

TAX SUPERVISING & CONSERVATION COMMISSION

Multnomah County, Oregon

1510 Portland Building

1120 S.W. Fifth Avenue

Portland, Oregon 97204

503/248-3054

June 26, 1990

District Council
Metropolitan Service District
2000 S.W. First
Portland, Oregon 97201

Dear Council Members:

Following a discussion and public hearing on June 14th, Metro's 1990-91 budget was certified with an objection regarding omitted revenues and overstated expenditures within the Debt Service Fund, resulting in a property tax levy in excess of needs. Revised resource and expenditure estimate sheets were filed by the Metro staff on June 25th. It is the Commission's understanding that the new estimates are to be submitted to the Council for its consideration when adopting the 1990-91 budget.

The Commission has reviewed and given careful consideration to the revised estimates. These estimates report \$878,000 of previously unreported revenue, a \$233,029 reduction in debt service expense, an \$811,029 reduction in revenue needs from property taxes and an \$862,131 reduction in the property tax levy.

Also, the estimates allocate \$4,756 to short term loan interest expense. The need for this item, not included in the original budget, was identified during preliminary discussions with the Metro staff. It provides for the cost of temporarily using money from another Metro fund. As such, the revised estimate sheet must be amended to show the amount as a transfer payment to the fund providing the loan. In turn, the loaning fund budget must report the revenue transfer and rebalance accounts.

Aside from this adjustment the revised estimates were judged to be reasonable for the purpose stated. The original June 14th certification is amended as follows:

District Council
Metropolitan Service District

June 26, 1990
Page 2

Budget Estimates:

| | | |
|-----------------------------|--------------------|---------------|
| Debt Service Fund | \$ 5,692,034 | |
| All Other Funds - No Change | <u>217,455,723</u> | |
| Total Budget Estimates | | \$223,147,757 |

Tax Levy:

| | | |
|--|------------------|---------------|
| Zoo Operating Fund - Tax Base | \$ 5,100,000 | |
| Debt Service Fund - Not Subject to Limit | <u>5,348,927</u> | |
| Total Tax Levy | | \$ 10,448,927 |

Yours very truly,

TAX SUPERVISING & CONSERVATION COMMISSION



G. J. Gutjahr
Administrative Officer

GJG:pj

EXHIBIT B
ORDINANCE NO. 90-340A
REVISIONS TO THE FY 1990-91 APPROVED BUDGET

| FISCAL YEAR 1990-91 | | APPROVED | | REVISION | | ADOPTED | |
|--------------------------|---|----------|------------|----------|-----------|---------|-------------|
| ACCOUNT # | DESCRIPTION | FTE | AMOUNT | FTE | AMOUNT | FTE | AMOUNT |
| SOLID WASTE REVENUE FUND | | | | | | | |
| Resources | | | | | | | |
| ----- | | | | | | | |
| Fund Balance | | | | | | | |
| | * Construction Account | | 11,880,239 | | | | 11,880,239 |
| | * Reserve Account | | 2,850,000 | | | | 2,850,000 |
| 341500 | Documents & Publications | | 2,381 | | | | 2,381 |
| 343111 | Disposal Fees-Commercial | | 18,682,128 | | | | 18,682,128 |
| 343115 | Disposal Fees-Public | | 1,356,507 | | | | 1,356,507 |
| 343121 | User Fees-Commercial | | 17,266,430 | | | | 17,266,430 |
| 343125 | User Fees-Public | | 1,295,889 | | | | 1,295,889 |
| 343131 | Regional Transfer Charge-Commercial | | 3,136,994 | | | | 3,136,994 |
| 343135 | Regional Transfer Charge-Public | | 277,167 | | | | 277,167 |
| 343151 | Rehabilitation & Enhancement Fee-Commercial | | 120,382 | | | | 120,382 |
| 343155 | Rehabilitation & Enhancement Fee-Public | | 6,670 | | | | 6,670 |
| 343161 | Mitigation Fee-Commercial | | 126,473 | | | | 126,473 |
| 343165 | Mitigation Fee-Public | | 23,791 | | | | 23,791 |
| 343171 | Host Fees-Commercial | | 133,704 | | | | 133,704 |
| 343175 | Host Fees-Public | | 5,255 | | | | 5,255 |
| 343211 | DEQ - Orphan Site Account - Commercial | | 341,607 | | | | 341,607 |
| 343215 | DEQ - Orphan Site Account - Public | | 35,449 | | | | 35,449 |
| 343221 | DEQ - Promotional Program - Commercial | | 520,326 | | | | 520,326 |
| 343225 | DEQ - Promotional Program - Public | | 46,594 | | | | 46,594 |
| 343180 | Special Waste Fee | | 278,667 | | | | 278,667 |
| 343200 | Franchise Fees | | 1,143 | | | | 1,143 |
| 343300 | Salvage Revenue | | 6,000 | | | | 6,000 |
| 343900 | Tarp Sales | | 762 | | | | 762 |
| 347220 | Sublease Income | | 5,714 | | | | 5,714 |
| 361100 | Interest on Investments | | 3,215,617 | | | | 3,215,617 |
| 363000 | Finance Charge | | 50,000 | | | | 50,000 |
| 379000 | Other Miscellaneous Revenue | | 8,817 | | | | 8,817 |
| 391251 | Trans. Resources from Conv. Ctr. Debt Srv. Fund | | 0 | | 4,756 | | 4,756 |
| 391530 | Trans. Resources from S.W. Oper. Fund | | 7,892,751 | | 607,249 | | 8,500,000 |
| 391534 | Trans. Resources from S.W. Capital Fund | | 2,389,061 | | 1,300,939 | | 3,690,000 |
| 391535 | Trans. Resources from St. Johns Reserve Fund | | 26,375,520 | | | | 26,375,520 |
| 393768 | Trans. Direct Cost from Rehab. & Enhance. | | 4,483 | | | | 4,483 |
| Total Resources | | | 98,336,521 | | 1,912,944 | | 100,249,465 |

EXHIBIT B
ORDINANCE NO. 90-340A
REVISIONS TO THE FY 1990-91 APPROVED BUDGET

| FISCAL YEAR 1990-91 | | APPROVED | | REVISION | | ADOPTED | |
|--|--|----------|------------|----------|-----------|---------|-------------|
| ACCOUNT # | DESCRIPTION | FTE | AMOUNT | FTE | AMOUNT | FTE | AMOUNT |
| SOLID WASTE REVENUE GENERAL EXPENSES | | | | | | | |
| Interfund Transfers | | | | | | | |
| ----- | | | | | | | |
| OPERATING ACCOUNT | | | | | | | |
| 581610 | Trans. Indirect Costs to Support Svs. Fund | | 1,475,534 | | | | 1,475,534 |
| 581513 | Trans. Indirect Costs to Bldg. Fund | | 107,408 | | | | 107,408 |
| 581615 | Trans. Indirect Costs to Insurance Fund | | 46,267 | | | | 46,267 |
| 582513 | Trans. Resources to Bldg. Fund | | 25,000 | | | | 25,000 |
| 582140 | Trans. Resources to Transport. Plan. Fund | | 208,153 | | | | 208,153 |
| 582142 | Trans. Resources to Plan. & Developmt Fund | | 1,092,112 | | | | 1,092,112 |
| 582768 | Trans. Resources to Rehab. & Enhance. Fund | | 133,405 | | | | 133,405 |
| 583610 | Trans. Direct Costs to Supp. Svs. Fund | | 147,474 | | | | 147,474 |
| 583615 | Trans. Direct Costs to Insurance Fund | | 500,000 | | | | 500,000 |
| Total Interfund Transfers | | | 3,735,353 | | 0 | | 3,735,353 |
| Contingency and Unappropriated Balance | | | | | | | |
| ----- | | | | | | | |
| OPERATING ACCOUNT | | | 1,000,000 | | | | 1,000,000 |
| LANDFILL CLOSURE ACCOUNT | | | 615,500 | | | | 615,500 |
| CONSTRUCTION ACCOUNT | | | 16,430 | | | | 16,430 |
| RENEWAL & REPLACEMENT ACCOUNT | | | 26,100 | | | | 26,100 |
| GENERAL ACCOUNT | | | 563,768 | | | | 563,768 |
| 599999 | Contingency | | 2,221,798 | | 0 | | 2,221,798 |
| OPERATING ACCOUNT | | | 2,509,582 | | 497,005 | | 3,006,587 |
| LANDFILL CLOSURE ACCOUNT | | | 22,755,062 | | | | 22,755,062 |
| CONSTRUCTION ACCOUNT | | | 29,129 | | | | 29,129 |
| GENERAL ACCOUNT | | | 1,729,746 | | 1,300,939 | | 3,030,685 |
| RESERVE ACCOUNT | | | 2,850,000 | | | | 2,850,000 |
| 599990 | Unappropriated Fund Balance | | 29,873,519 | | 1,797,944 | | 31,671,463 |
| Total Contingency and Unappropriated Balance | | | 32,095,317 | | 1,797,944 | | 33,893,261 |
| TOTAL REVENUE FUND EXPENDITURES | | 66.75 | 98,336,521 | 0.00 | 1,912,944 | 66.75 | 100,249,465 |

EXHIBIT B
ORDINANCE NO. 90-340A
REVISIONS TO THE FY 1990-91 APPROVED BUDGET

| FISCAL YEAR 1990-91 | | APPROVED | | REVISION | | ADOPTED | |
|---|---------------------------------------|----------|-----------|----------|-----------|---------|-----------|
| ACCOUNT # | DESCRIPTION | FTE | AMOUNT | FTE | AMOUNT | FTE | AMOUNT |
| CONVENTION CENTER PROJECT DEBT SERVICE FUND | | | | | | | |
| Resources | | | | | | | |
| 305000 | Fund Balance | | 0 | | 400,000 | | 400,000 |
| 311110 | Real Property Taxes-Current Year | | 5,625,063 | | (811,029) | | 4,814,034 |
| 311120 | Real Property Taxes-Prior Year | | 300,000 | | 100,000 | | 400,000 |
| 361100 | Interest on Investments | | 0 | | 78,000 | | 78,000 |
| Total Resources | | | 5,925,063 | | (233,029) | | 5,692,034 |
| Requirements | | | | | | | |
| 533110 | General Obligation Bond-Principal | | 1,110,000 | | 0 | | 1,110,000 |
| 533120 | General Obligation Bond-Interest | | 4,815,063 | | (237,785) | | 4,577,278 |
| 582531 | Trans. Resources to S.W. Revenue Fund | | 0 | | 4,756 | | 4,756 |
| Total Requirements | | | 5,925,063 | | (233,029) | | 5,692,034 |

EXHIBIT C
SCHEDULE OF APPROPRIATIONS FY 1990-91

| | Adopted Budget |
|--|-------------------|
| <u>GENERAL FUND</u> | |
| Council | |
| Personal Services | 373,323 |
| Materials & Services | 308,570 |
| Capital Outlay | 3,800 |
| Subtotal | 685,693 |
| Executive Management | |
| Personal Services | 477,987 |
| Materials & Services | 126,816 |
| Capital Outlay | 4,400 |
| Subtotal | 609,203 |
| General Expense | |
| Contingency | 135,000 |
| Interfund Transfers | 1,838,737 |
| Subtotal | 1,973,737 |
| Unappropriated Balance | 65,000 |
| Total General Fund Requirements | 3,333,633 |
| <u>SUPPORT SERVICES FUND</u> | |
| Finance & Administration | |
| Personal Services | 1,569,883 |
| Materials & Services | 940,004 |
| Capital Outlay | 59,511 |
| Subtotal | 2,569,398 |
| Personnel | |
| Personal Services | 335,538 |
| Materials & Services | 28,050 |
| Capital Outlay | 5,436 |
| Subtotal | 369,024 |
| Office of General Counsel | |
| Personal Services | 296,913 |
| Materials & Services | 18,120 |
| Capital Outlay | 8,500 |
| Subtotal | 323,533 |

| | <u>Adopted Budget</u> |
|---|---------------------------|
| Public Affairs | |
| Personal Services | 547,839 |
| Materials & Services | 98,661 |
| Capital Outlay | 12,768 |
| Subtotal | <u>659,268</u> |
| General Expense | |
| Contingency | 150,000 |
| Interfund Transfers | 275,899 |
| Subtotal | <u>425,899</u> |
| Unappropriated Balance | 30,000 |
| Total Support Services Fund Requirements | 4,377,122 |
| <u>BUILDING MANAGEMENT FUND</u> | |
| Personal Services | 83,279 |
| Materials & Services | 538,420 |
| Capital Outlay | 110,000 |
| Contingency | 50,000 |
| Unappropriated Balance | <u>25,000</u> |
| Total Building Management Fund Requirements | 806,699 |
| <u>INSURANCE FUND</u> | |
| Materials & Services | 453,600 |
| Contingency | 529,769 |
| Unappropriated Balance | <u>3,206,421</u> |
| Total Insurance Fund Requirements | 4,189,790 |
| <u>ZOO OPERATING FUND</u> | |
| Administration | |
| Personal Services | 614,906 |
| Materials & Services | 314,718 |
| Capital Outlay | 7,679 |
| Subtotal | <u>937,303</u> |
| Animal Management | |
| Personal Services | 1,691,662 |
| Materials & Services | 343,187 |
| Capital Outlay | 14,500 |
| Subtotal | <u>2,049,349</u> |

Adopted
Budget

| | |
|---|------------------|
| Facilities Management | |
| Personal Services | 1,419,748 |
| Materials & Services | 1,355,570 |
| Capital Outlay | <u>453,846</u> |
| Subtotal | 3,229,164 |
| Education | |
| Personal Services | 610,453 |
| Materials & Services | 297,859 |
| Capital Outlay | <u>39,050</u> |
| Subtotal | 947,362 |
| Marketing | |
| Personal Services | 165,773 |
| Materials & Services | 315,887 |
| Capital Outlay | <u>5,950</u> |
| Subtotal | 487,610 |
| Visitor Services | |
| Personal Services | 1,141,257 |
| Materials & Services | 1,118,888 |
| Capital Outlay | <u>64,051</u> |
| Subtotal | 2,324,196 |
| General Expenses | |
| Interfund Transfers | 783,999 |
| Contingency | <u>496,264</u> |
| Subtotal | 1,280,263 |
| Unappropriated Balance | 1,188,496 |
| Total Zoo Operating Fund Requirements | 12,443,743 |
| <u>ZOO CAPITAL FUND</u> | |
| Personal Services | 78,819 |
| Materials & Services | 2,569 |
| Capital Outlay | 3,769,965 |
| Contingency | 166,057 |
| Unappropriated Balance | <u>1,906,300</u> |
| Total Zoo Capital Fund Requirements | 5,923,710 |
| <u>SOLID WASTE REVENUE FUND</u> | |
| Administration | |
| Personal Services | 334,895 |
| Materials & Services | <u>118,826</u> |
| Subtotal | 453,721 |

| | Adopted Budget |
|---|-------------------|
| Budget and Finance | |
| Personal Services | 320,065 |
| Materials & Services | <u>284,850</u> |
| Subtotal | 604,915 |
| Operations | |
| Personal Services | 747,200 |
| Materials & Services | <u>28,847,736</u> |
| Subtotal | 29,594,936 |
| Engineering and Analysis | |
| Personal Services | 428,843 |
| Materials & Services | <u>580,920</u> |
| Subtotal | 1,009,763 |
| Waste Reduction | |
| Personal Services | 633,075 |
| Materials & Services | <u>3,828,499</u> |
| Subtotal | 4,461,574 |
| Debt Service Account | |
| Debt Service | <u>1,360,427</u> |
| Subtotal | 1,360,427 |
| Landfill Closure Account | |
| Capital Outlay | <u>6,155,000</u> |
| Subtotal | 6,155,000 |
| Construction Account | |
| Personal Services | 61,247 |
| Capital Outlay | <u>12,350,000</u> |
| Subtotal | 12,411,247 |
| Renewal & Replacement Account | |
| Capital Outlay | <u>519,000</u> |
| Subtotal | 519,000 |
| General Account | |
| Capital Outlay | <u>6,050,268</u> |
| Subtotal | 6,050,268 |
| General Expense | |
| Contingency | 2,221,798 |
| Interfund Transfers | <u>3,735,353</u> |
| Subtotal | 5,957,151 |
| Unappropriated Balance | 31,671,463 |
| Total Solid Waste Revenue Fund Requirements | 100,249,465 |

Adopted
Budget

SOLID WASTE OPERATING FUND

| | |
|---|------------------|
| Interfund Transfers | <u>8,500,000</u> |
| Total Solid Waste Operating Fund Requirements | 8,500,000 |

SOLID WASTE CAPITAL FUND

| | |
|---|------------------|
| Interfund Transfers | <u>3,690,000</u> |
| Total Solid Waste Capital Fund Requirements | 3,690,000 |

ST. JOHNS RESERVE FUND

| | |
|---|-------------------|
| Interfund Transfer | <u>26,375,520</u> |
| Total St. Johns Reserve Fund Requirements | 26,375,520 |

REHABILITATION & ENHANCEMENT FUND

| | |
|--|------------------|
| Materials & Services | 551,900 |
| Contingency | 4,483 |
| Interfund Transfers | 20,000 |
| Unappropriated Balance | <u>1,652,019</u> |
| Total Rehab. & Enhancement Fund Requirements | 2,228,402 |

TRANSPORTATION PLANNING FUND

| | |
|---|---------------|
| Personal Services | 1,436,787 |
| Materials & Services | 2,412,056 |
| Capital Outlay | 75,785 |
| Contingency | 92,479 |
| Interfund Transfers | 594,497 |
| Unappropriated Balance | <u>18,844</u> |
| Total Transportation Planning Fund Requirements | 4,630,448 |

PLANNING & DEVELOPMENT FUND

| | |
|-------------------------|------------------|
| Urban Growth Management | |
| Personal Services | 448,107 |
| Materials & Services | 690,734 |
| Capital Outlay | 7,100 |
| Subtotal | <u>1,145,941</u> |

Adopted
Budget

| | |
|--|----------------|
| Solid Waste Planning | |
| Personal Services | 397,332 |
| Materials & Services | 394,835 |
| Capital Outlay | 11,550 |
| Subtotal | <u>803,717</u> |
| General Expenses | |
| Interfund Transfer | 346,328 |
| Contingency | 171,281 |
| Subtotal | <u>517,609</u> |
| Total Planning & Development Fund Requirements | 2,467,267 |

CONVENTION CENTER PROJECT MANAGEMENT FUND

| | |
|---|--------------|
| Personal Services | 53,219 |
| Materials & Services | 221,635 |
| Interfund Transfers | 50,032 |
| Contingency | <u>1,637</u> |
| Total Convention Center Project Management Fund Requirements | 326,523 |

CONVENTION CENTER PROJECT CAPITAL FUND

| | |
|--|--------------|
| Personal Services | 130,129 |
| Materials & Services | 58,089 |
| Capital Outlay | 13,319,030 |
| Interfund Transfers | 167,500 |
| Contingency | <u>4,004</u> |
| Total Convention Center Project Capital Fund Requirements | 13,678,752 |

CONVENTION CENTER PROJECT DEBT SERVICE FUND

| | |
|---|--------------|
| Debt Service | 5,687,278 |
| Interfund Transfers | <u>4,756</u> |
| Total Convention Center Project Debt Service Fund Requirements | 5,692,034 |

Adopted
Budget

METRO ERC MANAGEMENT POOL FUND

| | |
|--|------------------|
| Personal Services | 764,509 |
| Materials & Services | 152,216 |
| Contingency | <u>95,000</u> |
| Total Metro ERC Management Pool Fund Requirements | 1,011,725 |

OREGON CONVENTION CENTER OPERATING FUND

| | |
|--|------------------|
| Personal Services | 1,918,520 |
| Materials & Services | 3,268,073 |
| Capital Outlay | 200,000 |
| Contingency | 300,000 |
| Interfund Transfers | 669,072 |
| Unappropriated Balance | <u>1,133,624</u> |
| Total Oregon Convention Center Operating Fund Requirement | 7,489,289 |

SPECTATOR FACILITIES OPERATING FUND

| | |
|---|-------------------|
| Memorial Coliseum | |
| Personal Services | 3,295,848 |
| Materials & Services | 5,277,026 |
| Capital Outlay | <u>268,500</u> |
| Subtotal | 8,841,374 |
| Civic Stadium | |
| Personal Services | 516,945 |
| Materials & Services | 1,150,196 |
| Capital Outlay | <u>21,700</u> |
| Subtotal | 1,688,841 |
| Performing Arts Center | |
| Personal Services | 2,701,759 |
| Materials & Services | 1,074,060 |
| Capital Outlay | <u>312,575</u> |
| Subtotal | 4,088,394 |
| General Expense | |
| Contingency | 665,000 |
| Interfund Transfers | <u>1,076,203</u> |
| Subtotal | 1,741,203 |
| Unappropriated Balance | 2,005,453 |
| Total Spectator Facilities Operating Fund Requirements | 18,365,265 |

Adopted
Budget

PORTLAND CENTER FOR THE PERFORMING ARTS CAPITAL FUND

| | |
|---|------------------------|
| Capital Outlay | 965,000 |
| Contingency | <u>105,468</u> |
| Total Portland Center for the Performing Arts Center Capital Fund Requirements | 1,070,468 |
| TOTAL APPROPRIATIONS | 226,849,855 |

approp1.prn
6/26/90



TUALATIN VALLEY
ECONOMIC DEVELOPMENT CORPORATION

June 6, 1990

Rena Cusma
Executive Officer
METRO
2000 SW First Avenue
Portland, OR 97201-5398

RECEIVED
JUN 7 1990
METRO SERVICE DISTRICT
EXECUTIVE MANAGEMENT

Dear Ms. Cusma:

The Tualatin Valley Economic Development Corporation's (TVEDC) stated objective is to provide private sector leadership and representation on major regional issues affecting economic vitality in the Tualatin Valley.

The corporation's board of directors believe that maintaining a high quality of life is an important part of a positive business environment. Therefore, the corporation is actively involved in the Tualatin River clean up process. The corporation and its board of directors lend support to the private and public sector alliance that has developed in response to the clean up program.

One program element of USA's Waste Water Facilities Plan is the reduction of the amount of pollutants users discharge into the waste water treatment system. TVEDC supports USA's and the Metropolitan Service District's efforts to ban phosphorus detergent, as one component in the basinwide effort to clean up the Tualatin River. This method of reducing pollutants is considered relatively painless to households and has been shown to significantly decrease the amount of phosphorus entering the system for treatment.

Enclosed is a copy of the adopted resolution in support of a phosphorus ban. If you have any questions please contact me at 620-1142.

Very truly yours,

Mary A. Weber
Program Manager

enc.



TUALATIN VALLEY

ECONOMIC DEVELOPMENT CORPORATION

R E S O L U T I O N

WHERE AS:

The Tualatin Valley Economic Development Corporation's stated objective is to provide private sector leadership and representation on major regional issues affecting economic development in the Tualatin Valley.

WHERE AS:

the board of directors of the Tualatin Valley Economic Development Corporation believe that maintaining a high quality of life in the Tualatin Valley is an important part of a positive business environment. The work of local agencies and the private sector to meet DEQ water quality standards for the Tualatin River Basin is one effort to insure a desirable environment. The board of directors support the private and public sector alliance that has developed in response to the Tualatin River clean up.

WHERE AS:

the Unified Sewerage Agency (USA) is the lead public agency responsible for storm water runoff and sewerage treatment in the urban area of the Tualatin River Basin. One of USA's Waste Water Facilities Plan program elements is the reduction of the amount of pollutants that users discharge into the waste water system. Two of the ways reduction can be achieved is through a phosphorus detergent ban and public education.

WHERE AS:

the board of directors support the concept of reducing the amount of pollutants that are discharged into the waste water system. In many areas it has been shown that a phosphorus detergent ban reduces the amount of phosphorus entering the waste water system by 20 to 60 percent. This reduction of phosphorus is considered relatively painless to households because in this region comparable and effective non-phosphate detergents are available to the consumer.

THEREFORE:

the board of directors support USA's and the Metropolitan Service District's efforts to ban phosphorus detergent as one component in the basin wide plan to clean up the Tualatin River.

May 1990

CHURCH & DWIGHT CO., INC.

15014 NE 40TH STREET
SUITE 201A
REDMOND, WA 98052
PHONE (206) 869-2962
FAX (206) 869-1941

DOUG BEAHM
Seattle Region Manager

CHURCH & DWIGHT ENVIRONMENTAL STATEMENT

For Portland, Oregon County Council Meeting

I appreciate the opportunity to share with you the importance that Church & Dwight attaches to the care and preservation of the environment.

Our environmental concern and involvement is an important part of our heritage and goes back to the last century when small trading cards of birds appeared in boxes of baking soda with the message "For the good of all, do not destroy the birds." This message was one of the first manifestations of wildlife conservation by a member of the corporate community.

For over 100 years we've been marketing ARM & HAMMER Baking Soda and ARM & HAMMER Super Washing Soda, both natural products which are recognized as safe and natural products for cleaning and deodorizing around the home.

Church & Dwight has also taken a leadership role in the area of environmentally compatible laundry detergents. Shortly after the first Earth Day 20 years ago, we introduced ARM & HAMMER Laundry Detergent, a product developed specifically with the environment in mind. Today our laundry detergent is available in the Pacific Northwest and all other phosphate permitted areas with a minimal (.25%) level of phosphorus, while other detergents typically contain 5% or more. We are in the process of completing our conversion to a phosphate-free product, and

CONSUMER PRODUCTS



CHEMICALS DIVISION

JUN 15 50 12 32 CHURCH & DWIGHT BSA F.4

CHURCH & DWIGHT CO., INC.

Page 2
C&D Environmental Statement

this will be available to consumers everywhere by the end of the summer. This ARM & HAMMER Laundry Detergent, produced through an energy efficient process that uses no phosphates and only biodegradable surfactants, is proof that consumers' cleaning needs can be met without phosphates. Only 17 states have some form of phosphate ban, but we welcome and encourage other detergent manufacturers to follow us in providing phosphate-free products, not only in this region, but in all regions of the country.

In the Chemical Division of our company, research scientists have developed new technologies for using sodium bicarbonate to combat acid rain by reducing toxic emissions, to restore acidified lakes, to treat lead contaminated drinking water, and to remove paint as a safe, nontoxic industrial cleaning compound.

In order to improve the environment, it will be necessary for all of us to work together responsibly. That means government, consumer, and manufacturers. For our part, Church & Dwight will continue our positive and active role in the environmental area.



Port of Portland

Box 3529 Portland, Oregon 97208

503/231-5000

TLX: 474-2039

June 28, 1990

Metro Council
2000 SW 1st Avenue
Portland, OR 97201

ADOPTION OF THE SMITH AND BYBEE LAKES MANAGEMENT PLAN

The Smith and Bybee Lakes Management Plan has been developed over the last four years by a broadly representative advisory committee originally convened by the Port of Portland. Though the plan has evolved significantly, especially in the last year under the City's lead, its basic direction has remained constant through the years. The Smith and Bybee area is to be managed as a natural wildlife habitat area, with limited recreational access. The process of reaching that consensus, and maintaining it as the details of the Plan evolved, was a delicate one given the many individual and organizational, private and public interests involved.

