



REPORT

DATE ISSUED: April 26, 2005

ITEM 100

REPORT NO: HCR05-43
For the Agenda of May 20, 2005

SUBJECT: Award of Contract for the Improvements at Fulton Street, Saranac Street and Golfcrest Drive (Council Districts 6 & 7)

SUMMARY

Issue: Should the Housing Commission recommend that the Housing Authority award a construction contract to the lowest responsive bidder, HAR Construction, Inc. in the amount of \$2,341,000 with a ten percent contingency (\$234,100), for various improvements at the public housing sites on Fulton Street, Saranac Street and Golfcrest Drive?

Recommendation: Recommend the Housing Authority award the contract to HAR Construction, Inc. for \$2,341,000 and authorize the President & Chief Executive Officer to execute the contract (Attachment 1) and expend up to a ten percent (10%) contingency, if necessary, for items not anticipated in the original scope of work at the public housing sites on Fulton Street, Saranac Street and Golfcrest Drive.

Fiscal Impact: Funding for this contract is contained within the Housing Commission FY05 budget.

Certificate No. 05-093
Amount: \$2,341,000
Revenue Source: 343 Major Renovations – Construction Defects
314 Major Renovations – Construction Services
Division: Modernization
Line Item: Extraordinary Maintenance

Equal Opportunity Statement: HAR Construction, Inc. is certified as a Disadvantaged, Women Owned or Disabled Veteran Business Enterprise. A Certificate of Compliance and a Workforce Analysis has been provided and shows that this vendor is in compliance



with the San Diego Housing Commission Equal Opportunity Program. Information on the Workforce Analysis (Attachment 2) indicates that 90% of the company's workforce is disadvantaged.

Environmental Review: This action is categorically exempt from the provisions of CEQA under the provisions of 14 California Code of Regulations Sections 15301 (existing facilities). A Notice of Exemption has been issued by the environmental review staff of the City of San Diego (Attachment 3).

BACKGROUND

On May 22, 1995, Roman E.C.D., Inc., entered into a contract with the San Diego Housing Commission to construct the forty-seven (47) unit family public housing development located at three (3) separate sites; 7520-7580 Fulton Street; 7281, 7289 and 7291 Saranac Street; and 7891, 7895 and 7899 Golfcrest Drive.

On September 29, 2000, the San Diego Housing Commission filed suit against the Weyerhaeuser Company, Roman E.C.D. Inc., and Vigilant Insurance Company for faulty construction of the forty-seven (47) units.

On or about December 19, 2002, the Weyerhaeuser Company, Roman E.C.D. Inc., and Vigilant Insurance Company reached settlement in this matter, which resulted in payment to the Housing Commission of \$2.55 million. The work at these sites will be completed with the funds received from that settlement and set aside for this purpose, supplemented by monies from public housing program reserves.

DISCUSSION

The proposed work under this contract provides for various exterior repairs, concrete replacement, landscape upgrades, public improvements and exterior and interior painting at the family public housing developments located at 7520-7580 Fulton Street; 7281, 7289 and 7291 Saranac Street; and 7891, 7895 and 7899 Golfcrest Drive in the Linda Vista, Rolando and San Carlos areas of the City of San Diego, respectively.

On four occasions, April 20, 2004, June 10, 2004, September 27, 2004, and January 10, 2005, this project was put out to bid. On the first three occasions no bids were received. On the January 10, 2005, Invitation to Bid, four (4) bids were received, and on February 4, 2005, the Housing Commission elected to reject all these bids and directed staff to again put the project out to bid.

On February 8, 2005, an Invitation to Bid was issued for this work. Bid advertisements were placed in the *San Diego Union*, the *San Diego Daily Transcript*, *La Prensa* and the *Voice and Viewpoint*. In addition, 33 invitations were sent as outreach to general contractors.

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Award of Contract for the Improvements at Fulton Street, Saranac Street and Golfcrest Drive

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On February 23, 2005, a pre-bid conference was conducted. During the bid period a total of fourteen (14) bid packages were provided to interested contractors.

At bid closing on March 9, 2005, two (2) bid packages were received. Information on the submitted bids is outlined below:

Bidder	Amount	Responsive Bidder	DBE
HAR Construction, Inc.	\$2,341,000	Yes	No
Wier Construction Corporation	\$2,949,000	Yes	No

Staff analysis indicates that HAR Construction, Inc. has provided the lowest responsive bid and is capable of performing the work and should be awarded the contract for these physical improvements.

