



REPORT

DATE ISSUED: April 7, 2004

ITEM 102

REPORT NO: HCR04-28
For the Agenda of April 23, 2004

SUBJECT: Award of Contract for the Fulton Street Sound Wall Retrofit
(Council District 6)

SUMMARY

Issue: Should the Housing Commission award a construction contract to Southland Construction in the amount of \$179,800 with a ten percent contingency (\$17,980), for retrofit of the sound wall at 7526-7580 Fulton Street?

Recommendation: Approve the award of a contract to Southland Construction for \$179,800 and authorize the Chief Executive Officer to execute the contract (Attachment 1) and expend the contingency, if necessary, for items not anticipated in the original scope of work.

Fiscal Impact: Funding for this contract is contained within the Housing Commission FY04 budget.

Certificate No. 04-121
Amount: \$179,800
Revenue Source: 343 Major Renovations – Construction Defects
Division: Modernization
Line Item: Extraordinary Maintenance

Equal Opportunity Statement: Southland Construction is not 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 80% of the company's workforce is disadvantaged.



Environmental Review: This project has been determined to be categorically exempt pursuant to Article 19 Section 15300 of the California Environmental Quality Act.

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. Issues concerning the sound wall were included as part of the litigation.

On or about December 19, 2002, the San Diego Housing Commission reached settlement with the Weyerhaeuser Company, Roman E.C.D. Inc., and Vigilant Insurance Company, which resulted in payment to the Housing Commission of \$2.4 million. The work at this project will be completed with the funds received from that settlement and set aside for this purpose.

DISCUSSION

The proposed work under this contract provides for the excavation and reconstruction of concrete footing under certain portions of the existing sound wall at the 31-unit family public housing development located at 7520-7580 Fulton Street in the City of San Diego.

On March 1, 2004, 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.

On March 16, 2004, a pre-bid conference was conducted. During the bid period a total of five bid packages were provided to interested contractors.

At bid closing on March 30, 2004, Southland Construction was the sole respondent. Following the closing date, staff contacted prospective General Engineering Class-A licensed bidders and was advised that, due to the current market conditions and the small dollar value of this contract, this project was currently not appealing.

Bidder	Amount	Responsive Bidder	DBE
Southland Construction	\$179,800	Yes	No

In-house estimate: \$150,000

Staff analysis indicates that Southland Construction has provided a responsible bid and is capable of performing the work.

ALTERNATIVE

Reject the bid submitted by Southland Construction and direct the staff to reissue the Invitation to Bid.

This alternative is not recommended. Due to current market conditions, staff believes that the re-issuance will not result in the receipt of more advantageous responses.

Respectfully submitted,

Approved by,

Steve Snyder
Asset Manager

**Signature on File
With Original Document**

Elizabeth C. Morris
Chief Executive Officer

M. Gresham, 578-7485

Attachment: 1- Contract
2- Workforce Analysis

Attachment 1

CONTRACT

THIS AGREEMENT made this _____ day of May, in the year 2004, by and between SOUTHLAND CONSTRUCTION, 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 STREET WALL RETROFIT, in strict accordance with the Specifications dated March 1, 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 ONE HUNDRED SEVENTY-NINE THOUSAND EIGHT HUNDRED AND NO/00 Dollars (\$179,800.00).

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

Attachment 1

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 limit nor amplify 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. Contractor will have ninety (90) calendar days from the Notice to Proceed to substantially complete all the Work on the Project including the work within the Cal Trans right of way. Substantial completion of the work will be as determined by the Commission's Owner's Representative or Contracting Officer, as designated by the Contracting Officer. The time frames for substantial completion shall commence ten (10) after the issuance of a Notice to Proceed. There shall be one liquidated damages amount that will be imposed upon the

Attachment 1

Contractor for failure to substantially complete the project within the time allowed. Liquidated Damages are in the amount of **\$300.00** per day for each day that the substantial completion is extended beyond the allowed time for substantial completion. 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 is 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, damages, utility costs, lost subsidies, and other applicable costs and expenses.

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
- j. Cal Trans Encroachment Permit

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.

Attachment 1

- 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.

Attachment 1

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:

- A. 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;
- B. 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.
- C. 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,
- D. 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.

SOUTHLAND CONSTRUCTION

By: _____
(Signature)

Title: _____

(License Number)

Attachment 1

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:

3943 Irvine Blvd. #40
Irvine, Ca 92602

SAN DIEGO HOUSING COMMISSION

By: _____
Carrol Vaughan

Title: Chief Operating 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: _____

Company Name: Southland Construction Payroll Ending Date _____

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

Occupational Category	Total Number of Employees		Caucasian Not Hispanic		African American Not Hispanic		Hispanic All Races		Asian/Pacific Islander Not Hispanic		Native American Not 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	1	1	1					1										1
Professional Specialty	1		1															
Technicians and Related Support	1						1										1	
Sales																		
Administrative Support																		
Services																		
Precision Production, Craft and Repair																		
Machine Operators, Assemblers and Inspector	1		1															
Transportation and Material Moving																		
Handlers, Equipment Cleaners, Helpers and Laborers	10						10										10	
TOTALS	14	1	3				11	1									11	1