Jim Sjulín from the City of Portland Parks Bureau and I testified at the June meeting of the Intergovernmental Relations Committee, and expressed our concern that the language changes proposed to the Policy and Actions sections of the Plan by Metro staff might jeopardize that delicate consensus. Specifically, we indicated that the role of the Management Committee and management of the Smith and Bybee Lakes Trust Fund were areas of the Plan that needed more careful consideration. I understand that the action to be taken tonight by the full Metro Council is adoption of the Management Plan in concept. In order to keep the process of Plan adoption and implementation on track, this is a very welcome action. The specific policy language still needs clarification, however, before the Plan can be considered in final, implementable form.

The Port's primary concerns parallel the City Parks Bureau's and those expressed by several individuals who have been active in developing the Management Plan over the last four years. Given the delicate balance of interests which has formed around this Plan, it is imperative that effective control over implementation of the Plan be held by the Management Committee, and not with any single agency.

Metro Council
Page 2
June 28, 1990

Though management of the Trust Fund must reside with an elected body (either the Metro or City Council), the Management Committee should be the body to propose budgets, policy changes, and any other substantive action. Our other major area of concern is that there be no conflict of interest for any organization in implementing the Plan. In the case of Metro, the responsibilities for St. Johns Landfill closure could create a potential conflict with implementation of the Management Plan if the relationship between the two is not carefully considered.

As I mentioned previously, adoption of Resolution 90-1282 approving the Smith and Bybee Lakes Management Plan in concept is a most welcome step. Port staff is ready to work with staff from Metro and the City to finalize the Plan's policy language, and move as quickly as possible to final adoption so that we can all enjoy the results of its implementation.


Brian Campbell
Planning Manager

cc: Smith and Bybee Lakes Advisory Committee



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503 221-1646

Memorandum

M E M O

DATE: July 25, 1990
TO: Jessica Marlitt
FROM: *PKC* Richard Carson
RE: Yard Debris Plan Public Process

The following public process was conducted in developing the regional yard debris plan:

- o Public Hearing - CSWC, June 19, 1990
- o Public/Local Government Workshops - Four were conducted. One at Metro and one for each of the three counties.
 - Metro - April 18, 1990
 - Washington County - April 23, 1990
 - Multnomah County - April 25, 1990
 - Clackamas County - April 27, 1990
- o Policy Committee, Technical Committee, Waste Reduction Subcommittee. These groups met to develop the plan over the 14 month process. In addition, Metro mailed agendas for all these meetings to city managers, haulers, processors, recyclers and interested persons. Regular yard debris agenda mail-outs went to about 150 persons.
- o Metro Planning News. The developing yard debris plan was featured in two issues of this newsletter. The plan recommendations were detailed in the June issue. This newsletter is received by over 1,000 people and organizations including haulers, recyclers, local governments and interested persons.
- o Media. Several area radio stations have conducted interviews with staff about the yard debris plan recommendations on the air. Channel 8 recently interviewed Metro's Public Affairs Director for a story.



Pen-Nor, Inc.

Contracting

June 27, 1990

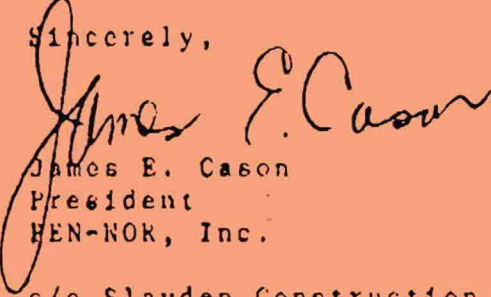
Mr. Amha M. Hazen
Contract Administrator
Metro Service District
2000 S.W. 1st
Portland, OR 97201-5398

Dear Amha:

As per my phone conversation on Wednesday, June 27, 1990, at 9:10 a.m., I am directing you to excise my affidavit from the June 22, 1990 letter and replace pages 2 and 4 with new pages 2 and 4 from Mr. Siefer.

Thank you in advance on this matter.

Sincerely,


James E. Cason
President
PEN-NOR, Inc.

c/c Slayden Construction, Inc.

P.S. See enclosed letter to Dan Siefer, dated June 26th, 1990.



Pen-Nor, Inc.

Contracting

June 26, 1990

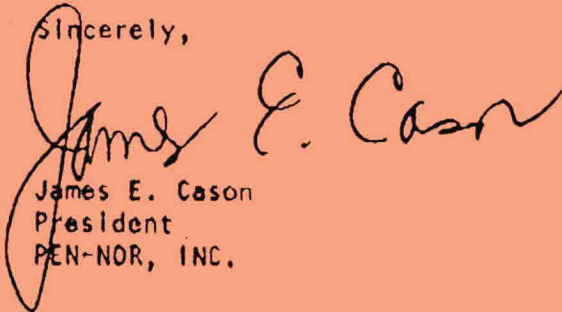
Mr. Dan Siefert
SIEFER, YATES, WHITNEY & MILL
900 S. W. 5th Ave - #1516
Portland, OR. 97204

Dear Dan:

After several conversations I am writing to advise you to withdraw my affidavit and you are not authorized to utilize it in any way, directly or indirectly in your presentation.

Also, delete my name from your cover letter dated June 22, 1990 where it appears, specifically pages 2 and 4, and supply new pages 2 and 4 for inclusion with the Board packages.

Sincerely,



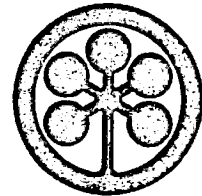
James E. Cason
President
PEN-NOR, INC.

JEC/sb

cc - Lynnla Woods
Allen, Kilmer, Schrader
Yazbeck & Chenoweth



CITY OF PORTLAND
BUREAU OF PARKS AND RECREATION



1120 S.W. 5TH, ROOM 502
PORTLAND, OREGON 97204-1976
(503) 796-5193

MIKE LINDBERG, Commissioner

CHARLES JORDAN, Superintendent

June 28, 1990

Rena Cusma, Executive Officer
Metropolitan Service District
2000 S.W. 1st Avenue
Portland, OR 97201

Dear Ms. Cusma:

The City of Portland Bureau of Parks and Recreation is pleased to endorse today's resolution adopting the Smith and Bybee Lakes Management Plan in concept. The Management Plan is the product of many people's efforts over several years and provides us all with an opportunity to protect and enhance what is surely one of the most significant natural areas in the region.

The Bureau of Parks and Recreation is looking forward to implementation of the Plan in cooperation with Metro. We are thankful for this opportunity to develop and manage the recreation services component at Smith-Bybee and to be able to do so with the consistent and reliable funding source which has been identified by the Plan. It is important that we commit to protecting the proposed Smith and Bybee Lakes Trust Fund from any misuse or misdirection. To this end we should strengthen the Plan by providing for both Metro and City approval of appropriations from the Trust Fund.

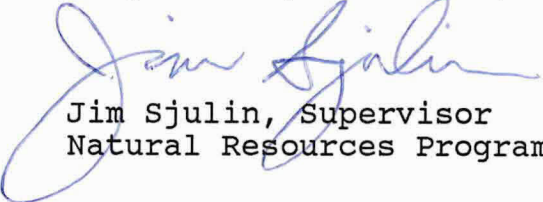
We should also take measures to insure that the use of the land is in step with the policies proposed by the Management Plan. Privately owned lands should be acquired as soon as possible from willing sellers. Public lands should be forever restricted from any use not specified in the Management Plan; when this is done, ownership by either the City or Metro is not an issue.

As you may know, the March 12th "Planning Commission Final Draft" with some minor additions (two memos) is recommended by the Portland Planning Commission. It is our intent to take the Smith and Bybee Lakes Management Plan to the Portland City Council this summer. We may propose at that time refinements in the Plan's language which provide clarification and which further insure the Plan's integrity. It is our hope that City, Metro, and Port staff, along with other members of the ad-hoc Smith and Bybee Lakes Advisory Committee submit together any needed language changes. Once adopted by Portland City Council, we would like to bring the Management Plan back to the Metro Council for adoption by

ordinance. We also expect that the Port Commission will adopt the Plan this summer.

I am attaching a letter received this week by the Planning Bureau from a private property owner in the Smith Lake area. The writer expresses her support of the Management Plan from the perspective of a private property owner, of one who grew up with the lakes, and of one who cares very much about the lakes' future.

Respectfully submitted,



Jim Sjulín, Supervisor
Natural Resources Program

c: Charles Jordan, Supt. of Parks
Mike Lindberg, City Commissioner

6553 4th Avenue NW
Seattle WA 98117

RECEIVED

JUN 27 1990

21 June 1990

CITY OF PORTLAND
BUREAU OF PLANNING

Planning Bureau
Portland Building, Room 1002
1120 SW 5th Avenue
Portland OR 97204

Dear Commissioners:

As an owner of property between Smith Lake and the Columbia Slough, I urge you to approve the Smith & Bybee Lakes Management Plan and facilitate steps to begin purchase of private property.

These lakes are close to my heart. Some of my earliest memories involve visiting our Shetland ponies at Grandpa's barn and a night-time ice skating party when Smith Lake froze one winter. A few years later we began water-skiing on Smith Lake every weekend from May through 4th of July. Because these lakes are close to my heart, I would like other children in St. Johns to have fond memories of the Lakes like I have. Having the City of Portland acquire the lakes in this manner seems an excellent way of preserving the lakes very much like I knew them.

There is very little that we can do with our property at the lakes because of regulations and our lack of capital. Therefore, currently the lakes are an economic drain in contrast to the traditional belief that my brother and I would eventually get a substantial return on Grandpa's investment.

Although I grew up being told the lakes would one day be dredged in and become industrial parks, my only attachment to that plan was the money it was supposed to bring. I am much more happy with the current plan to keep the lakes quiet and natural.

Again, I urge you to approve the Smith & Bybee Lakes Management Plan and facilitate steps to begin purchase of the private property. Thank you for your consideration.

Sincerely,



Terri Smith-Weller

1/2 Owner:

Tax Lot No. 29-37, Junction Addition
J&K , Junction Addition
4, 71, 108, Section 6, 1N, 1E

**INTERGOVERNMENTAL RELATIONS
COMMITTEE REPORT**

**ORDINANCE NO. 90-336, PROHIBITING THE SALE AND DISTRIBUTION OF
LAUNDRY CLEANING AGENTS CONTAINING PHOSPHORUS WITHIN THE
METROPOLITAN SERVICE DISTRICT BOUNDARIES**

Date: May 25, 1990

Presented By: Councilor Ragsdale

COMMITTEE RECOMMENDATION: At the May 22, 1990, Intergovernmental Relations Committee meeting, Councilors Bauer, Devlin, McFarland and myself were present and voted unanimously to recommend Council adopt Ordinance No. 90-336 as amended. Councilor Gardner was excused.

COMMITTEE DISCUSSION/ISSUES: Planning and Development staff Larry Sprecher and Jim Morgan, and Legal Counsel Larry Shaw, presented Ordinance No. 90-336 which bans the sale and distribution of laundry detergents containing phosphates within the District. Staff provided a general overview, noting the following points:

- o Past water quality regulations on nutrients have concentrated on discharges and treatment but recent trends have focussed on problem sources in order to reduce treatment requirements. Chemical treatments may themselves have negative impacts on water quality, such as elevating suspended solids levels.
- o States with phosphate bans have experienced significant decreases in phosphorous, ranging from 22 to 60 percent reductions. Ordinance No. 90-336 is estimated to reduce phosphorous in the Metro area by at least 30 percent.
- o Any reduction in phosphorous would reap benefits by reducing potential treatment costs for the region's water bodies. Unified Sewerage Agency (USA) consultants estimate savings to the Agency, from the proposed phosphates ban, at \$390,000 by 1995 and \$540,000 as of the year 2000. Savings would come from less chemicals required to treat the water and reduced sludge removal costs.

The Committee held a public hearing and six people testified as follows:

1. Representative Ron Cease strongly supported the ordinance but questioned the exemptions list impact on the total sale of phosphorous containing products and the appropriateness of exempting products for sale outside of the Metro District. He felt this exemption represented a "double-standard" and recommended the Council reconsider the exemption.
2. Senator Dick Springer noted he served as co-chair on the Interim Committee on Environment and Hazardous Materials and water issues remain a priority of the Legislature. He stated his support for the general issues the ordinance addresses, especially on non-point source pollution and treatment costs for local jurisdictions. He urged Council adoption of the ordinance, noting this ban would provide a "test case" for the State to examine.
3. John Jackson, Planning Division Manager, USA reiterated USA's desire for the ban which would help the Agency meet its required January

1993 waste load allocation levels at less cost. He stated USA's Facilities Plan will incorporate industrial pre-treatment requirements for phosphorous but Metro's ban is necessary to address household phosphorous sources. He noted the Department of Environmental Quality (DEQ) is examining potential water quality regulations for aluminum, which is used to strip phosphorous from the water, and the best way to avoid an aluminum problem is to reduce its use in treating phosphorous. He observed that the Metro region's eastern areas will face water quality problems similar to those in Washington County as their population continues to grow. Given the ordinance's definition section, Mr. Jackson said the exemption section was redundant and recommended its deletion. He said USA would be able to provide Metro annual data regarding the ban's effectiveness.

4. Paul Cosgrove, Lindsay, Hart, Neil & Weigler Lawyers, testified a phosphorous ban would not reduce phosphorous in the Tualatin River. Regarding USA's savings estimates, he stressed they were estimates and noted the \$390,000 figure worked out to represent \$.10 per person per month in USA's jurisdiction. He said the Tualatin River represented a cost issue, not a water quality issue and other alternatives should be examined, such as biological nutrient removal, use of wetlands, and the land application of treated water. He said the major goal was finding less chemically oriented means of treating water. In terms of USA's 1993 deadline to meet waste load allocation levels, he said the key is to have a plan in place with treatments identified to address the Tualatin's problems. Mr. Cosgrove distributed a recommended replacement ordinance (see Attachment A hereto).
5. Mary Halaburton, DEQ said DEQ will submit formally written testimony supporting the ordinance. She noted the ban would not eliminate the need for other efforts to reduce phosphorous in the Tualatin but it would offer a complimentary piece to the plan. She said the ban is consistent with DEQ's goal of pollution prevention because it would reduce phosphorous entering the Tualatin and thereby reduce water treatment costs.
6. Kathleen Woods, Chemist with Mt. Hood Chemical Corporation, said she only wanted to address exemption (g) [exempting from the ban cleaning agents "manufactured, stored, or distributed for use or sale outside the District."]. She said this exemption is important to maintain so businesses within the District can compete for laundry detergent contracts, which require phosphorous, outside of the District.

Following public testimony, the Committee reviewed the ordinance section by section and directed Legal Counsel Larry Shaw to amend the ordinance as follows for Council consideration:

- A. Delete the introductory "Whereas" clauses and incorporate points necessary to clarify legislative intent into the ordinance "Policy

and Purpose" section. (Unanimous motion) The Committee questioned whether the "Whereas" clauses were necessary to establish findings or justifications for the ordinance. Mr. Shaw said there was no legal requirement for the "Whereas" statements and normally they were used to differentiate legislative findings from quasi-judicial language in the ordinance. Mr. Shaw suggested folding the first 3 to 4 "Whereas" statements into the ordinance "Policy and Purpose" section.

- B. Amend the ordinance effective date to be February 1, 1991. (3 to 1 vote on the motion, Ragsdale dissenting) The Committee noted most bans had a grace period to allow businesses and distributors to adjust their inventories and warehouses. I noted my preference for governments to not implement bans and asked Mr. Jackson with USA what the latest ordinance effective date could be and still remain practicable for USA's needs. Mr. Jackson responded the ban would have to be in place by February 1991. Mr. Cosgrove said other States provided at least a one year grace period because anything less poses problems for industries, in terms of changing distribution processes, etc.
- C. Amend the ordinance sunset clause to December 31, 1994. (3 to 1 vote on the motion, Ragsdale dissenting) Larry Shaw recommended the Committee retain a sunset clause for legal purposes, but the particular date was not a legal issue. Councilor Devlin's motion to change the sunset date to December 31, 1995, per USA's recommendation, failed. Councilor Bauer's motion to change the date to December 31, 1993 also failed. The 1993 date according to USA would not allow for adequate results to measure the Tualatin's compliance with the "Total Maximum Daily Load" (TMDL) standards.
- D. Rewrite the "Definition" and "Prohibition" sections to conform with the 1989 Pennsylvania statute (used as the model for the ordinance). Legal Counsel was directed to rewrite these sections to make them consistent with the Pennsylvania statute, thereby eliminating current redundant and cloudy language in the proposed ordinance. Mr. Shaw noted with the rewrite he would prepare a brief cover memo to summarize the changes.

The Committee also discussed the 8.7 percent phosphorous level for dishwashing detergents and staff noted little information was available about impacts. Staff cited results from New Hampshire a few years ago which indicated dishwashing detergents contributed approximately 15 percent of total phosphorous pollution from cleaning agents. The Committee decided not to reduce the 8.7 percent level since the benefits could not be determined and there is a lack of readily available substitute products.

7. RESOLUTIONS

(Read the "referred from," item number, resolution number and complete title.)

REFERRED FROM FINANCE COMMITTEE

7.2 Resolution No. 90-1281, Revising Guidelines for Council Per Diem, Councilor Expense and General Council Materials and Services Account

- A. Have Councilor Van Bergen, chair of the Finance Committee, move to adopt the resolution.
- B. Have Councilor Van Bergen present the Finance Committee's report and recommendations.
- C. Discussion: Councilor comments and questions.
- D. Vote on the motion to adopt the resolution.
- E. Announce the results of the vote.

REFERRED FROM INTERGOVERNMENTAL RELATIONS COMMITTEE

7.3 Resolution No. 90-1261, Establishing a Park & Natural Areas Policy Advisory Committee

- A. Have Councilor Devlin, member of the Intergovernmental Relations Committee, move to adopt the resolution.
- B. Have Councilor Devlin present the Intergovernmental Relations Committee's report and recommendations.
- C. Discussion: Councilor comments and questions.
- D. Vote on the motion to adopt the resolution.
- E. Announce the results of the vote.

7. RESOLUTIONS

7.4 Resolution No. 90-1282, Approval in Concept of the Smith and Bybee Lakes Plan

- A. Have Councilor Devlin, member of the Intergovernmental Relations Committee, move to adopt the resolution.
- B. Have Councilor Devlin present the Intergovernmental Relations Committee's report and recommendations.
- C. Discussion: Councilor comments and questions.
- D. Vote on the motion to adopt the resolution.
- E. Announce the results of the vote.

7.5 Resolution No. 90-1265, For the Purpose of Revising the Bylaws of the Water Resources Policy Alternatives Committee

- A. Have Councilor McFarland, member of the Intergovernmental Relations Committee, move to adopt the resolution.
- B. Have Councilor McFarland present the Intergovernmental Relations Committee's report and recommendations.
- C. Discussion: Councilor comments and questions.
- D. Vote on the motion to adopt the resolution.
- E. Announce the results of the vote.

7. RESOLUTIONS

REFERRED FROM SOLID WASTE COMMITTEE

7.6 Resolution No. 90-1290, Regional Yard Debris Plan for Submittal to the Department of Environmental Quality

- A. In introducing Resolution No. 90-1290, I want to highlight the purpose of this resolution is to submit Metro's draft yard debris plan to the State Department of Environmental Quality (DEQ). Metro is legally required to submit the Plan by July 1, 1990 after which DEQ will review the Plan and return it to Metro for final revisions. Metro will have 90 days to respond to DEQ's comments and adopt the final plan by ordinance, ensuring at least 3 additional public hearings. I present this process summary because I believe tonight's action is not directed towards the final plan content, but simply forwards the plan to DEQ as required. Please note staff has distributed a memo from Planning and Development summarizing the public involvement process to date in developing the Yard Debris Plan.
- B. Have Councilor Wyers, member of the Solid Waste Committee, move to adopt the resolution.
- C. Have Councilor Wyers present the Solid Waste Committee's report and recommendations.
- D. Discussion: Councilor comments and questions.
- E. Vote on the motion to adopt the resolution.
- F. Announce the results of the vote.

7.7 Resolution No. 90-1280, For the Purpose of Purchasing Computer Equipment for Use at Metro Solid Waste Disposal Sites

Announce that Resolution No. 90-1280 (For the Purpose of Purchasing Computer Equipment for Use at Metro Solid Waste Disposal Sites) has been removed from the agenda.

7. RESOLUTIONS

**BEFORE THE CONTRACT REVIEW BOARD OF THE METROPOLITAN SERVICE DISTRICT
REFERRED FROM CONVENTION & VISITOR FACILITIES COMMITTEE**

7.8 Resolution No. 90-1273, For the Purpose of Authorizing Execution of a Contract for the CCTV System for the Oregon Convention Center to Other than the Apparent Low Bidder

- A. Announce in accordance with Metro Code Chapter 2.04.044(e), contracts awarded to any bidder other than the apparent low bidder must be approved by the Contract Review Board. Recess the Council, and convene the Contract Review Board.
- B. Have Councilor Knowles, chair of the Convention and Visitor Facilities Committee, present the committee's report and recommendations.
- C. Discussion: Councilor comments and questions.
- D. Vote on the motion to adopt the resolution.
- E. Announce the results of the vote.

7.9 Resolution No. 90-1285, For the Purpose of Exempting Oregon Convention Center Follow-on Contract Items from Requirements of Metro Code Section 2.04.041(c) and 2.04.044

- A. Announce in accordance with Metro Code Chapter 2.04.041(c) and 2.04.044, this resolution is also a matter for the Contract Review Board to decide. Recess the Council, and convene the Contract Review Board.
- B. Have Councilor Knowles, chair of the Convention and Visitor Facilities Committee, present the committee's report and recommendations.
- C. Discussion: Councilor comments and questions.
- D. Vote on the motion to adopt the resolution.
- E. Announce the results of the vote.

7. RESOLUTIONS

NON-REFERRED RESOLUTIONS

7.10 Metro South Modifications Project Bid Protest of Award to Emerick Construction Company --Hearing and Council Action on Appeal

- A. Announce that pursuant to Metro Code Section 2.04.031, this matter comes before the Contract Review Board as an appeal of an Executive Officer's decision on a bid award protest. Mr. Cooper will give a short introduction for the Council concerning the subject matter and background of this appeal. Mr. Martin will then give a short report on behalf of the Executive Officer regarding the decision being appealed.

The Contract Review Board will then hear from the appellants, Robinson Construction Company, who will have 30 minutes to present their case. Then Emerick Construction Company will have 30 minutes to make its presentation to the Board. Robinson may reserve up to 10 minutes of its time for rebuttal.

The Board may then take additional testimony from those present who wish to be heard. Due to the hour and the length of this proceeding, additional testimony will be limited to three minutes per person.

The Board will then discuss and resolve the matter, and may ask questions of the Executive Officer's representatives or General Counsel.

A motion to uphold or reject the appeal would then be in order. Approval of a motion to uphold the appeal would disqualify Emerick's bid. Approval of a motion to reject the appeal would allow the Executive Officer to execute a contract with Emerick.

- B. **Have** Dan Cooper give an introduction.
- C. Have Bob Martin give his report.
- D. Have the appellants, Robinson Construction Company, present their case.
- E. Have Emerick Construction Company make their presentation to the Board.
- F. Councilor discussion/questions.
- G. Receive a motion to either uphold or reject the appeal.
- H. Vote on the motion.
- I. Announce the results of the vote.
- J. Adjourn the Contract Review Board and reconvene the Council.

June 28, 1990 Council Meeting Notes
Page 12

8. COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS

8.1 Water Resources Management Work Plan

A. Have Councilor McFarland present the report.

ADJOURN the meeting!

A:\COUN0628.AGN

7.7 Resolution No. 90-1280, For the Purpose of Purchasing
Computer Equipment for Use at Metro Solid Waste Disposal
Sites

Removed from the agenda.

7.8 Resolution No. 90-1273, For the Purpose of Authorizing
Execution of a Contract for the CCTV System for the Oregon
Convention Center to Other than the Apparent Low Bidder

7.9 Resolution No. 90-1285, For the Purpose of Exempting Oregon
Convention Center Follow-on Contract Items from Requirements
of Metro Code Section 2.04.041(c) and 2.04.044

7.10 Metro South Modifications Project Bid Protest of Award to
Emerick Construction Company Hearing and Council Action on
Appeal

COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS

8.1 Water Resources Management Work Plan

Removed from the agenda.

A:\COUN0628.AGN

NOTES FOR COUNCIL MEETING JUNE 28, 1990

CALL TO ORDER/ROLL CALL

- 1. INTRODUCTIONS**
- 2. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS**
- 3. EXECUTIVE OFFICER COMMUNICATIONS**
- 4. CONSENT AGENDA (Action Requested: Motion to Adopt the Recommendations Listed Below)**
- A. Announce that the following items are on the Consent Agenda for consideration (read the number and title of each item, e.g. "Referred from the Intergovernmental Relations Committee, item number 4.1, Resolution No. 90-1268, Authorizing Federal Funds for a Section 16(b)(2) Special Transportation Project and Amending the Transportation Improvement Program.)**

REFERRED FROM INTERGOVERNMENTAL RELATIONS COMMITTEE

- 4.1 Resolution No. 90-1268, Authorizing Federal Funds for a Section 16(b)(2) Special Transportation Project and Amending the Transportation Improvement Program**
- 4.2 Resolution No. 90-1269, Amending the Functional Classification System and the Federal-Aid Urban (FAU) System**
- 4.3 Resolution No. 90-1275, Transferring \$1,700,000 of Interstate Transfer Funds to the Hawthorn Bridge Project from the Scholls/Skyline Project**
- B. Ask if any councilor wishes to remove an item from the Consent Agenda (it does not take a vote; if any councilor wishes to remove an item from the Consent Agenda, announce when at tonight's meeting it will be heard--after second readings of ordinances).**
- C. Receive a motion to adopt the Consent Agenda.**
- D. Vote on the motion.**
- E. Announce the results of the vote.**

June 28, 1990 Council Meeting Notes
Page 2

*****ANNOUNCE --** If there is anyone in the audience who would like to testify on an item on tonight's agenda, please fill out one of the testimony cards on the table by the entry and hand it to the Clerk. Remember to indicate which item you'd like to speak on and your name will be called when we reach that item on the agenda.

5. ORDINANCES, FIRST READING

(Read only the item number and ordinance number.)

5.1 Ordinance No. 90-355, For the Purpose of Amending Metro Code Section 7.01.050 by Exempting Certain Payments to the Metro Washington Park Zoo from the Excise Tax

- A. Have the Clerk read the ordinance for a first time by title only.**
- B. Announce that the ordinance has been referred to the Zoo Committee.**

INTERGOVERNMENTAL RELATIONS COMMITTEE REPORT

**RESOLUTION NO. 90-1268, AUTHORIZING FEDERAL FUNDS FOR A
SECTION 16(b)(2) SPECIAL TRANSPORTATION PROJECT AND AMENDING
THE TRANSPORTATION IMPROVEMENT PROGRAM**

Date: June 15, 1990

Presented by: Councilor Devlin

COMMITTEE RECOMMENDATION: At the June 12, 1990 Intergovernmental Relations Committee meeting, Councilors McFarland, Ragsdale and myself voted unanimously to recommend Council adopt Resolution No. 90-1268. Councilors Bauer and Gardner were excused.

COMMITTEE DISCUSSION/ISSUES: Transportation Director Andy Cotugno presented the resolution which amends the Transportation Improvement Program (TIP) to allow Tri-Met to receive federal pass-through funds specifically designated for handicapped transportation facilities. Tri-Met has received one application from Volunteer Transportation Program to receive these designated Section 16(b)(2) funds from the Urban Mass Transportation Authority (UMTA).