Respectfully submitted,

Steve Snyder
Director of Facilities

**Signature on File
With Original Document**

Approved by,

Elizabeth C. Morris
President & Chief Executive Officer

M. Gresham, 578-7485

Attachment: 1- Contract
2- Workforce Analysis
3- Notice of Exemption

Attachment 1

CONTRACT

THIS AGREEMENT made this _____ day of June, in the year 2005, by and between HAR CONSTRUCTION, INC., a corporation organized and existing under the laws of the State of California, hereinafter called the "Contractor," and the SAN DIEGO HOUSING COMMISSION, hereinafter called the "Commission" and/or "Owner."

WITNESSETH, that the Contractor and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish all labor, material, equipment and services, and perform and complete all work required for FULTON, SARANAC & GOLFCREST IMPROVEMENTS, in strict accordance with the Specifications dated February 8, 2004. Specifications and Drawings are incorporated herein by reference and made a part hereof.

ARTICLE 2. The Contract Price: The Commission shall pay the Contractor for all performance of the Contract, in current funds, subject to additions and deductions as provided in the Specifications, the sum of TWO MILLION THREE HUNDRED FORTY-ONE THOUSAND AND NO/100 Dollars (\$ 2,341,000.00).

ARTICLE 3. Indemnity: Subject to only the limitations of the applicable statutes of limitations as contained within applicable State and Federal law, Contractor agrees to save, indemnify and keep harmless City of San Diego, The San Diego Housing Commission and the Housing Authority of the City of San Diego, and each of them (hereinafter collectively referred to as Indemnatee), against any and all liability, claims, fines, penalties, judgments, complaints, causes of action, actions, or demands, including demands arising from injuries to or death of persons (Contractor's employees and subcontractors included) and damage to property, or any other loss, damage or expense, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor including those in part due to the negligence of Indemnatee save and except liability, claims, judgments or demands arising through the sole negligence or sole willful misconduct of Indemnatee or resulting from defects in design furnished by Indemnatee and Contractor will, if requested by Indemnatee, defend any such suits against the Commission, the City/and or the Housing Authority of the City of San Diego, at the sole cost and expense of Contractor, with counsel of Indemnatee's choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation concerning this Contract to receive attorneys' fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Contract.

ARTICLE 4. Governing Law: This Contract and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 5. Entire Agreement: This Contract contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect.

ARTICLE 6. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 7. Severability: If any provision of this Contract or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

ARTICLE 8. Terminology: All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limits nor amplifies the provisions of the Contract itself, and all references herein to paragraphs thereof are to this Contract unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 9. Binding Agreement: Subject to any restrictions on the assignment of this Contract or rights thereto, this Contract shall inure to the benefit of and be binding upon Commission and Contractor and their respective successors, assigns or transferees.

ARTICLE 10. Procedure for Resolving Disputes: In the event of a dispute concerning this Agreement, the same shall be resolved in San Diego Superior Court, Downtown Branch.

ARTICLE 11. Time is of the Essence: Time is of the essence in this Contract, as per the schedule submitted by contractor and agreed upon by owner.

ARTICLE 12. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the San Diego Housing Commission monies in accordance with Clause 33 of General Conditions as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the San Diego Housing Commission. The project is divided into three sites, with separate and distinct commencement dates and completion dates. The Saranac site is the prototype site. All inhabitants will be removed from the Saranac site prior to the commencement of work by the Contractor and Contractor will have sixty (60) calendar days from the Notice to Proceed to substantially complete all the Work on the Saranac site including the alley improvements. The Saranac site will become the prototype for siding and stucco work on the Fulton and Golfcrest sites. The Contractor shall have sixty (90) days to achieve substantial completion of the work at the Saranac site, as determined by the Commission's Owner's Representative or Contracting Officer, as determined by the Contracting Officer. The Contractor will have a total of ninety (90) days on the Golfcrest and Fulton sites to substantially complete all work on both the Golfcrest and Fulton sites. The time frames for completion shall commence ten (10) after the issuance of a Notice to Proceed. No work may commence upon the Fulton or Golfcrest sites unless and until the work has been substantially completed on the Saranac site, as determined by the Commission. The tenants will not be removed from either the Golfcrest or the Fulton sites during construction. There shall be one liquidated damages amount that will be imposed upon the Contractor for failure to substantially

