



Office of the City Manager

ITEM 16
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COUNCIL MEETING

OCT 21 2003 October 21, 2003

To: Honorable Mayor and Members of the City Council
OFFICE OF THE CITY CLERK
CITY OF BERKELEY

From: Weldon Rucker, City Manager

Subject: Contract: James Kenney Recreation Center Renovation

The Public Works Department Facilities Division received bids on August 14, 2003 for the James Kenney Recreation Center Renovation. The low bidder was Kin Wo Construction Company. The company was found to be a responsive and responsible bidder by staff.

On October 8, 2003, a message was sent to the City Council Members by electronic mail from a representative of the Carpenter's Union Local 713. The message made allegations that Kin Wo Construction discriminates against union workers that seek employment, may fail to supply breaks to workers and may discriminate against women seeking employment as carpenters. The message stated that charges had been filed with the National Labor Relations Board (NLRB) as relating to the allegation that Kin Wo Construction discriminates against union workers that seek employment.

The allegations were forwarded to Kin Wo Construction for their review and response. They issued a response on October 9, 2003. The response denied the claims made by the Union. After receiving Kin Wo's response, staff investigated the allegations made by the Union by contacting the representative of the Carpenter's Union who sent the message to the City Council, representatives of Kin Wo Construction, and the case worker assigned by the NLRB to handle this matter. In addition, staff contacted Chinese for Affirmative Action, a non-profit community organization, and the San Francisco Human Rights Commission to learn about their experiences with Kin Wo.

After contacting the companies/organizations above, staff learned that the contractor has a standard hiring policy wherein they advertise when they have openings and ask for resumes to be faxed to the office and the best qualified are asked to make an appointment for interviews. The case being alleged by the union regarding discrimination against union workers apparently was an instance where three men and one woman came to the offices without an appointment, asked for employment applications and then demanded an interview immediately. They were told to follow company policy and were told that no interview would be made on that occasion. Kin Wo also stated that they have hired union workers in the past and will continue to hire qualified workers regardless of union status.

With respect to the allegation that Kin Wo has violated the state labor code by failing to provide former workers with breaks, Kin Wo explains that since the Union fails to identify who these

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alleged employees are, it is unable to investigate this charge other than to deny that it has ever violated any state laws.

With respect to the allegation that Kin Wo discriminated against a woman because of her gender, the Union states that the basis for this allegation is that Kin Wo failed to provide a woman applicant with a follow up phone number when she submitted her application. Kin Wo responds that since the woman is not identified, it is unable to investigate this matter other than to state that it is their company hiring policy to contact applicants for interview based on an evaluation of the applicant's resume and application. Kin Wo has unequivocally stated that they do not discriminate against anyone, Union or otherwise, male or female, and they have hired Union affiliated workers in the past.

As to the allegation that Kin Wo engages in gender discrimination, Kin Wo reiterated that they do not discriminate and always hires the most qualified applicants. In addition, the San Francisco Human Rights Commission informed staff that Kin Wo has in the past complied with San Francisco's DBE/WBE requirements on projects.

Staff has determined that there is no reasonable basis for disqualifying Kin Wo Construction due to non-responsibility. The Charter requires that construction contracts such as this contract be awarded to the lowest responsive, responsible bidder. Since the investigation by staff has not uncovered any information that would lead staff to believe that Kin Wo Construction is not a responsible bidder, and since Kin Wo Construction is the lowest responsive bidder, staff recommends acceptance of the bid submitted by Kin Wo Construction for the James Kinney Recreation Center Renovation project. The bid submitted by Kin Wo expires on October 23, 2004 so if it is not accepted by that date, the City may have to rebid the project.