As noted in the staff report, Section 16(b)(2) funds are for capital grants to private, nonprofit organizations to provide transportation services for elderly and handicapped persons. Tri-Met has reviewed the Volunteer Transportation Program application to fund 10 vehicle purchases and recommends approval so that services may be received by client groups not served by Tri-Met. The resolution approves the application for \$200,000 in available funds.

The Committee did not raise any questions or issues concerning the resolution.

jpmfive
b:\901268.cr

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 90-1268
FEDERAL FUNDS FOR A SECTION 16(b)(2)) Introduced by Rena Cusma,
SPECIAL TRANSPORTATION PROJECT AND) Executive Officer
AMENDING THE TRANSPORTATION IMPROVE-)
MENT PROGRAM)

WHEREAS, Section 16(b)(2) of the Urban Mass Transportation Act authorizes the Urban Mass Transportation Administration to make capital grants to private, nonprofit organizations to provide transportation services for elderly and handicapped persons; and

WHEREAS, Section 16(b)(2) funding will be made available only to nonprofit organizations serving specific client groups which cannot better be served by regular Tri-Met service to the elderly and handicapped community; and

WHEREAS, Tri-Met has determined that the applicant listed below can serve their client group more efficiently than could Tri-Met; and

WHEREAS, To comply with federal requirements the Transportation Improvement Program must be amended to include projects recommended for Urban Mass Transportation Administration 16(b)(2) funds; and

WHEREAS, The project described below was reviewed and found consistent with federal requirements and regional policies and objectives; now, therefore,

BE IT RESOLVED:

1. That Federal 16(b)(2) funds be authorized for the purchase of special transportation vehicles for the following:

| | <u>Federal</u> | <u>Applicant</u> | <u>Total</u> |
|----------------------------------|----------------|------------------|--------------|
| Volunteer Transportation Program | \$160,000 | \$40,000 | \$200,000 |

2. That the Transportation Improvement Program and its Annual Element be amended to reflect this authorization.

3. That the Council of the Metropolitan Service District finds the project to be in accordance with the region's continuing, cooperative, comprehensive planning process and, thereby, gives affirmative Intergovernmental Project Review approval.

ADOPTED by the Council of the Metropolitan Service District this ____ day of _____, 1990.

Tanya Collier, Presiding Officer

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 90-1268 FOR THE
PURPOSE OF AUTHORIZING FEDERAL FUNDS FOR A SECTION
16(b)(2) SPECIAL TRANSPORTATION PROJECT AND AMENDING
THE TRANSPORTATION IMPROVEMENT PROGRAM

Date: May 18, 1990

Presented by: David Unsworth

PROPOSED ACTION

Recommend Council adoption of the attached Resolution which authorizes Federal 16(b)(2) funds to one private, nonprofit social service agency. These funds will be used for the purchase of passenger vehicles and related equipment to provide special transportation services in the Portland metropolitan area to specific client groups not served by Tri-Met. This Transportation Improvement Program (TIP) addition will allow the agency to apply for 16(b)(2) funding from the Urban Mass Transportation Administration (UMTA).

TPAC has reviewed this TIP amendment and recommends approval of Resolution No. 90-1268.

FACTUAL BACKGROUND AND ANALYSIS

Section 16(b)(2) authorizes UMTA to make capital grants to private, nonprofit organizations to provide transportation services for elderly and handicapped persons. Capital investments include purchase of conventional and paratransit vehicles and other equipment associated with providing local and regional (non-intercity) transportation services to the elderly and handicapped. Apportioned 16(b)(2) funds are not available for operating expenses. Transportation Improvement Programs and their Annual Elements must be amended to include new 16(b)(2) projects.

Section 16(b)(2) funding is only available to private, nonprofit organizations and, in the Metro region, only for use to serve specific client groups that cannot be served effectively by Tri-Met. Tri-Met has reviewed the application for 16(b)(2) funds and supports it on the basis that Tri-Met is unable to perform more efficiently the function these vehicles would provide.

The one local provider submitting an application is:

| | | |
|----------------------------------|-------------------------|------------|
| Volunteer Transportation Program | 3 station wagons | \$ 20,580 |
| | 4 10-16 passenger vans | 84,610 |
| | 2 10-16 passenger buses | 90,000 |
| | 1 wheelchair lift | 4,460 |
| | TDD | <u>350</u> |
| | Total | \$200,000 |

RECEIVED MAR 15 1990



TRI-MET

4012 SE 17th AVENUE
PORTLAND, OR 97202



March 13, 1990

Mr. Andy Cotugno
METRO
2000 SW 1st
Portland, OR 97201

Dear Mr. Cotugno:

Tri-Met has reviewed Volunteer Transportation, Inc.'s public notice for the 1990 16(b)(2) program, and has determined that there is a need for the services and that Tri-Met is and will be, unable to perform the functions the vehicles and equipment would provide.

In view of this, and the fact that the volunteer programs in the tri-county area are working together and with Tri-Met, we strongly endorse their application. We are presently soliciting proposals for a company to provide scheduling, recordkeeping and maintenance services to both the Tri-Met Paratransit fleet and volunteer programs, thereby increasing coordination and cost effectiveness. We hope these efforts can be supported by the 16(b)(2) program.

Sincerely,

A handwritten signature in cursive script that reads "John R. Post".

John R. Post
Assistant General Manager

JRP:PW:et

c: Dave Unsworth
Lee LaFontaine
Volunteer Transportation, Inc.



June 13, 1990

Ms. Rena Cusma, Executive Director
Metropolitan Service District
2000 SW First Avenue
Portland, Oregon 97201-5398

Reference: Metro South Station Modifications
Oregon City, Oregon

Dear Ms. Cusma,

I have reviewed a copy of a letter with no letterhead dated June 6, 1990 addressed to you and purporting to be a bid protest on behalf of Slayden Construction. I recognize that you have properly rejected that protest on the basis of untimeliness, and that the matter is therefore moot. However, the issues raised in that letter are so offensive and unfounded that I feel compelled to respond, lest Metro think less of this company because of them.

The letter is replete with innuendo, supposition and inaccuracies. Even the opening statement of "facts" is wrong and, while perhaps inconsequential on its face, it sets an inappropriate platform for the letter's later conclusions. Slayden's bid was not "approximately \$10,000 higher than Emerick's bid"; it was almost \$29,000 higher. It is not correct to say that the first four low bidders on March 21, 1990 "failed ... to make good faith efforts ..." As you know, neither Metro nor anyone else made such a determination.

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Ms. Rena Cusma
Metropolitan Service District
Page 2

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We truly regret that, through an oversight, our summary did not record the bids we received from EDT Construction (although our telephone log shows that a bid was received, but was not low), McCalib Concrete Service, S & L Landscaping and Buffalo Welding. These bids had each been removed from our bid board for more detailed analysis in packages with other bids. Mr. Kennedy, who prepared our summary, was unfamiliar with that practice, and unfortunately failed to find and include those bids in the summary.

It is particularly unfortunate since we had taken especially active steps to involve EDT in the project. However, it is one thing to admit this oversight and it is another to say, as Slayden does, that S & L and McCalib were low bidders. (The fact that they were not low with Slayden either does nothing to deter those

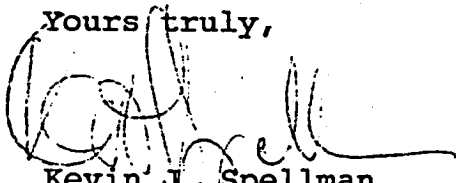


Ms. Rena Cusma
Metropolitan Service District
Page 3

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You may recall that I was an active participant in the Task Force that helped Metro revise and adopt the present DBE/MBE Code. You will find no one more committed than I to ensuring the proper application of the Code, and this company's efforts support that commitment. We look forward to proceeding with the contract at the earliest possible time.

Yours truly,



Kevin J. Spellman
President

mmw

cc: Neil E. Saling, Acting Director - Finance & Administration
Amha M. Hazen, Contracts Administrator
Rob Smoot, Projects Manager - Solid Waste
Monica Little, Legal Counsel
Gwen Ware-Barett, Clerk of the Council



June 11, 1990

Rena Cusma
Executive Officer
Metro
2000 S.W. 1st Ave.
Portland, Oregon

Dear Rena:

I disagree that a decision on Tri-Met merging with Metro should be put off yet again until next year. Tri-Met has been in limbo as a quasi-governmental agency long enough! Tri-Met should be merged with Metro as soon as possible. Accountability to the public and to the many employees who are Tri-Met, service to the Tri-Counties, and modern-people oriented-participative management styles and practices, these should be the main concerns. The other mechanical details of transition will readily be worked out.

Metro and Tri-Met merging is logical, natural, and a necessary marriage. The people of the Tri-Counties need regionally planned mass transportation and traffic flow. Metro will better be able to provide for sound permanent financing and direction for mass transportation in the Tri-County areas. All of the questions and concerns could and would readily be answered and resolved by immediately bringing Tri-Met under the umbrella of Metro. Tri-Met, to be headed by a new, modern management, participative styles and practices, people oriented, strong of character, visionary General Manager (Leader) - answerable directly to the Metro Executive Officer and Metro Council. Mass transportation must be a Metro function for our citizens (customers) to be properly served, our environment properly and responsibly protected, for Tri-Met to fulfil its purpose and goals, and for the many people who are Tri-Met to be responsibly represented and compensated for their commitment to the vision and mission of Tri-Met.

Now is the time for transition. Now, before the legislature can put up roadblocks to unified, responsible and accountable mass transportation.

Concerns should not be for the advantages of merging to Tri-Met's management; a fragmented, self-serving, nepotistic, collection of fiefdoms practicing cronyism, and good old boy promotion and hiring practices! But, concerns should be for our, Tri-Met's customers, and the many people who are Tri-Met and unrepresented except by archaic adversarially positioned union and management structures, our environment, and for the livability within the Tri-Counties.

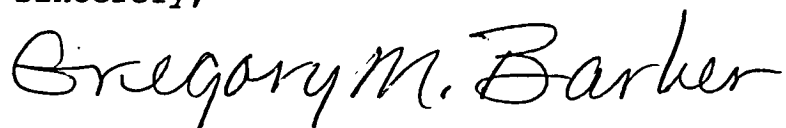
Act now, show the fiber of resolve, responsibility and accountability we the people expect from Metro. Help set Tri-Met on the proper path to ensure the fulfilling of its purpose.

Now is the time! "Never put off until tomorrow what you can do today." We the people who are Tri-Met (unrepresented and without voice) support you and long for a new order of fairness, honesty, integrity, accountability, change of every level of management, and responsibility a marriage with Metro will bring. Come and talk to the mechanics, helpers, cleaners, and drivers etc., of Tri-Met, about the need for change, about the current management "regime", about the waste, about the nepotism, about the good ole boy politics, about the cronyism, about the holding of high position without background experience or ability, about the fear to speak out.

We await a champion in the appointment of a new General Manager (Leader) who will make the changes required and, a marriage with Metro! This is especially imperative in light of Brian Clymer's attitude and position on Federal mass transportation funding!

These are my opinions respectfully and thoughtfully offered for your consideration and investigation.

Sincerely,

A handwritten signature in cursive script that reads "Gregory M. Barber". The signature is written in dark ink and is positioned below the typed name.

Gregory M. Barber

The Oregonian

Founded Dec. 4, 1850. Established as a daily Feb. 4, 1861. The Sunday Oregonian established Dec. 4, 1881. Published daily and Sunday by the Oregonian Publishing Co., 1320 S.W. Broadway, Portland, Oregon 97201

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DONALD J. STERLING JR., Assistant to the Publisher

TUESDAY, JUNE 12, 1990

Get light rail on track

The very health of the greater Portland community is riding on development of the light-rail system. Let's waste no more time in settling on a bond measure to provide local money. The Metropolitan Service District ought to put it on the November ballot, and the informational campaign should begin immediately.

Twenty-year bonds for \$100 million are estimated to cost taxpayers about 28 cents per \$1,000 of property value at the outset and taper off thereafter as new development helps to pay.

A vote no later than November is critical to construction of the west-side line. There is no assurance the federal commitment to pay 75 percent of the costs will still be honored that late, but there is a near-certainty that the huge federal contribution would not be available thereafter.

Failure of a constitutional amendment in the May election was a heavy setback for the region in federal eyes. Now the metropolitan area is looking at a last chance to prove to federal authorities its interest in its own transportation system.

The May vote was on a complex question that was the result of a creative approach to transit funding. Local voters are now authorized to assess a motor vehicle fee on top of the state's charge. The constitutional amendment would have permitted those same voters to use the money for transit as well as roads.

But the measure was not well-understood. So much for creativity. Now, with backs to the wall, it is time to be straightforward, put out a measure the voters can readily grasp, and explain it to them.

That boils down to either a serial levy of up to 10 years or bonds. The serial levy has the advantage of costing less because bonds carry interest. But it might be seen as overloading the property tax.

Voters have understood the basic equity of bonds in spreading the cost of a capital project over a big part of the project's life so those who benefit from it help to pay for it.

So let's go for bonds.

That leaves the question of which agency should be responsible, Metro or Tri-Met. Metro is the regional government, and Tri-Met ought to be a part of it. Let's put up no more roadblocks to a merger of the two. Metro should send the measure to the voters.

Even the confused May measure carried in the metropolitan area, although it lost in other parts of the state. The next measure will be regional only.

Surveys consistently show overwhelming support for light rail. What is needed is a financial plan that backs the support with money. A simple, familiar approach such as a bond measure ought to win voter favor and send a clear signal to the state and federal governments that the Portland area wants to get west-side light-rail back on track.

Metro may take over Tri-Met this year

□ The regional government says the time is ripe to assume responsibility for the transit district and cure its problems

By JAMES MAYER
of The Oregonian staff

The Metro Council wants to take over Tri-Met by the end of the year.

"It's past time not only to take a close look at it, but also to do something about it," said Councilor Jim Gardner.

The regional government has the power to put itself in the driver's seat by a simple majority vote of the 12-member council. The Oregon Legislature provided for the creation of both agencies in 1969 with laws that said Metro could assume the functions of the transit district by an order.

The idea has surfaced — and sunk — several times since. The last serious attempt was in 1983.

But Metro councilors say the time is ripe to try again.

At a recent council retreat, the talk was not about whether to take over Tri-Met but how to make it happen. Only George Van Bergen, Metro councilor from Clackamas County, said he was against the idea, although several councilors worried about the added workload.

The advantages of merging the agencies, which would add about \$200 million to Metro's \$223 million annual budget, appear to

be more political than operational.

Gardner and other Metro councilors believe a merger would make Tri-Met more accountable to elected officials and would streamline decisions by placing transit planning and operations under the same roof.

Also, rapid growth adds urgency to the issue as the region struggles with such questions as the right balance of highways, light rail and bus service — and who will pay for a vastly expanded system.

The probable need to ask voters for more taxes raises the political question of which agency is most liked — or perhaps least disliked — by the public.

"I don't think Metro enjoys the same reputation, frankly, that Tri-Met does right now," said Nita Brueggeman, a Tri-Met

■ **TUNNEL FAVORED:** Consultants say a West Hills tunnel would be the best choice for westside light rail. Page C5

board member.

"In my district, there is deep dissatisfaction with Tri-Met," said Metro Councilor Larry Bauer, who represents eastern Washington County.

Metro councilors cite two other reasons for acting this year.

First, Jim Cowen, the Tri-Met general manager and longtime foe of a merger with Metro, is retiring this summer, opening a rare window of change at the transit agency.

Please turn to
TRI-MET, Page C12

■ Continued from Page C1

And councilors worry that the Legislature could put up roadblocks in the 1991 session. A bill aimed at easing some of the technical difficulties of a merger failed to pass in the last session.

"Theoretically, it would be neat, tidy, but I'm not sure it's necessary," said Tri-Met board member Bill Robertson.

"What I'd like to see is some indication that association with Metro would be beneficial from Tri-Met's point of view," Robertson said. "that it would somehow add to the agency's credibility, or lead to improved transit or an improved transportation system."

Dick Feeney, Tri-Met's director of intergovernmental affairs, said studies of the idea had failed to uncover any advantage for Tri-Met.

So far this time around, no one at Metro has asked Tri-Met what it thinks about the idea.

"There's been no letter, no approach, no meetings," Feeney

said.

Metro councilors have informally agreed to hold hearings soon on a resolution setting up a task force to build political support for the idea, said Councilor David Knowles.

Knowles said Metro would have to show it can do the job better or cheaper, or with more accountability.

"It's sheer speculation about whether the first two are true," he said. "Certainly, the third one is."

Tri-Met is run by a board of directors appointed by the governor.

"Nobody votes for governor based on his or her Tri-Met appointments," Gardner said.

Gary Conkling, a Tri-Met board member from Washington County, questioned whether the agency would be more accountable if "lost in the sea of bureaucracy" at Metro.

Also, the merger could be costly.

In a report to the council, Metro attorney Dan Cooper said the agency could face "short-term financial cost increases" because of added pension

costs. Also, Cooper said refinancing of Tri-Met's bonds would involve some costs.

OTHER ISSUES abound. Would Metro assume Tri-Met's larger boundaries? Should the transit system be operated by a commission similar to the Metropolitan Exposition-Recreation Commission, or by a Metro department head? Could Metro apply its excise tax to transit fares? What role would the Tri-Met general manager play?

Cooper said Metro would have to re-enact all Tri-Met ordinances, including the payroll tax, exposing them to referral by the voters.

Rena Cusma, Metro executive officer, has said she favors a merger with Tri-Met. But given the complexities involved, Cusma believes the issue should be taken up next year after voters act on a November ballot measure giving Metro home rule powers.

If the measure is approved, a charter commission will revisit the agency's organization and mission.

MARK O. HATFIELD
OREGON

ROOM 114, PIONEER COURTHOUSE
PORTLAND, OR 97204

475 COTTAGE NE.
SALEM, OR 97301

United States Senate

WASHINGTON, DC

June 7, 1990

Gregory M. Barber
Post Office Box 1293
Gresham, Oregon 97030

Dear Mr. Barber:

Thank you for your letter regarding the replacement of General Manager Jim Cowan of Tri-Met due his imminent retirement.

I appreciate your thoughts on the requirements for the position. However, because Tri-Met is a local transit agency, as a U.S. Senator, I have no role in this selection process. I suggest that if you have not done so, you share your views with the members of the Tri-Met Board of Directors, who will be conducting the search for Mr. Cowan's successor. I am confident that your views will be given every consideration.

Thank you again for taking the time to write. Please don't hesitate to do so again on any matters of a federal nature of interest to you.

Kindest regards.

Sincerely,



Mark O. Hatfield
United States Senator

MOH:sl



June 13, 1990

Ms. Rena Cusma, Executive Director
Metropolitan Service District
2000 SW First Avenue
Portland, Oregon 97201-5398

Reference: Metro South Station Modifications
Oregon City, Oregon

Dear Ms. Cusma,

I have reviewed a copy of a letter with no letterhead dated June 6, 1990 addressed to you and purporting to be a bid protest on behalf of Slayden Construction. I recognize that you have properly rejected that protest on the basis of untimeliness, and that the matter is therefore moot. However, the issues raised in that letter are so offensive and unfounded that I feel compelled to respond, lest Metro think less of this company because of them.

The letter is replete with innuendo, supposition and inaccuracies. Even the opening statement of "facts" is wrong and, while perhaps inconsequential on its face, it sets an inappropriate platform for the letter's later conclusions. Slayden's bid was not "approximately \$10,000 higher than Emerick's bid"; it was almost \$29,000 higher. It is not correct to say that the first four low bidders on March 21, 1990 "failed ... to make good faith efforts ..." As you know, neither Metro nor anyone else made such a determination.

On more direct matters, Slayden's letter makes much of our alleged "(failure) to acknowledge the bid, much less accept the bid, of Westlake Consultants, Inc." That allegation is repeated in the letter, and is supposedly supported by an attached Affidavit from Judi Haney, President of Westlake. In fact, despite assurances from Westlake that it would bid, no such bid was submitted or received. A careful review of Ms. Haney's affidavit, the foundation of Slayden's allegations, does not claim otherwise.

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Ms. Rena Cusma
Metropolitan Service District
Page 2

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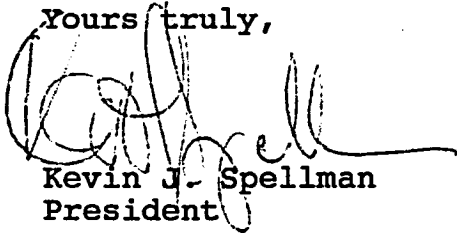


Ms. Rena Cusma
Metropolitan Service District
Page 3

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Yours truly,



Kevin J. Spellman
President

mmw

cc: Neil E. Saling, Acting Director - Finance & Administration
Amha M. Hazen, Contracts Administrator
Rob Smoot, Projects Manager - Solid Waste
Monica Little, Legal Counsel
Gwen Ware-Barett, Clerk of the Council





METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 7, 1990

Mr. Randy S. Robinson
Robinson Construction Company
7320 S.W. Hunziker, Ste #300
Tigard, Oregon 97223

Dear Mr. Robinson

Re: Metro South Station Modification Contract Bid Appeal

On June 4, 1990, Metro received a bid appeal from Robinson Construction Company (hereinafter Robinson). Based on a thorough review of the bid file, I have determined that Emerick Construction Company (hereinafter Emerick) substantially complied with Metro's Disadvantaged Business Enterprise Program Procedures (hereinafter, "DBE/WBE"), and qualifies as the low, responsive bidder for the Metro South Station Modification Contract.

BACKGROUND

On April 24, 1990, Metro issued an Invitation for Bids (IFB) for modifications to the Metro South Station (MSS). The IFB required bidders to comply with Metro's DBE/WBE procedures. A copy of Metro's DBE/WBE procedures was included in the IFB. The DBE goal for the MSS Modification Contract was ten (10) percent. The WBE goal was three (3) percent.

On May 22, 1990, Metro received five bids for the Metro South Station Modification Contract.

Emerick, the apparent low bidder, submitted documentation of good faith effort to comply with Metro's DBE/WBE requirements. Metro staff evaluated the good faith efforts documentation submitted by Emerick. Based on a review of that documentation, it has been determined that Emerick materially complied with the good faith effort requirements of Metro's DBE/WBE program.

Notice of Conditional Award was issued to Emerick Construction Company on May 25, 1990. Robinson's bid appeal was received by Metro on June 4, 1990.

Executive Officer
Rena Cusma

Metro Council

Tanya Collier
Presiding Officer
District 9

Gary Hansen
Deputy Presiding
Officer
District 12

Mike Ragsdale
District 1

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Roger Buchanan
District 10

David Knowles
District 11

Randy S. Robinson
June 6, 1990
Page 2.

The basis of the appeal is that Emerick Construction Company failed to establish that it complied with the good faith effort requirements set out in the Metro Code.

ANALYSIS

Robinson's first contention is, "Emerick has failed to break the Project down into the most efficient, economically feasible units and those with the greatest likelihood of increasing participation by DBEs and WBEs." Robinson cites Metro Code 2.04.160 (b) (2) which states that good faith effort shall include:

"Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises."

Emerick identified twenty-eight such units of work. These included:

Surveying; Demolition; Site Preparation & Earthwork; Pile Driving & Shot Crete; Site Utilities; Asphalt Paving & Base; Pavement Marking; Fencing; Landscaping & Irrigation; Concrete Cutting; Reinforcing Steel Furnish & Place; Concrete Curbs & Gutters; Precast Concrete; Metal Fabrications & Railings; Structural Steel Erection; Insulation; Roofing; Flashing, Sheet Metal & Metal Siding; Unit Masonry; Metal Framing, Drywall & Acoustical Ceilings; Painting; Mechanical & Fire Protection; Electrical Division; Joint Sealer; Steel Doors, Frames & Finished Hardware; Aluminum Windows, Glass & Glazing; Resilient Flooring; Conveying System.

Robinson states that:

- 1) two of Emerick's identified units of work ("Pile Driving and Shot Crete" and "Mechanical and Fire Protection") combine unrelated specialty items; and
- 2) that four units of work ("Reinforcing Steel Furnish & Place", "Flashing, Sheet Metal & Metal Siding", "Metal Framing, Drywall & Acoustical Ceilings", and "Steel Doors, Frames & Finished Hardware") combine specialty items that are not typically performed by a single firm.

Randy S. Robinson
June 6, 1990
Page 3.

Metro has broken out the 15 specialty items that are combined in these six units of work identified by Emerick and has determined that the effort made to solicit bids for each specialty item is in compliance with the Metro Code.

File driving: Bid solicited from the only firm listed.

Shot crete: No firms listed.

Mechanical: Five bids solicited.

Fire protection: Bid solicited from the only firm listed.

Reinforcing steel furnish: Bids solicited from the only two firms listed.

Reinforcing steel place: Five bids solicited.

Flashing and sheet metal (clearly related specialty items): Five bids solicited. Metro considers the subcontract with Brainard Sheetmetal, Inc. to indicate that a successful solicitation was made to Brainard.

Metal siding: No firms listed.

Metal framing: No firms listed.

Drywall: Bids solicited from all three firms listed.

Acoustical ceilings: One firm listed as reconditioning suspended and acoustical ceilings. this firm was not contacted, however, this project is to furnish and/or install, not recondition.

Steel doors: No firms listed.

Door frames: No firms listed.

Finish hardware: No firms listed.

Randy S. Robinson
June 6, 1990
Page 4.

2. Robinson's second basis of appeal is that Emerick failed to comply with Section 2.04.160 (b) (4) which sets forth the minimum requirement of the written notice required for solicitation of sub bids from DBE/WBEs. Robinson contends Emerick has failed to comply due to the following five reasons.

a. Emerick failed to send written notice soliciting sub bids to not less than five DBEs and WBEs for each specific economically feasible unit selected by Emerick. This is demonstrated in reference to the roofing unit, although Emerick sent six letters in this category only four of the letters were sent to certified DBEs and WBEs. See Exhibit B. page 2, item 17, which sets forth the businesses mailed to by Emerick for compliance with the roofing unit, and you will note that two of the six mailings were to entities which do not and did not qualify as certified DBEs or WBEs.

At the prebid conference held on May 1, 1990, Neil Saling, Acting Director, Finance & Administration and DBE/WBE liaison officer, instructed all bidders to use the March issue of the DBE/WBE directory as the list of certified DBE/WBEs. The five firms that Robinson has identified as not appearing in the May directory do appear in the March directory.

b. The solicitations mailed by Emerick did not include details regarding where Project specifications may be reviewed, Emerick only listed three plan centers - Daily Journal of Commerce, Portland, Oregon; Construction Data West, Portland, Oregon; and Impact Business Development, Portland, Oregon, while failing to list Construction Data East, Portland, Oregon and Valley Plan Center, Kent, Washington.

Metro code 2.04.160 (b)(4) requires bidders to include in their sub bid solicitation letters, information regarding where project specifications may be reviewed. Emerick listed three plan centers - Daily Journal of Commerce, Construction Data West and Impact Business Development. The number of plan centers contacted is determined to be sufficient and in compliance with Metro code 2.04.160. The Metro code does not specify a minimum number of plan centers to be contacted.

Randy S. Robinson
June 6, 1990
Page 5.

c. The notices sent by Emerick were of a general and standardized form which did not specify the portions of work each sub was solicited to perform nor did they offer to subdivide units into more feasible units for DBE/WBE subcontractors. Forty-three of the letters contained the wrong name for the contact person, in that the name used for company A was actually the contact person for company B. One can see by reviewing the letters that it is apparent the computer simply was not properly programmed. This happened in forty-three instances. Please see column 2 of Exhibit B in this regard.

