Non-Specialty Bid Amount (difference between column A and B); Column D - Total Credited Participation; Column E - Earned Bid Discounts as a result of the total credited participation and Column F - Adjusted Bid Amount calculated by applying the earned bid discount to the non-specialty work (column C) and then subtracting that difference from the original bid amount (column A).

Responsive		Proposed Participation				Earned Credits and Discounts			Banked Credits Eligibility	EBO Compliant? Y/N		
Company Name	Original Bid Amount	Specialty Dollar Amount	Non Specialty Dollar Amount	Total LBE/SLBE	LBE	SLBE	Trucking	Total Credited participation			Earned Bid Discounts	Adjusted Bid Amount
	A	B	C					D	E	F		
Pacific Trenchless Inc.	\$3,064,854.00	\$90,120.00	\$2,974,734.00	90.59%	0%	90.59%	100%	90.59%	5%	\$2,916,117.30	2%	Y

Comments: As noted above, Pacific Trenchless, Inc. exceeded the minimum 20% Local/Small Local Business Enterprise participation requirement. The firm is EBO compliant.

Non-Responsive		Proposed Participation						Earned Credits and Discounts			Banked Credits Eligibility	EBO Compliant? Y/N
Company Name	Original Bid Amount	Specialty Dollar Amount	Non Specialty Dollar Amount	Total LBE/SLBE	LBE	SLBE	Trucking	Total Credited participation	Earned Bid Discounts	Adjusted Bid Amount		
	<i>A</i>	<i>B</i>	<i>C</i>					<i>D</i>	<i>E</i>	<i>F</i>		
D'arcy & Harty	\$2,624,832.00	\$120,160.00	\$2,504,672.00	19.966%	0%	19.96%	100%	0%	0%	0%	0%	Y
Andes Construction	\$3,352,750.00	\$285,380.00	\$3,082,370.00	99.68%	0%	99.68%	0%	0%	0%	0%	0%	Y

Comments: As noted above, D'arcy & Harty failed to meet the minimum 20% L/SLBE participation requirement. Therefore, they are deemed non-responsive.

Andes Construction achieved 99.68% L/SLBE participation. However, they failed to meet the 20% L/SLBE trucking participation requirement, which is a substantial element of this work per Project Manager. Therefore, they are deemed non-responsive to the trucking requirement. Both firms are EBO compliant.

**DEPARTMENT OF CONTRACTING AND PURCHASING**



**Social Equity Division**

**PROJECT EVALUATION FORM**

**PROJECT NO.:** C312210

**PROJECT NAME:** The Rehabilitation of Sanitary Sewers in an Area Bounded by MacArthur Boulevard, 64th Avenue, Simson Street and 72nd Avenue (Sub-Basin 84-104)

**CONTRACTOR:** D'arcy & Harty Construction, Inc.

<u>Engineer's Estimate:</u>	<u>Contractors' Original Bid Amount</u>	<u>Specialty Dollar Amount</u>	<u>Over/Under Engineer's</u>
\$3,457,805.00	\$2,624,832.00	\$120,160.00	\$832,973.00

<u>Discounted Bid Amount:</u>	<u>Amount of Bid Discount</u>	<u>Non-Specialty Bid Amt.</u>	<u>Discount Points:</u>
\$0.00	\$0.00	\$2,504,672.00	0%

- 1. Did the 20% requirements apply? **YES**
- 2. Did the contractor meet the 20% requirement? **NO**
  - b) % of LBE participation **0%**
  - c) % of SLBE participation **19.96%**
- 3. Did the contractor meet the Trucking requirement? **YES**
  - a) Total SLBE/LBE trucking participation **100%**
- 4. Did the contractor receive bid discounts? **NO**
  - (If yes, list the percentage received) **0%**

**5. Additional Comments.**

For this project, Bid Item Number 8 Cured In Place Pipe (CIPP) specialty work was excluded from that total bid price for the purposes of determining compliance with the 20% L/SLBE requirement.

Contractor failed to meet the minimum 20% L/SLBE participation requirement. Therefore, they are deemed non-responsive.

5/24/2011  
Date

Reviewing Officer: Vivian Dumar

Date: 5/24/2011

Approved By: Shelley Darenburg

Date: 5/24/11

## LBE/SLBE PARTICIPATION BIDDER 1 (REVISED 5/24/11)

Project Name: **The Rehabilitation of Sanitary Sewers in an Area Bounded by MacArthur Boulevard, 64th Avenue, Simson Street and 72nd Avenue (Sub-Basin 84-104)**

Project No.: C312210		Engineers Est: 3,457,805.00				Under/Over Engineers Estimate: 832,973.00					For Tracking Only		
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	Total LBE/SLBE	L/SLBE Trucking	Total Trucking	*Non-Specialty Bid Amount	TOTAL Original Bid Amount	Ethn.	MBE	WBE
PRIME	D'arcy & Harty Construction, Inc.	San Francisco	UB						1,954,672.00	1,950,580.00	C		
Sawcutting	Bay Line Cutting & Coring	Oakland	CB		\$50,000.00	50,000.00			50,000.00	50,000.00	H	50,000.00	
Trucking	S & S Trucking	Oakland	CB		50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	H	50,000.00	
Pipe Work	Mosto Construction	Oakland	CB		400,000.00	400,000.00			400,000.00	400,000.00	H	400,000.00	
Pipe Work	Mission Clay	Oakland	UB						50,000.00	50,000.00	C		
CIPP	SAK	Pochaco	UB							124,252.00			
<b>Project Totals</b>				\$0.00	\$500,000.00	\$500,000.00	\$50,000.00	\$50,000.00	\$2,504,672.00	\$2,624,832.00		\$500,000.00	\$0.00
				0.00%	19.963%	19.963%	100%	100%	100%	100%		19.963%	0%
<b>Requirements:</b> The 20% requirements is a combination of 10% LBE and 10% SLBE participation. An SLBE firm can be counted 100% towards achieving 20% requirements.				LBE 10%	SLBE 10%	TOTAL LBE/SLBE	20% LBE/SLBE TRUCKING				<b>Ethnicity</b> AA = African American AI = Asian Indian AP = Asian Pacific C = Caucasian H = Hispanic NA = Native American O = Other NL = Not Listed MO = Multiple Ownership		
<b>Legend</b>				LBE = Local Business Enterprise	UB = Uncertified Business								
				SLBE = Small Local Business Enterprise	CB = Certified Business								
				Total LBE/SLBE = All Certified Local and Small Local Businesses	MBE = Minority Business Enterprise								
				NPLBE = NonProfit Local Business Enterprise	WBE = Women Business Enterprise								
				NPSLBE = NonProfit Small Local Business Enterprise									

\* The sanitary sewer project noted above contains specialty work. The Non-Specialty Work Bid Dollars were used for the purposes of determining compliance with minimum 20% L/SLBE participation requirement.