complete the Saranac site within the time allowed. It is referred to as the Saranac Liquidated Damages and is in the amount of \$1,000.00 per day for each day that the substantial completion is extended beyond the allowed time for substantial completion. The amount of liquidated damages for the Golfcrest and Fulton sites has been established at the rate of \$300.00 per day for each day, or portion thereof, that the substantial completion of the work on the Fulton and/or Golfcrest sites is extended beyond the time for substantial completion. It is possible that both liquidated damages provisions may be imposed against the Contractor if the Saranac site is not substantially completed on time and subsequently for the Fulton and Golfcrest sites if these sites are not substantially completed on time. The Contractor and the San Diego Housing Commission have agreed that the foregoing daily liquidated damage amount(s) are, each, a fair and reasonable estimate of the costs that the San Diego Housing Commission will incur if the sites are not substantially completed within the times referenced above. The parties further agree that the liquidated damage amount(s) are, each, a reasonable estimation of the damages that the San Diego Housing Commission will incur as a result of the failure of the Contractor to complete the sites on time, which estimate has been made in advance of any breach by the Contractor. Said liquidated damages are not intended as a penalty but only as a reasonable and fair estimate of the damages to be incurred by the San Diego Housing Commission upon the failure by the Contractor to timely complete the sites, and each of them, taking into consideration, lost rents, relocation costs, utility costs, lost subsidies, and other costs and expenses, but not including attorneys fees.

ARTICLE 13. Contract Documents:

This contract shall consist of the following component parts:

- a. This Instrument
- b. General Conditions
- c. Special Conditions
- d. Prevailing Wage Scales
- e. Technical Specifications
- f. Drawings
- g. Addenda to the Specifications and/or Drawings
- h. Performance Bond
- i. Payment Bond

This instrument, together with the other documents enumerated in this Article 13, form the Contract and are as fully a part of the Contract as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

ARTICLE 14. Drug-Free Workplace: Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

A. Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

- B. Establish a drug-free awareness program to inform employees about all of the following:
 - 1) The dangers of drug abuse in the workplace.
 - 2) The Contractor's policy of maintaining a drug-free workplace.
 - 3) Any available drug counseling, rehabilitation and employee assistance programs.
 - 4) The penalties that may be imposed upon employees for drug abuse violations.
- C. Post the statement required by subdivision 1 in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

ARTICLE 15. Equal Opportunity Programs: During the performance of this Contract, the Contractor agrees as follows:

- A. Contractor shall comply with all applicable Equal Opportunity Programs as described in the applicable State and Federal law. Contractor shall submit such forms and information as shall be requested by the Commission from time to time to verify the Contractor's compliance with applicable law.
- B. Certificate of Compliance (attached) with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state law and regulations hereinafter enacted.
- C. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin.
- D. If any under representation is found after submission of contractor workforce, the Commission may request an equal employment opportunity plan (EEOP). An acceptable plan to correct the identified underrepresented categories must be submitted within 30 days. Once the EEOP has been approved by the Commission, the Contractor must adhere to said plan. In case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEOP updates as required.
- E. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, the Contractor may, at the election of the Commission, be barred from participating in a Commission project for not less than one (1) year.

ARTICLE 16. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Agreement, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal

loan, the entering into of any cooperative agreement, or modification of a Federal contract, grant, loan or cooperative agreement;

If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Contractor will require that the above stated language be included in the award documents for all sub awards at all tiers, including subcontracts, sub grants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and,

Further, Contractor and all sub recipients, at all times, shall certify compliance with the provisions of 31 USC 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.

HAR CONSTRUCTION, INC.

By: _____
(Signature)

Title: _____

(License Number)

Note: If Contractor is a Corporation, two officers must execute the contract unless a Corporate Resolution Authorizing only one officer to execute has been submitted to the Commission.