The written notice mailed by Emerick to subcontractors included a description of work for which subcontract bids were being solicited, a complete information on bid deadlines and included a listing of plan centers where the project specifications could be reviewed. The description was sufficiently detailed and is in conformance with Metro Code 2.04.160 (b)(2).

The instances where the wrong contact name was used in mailing solicitation letters was determined to be a minor irregularity since Emerick followed up the mailings with phone calls.

d. Emerick made extensive utilization of DBE and WBE general contractors for solicitation of specialty work and you will note that not one of said general contractors submitted a bid to Emerick. Emerick further utilized specialty firms without the proper description for the various work units. Please see Exhibit A for an outline of these instances.

The Metro code does not preclude bidders from using certified DBE/WBE general contractors for specialty work as long as the DBE/WBE performs a commercially useful function for that particular work. The general contractors listed by Emerick were found to be capable of fulfilling a commercially useful function for the sub contract work they were listed.

e. It should be noted that of the one hundred seventy solicitation letters Emerick sent, only eighty-six were to single subs and the remaining eighty-four were to twenty-seven subs who received from two to nine letters each.

Randy S. Robinson
June 6, 1990
Page 6.

This is outlined in Exhibit C enclosed herewith for your review. This very definitely does not comply with the intent of Metro's Disadvantaged Business Program.

The Metro code does not preclude bidders from soliciting more than one sub bid from a DBE/WBE subcontractor.

3. Emerick failed to comply with Metro Code section 2.04.060 (b) (5) in that Emerick does not demonstrate any efforts to followup on disconnected numbers and Emerick does not document that on followup phone calls to subs who received multiple solicitations that inquiry was made to all categories for which a solicitation was mailed to the sub, in one instance this would have meant inquiring as to nine different categories.

Bidders are required to make followup phone calls after providing written notices to subcontractors. If a phone number listed on the DBE/WBE directory is disconnected, bidders are not required to make additional efforts to locate the firm.

CONCLUSION

For the reasons discussed, Metro believes that Emerick substantially complied with the procedures for establishing its good faith effort to obtain DBE/WBE subcontractors. Emerick's efforts resulted in contracts with DBE firms for 1.3% of the total contract and WBE firms for 0.7% of the total contract.

Robinson's bid appeal is rejected. Please be advised that, in accordance with Metro Code Section 2.04.031 (b), Robinson Construction Company has five working days from the postmarked date of this decision in which to preserve its appeal to the Contract Review Board.

Cordially,


Rena Cusma
Executive Officer

cc: Neil Saling, Acting Director of Finance & Admin.
Amha Hazen, Contracts Administrator
Rob Smoot, Projects Manager
Monica M. Little, Legal Counsel
✓ Gwen Ware-Barett, Clerk of the Council



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 7, 1990

Mr. Bruce Slayden
Slayden Construction
P.O. Box 625
Stayton, OR 97383

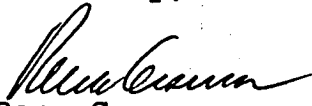
Re: Metro South Station Modifications Bid Appeal

The Notice of Award for the above referenced contract was sent on May 25, 1990. The notice was sent by certified mail and the return receipt shows your company received the notice on May 29, 1990.

Per Metro Code 2.04.03 (b) (1) all appeals shall be delivered to the Contracts Administrator at Metro's main office within five (5) working days of the postmarked date on the Notice of Award.

Your bid appeal was received on June 6, 1990, more than five (5) working days from the postmarked date on the Notice of Award. Therefore, your bid appeal has been rejected.

Cordially,


Rena Cusma
Executive Officer

RC:jp

cc: Neil E. Saling, Acting Director - Finance & Admin.
Amha M. Hazen, Contracts Administrator
Rob Smoot, Projects Manager - Solid Waste
Monica Little, Legal Counsel
✓ Gwen Ware-Barrett, Clerk of the Council



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: July 10, 1990
To: Metro Council
From: Tanya Collier, ^{TC} Presiding Officer
Regarding: JUNE 12 COUNCIL MEETING -- AMENDMENTS TO RESOLUTION NO. 90-1274

The June 12 Council meeting includes consideration of agenda item no. 7.7, Resolution No. 90-1274 which I will introduce to reorganize Council Standing Committee assignments, in response to the departure of Mike Ragsdale from the Council. Since drafting the resolution, I have continued to discuss assignments with Councilors and have had Council staff clarify membership parameters for Metro's different policy advisory committees. The resolution in the agenda packet contains some vacancies and uncertain assignments which I would like to amend as follows (**bold and underlined** indicates addition; [brackets] and ~~strikeout~~ indicate deletion):

FOR STANDING COMMITTEES (EXHIBIT A):

SOLID WASTE COMMITTEE

Tom DeJardin, Chair
Judy Wyers, Vice Chair
[Lawrence Bauer]
Roger Buchanan
Tanya Collier
District 1 Appointee

FOR ADDITIONAL ASSIGNMENTS (EXHIBIT B):

PARKS & NATURAL AREAS LIAISON

Richard Devlin, Chair
Ruth McFarland
[Jim Gardner]

WATER RESOURCES POLICY

ADVISORY COMMITTEE (WRPAC)
Richard Devlin, Chair
Ruth McFarland
Lawrence Bauer

Add Another Committee:

PARKS & NATURAL AREAS POLICY ADVISORY COMMITTEE (PAC)

Richard Devlin, Chair
Ruth McFarland
Jim Gardner

I will introduce these amendments at the Council meeting this Thursday and hope you will support these changes and an amended resolution.

EXHIBIT B

* Changes from the January 11, 1990 assignments are highlighted by bold for new members/new position, [brackets] and ~~strike-out~~ marks for former members/former position.

| | |
|--|---|
| <u>BI-STATE POLICY ADVISORY COMMITTEE:</u> | Councilor Bauer, Co-Chair [Councilor Gardner, Alternate] <u>Councilor Devlin, Alternate *</u> |
| <u>FRIENDS OF WASHINGTON PARK ZOO BOARD OF DIRECTORS:</u> | Councilor Knowles Councilor McFarland [Councilor Gardner] |
| <u>JOINT POLICY ADVISORY COMMITTEE ON TRANSPORTATION:</u> | [Councilor Ragsdale, Chair] Councilor Van Bergen, Chair Councilor Knowles, Vice Chair Councilor Devlin Councilor Gardner, Alternate |
| <u>NORTH PORTLAND ENHANCEMENT COMMITTEE:</u> | Councilor Hansen |
| <u>ONE PERCENT FOR ART COMMITTEE - OREGON CONVENTION CENTER:</u> | Councilor Knowles |
| <u>ONE PERCENT FOR ARE COMMITTEE - ZOO:</u> | Councilor DeJardin |
| <u>ONE PERCENT FOR RECYCLING COMMITTEE:</u> | Councilor Wyers, Chair Councilor DeJardin, Alternate |
| <u>OREGON REGIONAL COUNCILS ASSOCIATION:</u> | Councilor Gardner Councilor Wyers, Alternate |
| <u>PARKS & NATURAL AREAS LIAISON:</u> | Councilor Devlin, Chair Councilor McFarland Councilor Gardner |
| <u>SOLID WASTE POLICY ADVISORY COMMITTEE:</u> | [Councilor Hansen, Chair] Councilor DeJardin, Chair Councilor Wyers [Councilor Bauer] |
| <u>SPECIAL DISTRICTS ASSOCIATION OF OREGON BOARD OF DIRECTORS:</u> | Councilor Bauer |
| <u>TRI-MET HANDICAP TRANSPORTATION COMMITTEE:</u> | Councilor Buchanan |

* Correction as of March, 1990 -- no changes envisioned for 1990.

COUNCIL 6/28/90
Item No. 6.1
Ord. No. 90-340A

SOLID WASTE CONTRACTS LIST

AMENDMENTS

| <u>Page</u> | <u>Item</u> | <u>Amount</u> | <u>Designation</u> |
|-------------|---|---------------|--------------------|
| 93 | Survey of Rate Discount Implementation Options for Non-Profit Charitable Recycling Organizations | \$ 6,000 | B |
| 93 | Flow Control Enforcement and Monitoring | 50,000 | A |
| 93 | Waste Flow Monitoring to Develop "Network Model" | 45,000 | A |
| 96 | METRO East Station Operations | 3,364,084 | -* |
| 99 | Matching grants - Clean-Up of Illegal Dumpsites | 7,500 | B |
| 100 | Advertising for Waste Reduction Projects | 250,000 | -* |

* Contract already executed
Projects

METRO SOUTH STATION MODIFICATION PROJECT

BID PROTEST APPEAL DOCUMENTS

1. Letter from Daniel B. Cooper, Metro General Counsel, to Tanya Collier, Metro Presiding Officer, regarding Appeal and Procedures.
2. Robinson Construction Company appeal documents:
 - a. Letter from Larry D. Moomaw, attorney for Robinson, 6/13/90 (cover letter);
 - b. Letter from Larry D. Moomaw, attorney for Robinson, 6/13/90 (appeal with exhibits); and
 - c. Letter from Lymnia K. Woods, co-counsel for Robinson, 6/13/90 (appeal with exhibits).
3. Memo from Neil Saling, Acting Director of Finance & Administration, to Daniel B. Cooper regarding Robinson appeal.
4. Letter from Daniel J. Seifer, attorney for Emerick, 6/22/90 (with exhibits).
5. Letter from Rena Cusma to Robinson Construction Company, 6/7/90 (rejecting bid protest).
6. Letter from Rena Cusma to Slayden Construction Company, 6/7/90 (rejecting bid protest as untimely filed).
7. Letter from Moomaw, attorney for Robinson, 6/4/90 (bid protest).
8. Letter from Woods, attorney for Slayden, 6/6/90 (bid protest).



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

June 25, 1990

The Honorable Tanya Collier
Presiding Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Dear Presiding Officer Collier:

Re: Metro South Station Modifications Project:
Bid Protest of Award to Emerick Construction Company

This is an appeal from an Executive Officer's Decision to reject a protest filed against the award of the Metro South Station Modification Contract to Emerick Construction Company. The Council is required to hear the appeal as the Metropolitan Service District Contract Review Board pursuant to the provisions of Metro Code Section 2.04.031.

The Council will be hearing the matter as the Contract Review Board. The substance of the appeal arises out of the contention that Emerick Construction Company, the apparent low bidder on this project, did not comply with the requirements of Metro Code Sections 2.04.100 et seq. (the Metro Disadvantaged Business Program). Acting as the Contract Review Board, the Council must determine whether it agrees that the Executive Officer properly rejected the bid protest or whether, the bid protest should be upheld and the award of the contract to Emerick Construction Company be disallowed. The effect of a Council decision to reject the appeal would allow the Executive Officer to enter into a contract on behalf of the District with Emerick Construction Company for the project. Allowance of the appeal would disqualify Emerick as the apparent low bidder and authorize the Executive Officer to either issue a conditional notice of intent to award to Slayden Construction Company, the number two bidder, independently determine that Slayden's bid should be rejected, and a notice of award conditional award be awarded to Robinson, the number three bidder, or to reject all bids and rebid the project. A Council decision to reject the appeal will result in the entering into of a contract with Emerick Construction Company. A Council determination to uphold the appeal and reverse the Executive Officer's Decision will require further action by both the Executive Officer

Executive Officer
Rena Cusma

Metro Council

Tanya Collier
Presiding Officer
District 9

Gary Hansen
Deputy Presiding
Officer
District 12

Mike Ragsdale
District 1

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Roger Buchanan
District 10

David Knowles
District 11

The Honorable Tanya Collier
June 25, 1990
Page 2

and possibly the Council before a contract can be actually awarded.

Background Information

When bids were open on this project, Emerick Construction Company was the apparent low bidder, Slayden Construction Company was the second bidder, and Robinson Construction Company was the third bidder. Emerick, as part of its Bid Documents, indicated that it had not met the contracting goals for Minority Business Enterprise and Women Business Enterprise participation, but had rather made good faith efforts to do so. Pursuant to the provisions of Metro Code Section 2.04.160(b), the Department of Finance & Administration determined that Emerick had met the good faith requirements contained in the Code. Accordingly, the Department of Solid Waste issued a Notice of Award the contract to Emerick as a successful low bidder.

Robinson Construction Company filed a timely appeal of that determination. A separate appeal was also filed on behalf of Slayden Construction Company. By a decision rendered on June 7, 1990, the Executive Officer rejected the appeal of Robinson Construction Company on the merits, and further rejected the appeal of Slayden Construction Company by separate letter on the same date for not having been timely filed.

On June 13, 1990, Robinson Construction Company appealed the Executive Officer Decision to reject Robinson's appeal to the Metro Contract Review Board.

Attached hereto for the Council members reference are copies of Metro Code Section 2.04.031 regarding appeals and bid protests; and Section 2.04.160(b) regarding determination of good faith efforts.

Yours very truly,



Daniel B. Cooper,
General Counsel

gl 1156

Attachments

cc: Metro Council
Rena Cusma
Bob Martin

(b) No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget.

(Ordinance No. 82-130, Sec. 2; amended by Ordinance No. 84-175, Sec. 8 & 10, Ordinance No. 84-176, Sec. 4, Ordinance No. 84-179, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 2, amended by Ordinance No. 88-249, Sec. 2; amended by Ordinance No. 89-305A, Section 6)

2.04.031 Notice of Award and Appeals:

(a) At least five (5) days prior to the execution of any Public Contract over \$15,000 or a Personal Services Contract over \$10,000 the District shall provide a Notice of Award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals. This requirement may be waived by the Executive Officer for any emergency contract entered into pursuant to this Code.

(b) Bid/Request for Proposals Appeal Procedures: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a Public Contract above \$15,000 and a Personal Services Contract above \$10,000. The appeal process for bids is the same as for Requests for Proposals. In the case of Requests for Proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

(1) All appeals shall be made in writing and shall be delivered to the Contracts Administrator at Metro's main office within five (5) working days of the postmarked date on the Notice of Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

(2) The Contracts Administrator shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of appeal, the Executive Officer shall send a notice of rejection of the appeal or a notice of acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.

(3) The Contract Review Board will review the grounds for appeal, all pertinent information, and the Executive Officer's recommendation, and make a

decision. The decision of the Contract Review Board is final.

(4) No contract which is the subject of a pending appeal may be executed unless the Contract Review Board shall have given its approval at the request of the Executive Officer. The Executive Officer may request the Contract Review Board to determine a matter without waiting for the expiration of the time periods provided for herein.

(Ordinance No. 89-271, Sec. 1)

2.04.032 Contract Information Reports:

(a) The Executive Officer shall provide a monthly report to the Council showing the status of all contracts in effect at Metro as of the date of the report. The report shall be divided into four sections: (a) Contracts Awarded; (b) Contracts Amended; (c) Open Contracts; and (d) Contracts Closed.

(1) Contracts Awarded: This section shall report all new contracts awarded since the date of the previous report to the Council of all new contracts. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, vendor name, and a brief description of the purpose of the contract.

(2) Contracts Amended: This section shall report all contracts amended by Change Order since the date of the previous report to the Council of contract amendments. Information contained in this report will be the contract number, vendor name, amendment number, type of amendment, the original amount of the contract, the amount of the contract amendment, the new total contract amount, the percent of the amount of increase in excess of the original amount of the contract, and a brief description of the purpose of the contract.

(3) Contracts Open: This section shall report all contracts in effect on the last day of the month for which the report is prepared. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, the amount expended to date, vendor name, and a brief description of the purpose of the contract.

(b) Bidders or proposers on locally-funded contracts to which DBE/WBE goals apply shall achieve the applicable contract goal or demonstrate that they have made good faith efforts to achieve the goals. Good faith efforts shall include written documentation of at least the following actions by bidders:

(1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBEs of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

(2) Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises;

Minimum documentation required: At least the documentation required under subsection (4) below.

(3) Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;

Documentation required: copies of ads published.

(4) Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBEs for each subcontracting or material supply work item selected pursuant to (2) above not less than ten (10) days before bids/proposals are due.

If there are less than five certified DBEs/WBEs listed for that work or supply specialty then the solicitation must be mailed to at least the number of DBEs/WBEs listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

Documentation required: Copies of all solicitation letters sent to DBE/WBE along with a written statement from the bidder/proposer that all the

letters were sent by regular or certified mail not less than 10 days before bids/proposals were due.

(5) Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBEs who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals placing the calls; and b) results attained from each DBE/WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where DBE/WBE bids were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

(6) Using the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals.

Minimum documentation required: Letter from bidder/proposer indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.

(7) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which DBE/WBE goals apply need not accept the bid of a DBE or WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the DBEs or WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made a good faith effort to comply with the contract goals if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

(Ordinance No. 83-165, Sec. 13; amended by Ordinance No. 84-181, Sec. 6 and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

~~2.04.165 Replacement of DBE or WBE Subcontractors: Prime contractors shall not replace a DBE/WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE or WBE subcontractor shall replace such DBE/WBE subcontractor with another certified DBE/WBE subcontractor or make good faith efforts as described in the preceding section to do so.~~

~~(Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)~~

~~2.04.170 Records and Reports:~~

~~(a) Metro shall develop and maintain a recordkeeping system to identify and assess DBE and WBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:~~

~~(1) Awards to DBEs and WBEs by number, percentage and dollar amount.~~

~~(2) A description of the types of contracts awarded.~~

~~(3) The extent to which goals were exceeded or not met and reasons therefor.~~

~~(b) All DBE and WBE records will be separately maintained. Required DBE and WBE information will be provided to federal agencies and administrators on request.~~

MOOMAW, MILLER & REEL

ATTORNEYS AT LAW

12275 S.W. Second Street
Beaverton, Oregon 97005
(503) 646-0566

ALLEN REEL
ROBERT J. MILLER, SR.
LARRY D. MOOMAW
JEFFREY W. BELLIS
BRIEN F. HILDEBRAND
LILIAN BIER

MAILING ADDRESS
P.O. BOX 1609
BEAVERTON, OREGON 97075
FAX (503) 644-9574

June 13, 1990

Contract Review Board
Metropolitan Service District
2000 S.W. First Avenue
Portland, Oregon 97201-5398

RECEIVED

JUN 22 1990
9:05 am

RECEIVED

JUN 13 1990

TIME
METRO SERVICE DISTRICT
GENERAL COUNSEL
METRO SERVICE DISTRICT
EXECUTIVE MANAGEMENT

Re: Metro South Station Modification Contract

Appeal of Award of Bid

Dear Sir/Madam:

This office, in conjunction with Charles R. Schrader and Allen Kilmer and Schrader represent Robinson Construction Company. Emerick Construction Company was issued a Notice of Award for the above-referenced project.

On June 4, 1990 Robinson Construction protested the bid award. Metro correspondence dated June 7, 1990 rejects the protest and states that an appeal may be made to the Contract Review Board within five working days of the postmark of that decision; the postmark for that correspondence is June 11, 1990.

This is to appeal the Metropolitan Service District decision rejecting Robinson Construction Company's bid protest. The basis for the appeal is the failure of Emerick Construction Company to comply with Metro Code sections 2.04.160(b)(2), 2.04.160(b)(4) and 2.04.060(b)(5). This appeal is also based on the following written argument and documentation, submitted herewith and incorporated herein by this reference:

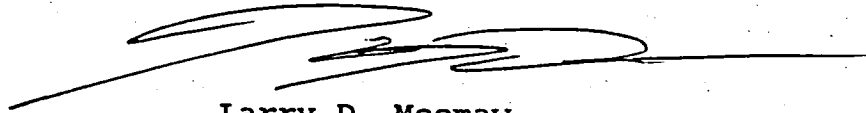
- (a) Written argument and documentation of even date herewith over my signature, and
- (b) Written argument and documentation of even date herewith over Lynn K. Woods' signature.

Robinson Construction Company requests that no formal action be taken to award the contract until Robinson Construction has been afforded an opportunity to be heard by the Contract Review Board. In the event Robinson is not given the opportunity to be heard

Contract Review Board
June 13, 1990
Page 2

or, the bid protest appeal is rejected and the contract awarded to Emerick Construction Company, our client will be left with no alternative but to seek a judicial remedy to this matter.

Very truly yours,



Larry D. Moomaw

LDM:sp
Enclosures
cc: Robinson Construction Company
Charles R. Schrader
Rena Cuzma
Tanya Collier

1358-3

MOOMAW, MILLER & REEL

ATTORNEYS AT LAW
12275 S.W. Second Street
Beaverton, Oregon 97005
(503) 646-0566

ALLEN REEL
ROBERT J. MILLER, SR.
LARRY D. MOOMAW
JEFFREY W. BELLIS
BRIEN F. HILDEBRAND
LILIAN BIER

MAILING ADDRESS
P.O. BOX 1609
BEAVERTON, OREGON 97075
FAX (503) 644-9574

June 13, 1990

Contract Review Board
Metropolitan Service District
2000 S.W. First Avenue
Portland, Oregon 97201-5398

Re: Metro South Station Modification
Notice of Appeal to Contract Review Board

Dear Sir/Madam:

This letter constitutes a portion of the formal appeal of the Executive Officer's decision rejecting the June 4, 1990 appeal by Robinson of the Notice of Award to Emerick Construction Company ("Emerick"). The bid of Emerick should be rejected as nonresponsive for the reason that Emerick has failed to comply with Metro's Disadvantaged Business Program goals or to demonstrate that a good faith effort has been made to meet the goals. If this appeal or copies thereof should be forwarded elsewhere, please do so as appropriate.

The bidding documents for the Project require compliance with Metro's Disadvantaged Business Program contained in Metro Code 2.04. Emerick's bid does not satisfy the DBE/WBE goals for this Project and Emerick has failed to demonstrate that they have made good faith efforts to achieve the goals. Emerick has failed to comply with the minimum good faith requirements set forth in Metro Code section 2.04.160(b) as follows:

1. Metro Code section 2.04.160(b)(2) requires Emerick to identify and select specific economically feasible units of the Project to be performed by DBEs or WBEs. Emerick has broken the Project into twenty eight feasible units for DBE/WBE subcontractors. Of these twenty eight units, two of the units, "Pile driving and shot crete" and "mechanical and fire protection" combine unrelated specialties. Pile driving and shot crete are performed by two separate types of specialty firms as are mechanical and fire protection.

The combination of pile driving and shot crete does not create an economically feasible unit of work, in fact it is

undisputed in the trade that each of these is a separate economically feasible unit. The same is true of the combination of mechanical and fire protection. The combining of these noneconomically feasible units has the absolute opposite effect of encouraging bids from DBEs or WBEs. It in effect requires, for example, a mechanical subcontractor to obtain an unrelated fire protection subcontractor with which to combine its bid in order to bid the specified unit. This, in accordance with Metro Code section 2.04.175(a)(5), is presumed not to be performing a commercially useful function. The consequence being that the Emerick's breakdown of the project into economically feasible units fails to qualify under 2.04.160(2) and 2.04.175(a)(5).

Emerick furthermore combined the furnishing of reinforcing steel and the placement of reinforcing steel as a single unit, combined flashing and sheet metal with metal siding, combined metal framing and drywall with acoustical ceilings, and combined the providing of steel doors and frames with the providing of finished hardware. While there may be one or two firms that would provide these combinations, this is not the industry standard, as each of these specialties is generally provided by a separate specialty firm.

In summary, Emerick has failed to break the Project down into economically feasible units and those with the greatest likelihood of increasing participation by DBEs or WBEs. See Exhibit A enclosed herewith.

2. Metro Code section 2.04.160(b)(4) sets forth the minimum requirements of the written notice required for solicitation of DBEs or WBEs. Emerick has failed to comply with these requirements as follows:

(a) Emerick failed to send written notice soliciting sub bids to not less than five DBEs or WBEs for each specific economically feasible unit selected by Emerick. This is demonstrated in reference to the roofing unit, although Emerick sent six letters in this category only four of the letters were sent to certified DBEs or WBEs. See Exhibit B, page 2, item 17, which sets forth the businesses mailed to by Emerick for compliance with the roofing unit, and you will note that two of the six mailings were to entities which do not and did not qualify as certified DBEs or WBEs.

The Executive Director makes the argument that Neil Saling, Acting Director, Finance and Administration, and DBE/WBE Liaison Officer instructed all bidders to use the March issue of

the DBE/WBE directory. This is irrelevant as Mr. Saling does not have authority to amend or qualify Metro Code 2.04, and as a practical point it must be remembered that Mr. Saling also asserted at the meeting that nothing he said at the meeting was controlling unless it was published as an addendum. An addendum addressing this issue was not published.

(b) The solicitations mailed by Emerick did not include details regarding where Project specifications may be reviewed, Emerick only listed three plan centers - Daily Journal of Commerce, Portland, Oregon; Construction Data West, Portland, Oregon; and Impact Business Development, Portland, Oregon, while failing to list Construction Data East, Portland, Oregon and Valley Plan Center, Kent, Washington.

The purpose of this requirement is to once again exhibit a good faith effort to encourage as much participation as possible and the effect of failing to specify the only Washington Plan Center, in particular, has the exact opposite effect. Metro Code section 2.04.160(b)(4) requires Emerick to provide "details regarding where project specifications may be reviewed" (emphasis added). It would appear the providing of "details" would at the minimum require the listing of all Plan Centers.

(c) The notices sent by Emerick were of a general and standardized form which did not specify the portions of work each sub was solicited to perform nor did they offer to subdivide units into more feasible units for DBE/WBE subcontractors. Forty three of the letters contained the wrong name for the contact person, in that the name used for company A was actually the contact person for company B. One can see by reviewing the letters that it is apparent the computer simply was not properly programmed. This happened in forty-three instances. Please see column 2 of Exhibit B in this regard.

The assertion by the Executive Director that the utilization of a wrong contact name in the letters constitutes a minor irregularity in this age of computers may on its face appear to be the correct analysis, however upon considering our co-counsel's letter and exhibits in this matter, I believe it requires the conclusion to be drawn that this, while maybe minor on its face, is consistent with the assertion that Emerick's effort is only an attempt at technical compliance and not a good faith effort.

(d) Emerick made extensive utilization of DBE and WBE general contractors for solicitation of specialty work and you

will note that not one of said general contractors submitted a bid to Emerick. Emerick further utilized specialty firms without the proper description for the various work units. Please see Exhibit A for an outline of these instances.

(e) It should be noted that of the one hundred seventy solicitation letters Emerick sent, only eighty-six were to single subs and the remaining eighty-four were to twenty-seven subs who received from two to nine letters each. This is outlined in Exhibit C enclosed herewith for your review. This very definitely does not comply with the intent of Metro's Disadvantaged Business Program.

3. Emerick failed to comply with Metro Code section 2.04.060(b)(5) in that Emerick does not demonstrate any efforts to followup on disconnected numbers and Emerick does not document that on followup phone calls to subs who received multiple solicitations that inquiry was made to all categories for which a solicitation was mailed to the sub, in one instance this would have meant inquiring as to nine different categories. Our co-counsel's letter and exhibits support our position that Emerick in its follow up phone call to subs did not inquire as to all categories for which a solicitation was mailed to the sub, once again demonstrating an attempt to technically comply versus the exerting of a good faith effort.

