



Office of the City Manager

ITEM No. 14

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RECEIVED AT
COUNCIL MEETING OF:

NOV 05 2003

November 4, 2003

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

From: Phil Kamlarz, Acting City Manager

Subject: Contract: James Kenney Recreation Center Renovation

Currently the building condition of the James Kenney Recreation Center discourages recreational and community use. Existing access to the second floor does not meet ADA standards. This renovation project will include the installation of a new elevator, renovation of the meeting room and kitchen, repair of dry rot within some of the walls, and mechanical and electrical work. Bids from three contractors received on August 14, 2003. Kin Wo Construction, Inc. submitted the lowest responsive and responsible bid, in the amount of \$763,800.

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.

The case before the NLRB involving the allegation that Kin Wo Construction discriminates against union workers that seek employment has now received a determination from their regional office. That determination is that on a probable cause basis the allegation has been determined to have merit. A complaint was issued by NLRB against Kin Wo Construction on October 31, 2003. The result will be a hearing before an Administrative Law Judge who will decide the case on the basis of a preponderance of the evidence. The hearing has been set to occur on January 22, 2004. The decision that will be rendered can be appealed to the NLRB in Washington, D.C. and their decision could be further appealed to the 9th Circuit Court or even the Supreme Court. The NLRB representative has explained that the process involved to render a final decision in the matter could take years. He has stressed that in no way should Kin Wo Construction be considered as having violated any law until due process is complete.

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With reference to the allegation that Kin Wo Construction discriminates against women in their hiring practices Staff has been unable to make a determination based upon the complaints of one woman who tried to apply for a carpenters job, apparently without following the normal process of application for the position. Kin Wo has a typical process that they follow in advertising, reviewing applicant's qualifications, interviewing, screening and hiring the most qualified candidates. It is not unreasonable to assume that if an applicant does not follow the established procedures used in the hiring process when applying for a job that their application may not be given as much merit.

Kin Wo Construction has stressed that they do not discriminate on any basis. They have stated that they would be very interested in hiring a woman carpenter should that person be the most qualified applicant for a carpenter's position.

A letter was sent to Kin Wo Construction on November 4, 2003 requesting that they agree to the following conditions:

- a. The contractor agrees that during this project, all positions that are available will be filled only after the position is advertised to the public.
- b. The contractor agrees that it will maintain all resumes and/or applications submitted to it for the positions described in the preceding paragraph and will provide them to the City within 10 days of filling that position(s).
- c. The contractor agrees that it will not discriminate against any applicant for employment on the basis of race, color, religion, ancestry, national origin, age (over forty), sex, pregnancy, marital status, disability, sexual orientation or AIDS.
- d. The contractor agrees that if the City or court determines during the project that the contractor engaged or engages in gender discrimination, such determination shall provide sufficient grounds to terminate the contract for cause.

Kin Wo Construction responded that they would agree to the conditions stated in the letter.

On November 4, 2003, the representative with the Carpenter's Union informed staff that they had reached a tentative agreement with Kin Wo Construction. The agreement resolves all outstanding issues. Kin Wo Construction has agreed to make everybody whole and to offer employment to all of those that felt they were harmed. Kin Wo Construction confirmed that they had reached a tentative agreement with the Carpenter's Union.

Staff recommends acceptance of the bid of Kin Wo Construction for the James Kenney Recreation Center Renovation because they have resolved all outstanding issues with the Carpenter's Union and they have agreed to the conditions contained in the November 4, 2003 letter ensuring non-discrimination.

RESOLUTION NO. -N.S.

APPROVING PLANS AND SPECIFICATIONS FOR RENOVATION OF THE JAMES KENNEY RECREATION CENTER; WAIVING PERMIT FEES; ACCEPTING THE BID OF KIN WO CONSTRUCTION, INC.; AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AND ANY AMENDMENTS, EXTENSIONS OR CHANGE ORDERS IN AN AMOUNT NOT TO EXCEED \$772,604

WHEREAS; it has been determined that the James Kenney Recreation Center needs renovation; and

WHEREAS, the City does not have the available manpower to complete the work; and

WHEREAS, plans and specifications were prepared to perform the needed renovation; and

WHEREAS, the project was duly advertised for bids, and responsive bids were received from three contractors, and Kin Wo Construction, Inc. ("contractor") was determined to be the lowest responsive and responsible bidder; and

WHEREAS, the contractor agrees that during this project, all positions that are available will be filled only after the position is advertised to the public, and

WHEREAS, the contractor agrees that it will maintain all resumes and/or applications submitted to it for the positions described in the preceding paragraph and will provide them to the City within 10 days of filling that position(s), and

WHEREAS, the contractor agrees that it will not discriminate against any applicant for employment on the basis of race, color, religion, ancestry, national origin, age (over forty), sex, pregnancy, marital status, disability, sexual orientation or AIDS, and

WHEREAS, the contractor agrees that if the City or court determines during the project that the contractor engaged or engages in gender discrimination, such determination shall provide sufficient grounds to terminate the contract for cause, and

WHEREAS, the City's Administrative Regulation 6.7 provides that permit fees shall be waived for work performed on City-owned facilities; and

WHEREAS, funds are available in the current year budget in the UPARR Fund (Budget code 245-5451-463-6570-02PB38), Capital Fund (Budget code 610-5451-463-6570-02PB38), Proposition 12 Fund (Budget code 668-5451-463-6570-02PB38), CDBG Fund (Budget code 370-5451-463-6570-02PB38), Proposition 40 Fund (Budget code 668-5451-463-02PB38), and HCD Grant Fund (Budget code 370-5451-463-02PB38) and the contract has been entered in the Citywide contract database with CMS number M13LP.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that plans and specifications for renovation of the James Kenney Recreation Center are approved and permit fees are waived.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley accepts the bid and authorizes the City Manager to execute a contract and any amendments, extensions or change orders with Kin Wo Construction, Inc. for renovation of the James Kenney Recreation Center in an amount not to exceed \$772,604 (UPARR Fund budget code 245-5451-463-6570-02PB38, Capital Fund budget code 610-5451-463-6570-02PB38, Proposition 12 Fund budget code 668-5451-463-6570-02PB38, CDBG Fund budget code 370-5451-463-6570-02PB38, Proposition 40 Fund budget code 668-5451-463-02PB38, and HCD Grant Fund budget code 370-5451-463-02PB38). A record signature copy of said agreement and any amendments to be on file in the Office of the City Clerk.