Business Address:

3103 Market St.
San Diego, CA 92102

SAN DIEGO HOUSING COMMISSION

By: _____
Carrol Vaughan

Title: _____
Executive Vice President & Chief Executive Officer

Business Address:

9550 Ridgehaven Court
San Diego, California 92123

APPROVED AS TO FORM

CHRISTENSEN SCHWERDTFEGER
& SPATH LLP

By _____
Charles B. Christensen
General Counsel
San Diego Housing Commission

Date: _____

Attachment 2

Company Name: HAR Construction, Inc. **Payroll Ending Date:** _____

**SAN DIEGO HOUSING COMMISSION
REPORT OF SAN DIEGO COUNTY WORKFORCE**

Occupational Category	Total Number of Employees		Caucasian Non Hispanic		African American Non Hispanic		Hispanic All Races		Asian/Pacific Islander Non Hispanic		Native American Non Hispanic		Filipino		Disabled		Total Disadvantaged	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Executive, Administrative and Managerial	6	2	3				1	2					2				3	2
Professional Specialty																		
Engineers/Architects																		
Sales																		
Administrative Support		2						2										2
Services																		
Precision Production, Craft and Repair																		
Machine Operators, Assemblers and Inspector																		
Transportation and Material Moving																		
Handlers, Equipment Cleaners, Helpers and Laborers	20						18		2								20	
TOTALS	26	4	3				19	4	2				2				23	4

**DETERMINATION OF
ENVIRONMENTAL EXEMPTION**

Pursuant to the California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO

Project No.: 68635

Date: April 25, 2005

Action/Permit(s): Approval by San Diego Housing Commission and Housing Authority

Description of Activity: Fulton, Golfcrest & Saranac Improvements. The project proposes to award a contract for rehabilitation work on three low income public housing sites: 7526 Fulton Avenue (31 units), 7891 Golfcrest Drive (9 units) and 7281 Saranac Street (7 units). The scope of work would include the provision of labor, materials, tools and equipment necessary for and incidental to the removal and replacement of all and/or area specific hardboard siding, trim, moisture barrier paper, gutters, downspouts, stucco repairs, window flashing, sheet metal flashing, screen replacement, roofing replacement, ventilation dampers, site concrete, site asphaltic concrete, site irrigation, site drainage, site landscaping, public improvements, painting and interior drywall.

Location of Activity: 7526 Fulton Avenue, 7891 Golfcrest Drive, and 7281 Saranac Street, City/County of San Diego.

(CHECK BOXES BELOW)

1. This activity is EXEMPT FROM CEQA pursuant to:
 - Section 15060(c) (3) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).

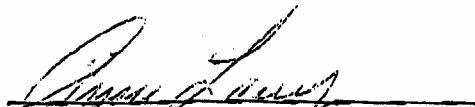
2. This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

ARTICLE 19 of GUIDELINES CATEGORICAL EXEMPTIONS (Incomplete list)		ARTICLE 18 of GUIDELINES STATUTORY EXEMPTIONS (Incomplete list)	
Section	Short Name	Section	Short Name
<input checked="" type="checkbox"/> 15301	Existing Facilities	<input type="checkbox"/> 15261	Ongoing Project
<input type="checkbox"/> 15302	Replacement or Reconstruction	<input type="checkbox"/> 15262	Feasibility and Planning Studies
<input type="checkbox"/> 15303	New Construction or Conversion of Small Structures	<input type="checkbox"/> 15263	Adoption of Coastal Plans and Programs
<input type="checkbox"/> 15304	Minor Alterations to Land	<input type="checkbox"/> 15268	Ministerial Projects
<input type="checkbox"/> 15305	Minor Alteration in Land Use	<input type="checkbox"/> 15269	Emergency Projects
<input type="checkbox"/> 15306	Information Collection	<input type="checkbox"/> Other	
<input type="checkbox"/> 15311	Accessory Structures		
<input type="checkbox"/> 15312	Surplus Government Property Sales		
<input type="checkbox"/> 15315	Minor Land Divisions		
<input type="checkbox"/> 15317	Open Space Contracts or Easements		
<input type="checkbox"/> 15319	Annexation of Existing Facilities and Lots for Exempt Facilities		
<input type="checkbox"/> 15325	Transfer of Ownership of Interest in Land to Preserve Open Space		
<input type="checkbox"/> Other _____			

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

Distribution:

Exemption or Project file
Pat Grabski, Development Project Manager


Senior Planner
Environmental Analysis Section