It should be acknowledged that Emerick, by its efforts to comply with the demonstration of good faith efforts requirements of Metro Code section 2.04.160(b), has not attempted to comply with the policy statement of Metro's program contained in the bid documents and Metro Code Section 2.04.105. Emerick's effort has been an attempt at technical compliance and not good faith compliance, and as we have demonstrated above, does not qualify as a technical compliance. I believe this point is born out by the fact that Emerick only received twenty-one DBE/WBE bids and of those four were from DBE/WBE subcontractors who were not solicited by Emerick. Furthermore, of these four, three were the low bidders and were utilized by Emerick in its bid. This is even more interesting when it is noted that Emerick only utilized eight DBE/WBe subcontractors, almost half of whom were not solicited by Emerick.

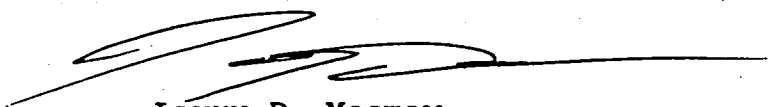
In summary, Emerick's good faith effort does not satisfy Metro's requirements for all the reasons set forth above, but emphasis should be placed on its failure to list all plan centers where project specifications could be reviewed and its failure to mail five notices soliciting DBEs or WBEs for the roofing item

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Page 5

identified by Emerick as a specifically economically feasible unit of the Project to be performed by DBEs or WBEs. (Historically Metro has found the latter to be sufficient to reject a bid.)

Article 12 of section 00700 General Conditions mandates that the Contractor shall comply with all pertinent provisions of Metro's Disadvantaged Business Program. The foregoing, coupled with our co-counsel's letter and exhibits submitted herewith, conclusively demonstrate that Emerick has not complied with all pertinent provisions of Metro's Disadvantaged Business Program and Metro must therefore reject the bid of Emerick and award the contract to the next lowest responsible bidder. The only other alternative to Metro is to reject all bids, which necessitates a finding that it is in the public interest to do so.

Very truly yours,



Larry D. Moomaw

LDM:sp
cc: Robinson Construction

1358

FEASIBLE UNITS FOR DBE/WBE SUBCONTRACTORS

- 1 Surveying - ~~TH~~ 1
- 2 Demolition - ~~TH~~ 1
- 3 Site Preparation & Earthwork - ~~TH~~ 1
- 4 Pile Driving & Shot Crete - ~~TH~~ 1 (S.F. & S.F.) 4 G.C.
- 5 Site Utilities - ~~TH~~ 1 (S.F.)
- 6 Asphalt Paving & Base - ~~TH~~ 1 (S.F.)
- 7 Pavement Markings - ~~TH~~ 1 (S.F.)
- 8 Fencing - ~~TH~~ 1 (S.F.)
- 9 Landscape & Irrigation - ~~TH~~ 1 (S.F.)
- 10 Concrete Cutting - ~~TH~~ 1 (S.F.) - 2 G.C.
- 11 Reinforcing Steel Furnish & Place ~~TH~~ 1 (S.F.)
- 12 Concrete Curbs & Gutters - ~~TH~~ 1
- 13 Precast Concrete ~~TH~~ 1 (S.F.)
- 14 Metal Fabrications & Railings ~~TH~~ 1 (S.F.) - 2 G.C. / 2 S.F. w/o PROPER DESCRIPTION
- 15 Structural Steel Erection ~~TH~~ 1 (S.F.) - 2 G.C. / 1 S.F. w/o P.D.
- 16 Insulation ~~TH~~ 1 (S.F.) - 3 G.C. / 1 FIRM CANCELLED
- 17 Roofing ~~TH~~ 1 (S.F.) - 1 G.C. / 1 S.F. w/o P.D. / 2 CANCELLED
- 18 Flashing, Sheet Metal & Metal Siding - ~~TH~~ 1 (S.F. & S.F.) 1 G.C. / 2 S.F. w/o P.D. 1 FIRM CANCELLED
- 19 Unit Masonry - ~~TH~~ 1 (S.F.) 2 G.C.
- 20 Metal Framing, Drywall & Acoustical Ceilings - ~~TH~~ 1 (S.F. & S.F.) 3 G.C. 1 FIRM CANCELLED
- 21 Painting - ~~TH~~ 1 (S.F.) 1 FIRM CANCELLED
- 22 Mechanical & Fire Protection - ~~TH~~ 1 (S.F. & S.F.)
- 23 Electrical Division - ~~TH~~ 1 (S.F.)
- 24 Joint Sealer ~~TH~~ 1 5 G.C.
- 25 Steel Doors, Frames & Finished Hardware ~~TH~~ 1 (S.F. & S.F.) 6 G.C.
- 26 Aluminum Windows, Glass & Glazing ~~TH~~ 1 (S.F.) 6 G.C. / 1 FIRM w/o P.D.
- 27 Resilient Flooring ~~TH~~ 1 (S.F.) 1 G.C.
- 28 Conveying System ~~TH~~ 1 (S.F.) 6 G.C.

Feasible
Units

TOTAL # = 43

WRONG CONTACT NAME ON LETTER (TYPICALLY COMPETITOR'S NAME)

| Feasible Units | WRONG CONTACT NAME ON LETTER (TYPICALLY COMPETITOR'S NAME) |
|---|--|
| WESTLAKE CROSS CONTINENT CENTRAC ASSOC ANTORIA INFRARED CONSULTANTS PREMSIGH & ASSOC. SURVEYORS WEST | ① XXXXXX X |
| NATHAN MILLAGE MRC COMPANY YOUNG, INC. DYNAMIC ROAD - II J. MURPHY CONST - II WHITE BUFFALO - II | ② X |
| EDT CONST - II CONMX - II BONSTAN - II J. MURPHY CONST DYNAMIC BENGE CONST. SALT & PEPPER | ③ XXXXX X |
| GERVMS CONST. - III VERSATILE DRIVING 3A INDUSTRIES G.P.D. CONST - IIII OHIO CONST RAM, INC. | ④ X |
| WHITE BUFFALO ALCCO BONSTAN NORTH'S PULP C.M. GEN'L CONT. K&R PULP | ⑤ XXXXX TOO BIG X |
| LOPEZ PAVING HENDERSON & CO. S & S CORP. MARMELEJO CONTRACT. - II AUSTIN CLAYTON - II AMERICAN CONT. CENTER - II | ⑥ XX |
| MARMELEJO AMERICAN CONT. CENTER AUSTIN CLAYTON EDT CONST WESTLINE CONST. HOLSFIELD'S G.C. | ⑦ XXXXX |
| PETER WESTSIDE FENCING JUNLO CORP PACIFIC STEELCOK POWER FENCE PACIFIC NW GUARDRAIL E.M.W. CONST. | ⑧ XX XX |
| WILCOTT LANDSCAPE A & G LANDSCAPE GREEN ART LANDSCAPE SAS BLDG & LANDG S & L LANDSCAPING POLYNESIAN LANDG | ⑨ XXXXX X |
| BALGHMAN & SONS CARR CONST. - IIII SEA-PORT GEN'L - IIII ELIS ALDA, HENRY BROTHERS CONC. INDIAN INC. - II | ⑩ X |

ROBINSON

CONSTRUCTION CO.

7320 S.W. HUNZIKER
P.O. BOX 23248
TIGARD, OREGON 97223

Feasible
Units

WRONG CONTACT

DISCONNECTED NO FOLLOW UP

SMITH CO.
TRIAD STEEL CO.
RAINIER STEEL
CONMX
DIVERSIFIED - II
JAMES CONST - III

(11)

X
X

RIVIERA CONST - II
LOPEZ CONC.
M'CALIB CONC.
CAPITOL CONC.
CASTLE ROCK CONST.
RETANA ENT.

(12)

X
X
X
X

GERVAIS CONST.
WOODBURN CONST - III II
MERIDITH CONST.
RIVIERA CONST.
BALLARD CONST
DIYERSIFIED CONST.

(13)

X
X
X

MCGRATH, WILL. - II
ROBERT ALT - III III
OGILVIE CO. - II
BEAVERCREEK - II
ALUM & BRONZE FAB
GPO CONST

(14)

X

GERVAIS CONST
ROBERT ALT
WILLIAM MCGRATH
INDIAN INC
ROBERT EARLE - II
RECORD STEEL & CONST

(15)

ROBERT ALT
WOODBURN CONST.
AGUILERS/WHITE - III (16)
CWH CONST. - II
JAMES CONST.
INTERSTATE INSULATIONS

(16)

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY (1990)

G.P.D. CONST
CASCADE ROOFING - II (17)
ALL AMERICAN CONST. - II
ATS-Z ROOFING
BORING GUTTER LADY
ROOF SYSTEMS

(17)

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY (1990)
X (1990)

CARR CONST
OGILVIE CO.
ALL AMERICAN CONST
EBA SHT MTL
CASCADE ROOFING
BEAVERCREEK MTL.

(18)

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY (1990)

WOODBURN MASONRY
J&S MASONRY
SCOTTS MASONRY
MEDINA MOSAIC
ROBERT ALT
WOODBURN CONST

(19)

X

WOODBURN CONST
PORTLD CUSTOM INTERIORS
SEA-PORT GEN'L (20)
CWH CONS
ROBERT ALT
AGUILERS/WHITE

(20)

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY (1990)

Feasible
Units

wrong contact

DISCONNECTED

JIM MILLER CONST
ACE OF SHADES
JOHN BURNS
C.M.P. & ASSOC.
PORTLAND CUSTOM INT.
PATHETT/SNIDGE

(21)

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY (1990)

X

CE BUTLER
ADAMS MECH
MSI - MECHANICAL
SPEARS MECH
THERMAL MECH
PEN-NOR MECH

(22)

X

FLOYD BROWN
PACIFIC ENERGY
AARON EASTSIDE
CYDELL CORP
JACKSON ELEC
BLESSING ELEC.

(23)

X

CARR CONSTRUCTION
SEA-FORT GEN'L
ROBERT ALT
WOODBURN CONST CO
JAMES CO.
SPOKANE CONC, CUTTING

(24)

JAMES CONST
WOODBURN CONST
SEA-FORT GEN'L
ROBERT ALT
CARR CONST
AGUILERA/WHITE

(25)

WITHERS LUMBER CO.
WOODBURN CONST CO.
ROBERT ALT
JAMES CONST.
SEA-FORT GEN'L
CARR CONST
AGUILERA/WHITE CONS

(26)

LOPEZ CARPETS / DRAPES
COMMERCIAL INT & SPEC
ECS & ASSOCIATES
LUTTONS DECORATING CENTER
AGUILERA/WHITE CONS
LACUNA INTERIORS

(27)

ROBERT ALT
G.P.D. CONST
SEA-FORT GEN'L
CARR CONSTRUCTION
AGUILERA/WHITE
ROBERT EARLE

(28)

X

170
111 different
59 repeat
letters

| | # OF LETTERS SENT | |
|-------------------------------|-------------------|--|
| 1 DYNAMIC | - 2 ✓ | |
| 2 J MURPHY | - 2 ✓ | |
| 3 WHITE BUFFALO | - 2 ✓ | |
| 4 EDT CONST | - 2 ✓ | |
| 5 CON HX | - 2 ✓ | |
| 6 BONSTAN | - 2 ✓ | |
| 7 GERVAIS | - 3 ✓ | - HIGHWAY/ROAD GENERAL CONTRACTOR |
| 8 G.P.D. | - 4 ✓ | - GENERAL CONTRACTOR |
| 9 MARMELEJO | - 2 ✓ | |
| 10 AUSTIN CLAYTON | - 2 ✓ | |
| 11 AMERICAN CONT CNTR | - 2 ✓ | |
| 12 CARR CONST | - 6 ✓ | - RES/COMM'L GEN. CONTRACTOR |
| 13 SEA - PORT GEN'L | - 6 ✓ | - RES/COMM'L GEN. CONTRACTOR |
| 14 INDIAN INC | - 2 ✓ | |
| 15 DIVERSIFIED | - 2 ✓ | |
| 16 JAMES CONST | - 5 ✓ | - WEATHERIZATION & RENNOVATION, INSULATION, DOORS & WINDOWS, PAINTING, DEMOLITION |
| 17 RIVIERA CONST | - 2 ✓ | |
| 18 WOODBURN CONST | - 7 ✓ | - SINGLE/MULTI FAMILY RESIDENTIAL/LIGHT COMMERCIAL (UP TO 3 S.O.H) TO THREE STORIES COMPLETE CONSTRUCTION CAPABILITIES. DRYWALL, MASONRY, PAINTING, FENCING, FRAMING, EXCAVATING |
| 19 WILL, M ^c GRATH | - 2 ✓ | |
| 20 ROBT ALT | - 9 ✓ | - RES/COMM'L GEN. CONTRACTOR SPECIALIZING IN INTERIOR PARTITIONING, REMODELING, STEEL FABRICATION |
| 21 OGILVIE CO, | - 2 ✓ | |
| 22 BELVER CREEK | - 2 ✓ | |
| 23 ROBERT EARLE | - 2 ✓ | |
| 24 AGUIERA/WHITE | - 6 ✓ | - RES/COMM'L GENERAL CONTRACTOR. PAINTING, CONSTRUCTION CLEAN UP |
| 25 CW H | - 2 ✓ | |
| 26 CASCADE ROOF'G | - 2 ✓ | |
| 27 ALL AMERICAN CONST | - 2 ✓ | |

84 LETTERS

86 SUBS SENT 1 LETTER EACH - 86

27 SUBS SENT 2-9 LETTERS EA - 84

113

170 LETTERS

ALLEN, KILMER, SCHRADER, YAZBECK & CHENOWETH

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

1600 SECURITY PACIFIC PLAZA
1001 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204
TELECOPIER 503-222-5290
TELEPHONE 503-224-0055

June 13, 1990

RECEIVED

JUN 14 1990

HAND DELIVERED

TIME: 10:30 am
METRO SERVICE DISTRICT
OFFICE GENERAL COUNSEL

Contract Review Board
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201

Re: Metro South Station Modifications, Oregon City,
Oregon, Project
Subject: Bid Protest of Award to Emerick Construction
Co.
Our File No.: 2803.11

Dear Contract Review Board Members:

Along with the law firm of Moomaw, Miller & Reel, we are co-counsel for Robinson Construction Co. ("Robinson"). Robinson hereby appeals the Executive Officer's decision to reject Robinson's appeal of the award of the Metro South Station Modifications Contract ("Contract") to Emerick Construction Company ("Emerick").

In addition to co-counsel Larry Moomaw's letter, Robinson submits this letter and the accompanying affidavits in support of Robinson's appeal.

Enclosed are copies of the following affidavits:

1. Affidavit of Edward Marmolejo;
2. Affidavit of Judi Haney;
3. Affidavit of Susan McCalib;
4. Affidavit of Gilbert Davlos;
5. Affidavit of David Gilmore; and
6. Affidavit of Audrey Castile.

The originals of these affidavits were previously submitted to the contracts administrator of the Metropolitan Service District.

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Robinson's protest is two-part: first, Emerick failed to make good faith efforts as defined in Metro Code Section 2.04.160(b); second, even if you determine that Emerick complied with the good faith efforts required by Metro Code Section 2.04.160(b), the definition of good faith efforts contained in that section is preempted by the definition of good faith efforts in ORS 200.045(3) and as a matter of common law.

1. The Facts.

Emerick is the apparent low bidder on the Contract. Slayden is the apparent second low bidder on the Contract. Slayden's bid was approximately \$10,000 higher than Emerick's bid.

The Contract had goals of 10 percent DBE participation and 3 percent WBE participation. Slayden's bid exceeded both goals. Emerick certified that it intended to subcontract 1.01 percent to WBEs and 1.84 percent to DBEs. Emerick chose to rely upon making good faith efforts rather than meeting the goals.

This is the second time that the Contract has been bid. The Contract was originally bid on March 21, 1990. The first four low bidders, including Emerick, failed to meet the DBE and WBE goals or to make good faith efforts as required by Metro Code Section 2.04.160(b). Slayden did not bid the Contract on March 21, 1990. Slayden was able to meet the WBE and DBE goals with very little effort.

2. Emerick Has Failed to Make Good Faith Efforts as Defined in Section 2.04.160(b).

Emerick has failed to make good faith efforts as required by Metro Code Section 2.04.160(b): by failing to work with Marmolejo Construction, Inc. ("Marmolejo"); by failing to acknowledge the bids, much less accept the bids, of DBE/WBE subcontractors, Westlake Consultants, Inc. ("Westlake"), EDT Construction, Inc. ("EDT"), Buffalo Welding, Inc. ("Buffalo"), McCalib Concrete Service ("McCalib"), and S&L Landscaping, Inc. ("S&L"); and by failing to send the letters required by Metro Code Section 2.04.160(b) in a manner best calculated to secure maximum DBE and WBE participation.

2.1 Emerick Failed to Make Good Faith Efforts to Obtain a Bid From Marmolejo and Failed to Accurately Reflect a Telephone Conversation With Ed Marmolejo in its Telephone Log.

Metro Code Section 2.04.100(b) requires bidders on locally funded contracts to achieve applicable contract goals for DBE/WBE participation or to demonstrate that they have made good faith

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efforts to achieve the goals. The section states that good faith efforts shall include written documentation of certain actions by the bidders. Section 2.04.100(b)(4) requires a bidder to send solicitation letters to not less than five DBEs or WBEs for each economically feasible unit of the project, which it has identified as being a unit capable of performance by DBEs or WBEs. The letters must be sent not less than 10 days before bids are due. Metro Code Section 20.04.100(b)(5) requires the bidder, not less than five days before bids are due, to make follow-up contractors to all DBEs and WBEs who have not responded to the solicitation letters. The bidder is required to maintain a telephone log showing the dates and times of follow-up calls and the results from each solicitation letter sent.

On May 17, 1990, Ed Marmolejo, who is president of Marmolejo, a certified MBE/DBE, received a letter inviting Marmolejo to bid on the project. On the same day, Mr. Marmolejo called Joe Kennedy, Emerick's estimator responsible for bidding the contract. Mr. Marmolejo asked Mr. Kennedy how large the project would be. Mr. Kennedy indicated that he estimated the project to be between \$2.3 million and \$7 million, with 10 percent DBE and 3 percent WBE requirements. Mr. Marmolejo asked Mr. Kennedy if Emerick needed any DBE assistance. Mr. Marmolejo told Mr. Kennedy that Marmolejo was available to take on any amount of work. They concluded that there would be approximately \$400,000 of DBE participation required to meet the goals. Mr. Kennedy said that he did not know how much DBE participation Emerick would receive and that it was too soon to tell. Mr. Marmolejo assured Mr. Kennedy that Marmolejo would be available and that Mr. Marmolejo would meet with him when Mr. Kennedy found out how much DBE participation he was going to need. (See Affidavit of Ed Marmolejo.)

Despite Mr. Marmolejo's offer to Mr. Kennedy, Mr. Marmolejo never heard any more from him. The telephone log submitted by Emerick does not accurately reflect the telephone conversation between Mr. Marmolejo and Mr. Kennedy on May 17, 1990. Mr. Marmolejo routinely takes notes of all telephone conversations. A copy of his notes are attached to his affidavit. Mr. Kennedy stated in his notes that Marmolejo did "not have time to bid this project, but want (sic) to work with us on any other upcoming project." Mr. Marmolejo did not tell Mr. Kennedy that Marmolejo did not have time to bid the project. Mr. Marmolejo told him that Marmolejo would be willing to work with Emerick so that they would be able to meet their DBE participation requirements. Mr. Kennedy's failure to accurately reflect the telephone conversation and his failure to call Mr. Marmolejo when he was unable to meet the DBE participation goals shows that Emerick did not make good faith efforts. Emerick simply followed the pro forma requirements of sending out letters and making telephone calls. Emerick did not utilize the offer of assistance from a DBE to

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actually fill the DBE goals. Inaccurately reflecting the telephone conversation between Mr. Kennedy and Mr. Marmolejo is an act of bad faith.

Mr. Marmolejo told Mr. Kennedy that Marmolejo would be able to put together a bid in a very short time-frame if Emerick was unable to get adequate DBE participation. Mr. Marmolejo told Mr. Kennedy that Marmolejo was capable of providing its own bonding and of performing many different types of work. Emerick failed to accept Marmolejo's offer of help to meet the DBE goals. (See Affidavit of Ed Marmolejo.)

2.2 Emerick Failed to Make Good Faith Efforts by Failing to Acknowledge and Utilize Westlake's Bid.

Westlake is a certified WBE. Westlake appears in the directory of DBE/MBE/WBE firms prepared by the Executive Department of the State of Oregon. Westlake submitted bids to Emerick when the Contract was bid on March 21 and on May 22. On March 14, 1990, Westlake faxed a letter proposal and scope of services to Emerick for the March 21 bid. Copies of the letter and scope of services are attached as Exhibit A to the Affidavit of Judi Haney. Emerick failed to use Westlake's bid and failed to include it on its list of DBE/WBE subcontractor bids. A copy of Emerick's list of DBE/WBE contractors for the March 21, 1990 bid is attached as Exhibit 1. Emerick did not send Westlake a solicitation letter for the March 21 bid. Westlake took the initiative, discovered the contract itself, and submitted a bid to Emerick. (See Affidavit of Judi Haney)

For the May 22 bid, Emerick sent a letter to Judi Haney dated May 10, 1990 requesting a quotation on surveying. On May 15, 1990, Westlake's estimator, Mike Hargrave, talked with Joe Kennedy of Emerick. Emerick's telephone log indicates that Westlake was "bidding" the surveying work, a copy of which is attached as Exhibit 2. Westlake determined that there were no substantial changes in the Contract since the May 21 bid and maintained its lump sum bid price of \$19,000 for the surveying work.

Emerick's summary of DBE/WBE bids for the May 22 bid, a copy of which is attached as Exhibit 3, indicates that Emerick used the bid amount of \$19,000 for survey work. Emerick's summary lists Cross Continent Engineers and Premsingh & Associates as DBE companies bidding on the surveying work. Emerick's list of DBE/WBE subcontractors does not make any mention of Westlake's bid. The summary does indicate that the amount of the bid used was \$19,000. Further, Emerick's list of all subcontractors, including non-DBE and WBE subcontractors, does not mention Westlake. A copy of the summary is attached as Exhibit 4. It appears that Emerick either obtained an identical quote from some other surveyor, which it

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fails to list on its list of subcontractors, or plans to do the work itself. In either situation, Emerick had a WBE bid in the same amount as the bid that it chose to use. Emerick's failure to use the WBE bid strongly evidences the fact that the letters sent and the telephone calls made by Emerick were for the purpose of meeting the good faith efforts criteria specified in Metro Code Section 2.04.160(b), but were not really intended to obtain DBE and WBE participation.

2.3 The Solicitation Letters Sent by Emerick Pursuant to Metro Code Section 2.04.160(b) Were not Submitted in a Manner Calculated to Obtain DBE and WBE Participation.

The solicitation letters sent by Emerick were not calculated to obtain maximum DBE/WBE participation. While facially appearing to send the correct number of letters for each economically feasible unit identified for DBE/WBE participation, Emerick did not actually make good faith efforts in sending the letters.

2.3.1 For the May 22 Bid, Emerick Failed to Send Letters to Four DBE/WBE Companies who Submitted Bids to Emerick.

Emerick's summary of DBE/WBE bids submitted in support of good faith efforts for its March 21 bid, a copy of which is attached as Exhibit 1, shows that it received bids from Rio Construction, Apply-A-Line, and Brainard Sheetmetal. The summary indicates that Rio and Brainard submitted bid packages that were unclear and that Emerick could not determine whether they were low bidders. On at least a portion, Apply-A-Line was the low bidder. For the May 22 bid, Emerick did not send letters to any of these three DBE/WBE bidders. Attached as Exhibit 5 is a summary of the letters sent by Emerick to DBE/WBE firms. The summary shows the economically feasible unit and the DBE/WBE contractors to whom Emerick sent solicitation letters.

Although Apply-A-Line and Brainard Sheetmetal submitted bids without receiving a solicitation letter, Rio Construction did not submit a bid for the May 22 bid. Emerick's failure to send solicitation letters to all DBE/WBE firms who had submitted bids for the March 21 bid evidences Emerick's failure to make good faith efforts. The most likely WBE/DBE firms to submit bids on the May 22 bid date were the ones who had submitted bids for the March 21 bid date because they had already prepared their bids. By failing to send solicitation letters and make telephone calls to these DBE/WBE firms, Emerick appeared to comply with the good faith efforts requirements, but in fact took actions that were inconsistent with increasing DBE/WBE participation.

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2.3.2 Emerick's Solicitation Letters do not Clearly Identify the Economically Feasible Unit for Which Emerick is Soliciting Participation.

Metro Code Section 2.04.100(b)(4) requires solicitation letters to be sent to not less than five DBEs or WBEs for each subcontracting materials supply work item. The letter must identify the work item or the DBE/WBE has no way of determining what type of bid is being solicited. For certain economically feasible units of work, Emerick sent letters that referred to a general category of work that was not a defined economically feasible unit. For example, Marmolejo was sent one letter requesting a quote for "highway/road work." Emerick has used that letter to satisfy its solicitation letter requirements of its economically feasible units No. 6, Asphalt Paving and Base, and No. 7, Pavement Markings. The letter is far too general to identify either economically feasible unit. For solicitation letters in the Pavement Marking economically feasible unit, Emerick submitted letters to the American Contractor Center, G. Clayton Austin Company, and Westline Construction, Inc. that requested quotes for "highway/roadway" work. These did not identify pavement markings as an economically feasible unit.

Further, by attempting to utilize a general letter to meet the requirements of sending out notices to five DBEs for each economically feasible unit, Emerick has failed to make good faith efforts. The list of certified DBE/WBE firms published by the Executive Department includes the following DBE/WBE firms identified pavement or asphalt markings as specialty items: Apply-A-Line; Holefield's General Contracting; Junlo Corporation; Maravilla Enterprises, Inc.; Tri-County Ceiling & Oiling; and Westline Construction, Inc. Emerick could have sent letters to all of these contractors who identified pavement markings as a sub-specialty item. Instead, at least three of the letters sent were to contractors who had not specifically identified asphalt marking as a sub-specialty item. Emerick's letters were not sent in a manner calculated to obtain WBE/DBE participation. They were sent merely to meet the number of letters requirement of the Metro Code Section.

For the May 22 bid, Emerick sent letters to DBEs who failed to bid the March 21 contract and to firms who Emerick learned during the March 21 bid had disconnected telephones, were out of business, or who declared that the work was not within their type of work.

The summary of letters, which is Exhibit 5, sent by Emerick to DBEs and WBEs shows that in each category, there were a substantial number of letters sent to DBE/WBE firms who declined to bid to Emerick on March 21. Emerick should have deleted those

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DBE/WBE firms from its mailing list and included new firms, unless there were no other subcontractors available for that unit of work. Certain units of work, such as No. 3, Site Preparation and Earth Work, and No. 5, Site Utilities, are the specialties listed by numerous DBE/WBE firms. As you will note from reviewing the summary, Emerick sent letters to Bonstan for each of those units of work, although Bonstan had declined to bid the job for the March 21 bid. Likewise, J. Murphy, North's Plumbing, Inc., and K&R Plumbing for those units had already declined to bid on March 21. Dynamic Road Construction and CM General Contracting each had their phones disconnected at the time that Emerick called for the March 21 bid. Nevertheless, Emerick sent letters to them again for the May 22 bid. Sending letters to DBE/WBE firms who are obviously out of business and who have declined to bid the first time fails to meet the number of letters requirement and fails to meet the standard of good faith efforts anticipated by the Metro Code. The actions taken by Emerick should have been calculated to increase DBE/WBE participation, not decrease it. Sending letters to people who failed to bid the first time and who were known to Emerick to be out of business based upon prior telephone calls is not calculated to achieve maximum DBE/WBE participation. These are only examples from two economically feasible units. You should carefully review the entire Exhibit 5 summary.

2.4 With Minimal Effort, Emerick Could Have Met the DBE/WBE Goals.

With a minimum amount of effort, Emerick could have met the DBE/WBE goals. Slayden was able to meet the goals and is approximately only \$10,000 higher for the entire Contract than Emerick.

The affidavits of Audrey Castile of S&L, Susan McCalib of McCalib, Gilbert Davlos of Buffalo, and David Gilmore of EDT are submitted to show that the quotes of these DBE and WBE firms were submitted to Emerick Construction Company ("Emerick").

Although they submitted quotes to Emerick, Emerick did not disclose their quotes on its summary of DBE/WBE bids received, a copy of which is attached as Exhibit 1.

Metro Code Section 2.04.100(b)(5) requires:

[I]n instances where DBE/WBE were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with a reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

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Emerick failed to fulfill that element of good faith efforts required by Metro's Code.

For the McCalib bid, if Emerick had provided the quantities necessary to calculate the price for the bid item quoted by McCalib, which was on a unit price basis, Emerick could have calculated McCalib's bid. It is quite possible that McCalib may have been low bidder. As evidenced by the DBE/WBE summary which is Exhibit 3, and the list of subcontractors, including non-DBE and WBE firms, which is attached as Exhibit 4, Emerick used at least two other contractors with unit prices. With a minimum amount of effort, Emerick could probably have used McCalib as a DBE subcontractor.

Emerick could have added Buffalo's quote for the aluminum rail to the steel price and erection quote used by Emerick. That also would have increased Emerick's DBE participation.

As the Affidavit of Audrey Castile shows, S&L appears to be the low bidder on the portion of work that it bid. Emerick could have used S&L's bid. S&L's bid included all labor necessary for the landscape portion of the contract and the inexpensive fabric for drainage. S&L's quote excluded the erosion control fabric. Emerick could have obtained a bid in the amount of \$50,000 to \$70,000 for the erosion control fabric from some other vendor. With a minimum amount of effort, Emerick could have met the WBE goal. We believe that the enclosed affidavit further evidences the fact that Emerick did a substantial amount of paperwork but did not make genuine efforts to meet the DBE/WBE goals.

S&L's affidavit is the fifth affidavit that we obtained from DBE or WBE contractors evidencing the fact that they submitted quotes to Emerick but that their bids are not reflected on Emerick's summary which was submitted to show that Emerick complied with Section 2.04.100(5). Emerick has failed to meet the requirements of that subsection. Omitting one DBE or WBE subcontractor might be carelessness. Omitting five shows that Emerick neither complied with the good faith efforts requirements nor fairly treated the bids that it received.

3. Metro Code Section 2.04.100, Which Defines the Minimum Efforts Required for the Good Faith Efforts, is Preempted by the Definition of Good Faith Efforts in ORS 200.045(3).

ORS 200.045(2) sets out the good faith standards for emerging small business contracts. ORS 200.045(3) sets out the definition for all public contracts within the State of Oregon. The definition requires the bidder to have "negotiated in good faith with interested, capable, and competitive minority or business enterprises submitting bids." The requirements of the Metro Code

ALLEN, KILMER, SCHRADER, YAZBECK & CHENOWETH

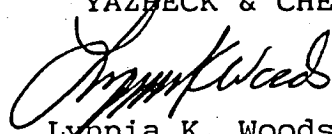
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do not include that requirement. There are other differences, but that is the most major difference. Emerick made no efforts to negotiate with any DBE/WBE firm. The prime example is evidenced by the Affidavit of Edward Marmolejo.

The requirements of ORS 200.045(3) have been recognized by a sufficient number of cases to create a common law definition of good faith efforts. Public policy requires that the good faith efforts outlined in ORS 200.045 preempt Metro Code Section 2.04.100.

Very truly yours,

ALLEN, KILMER, SCHRADER,
YAZBECK & CHENOWETH, P.C.



Lynn K. Woods
Charles R. Schrader

Enclosures

cc: Rena Cusma
Tanya Collier

SLAYBR\Cusma.005(B)

MARCH 22, 1990

| SPEC. SECTION | DBE SUBCONTRACTOR | DBE BID | LOW SUBCONTRACTOR | LOW BID |
|---------------|------------------------|-------------|-----------------------|-----------|
| EARTHWORK | E.D.T. CONSTRUCTION | * \$263,661 | BILL ERICKSON | \$441,200 |
| 02513 & 02222 | BENGE CONSTRUCTION | \$324,048 | PARKER NORTHWEST | \$264,562 |
| 02513 & 02222 | LOPEZ PAVING | \$355,264 | PARKER NORTHWEST | \$264,562 |
| 02577 | HOLEFIELDS GEN. CONTR. | \$5,000 | APPLY-A-LINE | \$3,761 |
| 03201 | RAINEER STEEL | \$33,663 | C & J REBAR | \$26,240 |
| 03410 | APPLY-A-LINE | \$7,550 | EMERICK CONSTRUCTION | \$2,003 |
| 07511 | ROOF SYSTEMS | \$13,236 | ABC ROOFING | \$6,810 |
| 09650 | COMMERCIAL INTERIORS | \$975 | COMMERCIAL INTERIORS | \$975 |
| DIV. 16000 | BLESSING ELECTRIC | \$292,915 | TIGARD ELECTRIC | \$184,000 |
| | RIO CONSTRUCTION | \$64,460 | | |
| | BRAINARD SHEET METAL | \$63,779 | | |
| | | | UNCLEAR PACKAGED BIDS | |

** E.D.T. CONSTRUCTIONS BID WAS INCOMPLETE FOR THE EARTHWORK PACKAGE. DOLLARS HAD TO BE ADDED TO THEIR BID WHICH MADE THEM HIGH.

**EMERICK CONSTRUCTION COMPANY
MBE/WBE CONTACT LOG**

PROJECT: METRO SOUTH STATIONS MODIFICATIONS BID DATE: MAY 22, 1990
 BID TIME: 11:00 AM

NAME: WILSON LAKE CONSULTANTS INC.

ADDRESS: _____

PHONE: () 650-6652

KIND OF WORK: SURVEYING

SIZE OF WORK CAN HANDLE: _____

| DATE | PERSON CONTACTED | CONTACTED BY | TIME | COMMENTS/DISCUSSIONS |
|------|-------------------------|---------------|-------|----------------------|
| 5/27 | | Jim [unclear] | 1:00 | fb [unclear] |
| 5/15 | WILSON LAKE CONSULTANTS | Joe [unclear] | 11:00 | ENDING |
| | | | | |
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RESULTS OBTAINED

| BID SUBMITTED | DECLINED | NO RESPONSE |
|---------------|----------|------------------|
| | | BID NOT RECEIVED |
| | | |
| | | |
| | | |
| | | |
| | | |

METRO SOUTH STATION MODIFICATIONS
2.04.160 DETERMINATION OF GOOD FAITH EFFORTS
SUBPARAGRAPH (5) DOCUMENTATION

EMERICK CONSTRUCTION COMPANY

| <u>SUB/SUPPLIER NAME</u> | <u>MINORITY STATUS</u> | <u>TYPE OF WORK</u> | <u>BID AMOUNT</u> | <u>BID AMOUNT USED</u> | <u>REASON REJECTED</u> |
|------------------------------|------------------------|--------------------------------------|-------------------|------------------------|--|
| Lopez Paving, Inc. | DBE | Asphalt Paving & Base | \$310,560 | 257,795 | Not Low Bidder |
| A & G Landscape | WBE | Landscape & Irrigation | 335,300 | 323,000 | Not Low Bidder |
| Lopez Concrete Service | DBE | Concrete Curb & Gutters | 50,964 | 26,400 | Not Low Bidder |
| Apply-A-Line | DBE | Pavement Markings | 3,761 | 3,761 | Low Bidder |
| Pacific Steelock Fence | DBE/WBE | Fencing | 18,059 | 12,410 | Not Low Bidder (used Pete's Westside) |
| Pete's Westside Fence | WBE | Fencing | 12,410 | 12,410 | Low Bidder |
| Triad Steel Inc. | DBE | Reinforcing Steel Furnish & Place | 81,383 | 75,440 | Not Low Bidder |
| Ballard Construction Co. | WBE | Reinforcing Steel Furnish | Unit Price | 26,850 | Not Low Bidder |
| Rainier Steel Inc. | DBE | Reinforcing Steel Furnish | Unit Price | 26,850 | Not Low Bidder |
| Northwest Concrete Pumping | WBE | Concrete Pumping | Unit Price | Unit Price | Low Bidder |
| Brainard Sheet Metal | DBE | Flashing, Sheet Metal & Metal Siding | 15,323 | 15,323 | Low Bidder |
| Commercial Interior & Spec. | DBE | Resilient Flooring | 975 | 975 | Low Bidder |
| Pro-Sign | WBE | Site Signage | 7,350 | 7,350 | Low Bidder |
| Pen-Nor Inc. | DBE | Mechanical | 65,280 | 32,822 | Not Low Bidder |
| Paragon Fire Sprinkler, Inc. | WBE | Fire Protection | 22,489 | 17,630 | Not Low Bidder |
| MSI Mechanical System | WBE | Mechanical | 32,822 | 32,822 | Low Bidder |
| EBA Sheet Metal | DBE | HVAC Only | 25,490 | 32,822 | Not Low Bidder (used MSI complete mech) |
| Blessing Electric | DBE/WBE | Electrical | 259,000 | 194,500 | Not Low Bidder |
| Cross Continent Engr. | DBE/WBE | Surveying | Unit Price | 19,000 | Not Low Bidder |
| Brothers Concrete Cutting | DBE | Concrete Cutting | Unit Price | Unit Price | Low Bidder |
| Prem Singh & Associates | DBE | Surveying | Unit Price | 19,000 | Not Low Bidder |

May 22, 1990

Metropolitan Service District
2000 SW First Avenue
Portland, Oregon 97201-5398

ATTN: Mr. Rob Smoot

Reference: METRO SOUTH STATION MODIFICATIONS
OREGON CITY, OREGON

Per Section 00110 - Instruction To Bidders, Item 14, please find the following list of subcontractors and suppliers we propose to use.

| <u>Item of Work</u> | <u>Subcontractor</u> | <u>Amount</u> |
|------------------------|---------------------------|---------------|
| Earthwork | B & R Excavation | \$440,000 |
| Piling | Riedel | 270,000 |
| Asphalt Paving | Lakeside | 257,795 |
| Pavement Markings | Apply-A-Line | 3,761 |
| Landscape | Ben Fox | 323,000 |
| Fencing | Pete's Westside Fence | 12,410 |
| Reinforcing Steel | Farwest Rebar | 48,590 |
| Rebar Installation | C & J Rebar, Inc. | 26,850 |
| Concrete Pumping | N.W. Concrete Pumping | 4,500 |
| Concrete Cutting | Brothers Concrete Cutting | 2,000 |
| Shotcrete | Blue Mountain Pool | unit price |
| Precast Concrete | Olympian | 72,681 |
| Structural Steel | GTE | 121,315 |
| Sheet Metal and Siding | Brainard Sheet Metal | 15,323 |
| Roofing | Snyder | 9,430 |
| Hollow Metal | Mercer | 2,689 |
| Windows | Mountain Glass | 15,758 |
| Drywall | Harlen's | 4,534 |
| Acoustical Ceiling | Columbia Acoustical | 782 |
| Flooring | Commercial Interiors | 975 |
| Painting | Ferguson | 16,847 |
| Signage | Prosign | 7,350 |
| Conveyor | Transco | 46,750 |
| Fire Protection | Grinnell | 17,630 |
| Mechanical | MSI Mechanical | 32,822 |
| Winch | Allied | 12,500 |
| Electrical | Tigard Electric | 194,500 |

If you have any questions concerning this please do not hesitate to call.

Yours truly,


Kevin J. Spellman
President

EXHIBIT 4
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May 22, 1990 Bid

Letters to DBEs were
sent 5/10/90

* Bid

** Low Bidder

< DBE/WBE firms who did not bid on March 21 Contract bid >

<<DBE/WBE who Emerick loss for March 21 Contract Bid indicate were
out of business or their phones were disconnected>>

Bid Date: 5/22/90
10 days before: 5/11/90
5 days before: 5/17/90

FEASIBLE UNITS FOR DBE/WBE SUBCONTRACTORS

1. Surveying

- 1.1 Westlake Consultants, Inc. - Emerick States Westlake did not bid, but note of 5/15 call indicates Westlake is "bidding". Calls: 5/14 and 5/15
- *1.2 Cross-Continent Engineers (C2E) - Bid - not low (unit price). Calls: 5/14 and 5/15
- 1.3 Centrac Associates, Inc. - Did not bid - design firm only. Calls: 5/14
- 1.4 Antoria Infrared Consultants - Did not bid - note says they only perform infrared surveys. Calls: 5/15 and 5/16
- *1.5 Premsingh & Associates, Inc. - Bid - not low (bid \$50 an hour - unit price). Call: 5/15
- 1.6 Surveyors West - Did not bid - project is too far away. Calls: 5/14 & 5/15

2. Demolition

- 2.1 Millage, Nathan, Trucking - Did not bid - note says they only have end dumps and belly dumps. Calls: 5/14, 5/15 and 5/16
- 2.2 MRC Company - Did not bid. Calls: 5/14, 5/15, 5/16

- <2.3 Young, Inc. - Did not bid - note says that they will supply explosives, no demolition work. Calls: 5/14, 5/15, 5/16>
- <<2.4 Dynamic Road Construction Corp. Did not bid. Calls: Attempted call 5/14 - disconnect, no new listing>>
- <2.5 J. Murphy Construction. Did not bid. Calls: Attempted call 5/14 - disconnected, no new listing>
- 2.6 White Buffalo Construction, Inc. - Did not bid. Call: 5/14

3. Site Preparation & Earthwork

- *3.1 E.D.T. Construction, Inc. - Bid - not low. Call: 5/14
- 3.2 Conmix, Inc. - Did not bid. Calls: 5/14, 5/15, 5/16
- <3.3 Bonstan - Did not bid. Call: 5/14>
- <3.4 J. Murphy - Did not bid. Calls: Attempted call 5/14 - disconnect, no new listing>
- <<3.5 Dynamic Road Construction Corp. - Did not bid. Calls: Attempted call 5/14 - disconnect, no new listing>>
- 3.6 Benge Construction Co. - Did not bid. Call: 5/14
- 3.7 Salt & Pepper Construction - Did not bid - but notes state "Salt & Pepper are joint venturing this bid with Waybo, Inc. Bidding..." Calls: 5/14 and 5/15

4. File Driving & Shot Crete

- 4.1 Gervais Construction, Inc. - Did not bid - Notes say "has merged with Ross Brothers..." Call: 5/14

- <<4.2 Versatile Drilling Contractors, Inc. - Did not bid - notes state "[d]o not do that much driven piles..." Call: 5/15 and 5/16>>
- <<4.3 3A Industries, Inc. - Did not bid - notes say "too busy..." Calls: 5/15 and 5/16>>
- 4.4 G.P.D. Construction Co. - Did not bid. Call: 5/15 - disconnect, no new listing.
- 4.5 Ohno Construction Company. Did not bid - notes say "too busy...". Call: 5/15
- <4.6 Ram Inc. Contractors - Did not bid - notes say "too busy". Call: 5/15>

5. Site Utilities

- 5.1 White Buffalo Construction, Inc. - Did not bid. Call: 5/14
- 5.2 ALCCO - Did not bid. Call: 5/14
- <5.3 Bonstan - Did not bid. Call: 5/14>
- <5.4 North's Plumbing, Inc. - Did not bid - notes say "project too big." Call: 5/14>
- <<5.5 C.M. General Contracting - Did not bid. Call: Attempted call 5/14 - disconnect, no new listing>>
- <5.6 K&R Plumbing - Did not bid - notes say "too busy". Call: 5/14>

6. Asphalt Paving & Base

- *6.1 Lopez Paving, Inc. - Bid - not low. Calls: 5/14
- <6.2 Henderson & Company - Did not bid. Calls: 5/14 and 5/15 left message on recorder, 5/16 called information and no listing. Unable to contact by phone.>
- 6.3 S and S Corporation - Did not bid. Calls: 5/14 and 5/15

- <6.4 Marmolejo Contractors, Inc. - Did not bid - notes state "not have time to bid this project...". Calls 5/14 and 5/17>
- <6.5 Austin G. Clayton, Company - Did not bid. Calls 5/14 and 5/15>
- 6.6 American Contractor Center - Did not bid - note says "not interested...". Call: 5/14

7. Pavement Markings

- 7.1 Marmolejo Contractors, Inc. - Did not bid. Calls: 5/14 and 5/17
- 7.2 American Contractor Center - Did not bid - note says "not interested...". Call: 5/14
- <7.3 Austin G. Clayton Company - Did not bid. Call: 5/14 and 5/15>
- 7.4 EDT Construction, Inc. - Did not bid - note says "Bidding". Call: 5/14
- <<7.5 West Line Construction, Inc. - Did not bid. Call: 5/15>>
- 7.6 Holesfield's General Contracting - Did not bid. Call: 5/15 and 5/16

8. Fencing

- **8.1 Pete's Westside Fence Company. - Bid - low bidder. Call: 5/11
- <8.2 Junlo Corporation - Did not bid - note says "too busy". Call: 5/14>
- *8.3 Pacific Steelock Fence Co. - Bid - not low. Call: 5/14
- <<8.4 Power Fence - Did not bid - note says "not enough fencing to travel to Portland." Call: 5/14>>

<8.5 Pacific Northwest Guardrail & Supply Co. - Did not bid - note says "not interested only install guardrailing on roadways". Calls: 5/14>

8.6 E.M.W. Construction Co. - Did not bid. Calls: 5/14, 5/15 and 5/16

9. Landscape & Irrigation

9.1 Wilcott Landscape Company - Did not bid - note says "Interested. Has an estimator working on project". Calls: 5/14 and 5/15

*9.2 A&G Landscaping, Inc. - Bid - not low. Calls: 5/14 and 5/15

<9.3 Green Art Landscape and Irrigation Co. - Did not bid - note says "too much work". Calls: 5/14, 5/15 and 5/16>

<<9.4 SAS Building and Landscaping - Did not bid - note indicates SAS planned to bid. Call: 5/14>>

9.5 S&L Landscaping, Inc. - Did not bid - note says "Bidding". Call: 5/14 and 5/15

<<9.6 Polynesian Landscape Company - Did not bid. Call: Attempted call 5/14 - not at number listed and no new listing>>

10. Concrete Cutting

10.1 Baughman & Sons, Inc. - Did not bid - note says "They generally bid work on Southern coast...". Call: 5/14

10.2 Carr Construction, Inc. - Did not bid - note says "not interested." Calls: 5/14 and 5/15

10.3 Sea-Port General - Did not bid - note says "too busy". Calls: 5/14 and 5/15

10.4 Elis' alda Henry J. & Associates - Did not bid. Calls: Attempted to call on 5/14, 5/15 and 5/16 - no answer each time.

**10.5 Brothers Concrete Cutting, Inc. - Low bidder - gave quote over phone. Call: 5/14

*10.6 Indian Incorporated - Bid with Albany Electric - not low. Calls: 5/14.

11. Reinforcing Steel Furnish & Place

11.1 Smith Company, Inc. - Did not bid. Calls: Left message with answering service on 5/15 and 5/16

*11.2 Triad Steel Inc. of Oregon - Bid - not low. Calls: 5/15

*11.3 Rainier Steel - Bid - not low. Calls: 5/15 and 5/16

<11.4 Conmix, Inc. - Did not bid - note says "not interested. Not enough time to look at plans." Calls: 5/14 and 5/16>

11.5 Diversified Builders, Inc. - Did not bid - note says "too busy..." Calls: 5/14

11.6 James Construction - Did not bid - wants to do painting and insulation. Call: 5/14.

12. Concrete Curbs & Gutters

<<12.1 Rivera Construction, Inc. - Did not bid - note says "No bidding is closing down business." Call: 5/14>>

*12.2 Lopez Concrete Service - Bid - not low. Calls: 5/15, 5/16 and 5/21

12.3 McCalib Concrete Service - Did not bid - note he states he is "Bidding". Calls: 5/15 and 5/16

<12.4 Capital Concrete Construction - Did not bid - note says "will be bidding". Calls: 5/15 and 5/16>

<12.5 Castle Rock Construction, Inc. - Did not bid. Call: 5/15>

<12.6 Retana Enterprises, Inc. - Did not bid. Calls:
5/15 and 5/16>

13. Precast Concrete

<13.1 Gervais Construction, Inc. - Did not bid - note
says "merged with Ross Brothers..." Call:
5/14>

<13.2 Woodburn Construction Company - Did not bid -
note says "too much work..." Call: 5/14>

13.3 Meridith Construction, Inc. - Did not bid.
Call: 5/14

<<13.4 Rivera Construction, Inc. - Did not bid - note
says "no bid is closing down business." Call:
5/14>>

*13.5 Ballard Construction Company - Bid - Not low.
Call: 5/14

13.6 Diversified Builders, Inc. - Did not bid - note
says "too busy..." Call: 5/14

14. Metal Fabrications & Railings

14.1 McGrath, William M. Company - Did not bid -
note says "will not be bidding, project is out
of their area". Call: 5/14

<14.2 Alt, Robert W. Construction - Did not bid -
note says "has too much work..." Call: 5/14>

14.3 Ogilvie Company, Inc. - Did not bid - note says
"Bid date too soon...". Call: 5/14

14.4 Beaver Creek Metal Products - Did not bid.
Call: Attempted call 5/14 - number
disconnected, no new listing.

<14.5 Aluminum & Bronze Fabricators, Inc. - Did not
bid. Call: 5/14>

14.6 G.P.D. Construction Company - Did not bid.
Call: Attempted call 5/15 - number
disconnected; no new listing.

15. Structural Steel Erection

- <15.1 Gervais Construction, Inc. - Did not bid - note says "Have merged with Ross Brothers..." Call: 5/14>
- <15.2 Alt., Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>
- 15.3 McGrath, William M. Company - Did not bid - note says "project is out of their area". Call: 5/14
- *15.4 Indian Incorporated - Bid with Albany Electric - not low. Calls 5/14 and 5/15
- 15.5 Earle, Robert G., Inc. - Did not bid - note indicates they are "swamped" with work. Calls: 5/14 and 5/15
- <<15.6 Record Steel and Construction, Inc. - note says "she does not want to bid out of town". Did not bid. Calls: 5/14 and 5/15>>

16. Insulation

- <16.1 Alt., Robert W. Construction - Did not bid - note says "too much work..." Call: 5/14>
- <16.2 Woodburn Construction Company - Did not bid - note says "too much work..." Call: 5/14>
- <16.3 Aguilers/White Construction, Inc. - Did not bid - note says "too much work..." Calls: 5/14, 5/15, 5/16 and 5/18>
- 16.4 CHW Construction, Inc. - Did not bid. Call: 5/14
- <16.5 James Construction - Did not bid. Call: 5/14>
- <16.6 Interstate Insulations, Inc. - Did not bid - note says "has looked at drawings and he did not feel there is enough for them to bid on." Call: 5/14>

17. Roofing

- 17.1 G.P.D. Construction Company - Did not bid.
Call: Attempted call 5/14 - number
disconnected; no new listing.
- <17.2 Cascade Roofing - Did not bid. Call: 5/14 and
5/16>
- <17.3 All American Construction Company - Did not
bid. Calls: 5/14, 5/15 and 5/16>
- <<17.4 A-TS2 Roofing, Inc. - Did not bid. Call:
Attempted call 5/14 - number disconnected; no
new listing. Solicitation letter returned -
no forwarding address.>>
- 17.5 Boring Gutter Lady - Did not bid. Calls: 5/14
and 5/15
- 17.6 Roof Systems - Did not bid. Calls: 5/14, 5/15
and 5/16

18. Flashing, Sheet Metal & Metal Siding

- 18.1 Carr Construction, Inc. - Did not bid. Calls:
5/14 and 5/15
- 18.2 Ogilvie Company, Inc. - Did not bid - note says
"bid date too soon...". Call: 5/14
- <18.3 All American Construction Company - Did not
bid. Call: 5/14 - no answer.>
- *18.4 EBA Sheet Metal, Inc. - Bid - not low. Calls:
5/14, 5/15 and 5/21
- <18.5 Cascade Roofing - Did not bid. Calls: 5/14 and
5/16>
- <<18.6 Beaver Creek Metal Products - Did not bid.
Call: Attempted call 5/14 - number
disconnected; no new listing.>>

19. Unit Masonry

- <19.1 Woodburn Masonry, Inc. - Did not bid. Calls: 5/14 and 5/16>
- <<19.2 J&S Masonry - Did not bid - note says "not working in oregon at present time". Calls: 5/14>>
- <19.3 Scott's Masonry, Inc. - Did not bid. Call: Attempted calls 5/14 and 5/15 - no answer; information had no listing>
- <19.4 Medina Mosaic - Did not bid. Call: 5/14>
- <19.5 Alt., Robert W. Construction - Did not bid - note says "has too much work". Call: 5/14>
- <19.6 Woodburn Construction Company - did not bid - note says "have too much work..." Call: 5/14>

20. Metal Framing, Drywall & Acoustical Ceilings

- <20.1 Woodburn Construction Company - Did not bid - note says "has too much work..." Call: 5/14>
- <20.2 Portland Custom Interiors - Did not bid. Call: 5/14
- 20.3 Sea-Port General - Did not bid - note says "too many other things going on". Call: 5/14 and 5/15
- <20.4 CWH Construction, Inc. - Did not bid. Call 5/14 and 5/16>
- <20.5 Alt., Robert W. Construction - Did not bid - note says "has too much work...". Call: 5/14>
- <20.6 Aguilers/White Construction - Did not bid - note says "has too much work...". Calls: 5/14, 5/15, 5/16 and 5/17>

21. Painting

- <21.1 Jim Miller Construction - Did not bid - note says "too many other things at present time". Call: 5/14>

- <21.2 Ace of Shades Painting - Did not bid. Call: Attempted call 5/14 - number listed incorrectly; no phone listing>
- <21.3 Burns, John W. & Sons, Inc. - Did not bid - note says "too many other things going on." Calls: 5/14 and 5/15>
- <<21.4 CMB & Associates, Inc. - Did not bid. Calls: 5/14, 5/15 and 5/16>>
- <21.5 Portland Custom Interiors - Did not bid. Call: 5/14>
- <21.6 Patchett/Savidge Contractors - Did not bid. Calls: 5/14, 5/15 and 5/16>

22. Mechanical & Fire Protection

- <<22.1 Butler C.E. & Associates - Did not bid. Call: Attempted call 5/14 - number disconnected; solicitation letter returned with no forwarding address>>
- <22.2 Adams Mechanical - Did not bid - note says "too busy". Call: 5/14>
- **22.3 MSI - Mechanical systems - Low bidder. Calls: 5/14, 5/15, 5/16 and 5/17
- <22.4 Spears Mechanical - Did not bid - note says "Not interested..." Calls: 5/14, 5/15 and 5/16>
- <22.5 Thermal Mechanical, Inc. - Did not bid. Calls: 5/14 and 5/15>
- *22.6 Pen-Nor, Inc. - Bid - not low. Call: 5/14

23. Electrical Division

- 23.1 Brown, F. Electric Company - Did not bid. Call: Attempted call 5/15 - phone disconnected; phone listing
- <23.2 Pacific Energy Management Corporation - Did not bid. Calls: 5/15 and 5/16>

<23.3 Aaron Eastside Electric - Did not bid - note says "not interested project too big..." Calls: 5/15 and 5/16>

<23.4 Cydell Corporation, Inc. - Did not bid. Calls: 5/15 and 5/16>

<23.5 Jackson Electric - Did not bid - note says "project too far away". Call: 5/15>

*23.6 Blessing Electric - Bid - not low. Call: 5/15

24. Joint Sealer

24.1 Carr Construction, Inc. - Did not bid. Calls: 5/14 and 5/15

24.2 Sea-Port General - Did not bid - note says "too many other things going on." Calls: 5/14 and 5/15

<24.3 Alt., Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>

<24.4 Woodburn Construction Company - Did not bid - note says "has too much work..." Call: 5/14>

24.5 James Construction - Did not bid. Call: 5/14

24.6 Spokane Concrete Cutting, Inc. - Call: 5/15 - phone contact was made but solicitation letter was returned - no forwarding address.

25. Steel Doors, Frames & Finished Hardware

25.1 James Construction - Did not bid. Call: 5/14

25.2 Woodburn Construction Company - Did not bid - note says "has too much work..." Call: 5/14

25.3 Sea-Port General - Did not bid - note says "too many other things going on." Calls: 5/14 and 5/15

<25.4 Alt., Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>

25.5 Carr Construction, Inc. - Did not bid - note says "not interested..." Calls: 5/14 and 5/15

<25.6 Aguilera/White Construction, Inc. - Did not bid - note says "too much work..." Calls: 5/14, 5/15, 5/16 and 5/18>

26. Aluminum Windows, Glass & Glazing

26.1 Withers Lumber Company - Did not bid - note says "they do not carry the special windows." Call: 5/15

<26.2 Woodburn Construction Company - Did not bid - note says "too much work..." Call: 5/14>

<26.3 Alt., Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>

26.4 James Construction - Did not bid. Call: 5/14

26.5 Sea-Port General - Did not bid - note says "too many other things going on..." Calls: 5/14 and 5/15

26.6 Carr Construction, Inc. - Did not bid. Calls: 5/14 and 5/15

<26.7 Aguilera/White Construction, Inc. - Did not bid - note says "too much work..." Calls: 5/14, 5/15, 5/16 and 5/18>

27. Resilient Flooring

<27.1 Lopez Carpets & Drapes - Did not bid. Call: 5/15>

**27.2 Commercial Interiors & Specialties - Low bidder - note states "Bidding." Calls: 5/15 and 5/16

27.3 ECS & Associates - Did not bid - note says they "do not do resilient flows." Call 5/15

27.4 Lutton's Decorating Center, Inc. - Did not bid - note says "too far away." Call: 5/15

<27.5 Aguilera/White Construction, Inc. - Did not bid - note says "too much work..." Calls: 5/14, 5/15 and 5/18>

27.6 Lacuna Interiors, Inc. - Did not bid - note says "No longer installing flooring." Call: 5/14

28. Conveying System

<28.1 Alt., Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>

28.2 G.P.D. Construction Company - Did not bid. Call: Attempted call 5/15 - phone disconnected; no new listing

28.3 Sea-Port General - Did not bid - note says "too many other things going on." Calls: 5/14 and 5/15

28.4 Carr Construction, Inc. - Did not bid - note says "not interested..." Calls: 5/14 and 5/15

<28.5 Aguilera/White Construction, Inc. - Did not bid - note says "too much work..." Calls: 5/14, 5/15, 5/16 and 5/18>

<28.6 Earle, Robert G., Inc. - Did not bid - note indicates they are "swamped" with work. Calls: 5/14 and 5/15>

METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATION
OREGON CITY, OREGON

AFFIDAVIT OF EDWARD MARMOLEJO

State of Oregon)
) ss.
County of Multnomah)

I, Edward Marmolejo, do hereby depose and say as follows:

1. I am President of Marmolejo Contractors, Inc. ("Marmolejo"), 980 N.W. Wade Street, Estacada, Oregon 97023:

2. I make this affidavit based upon my own personal knowledge of the matters herein.

3. Marmolejo Contractors, Inc. is a certified minority business enterprise ("MBE") and disadvantaged business enterprise ("DBE"). Marmolejo appears in the vendor directory published by the Executive Department of the State of Oregon. Marmolejo has been in business for approximately 20 years. I am very familiar with the DBE/MBE/WBE (collectively, "DBE") program and have been on many committees regarding DBE issues.

4. I am extremely concerned that Emerick Construction Company ("Emerick") has failed to make good faith efforts to obtain DBE participation on the Metro South Station Modifications Contract (the "Contract"). On May 17, 1990 I received a letter inviting Marmolejo to bid on the project, a copy of which is attached as Exhibit A. On the same day, I called Joe Kennedy, Emerick's estimator responsible for bidding the project, and told him that I had received his letter and asked him how large the project would be. He indicated that he estimated the project to be between \$2.3

million and \$7 million with 10 percent DBE and 3 percent WBE requirements.

5. I asked Mr. Kennedy if Emerick needed any DBE assistance. I told him that we were available to take on any amount and virtually any kind of work on the project. We discussed the estimated amount of the general contract and came to the conclusion that there would be approximately \$400,000 of DBE participation required to meet the goals.

6. Mr. Kennedy told me that he did not know how much DBE participation they would receive and that it was too soon to tell. I assured him that we would be available and that I would meet with him when he found out how much DBE participation he was going to need.

7. I routinely take notes during all of my telephone conversations. A copy of my notes from my conversation with Mr. Kennedy is attached as Exhibit B.

8. Despite my offer to Mr. Kennedy, I never heard any more from him. I assumed that if he had difficulty obtaining DBE participation to meet the goals that he would call me so that I could work out a bid.

9. In support of its position that Emerick made good faith efforts to obtain DBE participation, Emerick has submitted two telephone logs of telephone calls to Marmolejo. Copies of the logs are attached as Exhibits C and D. Exhibit C refers to asphalt paving, while Exhibit D refers to pavement markings. Both exhibits refer to the same telephone conversation, except that Exhibit D,

regarding pavement markings, does not reference my telephone conversation with Joe Kennedy of May 17, 1990.

9. Exhibit C does not accurately reflect my telephone conversation with Joe Kennedy of May 17, 1990. Exhibit C states that I said that Marmolejo did "not have time to bid this project, (sic) to work with us on any other upcoming project." I did not tell Joe Kennedy that Marmolejo did not have time to bid the project. To the contrary, I told him that we would be willing to work with him so that they would be able to meet their DBE participation requirements. Mr. Kennedy's failure to accurately note our conversation and his failure to call me when he understood that I was willing to give him a quote if they were unable to meet their DBE participation requirements shows that Emerick was only meeting the proforma requirements for good faith efforts, by sending out letters and making telephone calls. Emerick failed to actually pursue obtaining a quote from a DBE. In fact, stating that Marmolejo did not have time to bid is a bad faith statement because it is the opposite of what I told him. I told him that we would be able to put together a bid in a very short timeframe if he was unable to get adequate DBE participation. I told Mr. Kennedy that we are capable of providing our own bonding and that we are capable of performing many different types of work and that we would be able to help them if they were not able to meet the goals. Emerick failed to accept our offer of help. For that reason, I do not believe that Emerick made good faith efforts.

10. Further, I have reviewed the materials submitted by

Emerick in support of their contention that they made good faith efforts to obtain DBE participation. I note that there is a copy of Exhibit A included as one of the five letters they contend they sent to request bids for the asphalt paving unit of the Contract. The same letter is included as one of the first letters they contend they sent to request bids for the pavement markings unit. Marmolejo received two identical letters. As you will note, Exhibit A only asks us to provide a quote on "highway/roadway work." It does not define that they are seeking a quote on asphalt paving or pavement markings. Metro's Code requires the general contractor to provide written notice soliciting sub-bids/proposals to not less than five DBEs or WBEs for each subcontracting or material supply work items selected as an economically feasible unit for DBE participation. I do not believe that the letter sufficiently identified the economically feasible units for which Emerick was soliciting quotes.

Dated this 6TH day of June, 1990.

Edward Marmolejo
Edward Marmolejo

SUBSCRIBED AND SWORN to before me this 6TH day of June, 1990.

Pat Laughlin
NOTARY PUBLIC FOR OREGON
My Commission Expires: 03-19-91



May 10, 1990

Marmolejo Contractors, Inc.
980 N.W. Wade Street
Estacada, OR 97023

Attention: Edward Marmolejo

Reference: METRO SOUTH STATION MODIFICATIONS
OREGON CITY, OREGON

Bid Date: May 22, 1990
Bid Time: 11:00 am

We are preparing a general contract bid on the above referenced project and request your subcontract or material supply quotation on highway/road work.

Bids will be received by our estimating staff at (503) 777-5531 (collect calls will be accepted). Written quotations or scope letters should be sent to:

EMERICK CONSTRUCTION COMPANY Phone: (503) 777-5531
P.O. Box 66100 Fax: (503) 771-2933
Portland, Oregon 97266-0100

Plans and specifications are available for review at our office and at plan centers listed on the following page. We would appreciate the opportunity of discussing the scope of your bid prior to bid day.

We would be glad to offer you any advice or assistance in obtaining lines of credit or insurance to allow you to perform work on this project. Please contact us if we can be of any help in these areas.

Please call me at (503) 777-5531 for additional information.

Yours truly,

Joe Kennedy
Estimator

EXHIBIT A
PAGE 1 OF 1



980 N.W. Wade St.
Estacada, Oregon 97023

(503) 630-6379

MARMOLEJO CONTRACTORS INC.
telephone conversation log

I CALLED ☞ ☎ : 1515 THEY CALLED () ☎ : DATE: 5-17-90 PH. () 777-5531
MR. ☞ MS () : JOE KENNEDY OF: EMERICK
WILL CALL LATER: () PLEASE CALL: () I RETURNED CALL ☎ :
IN RE: JOB#: PROJECT: METRO SOUTH BY: EM.

I TOLD HIM THAT I HAD RECEIVED HIS LETTER OF INVITATION AND HOW BIG WAS THIS PROJECT? HE INDICATED THAT IT WAS ESTIMATED @ 2.3 TO \$7.0 MILL WITH 10% DBE & 3.0% WBE REQUIREMENTS.

HE SAID THE PROJECT HAS ALREADY POSTPONED 2 TIMES ALREADY.

I ASKED HIM IF HE NEEDED ANY DBE ASSISTANCE, AND THAT WE WERE AVAILABLE TO TAKE ON ANY AMOUNT OF WORK. WE DISCUSSED WHAT THE PROJECT MAY GO FOR. AND CAME TO THE CONCLUSION THAT THERE WAS AN APPROX \$400,000. DBE REQUIREMENT.

HE INDICATED THAT HE DIDNT KNOW HOW MUCH PARTICIPATION THEY WOULD BE GETTING AND THAT IT WAS TO SOON TO TELL. I ASSURED HIM THAT WE WOULD BE AVAILABLE AND FOR HIM TO GET WITH ME WHEN HE FOUND OUT HOW MUCH DBE HE WAS GOING TO NEED. AND THAT I WOULD TRY TO CALL HIM TOMORROW. HE WAS VERY CONGENIAL AND SAID HE LOOK FORWARD TO IT AND THANKED ME FOR CALLING.

**EMERICK CONSTRUCTION COMPANY
MBE/WBE CONTACT LOG**

PROJECT: METRO SOUTH STATIONS MODIFICATIONS BID DATE: MAY 22, 1990
 BID TIME: 11:00 AM

NAME: MARMOLEJO CONTRACTORS, INC

ADDRESS: _____

PHONE: () 630-6379

KIND OF WORK: ASPHALT PAVING

SIZE OF WORK CAN HANDLE: _____

| DATE | PERSON CONTACTED | CONTACTED BY | TIME | COMMENTS/DISCUSSIONS |
|------|------------------|--------------|------|---|
| 5/16 | DAN ANDERSON | LEG KENNEDY | 3:45 | INTERESTED WILL LOOK AT DRAWINGS. INTERESTED IN THE UTILITIES & EXCAVATION. |
| 5/17 | ED MARMOLEJO | LEG KENNEDY | 3:15 | NO TIME TO SEE THE PROJECT BUT WANT TO UCCB WITH US ON FR. AFTER IF COMING TO ... |
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RESULTS OBTAINED

| BID SUBMITTED | DECLINED | NO RESPONSE |
|---------------|------------------------|-------------|
| | PER 5/17 CONVERSATION. | |
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**EMERICK CONSTRUCTION COMPANY
MBE/WBE CONTACT LOG**

PROJECT: METRO SOUTH STATIONS MODIFICATIONS BID DATE: MAY 22, 1990
 BID TIME: 11:00 AM

NAME: MARMOLELO CONSTRUCTION INC.

ADDRESS: _____

PHONE: () 630-6379

KIND OF WORK: PAVEMENT MARKINGS

SIZE OF WORK CAN HANDLE: _____

| DATE | PERSON CONTACTED | CONTACTED BY | TIME | COMMENTS/DISCUSSIONS |
|------|------------------|--------------|------|--|
| 5/6 | JOHN A. JENSEN | JOHN KENNEDY | 3:45 | DISCUSS: WILL LOOK AT PAVEMENT MARKINGS IN THE UTILITY SECTION |
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RESULTS OBTAINED

| BID SUBMITTED | DECLINED | NO RESPONSE |
|---------------|----------|------------------|
| | | BID NOT RECEIVED |
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METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATION
OREGON CITY, OREGON

AFFIDAVIT OF JUDI HANEY

State of Oregon)
) ss.
County of Multnomah)

I, Judi Haney, do hereby depose and say as follows:

1. I am President of Westlake Consultants, Inc. ("Westlake"). I make this affidavit based upon my own personal knowledge of the matters herein.

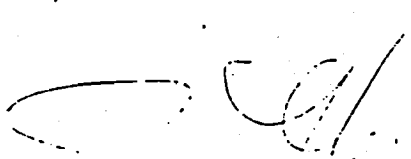
2. Westlake is a certified women-owned business enterprise ("WBE"). Westlake appears in the directory of DBE/MBE/WBE (collectively, "DBE") firms prepared by the Executive Department of the State of Oregon.

3. The Metro South Station Modification Project at Oregon City, Oregon (the "Contract") has been bid twice. I understand that the project was first bid on March 21, 1990 and that the first four bidders failed to meet the DBE goals for good faith efforts. Accordingly, the Contract was bid again on May 22, 1990.

4. Westlake submitted a bid to Emerick for the March 21 bid date. On March 14, 1990, Westlake faxed a letter proposal and scope of services to Emerick for the March 21, 1990 bid. Copies of the letter proposal and scope of services are attached as Exhibit A. Westlake made a lump sum bid of \$19,000. For the March 21 bid, Westlake did not receive a letter from Emerick requesting a subcontractor quotation. Westlake took the initiative in discovering the Contract and submitting a quotation.

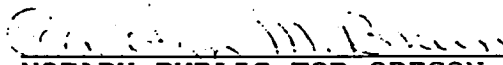
5. For the May 22 bid, Emerick sent a letter to me dated May 10, 1990 requesting a quotation on surveying. On May 15, 1990, my estimator, Mike Hargrade, talked with Joe Kennedy of Emerick. As Emerick's May 22, 1990 telephone log indicates, a copy of which is attached hereto as Exhibit B, Westlake was "bidding" the surveying work.

Dated this 6th day of June, 1990.



Judi Haney

SUBSCRIBED AND SWORN to before me this 6th day of June, 1990.



NOTARY PUBLIC FOR OREGON
My Commission Expires 10-2-92



ENGINEERING ♦ SURVEYING ♦ PLANNING

HILLTOP BUSINESS CENTER
7340 S.W. HUNZIKER, SUITE 204
TIGARD, OREGON 97228

(503) 884-0652
FAX (503) 824-0157

Copy

FAX TRANSMITTAL COVER SHEET

TO: Dennis Barstad
NAME
Emerick Construction
ESTIMATE NAME

DATE: 3-14-90
FAX NO.: 771-2933

PROJECT NAME: Metro South Station PROJECT NO.: Promo

THE FOLLOWING ITEMS ARE TRANSMITTED:

| ITEM | NUMBER PAGES | DATED | DOCUMENT DESCRIPTION |
|------|--------------|-------|----------------------|
| 1 | 1 | 3-14 | Proposal letter |
| 2 | 4 | 3-14 | Scope of Services |
| | | | |

REMARKS: Originals via mail

CC: _____

This cover sheet is page 1 of 6 pages in this transmittal. If you do not receive all of the transmittal, please call our office.

From: Mike Hargrave

EXHIBIT A
PAGE 1 OF 6



WESTLAKE

CONSULTANTS INC.

ENGINEERING ♦ SURVEYING ♦ PLANNING

Phone: 503 684-0652
Fax: 503 624-0157

March 14, 1990

Mr. Dennis Barstad
Emerick Construction
P.O. Box 66100
Portland, OR 97266

Re: Metro South Station
Construction Staking

Dear Dennis:

WESTLAKE CONSULTANTS, INC., IS CERTIFIED BY O.D.O.T. AS A WOMAN BUSINESS ENTERPRISE AND DISADVANTAGE BUSINESS ENTERPRISE.

On behalf of Westlake Consultants, Inc., I am pleased to submit for consideration our cost proposal for construction staking services for the above-referenced project. Our scope of work includes layout for the building addition, piling, employee and trailer parking areas, access road, new site entrance and utilities. A detailed "Scope of Services" is enclosed that describes the work tasks we are proposing to provide.

Our lump sum cost proposal is \$19,000.00.

Thank you for considering our proposal. If you have any questions, or require further clarification, please do not hesitate to call.

Sincerely,

Michael A. Hargrave
Project Surveyor

MAH/cr
encl.

SCOPE OF SERVICES
FOR
South Metro Station

Research, Meetings, Administration

- Obtain data for control, benchmarks, and plans.
- Attend pre-construction meeting and periodic site meetings.
- Schedule and coordinate field and office activities.
- Administer contract and billing.

Initial Control and Layout Calculations

- Locate and tie by traverse existing control monuments.
- Set intermediate horizontal control and benchmarks throughout project site.
- Compute in relation to control lines, x and y coordinates for location of excavation limits, building grid lines, piles, curb lines, retaining walls, manholes, catch basins and utility vaults.

Access Road & Site Entrance

Initial Grading

- Provide slope stakes on each side of access road at 50' intervals.
- Provide slope stakes for new site entrance of 50' intervals.

Top of Rock Grade - Bluetop

- A stake will be set at top of rock grade on each side of access road and on center of improvements at 25 foot intervals.

Curbs

- Provide one set of grade stakes with cut and/or fill to top of curb at requested offset and at the following points:
 - 1) Along tangents at 25 foot stationing.
 - 2) Beginning and end of curves.
 - 3) Along horizontal curves at 25 foot stations (with radii more than 50 feet).
 - 4) 1/4 points along curves with radii less than 50 feet (and radius point with radii less than 25 feet).

South Metro Station
Scope of Services
Page 2

Building Addition

Initial Grading

- Provide one set of grade stakes with cut and/or fill to finish grade at building pad corners.

Grid Lines

- Stake location of grid lines; provide benchmark for finished floor elevation.

Pile Layout

- Stake location of piling (130 total) for building addition, bridge, bulldozer ramp, and retaining walls; mark cut-off elevation on each pile.

Pile As-Builts

- Locate position (horizontal & vertical) of each pile relative to plan location; summarize results.

Retaining Walls

- Provide one set of grade stakes at four foot offset to face of wall.

Parking - Employee and Trailer Lots

- Provide slope stakes around perimeter of parking lots at 50' intervals.
- Provide one set of rough grade stakes with cut and/or fill to finish grade at following points:
 - 1) Along ridge lines and/or gutter lines at approximately 50 foot stations.
 - 2) Catch basin locations.
- Provide one set of blue top stakes at top of rock grade on 50' x 50' grid.

Metro South Station
Scope of Services
Page 3

- Provide one set of final grade stakes at four foot offset to face of curb with cut and/or fill to top of asphalt at the following points:
 - 1) Along tangents at 25 foot stations.
 - 2) Beginning and end of curves.
 - 3) Along horizontal curves at 25 foot stations (with radii more than 50 feet).
 - 4) 1/4 points along curves with radii less than 50 feet (and radius point with radii less than 25 feet).

Utilities

Sanitary Sewer and Storm Drain

- Stake location of all manholes, cleanouts, catch basins and outlets, and mark with offset with cut to flow line.
- Provide offsets to line at 25 foot, 50 foot and 100 foot stations between manholes with cut to flow line.
- Provide one set of offset stakes for corners of sanitary and storm pump stations.

Waterline

- Provide stakes for location of tees, angle points, and fire hydrants.

Utility Vaults and Poles

- Stake location and provide offsets with cut/fill to finish grade.

Mass Grading

Wetlands Area

- Provide two sets of grade stakes with cut and/or fill to finished grade on 50' x 50' grid over revised wetlands mitigation area.

Metro South Station
Scope of Services
Page 4

Landscape Area

- Provide one set of grade stakes with cut and/or fill to finished grade on 100' x 100' grid.

Foundation Survey

- Prepare survey of building location.

In the event that stakes are destroyed and a request is issued to replace them, the contractor will pay the subcontractor on an hourly basis. All restaking or staking outside the above described Scope of Services will be pre-authorized prior to completion.

**EMERICK CONSTRUCTION COMPANY
MBE/WBE CONTACT LOG**

PROJECT: METRO SOUTH STATIONS MODIFICATIONS BID DATE: MAY 22, 1990
 BID TIME: 11:00 AM

NAME: WEST LAKE CONSULTANTS INC

ADDRESS: _____

PHONE: () 089-0652

KIND OF WORK: SURVEYING

SIZE OF WORK CAN HANDLE: _____

| DATE | PERSON CONTACTED | CONTACTED BY | TIME | COMMENTS/DISCUSSIONS |
|----------------|----------------------|---------------------|--------------|----------------------|
| <u>5/14/90</u> | | <u>VAL PFEIFFER</u> | <u>11:40</u> | <u>Call back</u> |
| <u>5/15</u> | <u>MIKE HARGRAVE</u> | <u>JOE KENNEDY</u> | <u>11:40</u> | <u>BIDDING</u> |
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RESULTS OBTAINED

| BID SUBMITTED | DECLINED | NO RESPONSE |
|---------------|----------|-------------------------|
| | | <u>BID NOT RECEIVED</u> |
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METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATION
OREGON CITY, OREGON

AFFIDAVIT OF SUSAN MCCALIB

State of Oregon)
) ss.
County of Multnomah)

I, Susan McCalib, do hereby depose and say as follows:

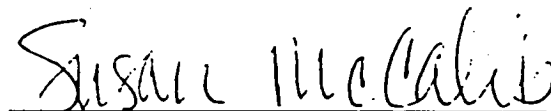
1. I am Secretary to Bruce McCalib, who is the owner of McCalib Concrete Service ("McCalib"). I make this affidavit based upon my own personal knowledge of the matters herein.

2. McCalib is a certified DBE and appears in the Directory of DBE/MBE/WBE ("DBE") directory prepared by the Executive Department of the State of Oregon.

3. On March 14, 1990, I faxed a quote to Emerick Construction Company ("Emerick") for curbs and flat work for the Metro South Station Modifications Project in Oregon City, Oregon (the "Contract").

4. When the Contract was rebid, Bruce McCalib, my husband, changed the date on the March 14, 1990 quote to May 22, 1990 and we faxed it on May 22, 1990 at 10:33 a.m. to Emerick. A copy of the quote and a copy of the fax receipt indicating Emerick's fax number, which is 771-2933, are attached as Exhibit A.

Dated this 6th day of June, 1990.



Susan McCalib

SUBSCRIBED AND SWORN to before me this 6 day of June, 1990.

[Handwritten Signature]

NOTARY PUBLIC FOR OREGON

My Commission Expires: 3-22-94

McCALIB CONCRETE SERVICE
Paving, Curb, and Commercial

2050 N.W. Connell
Hillsboro, Oregon 97124
(503) 640-3832
(503) 693-1712 FAX

Date of Bid: May 22 March 11, 1990 SUBCONTRACTOR QUOTE
Owner: Metro Sewice District
Project Name/Location: Metro South Station Modification, Oregon City
Prepared By: Bruce McCalib

| Item # | Description | Quantity/Unit | Unit Price | Total |
|--------|--|--------------------------------|------------|-------|
| 1 | Type 'A' Curb & Gutter Detail Sheet C-7 | Approx 860/LF Per Sheet C-3 | \$10.00/LF | |
| 2 | Type "A" Curb & Gutter 2 sided detail Sheet C-7 Location per Sheet C-3 | Approx 180/LF | \$16.50/LF | |
| 3 | Type "C" Curb at Washington No detail except as noted Sec A, Sheet C-5 | Approx 620/LF | \$5.10/LF | |
| 4 | 5 1/2" Trailer Storage Slabs 5' x 1500' = 7500 SF Detail Sheet C-6 Location Sheet C-1 | Approx 7500/SF | \$3.00/SF | |

EXCLUSIONS & CONDITIONS

| Item # | Comments |
|--------|--|
| 1 & 2 | Includes 1 move in. Subbase grade +/- .05' by others, includes 3 pieces # 4 continuous. |
| 3 | Includes 1 move in. Subbase grade +/- .05' by others, includes 3 pieces # 4 continuous. Note if additional 2000 LF for - chg 1 LF to 4.90 per. |
| 4 | One move in included. Subbase grade +/- .05' by others. Includes steel in slab. |
| ALL | Line & grade and traffic control provided by others. |
| NOTE: | There is a discrepancy between the access roadway section sheet C-6 & location of curb sheet C-3. |

| | | | | | | | | | |
|------------------|---|-----------------------------|----------------------|------------------------------|--|---|---|---|---|
| MBE - Oregon | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Addendas (Circle) | 1 | 2 | 3 | 4 | 5 | 6 |
| DBE - Oregon | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Bond Included - 2.5% | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | | | | |
| MBE - Washington | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Tax Included | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | | | | |
| DBE - Washington | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | Quote Void After | <u>6/22/90</u> | | | | | |

FAA

Berge 655-4335 ✓
Copenhagen 654-3526 ✓
Elm, Inc Reg 631-3892
Emerick 771-2933 ✓
Robunson 620-3428 ✓
Schomer 233-2714 ✓
Todd 620-6825 ✓
620-7652

METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATION
OREGON CITY, OREGON

AFFIDAVIT OF GILBERT DAVLOS

State of Oregon)
) ss.
County of Multnomah)

I, Gilbert Davlos, do hereby depose and say as follows:

1. I am the President of Buffalo Welding, Inc. ("Buffalo").
I make this affidavit based upon my own personal knowledge of the matters herein.

2. Buffalo is a certified MBE/DBE firm and appears in the directory of DBE/MBE/WBE firms prepared by the Executive Department of the State of Oregon.

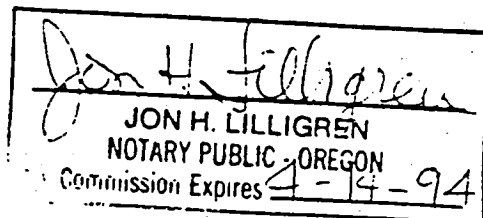
3. Although Buffalo did not receive any type of letter from Emerick Construction Company ("Emerick"), soliciting Buffalo's bid on the Metro South Station Modification Project at Oregon City, Oregon (the "Project"), I called Emerick's office and submitted a quote on May 21, 1990. I submitted a quote on the Project for \$32,570.00 for aluminum rail. My quote is still a good quote and I would still provide the aluminum rail for that price.

Dated this day of June, 1990.

Gilbert Davlos
Gilbert Davlos

SUBSCRIBED AND SWORN to before me this 6 day of June, 1990.

Jon H. Lilligren
NOTARY PUBLIC FOR OREGON
My Commission Expires: 4-14-94



5/22/1990

EMERICK - 503-777-5531 ✓ 8:15

DENNIS - \$521,352.00

NO COMMENT OTHER THAN IT COVERED
THE ITEMS AS WE HAD TALKED ABOUT.

COPENHAGEN UTILITIES - 503-654-3104 8:10

MAX MARCOTT - \$360,424.00 ✓

Max took quote as if it included bond
I said no, he ask how much for bond I told
him 2% he ask if we were bondable I
said yes.

EXHIBIT
PAGE 1

A
5

5/22/1990

8:20

Berge Bros Ent - 503-685-2865

Ted - \$521,352.00

NO - comment - Just THANK YOU.

5/22/1990

8:30

Slayden Construction, Inc. - 503-749-1969

\$521,352.00

TALKED TO RECEPTIONIST SHE WILL FORWARD
TO BRUCE. SHE ASK IF WE WERE A DBE,
I SAID YES

EDT Construction, Inc.
7409 N.E. Hazel Dell Ave.
Vancouver, Wa. 98665
(206)699-5275

Project: South Station Modification
Bid Date: 5-22-90

Items

Mob
Demolition
Access & New Appr.
Building Exc.
Footing Exc.
Foundation B/F
Mass Exc
Strip&Place topsoil
Embankment
Retain Wall Exc.
Wall B/F
Finish S.G.
Slab on Grade
Wetland Grading

Clear & Grub
Strip Topsoil
Grade Pond S.G.
Screen Topsoil
Spread Topsoil
Bentonite
Fine Grade Site
Rip Rap
Flow Control Gate
Wood Parking Bumper

Exclusions:

Permits & Fees
Engineering
Concrete Work (footings, retaining walls, bridge)
Foot Bridge
Crushed Rock & Paving
Pathways
Landscaping & Irrigation

NO UNDERGROUND

Copenhagen utilities

\$ 360,424.00

2% for Bond.

EDT Construction, Inc.
7409 N.E. Hazel Dell Ave.
Vancouver, Wa. 98665
(206)699-5275

Project: South Station Modification
Bid Date: 5-22-90

Items

Mob ✓
Demolition ✓
Access & New Appr. ✓
Building Exc. ✓
Footing Exc. ✓
Foundation B/F ✓
Mass Exc ✓
Strip & Place topsoil ✓
Embankment ✓
Retain Wall Exc. ✓
Wall B/F ✓
Finish S.G. ✓
Slab on Grade ✓
12" RCP ✓
15" RCP ✓
18" RCP ✓
21 RCP ✓
24" RCP ✓
4" PVC ✓
6" PVC ✓
10" PVC Sch 80 ✓
6" DIP ✓
8" DIP ✓
6" Water ✓
8" DIP Temp ✓
Fire Hydrant ✓
48" Manholes ✓
48" Sand-Oil Separator ✓
Curb Inlets ✓
Trench Exc. ✓
Pipe Bedding

Wetland Grading

- Clear & Grub ✓
- Strip Topsoil ✓
- Grade Pond S.G. ✓
- Screen Topsoil ✓
- Spread Topsoil ✓
- Bentonite ✓
- Fine Grade Site ✓
- Rip Rap ✓
- Flow Control Gate ✓
- Wood Parking Bumper ✓

\$521,352.00

Exclusions:

- Permits & Fees
- Engineering
- Concrete Work (footings, retaining walls, bridge)
- Foot Bridge
- Lift Stations (Prime set, We excavate & backfill)
- Crushed rock & Paving
- Pathways
- Landscaping & Irrigation

Frederick S. ...
Kerge K105
Stuydent Construction

RECORDED
2011 01 14

JUN 1 1990

METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATION
OREGON CITY, OREGON

DEPT. HEAD
COMMUNITY REL.
SECURITY

AFFIDAVIT OF AUDREY CASTILE

State of Oregon)
) ss.
County of Multnomah)

I, Audrey Castile, do hereby depose and say as follows:

1. I am the owner of S&L Landscaping, Inc. ("S&L"). I make this affidavit based upon my own personal knowledge of the matters herein.

2. S&L is a certified WBE/DBE and appears in the DBE/MBE/WBE directory prepared by the Executive Department of the State of Oregon.

3. During the morning, on May 22, 1990, I faxed a quote to Emerick Construction Company ("Emerick") for certain landscaping work for the Metro South Station Modification Project in Oregon City, Oregon (the "Contract"). A copy of the quote and fax journal showing Emerick's receipt of S&L's quote, are attached as Exhibit 1.

4. The plans and specifications for the Contract required two types of fabric: inexpensive fabric was required for drainage and an expensive fabric was required for erosion control. S&L's quote included the inexpensive fabric, but excluded the erosion control fabric.

5. S&L submitted a total bid in the amount of \$251,992.00 plus a lump sum on labor only for fabric installation and a unit

price on topsoil. I understand that Emerick used a bid for landscaping in the amount of \$323,000.00. Emerick could have used my bid in the amount of \$251,000.00, and obtained a price for erosion control fabric in the amount of \$50,000.00 to \$70,000.00 from some other vendor, which would have resulted in a lower price for the landscaping portion of this Contract than the bid used by Emerick. I think S&L was low bidder on the portion of work that it bid.


6. I have reviewed the summary of good faith efforts submitted by Emerick, a copy of which is attached hereto as Exhibit 2. I note that S&L's bid is not reflected on that summary. I have not been given any reason why Emerick did not acknowledge our bid on the summary. I do not believe that Emerick used good faith efforts to obtain WBE/DBE participation for this Contract.

Dated this 8 day of June, 1990.

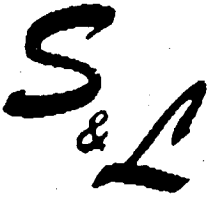


Audrey Castile

SUBSCRIBED AND SWORN to before me this 8th day of June, 1990.



NOTARY PUBLIC FOR OREGON
My Commission Expires: Aug. 4, 1990



Landscaping Inc.

8100 SW Durham Road • Tigard, Oregon 97224

Phone (503) 639-1395

BID QUOTE
METRO SOUTH STATION
May 22, 1990

BID SECTIONS:

- #02810 Irrigation
- #02920 Soil Preperation
- #02930 Lawns & Grass
- #02950 Trees, Shrubs, & Groundcover

TOTAL BID.....\$ 251,992.00

TOPSOIL:

- To be supplied at.....\$ 6.25 per yd.
- To be placed at.....\$ 4.00 per yd.

FILTER FABRIC:

Labor ONLY.....\$ 15,000.00

INCLUSIONS:

Gravel walkway

EXCLUSIONS:

- Bentonite sealing
- Entry sign
- Bridge
- Rip rap
- Anything related to grading and/or installing of pond

<<< JOURNAL >>>

| NO. | OTHER FACSIMILE | MODE | PAGES | RESULT |
|-----|-----------------|------|-------|--------|
| 01 | 6909291 | TX | 01 | OK |
| 02 | INCOMING | RX | 02 | OK |
| 03 | 2350829 | TX | 01 | OK |
| 04 | 12054258962 | TX | 04 | OK |
| 05 | INCOMING | RX | 05 | OK |
| 06 | INCOMING | TX | 03 | OK |
| 07 | 16543526 | TX | 03 | OK |
| 08 | 7712933 | TX | 03 | OK |
| 09 | 17492206 | TX | 03 | OK |

METRO SOUTH STATION MODIFICATIONS
2.04.160 DETERMINATION OF GOOD FAITH EFFORTS
SUBPARAGRAPH (5) DOCUMENTATION

EMERICK CONSTRUCTION COMPANY

| <u>SUB/SUPPLIER NAME</u> | <u>MINORITY STATUS</u> | <u>TYPE OF WORK</u> | <u>BID AMOUNT</u> | <u>BID AMOUNT USED</u> | <u>REASON REJECTED</u> |
|------------------------------|------------------------|--------------------------------------|-------------------|--------------------------|------------------------|
| Lopez Paving, Inc. | DBE | Asphalt Paving & Base | \$310,560 | 257,795 | Not Low Bidder |
| A & G Landscape | WBE | Landscape & Irrigation | 335,300 | 323,000 | Not Low Bidder |
| Lopez Concrete Service | DBE | Concrete Curb & Gutters | 50,964 | 26,400 | Not Low Bidder |
| Apply-A-Line | DBE | Pavement Markings | 3,761 | 3,761 | Low Bidder |
| Pacific Steelock Fence | DBE/WBE | Fencing | 18,059 | 12,410 | Not Low Bidder |
| | | | | (used Pete's Westside) | |
| Pete's Westside Fence | WBE | Fencing | 12,410 | 12,410 | Low Bidder |
| Triad Steel Inc. | DBE | Reinforcing Steel Furnish & Place | 81,383 | 75,440 | Not Low Bidder |
| Ballard Construction Co. | WBE | Reinforcing Steel Furnish | Unit Price | 26,850 | Not Low Bidder |
| Rainier Steel Inc. | DBE | Reinforcing Steel Furnish | Unit Price | 26,850 | Not Low Bidder |
| Northwest Concrete Pumping | WBE | Concrete Pumping | Unit Price | Unit Price | Low Bidder |
| Brainard Sheet Metal | DBE | Flashing, Sheet Metal & Metal Siding | 15,323 | 15,323 | Low Bidder |
| Commercial Interior & Spec. | DBE | Resilient Flooring | 975 | 975 | Low Bidder |
| Pro-Sign | WBE | Site Signage | 7,350 | 7,350 | Low Bidder |
| Pen-Nor Inc. | DBE | Mechanical | 65,280 | 32,822 | Not Low Bidder |
| Paragon Fire Sprinkler, Inc. | WBE | Fire Protection | 22,489 | 17,630 | Not Low Bidder |
| MSI Mechanical System | WBE | Mechanical | 32,822 | 32,822 | Low Bidder |
| EBA Sheet Metal | DBE | HVAC Only | 25,490 | 32,822 | Not Low Bidder |
| | | | | (used MSI complete mech) | |
| Blessing Electric | DBE/WBE | Electrical | 259,000 | 194,500 | Not Low Bidder |
| Cross Continent Engr. | DBE/WBE | Surveying | Unit Price | 19,000 | Not Low Bidder |
| Brothers Concrete Cutting | DBE | Concrete Cutting | Unit Price | Unit Price | Low Bidder |
| Prem Singh & Associates | DBE | Surveying | Unit Price | 19,000 | Not Low Bidder |



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

RECEIVED

JUN 19 1990

TIME 3:45 PM
METRO SERVICE DISTRICT
GENERAL COUNSEL

Date: June 19, 1990
To: Dan Cooper, General Counsel
From: Neil E. Saling, Acting Director - Finance & Administration
Regarding: Comment on Robinson Construction Company Bid Protest

As I will be absent from the Contract Review Board hearing of Robinson Construction Company's (Robinson's) appeal of the Executive Officer's rejection of their bid protest of the award of the Metro South Station Modifications contract to Emerick Construction Company (Emerick), you have asked for my informal comments on Robinson's June 13, 1990 letter of appeal.

General

The letter of appeal is a virtual duplicate of the bid protest the law firm of Allen, Kilmer, Schrader, Yazbeck and Chenowith (Schrader) prepared earlier for Slayden Construction Company (Slayden). Slayden earlier protested the award of the contract to Emerick, but the protest was not submitted in a timely manner and was rejected. Schrader is now the co-counsel with the law firm of Moomaw, Miller and Reel (Moomaw).

Metro DBE/WBE Program

The Metro DBE program is an outreach effort based upon sound business practices. If the outreach is capable of achieving DBE/WBE participation at the desired levels, examination of that effort is unnecessary. However, if the devised levels of participation are not achieved, an examination of these "good faith efforts" becomes necessary to determine compliance with the Metro Code.

The good faith efforts require a contractor to divide the potential project into defined subelements suitable for subcontracts with DBE/WBE firms. These potential subcontracts are offered to DBE/WBE firms for quotes or bids. The Metro Code, however, does not require award to a DBE/WBE firm unless that firm is the lowest responsible, responsive bidder/proposer.

It should be noted that the Metro Code has no provisions for "negotiation" with the DBE/WBE firms. Such negotiation is viewed by many in the contracting community as "bid-shopping" and is therefore undesirable.

Robinson Construction Company Bid Protest

Page 2.

Marmolejo

Ed Marmolejo chose not to bid on the subcontracting elements established by Emerick. Emerick had no obligation to pursue Marmolejo for a bid. Marmolejo's statements indicate that he was available for negotiating a subcontract, but he apparently did not wish to compete on the defined elements of the contract.

Repeat Solicitations

Nothing in the Metro Code requires contacts be made with previously contacted subcontractors on a rebid. One view might be that Emerick expanded the potential field by contacting other subcontractors, particularly since two of the previously contacted DBE/WBE subcontractors submitted unsolicited bids.

Clear Identification of Subcontracts

The response to Emerick indicates that the contracting community understood the scope of the proposed subcontracts. A simple telephone call to Emerick by a truly interested firm should be expected if any confusion existed.

Meeting Goals

Emerick elected to choose their subcontractors based upon a strict adherence to the Metro Code. None of the DBE/WBE firms cited were fully responsive.

Castille: Submitted a partial quote.

McCalib: Submitted a quote 27 minutes before bid opening.

Davlos: Quoted on only supplying a part of the proposed steel subcontract.

Gilmore: Quoted only a part of the proposed demolition subcontract.

Robinson Construction Company Bid Protest
Page 3.

Summary

The general theme of Robinson's appeal is that Emerick could have achieved a higher level of DBE/WBE participation by a variety of negotiations and through modifications to their subcontract list. While this might be true, Emerick was not required to do so by the Metro Code. Neither might they be the low bidder if they had followed such practices.

NES:jp

cc: Amha M. Hazen
Contracts Administrator

SEIFER, YEATS, WHITNEY & MILLS

DANIEL J. SEIFER
ELIZABETH YEATS
SUSAN G. WHITNEY
RODNEY R. MILLS
CHRISTOPHER E. MARTIN

ATTORNEYS AT LAW
SUITE 1516
900 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

TELEPHONE
(503) 223-6740
FAX (503) 223-9564

June 22, 1990

RECEIVED

JUN 22 1990

TIME: 9:45 am
METRO SERVICE DISTRICT
OFFICE GENERAL COUNSEL

Metropolitan Service District
Contract Review Board
2000 S. W. First
Portland, OR 97201-5398

HAND DELIVERED

Re: Metro South Station Modifications
Response to Bid Appeal

Ladies and Gentlemen:

This office represents Emerick Construction, to which Metro has given notice of conditional award for the project above referenced. Our client has asked us to respond to the appeal of Robinson Construction Company from the Executive Officer's decision of June 7, 1990, rejecting Robinson's bid appeal.

Metro's Disadvantaged Business Program (§2.04.100 et seq.) requires the successful bidder on a Metro construction project either to achieve designated goals for DBE/WBE participation or to demonstrate "good faith efforts to achieve the goals." §2.04.160(b). Although Emerick did not achieve the goals, it both made and demonstrated extensive efforts to do so. As is reflected in supporting affidavits, if Emerick's efforts on this project are held to be insufficient, the Program itself is probably unworkable.

Robinson's bid appeal attacks Emerick's efforts to secure DBE/WBE participation in its bid. Emerick's efforts were documented in a thick notebook submitted to Metro pursuant to requirements of the Program. Emerick's efforts are also summarized in several documents being submitted with this letter:

1. Affidavit of Kevin Spellman,
President, Emerick Construction
2. Affidavit of Dennis Barstad,
Emerick project manager/estimator
3. Affidavit of Joe Kennedy,
Emerick estimator

Metropolitan Service District
Contract Review Board

Page 2
June 22, 1990

4. Affidavit of Jack Kalinoski,
AGC Executive Director
5. Affidavit of David Gilmore,
Gen. Mgr. of EDT Construction
6. Affidavit of Kerry Brainard,
Brainard Sheet Metal
7. Affidavit of James Cason,
President of Pen-Nor, Inc.

Upon review, Solid Waste staff found these efforts sufficient. In rejecting Robinson's bid appeal, the Executive Officer concurred.

The Executive Officer's decision is correct, and Robinson's bid appeal should be rejected by you. First, Emerick did make good faith efforts to achieve the DBE/WBE goals for the project, in strict accordance with the Metro Disadvantaged Business Program. Second, in direct violation of Metro's bid appeal procedure, Robinson's appeal is based upon other and different laws, rules, regulations and procedures from that cited to the Executive Officer. Third, even if the additional issues now raised by Robinson are considered, the appeal is clearly unfounded, and is both factually incorrect and legally unsupported.

Emerick did make good faith efforts to achieve the DBE/WBE goals for the project in strict accordance with the letter and the spirit of the Metro Disadvantaged Business Program.

The Metro South Station Modifications Project was first advertised for bids early this year. Bids were opened on March 21, 1990. The apparent low bid was submitted by Robinson, and the apparent second low bidder was Emerick. However, Robinson did not comply with Metro's Disadvantaged Business Program. Robinson failed either to meet the goals for DBE and WBE participation in the contract, or to submit documentation necessary to demonstrate a good faith effort to meet those goals, as required by the ordinance. Emerick asked that the project be awarded to Emerick. Metro determined to reject all bids and readvertise the project.

Metropolitan Service District
Contract Review Board

Page 3
June 22, 1990

Bids were opened for the readvertisement on May 22, 1990. Emerick was the low bidder. Slayden Construction ("Slayden") was the apparent second low bidder, and Robinson was third. Emerick did not meet the goals for DBE and WBE participation in the contract, but did submit documentation of its good faith effort to meet the goals, in accordance with Metro's Disadvantaged Business Program. On May 25, 1990, Metro notified Emerick of its intent to award a contract to Emerick for the project, contingent only on contract execution and submittal of required bonds and insurance. On June 4, 1990, Robinson appealed Metro's notice of award to Emerick. The appeal was considered, and was rejected by the Executive Officer's written decision dated June 7, 1990. Robinson has now appealed the rejection to the Contract Review Board. The Executive Officer's decision was clearly correct, and Robinson's bid appeal should be rejected by this Board, as it was by the Executive Officer.

Robinson's protest is based upon three alleged deficiencies in Emerick's good faith efforts to obtain DBE and WBE participation. First, Robinson acknowledges that Emerick's efforts included "identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises," as required by the Program, but contends that Emerick failed to identify the units "with the greatest likelihood of increasing participation." Second, Robinson acknowledges that Emerick provided 170 written notices soliciting sub-bids to 113 DBE and WBE firms, but contends the solicitations were technically defective in five listed respects. Third, Robinson acknowledges that Emerick's good faith efforts included "making ... follow-up phone calls to all DBE/WBE's who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so," but contends that there was insufficient follow-up effort with respect to firms whose telephones had been disconnected, and that the documentation of follow-up phone calls was defective in failing to list more details of the conversation.

The Executive Officer's decision contains a detailed analysis with respect to each of Robinson's contentions, based upon essentially undisputed facts. The Executive Officer correctly concluded, with respect to each contention, that Emerick's efforts fully complied with the "good faith

Metropolitan Service District
Contract Review Board

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June 22, 1990

efforts" requirements of the Program. See also, Affidavits of Jack Kalinoski (AGC) and James Cason (Pen-Nor). We believe you will reach the same conclusion. For your convenience, our response is itemized consistently with Robinson's protest, as discussed in the June 13, 1990 letter from Larry D. Moomaw.

1. Robinson initially complained that Emerick has failed to break the project down into the "most efficient, economically feasible units," and therefore that Emerick has failed to comply with Metro Code §2.04.106(b)(2). Essentially the same contention is now phrased as an alleged failure to use units with the greatest likelihood of increasing participation. The cited Code section only requires bidders to break the project down into "economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises." The Code does not require that the breakdown be the most efficient or have the greatest likelihood of participation.

The 28 economically feasible units identified by Emerick were selected in order to increase the likelihood of participation by DBEs or WBEs.

For example, pile driving and shotcrete were combined because there were no certified DBE/WBEs specializing in shotcrete. Since the shotcrete work on this project is foundation related, this grouping was likely to induce a DBE/WBE specializing in pile driving to include the shotcrete in its bid, with the expectation that the shotcrete work would be subcontracted to others.

Mechanical and fire protection were combined for the same reason, there being no DBE/WBEs listed for fire protection.

With respect to the flashing, sheet metal and metal siding combination, it should be noted that Emerick received a bid from, and intends to award a contract to a DBE (Brainard Sheet Metal) for this package. See Affidavit of Kerry Brainard.

The steel doors were packaged with finish hardware to give DBE/WBE general contractors an opportunity to bid on this work because there were an insufficient number of

Metropolitan Service District
Contract Review Board

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June 22, 1990

DBE/WBE specialty subs listed for this work. During the first bid opening for this project, bids were received by Emerick for this combination.

Drywall and acoustical ceilings are often combined, and this combination gives additional opportunities to DBE/WBE general contractors and specialty subcontractors. Again, bids for this combined package were previously received by Emerick.

Even though the feasible economic units identified by Emerick did combine more than one unit of work, it should be noted that Emerick willingly accepted and received bids for discrete portions of these combined units. For example, Emerick received a bid for furnishing and placement of the reinforcing steel from Triad and also received bids for furnishing the steel only from Ballard and Rainier, all of whom are DBE/WBES.

The identification of economically feasible units by Emerick was in fact designed to achieve the greatest likelihood of increasing participation" of DBE/WBES and certainly met the requirements of §2.04.160(b)(2).

2. Robinson complains that Emerick failed to meet the minimum requirements of written notice required for solicitation of DBE/WBES, as set forth in §2.04.160(b)(4). This Code section requires solicitation of not less than five DBE/WBES for each subcontracting or materials supply work identified as an economically feasible unit or, if there are less than five certified DBE/WBES listed for that work or supply specialty, then the solicitation of the number of DBE/WBES listed for the specialty.

(a) Robinson complains that Emerick failed to send the required number of notices for each specific economically feasible unit, arguing that this is demonstrated by the fact that Emerick sent solicitations to only four qualified DBE/WBES for the roofing unit. Emerick also mailed solicitations to two firms on the March list of DBE/WBE firms which Metro directed all bidders to use, although those firms were deleted on a May update of the list. However, the remaining four DBE/WBES solicited by Emerick included all roofing DBE/WBES listed, and therefore satisfies the requirement of §2.04.160(b)(4).

Metropolitan Service District
Contract Review Board

Page 6
June 22, 1990

Robinson argues, without any cited authority, that Metro staff had no authority to designate which issue of the DBE/WBE directory is applicable to a given bid. Metro's Program expressly provides that the directory is to be maintained by Metro staff, based upon the State Executive Department's list of certified DBE and WBE firms. §204.125 and 2.04.140(b).

(b) Section 2.04.160(b)(4) does not require that Emerick identify all centers where plans may be reviewed, but simply that Emerick identify details where project specifications may be reviewed in its solicitation. As noted by Robinson, Emerick's solicitation identified three such plan centers: the Daily Journal of Commerce in Portland, Construction Data West, Portland, and Impact Business Development, in Portland. The identification of these three plan centers clearly satisfied the requirements of §2.04.160(b)(4).

The specifications did not identify any plan centers from which plans could be obtained for the project. Emerick personnel contacted Metro personnel to find out the centers from which plans for the project could be obtained. Metro personnel identified only the three plan centers listed by Emerick in its solicitation. Significantly, not one of the over 100 DBE/WBE firms solicited by Emerick raised any questions about where plans could be obtained or the availability of plans for review.

(c) The notices sent by Emerick included a description of the work for which subcontract bid/proposals were requested, contrary to the assertions made by Robinson in its letter. There is no requirement in the Program to "offer to subdivide units into more feasible units (sic)."

As a result of a word processing error, the wrong contact person was listed on some of the solicitation letters. However, the correct firm name and address were listed, and there was no prejudice, since the letters were delivered to the proper firms. In any event, personal telephone contact was made later in every case. Robinson's attorney, in his appeal letter of June 13, 1990, virtually acknowledges that this contention is a "minor irregularity" properly waived by Metro under §2.04.155(g).

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(d) Emerick solicited DBE/WBE general contractors where less than five specialty contractors were listed for a particular unit of work. The solicitation of general contractors in these areas increased the likelihood of DBE/WBE participation, consistent with Metro's goal. When general contractors were solicited, Emerick did identify the particular economic unit of work for which a quote was being solicited.

(e) Where a single DBE/WBE was listed as a specialty contractor in different categories, more than one solicitation was sent to that DBE/WBE. Separate solicitation letters were sent in these instances because Emerick did not want to give the DBE/WBE the impression that package bids only would be considered. This additional effort and expense increased the likelihood of DBE/WBE participation, consistent with Metro's goals.

3. Robinson's assertion that Emerick failed to comply with §2.04.060(b)(5) by not demonstrating any effort to follow up on disconnected numbers, is in error. The documentation provided by Emerick demonstrates that in virtually every instance in which Emerick discovered a disconnected number, it attempted to obtain a new listing for the solicited DBE/WBE. There is no requirement in the Program that Emerick make separate phone calls for each category of work solicited if more than one bid is solicited from a particular DBE/WBE.

Section 2.04.160(b)(7) of the Program provides:

It shall be a rebuttable presumption that a bidder or proposer has made a good faith effort to comply with the contract goals if the bidder has performed and submits written documentation of all of the above actions.

Robinson attempts to rebut this presumption by its assertion that Emerick received four unsolicited DBE/WBE bids, three of which were utilized by Emerick. This fact, even if true, would not be sufficient to rebut the presumption of good faith efforts, since all of the guidelines established by the Program were fully followed by Emerick.

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More importantly, Emerick's documentation represents efforts to increase participation beyond that already offered, and not simply paperwork for technical compliance. Apply-A-Line and Pro-Sign submitted low bids to Emerick for pavement marking and signage the first time this project was bid. Prior to the second bid, Emerick contacted each firm and both confirmed that they were bidding the second letting. The two other DBE/WBE bids utilized by Emerick which did not receive solicitation letters were Northwest Concrete Pumping and Brainard Sheet Metal. Brainard Sheet Metal initially submitted a bid for a combination of units which was not workable or feasible. Through negotiations during the bid process, Emerick and Brainard jointly developed an acceptable scope and price for the flashing, sheet metal and siding portion of the work. See Affidavit of Kerry Brainard. Northwest Concrete Pumping submitted a bid on items of work which were not identified as feasible economic units. This bid was utilized since it was low.

Metro's Program requires bidders to advertise for DBE/WBE sub-bids and to work with minority organizations to encourage participation by DBE/WBEs. The obvious intent of these requirements is to assure that DBE/WBEs who are not directly solicited have an opportunity to bid. The fact that bids were received from DBE/WBEs who were not directly solicited shows the effectiveness of Emerick's other efforts to encourage DBE/WBE participation. See Affidavits of Jack Kalinoski and James Cason.

In direct violation of Metro's bid appeal procedure, Robinson's appeal is based upon other and different laws, rules, regulations and procedures from that cited to the Executive Officer.

The Board will observe that Robinson's appeal is supported by two different letters from two different law firms, purporting to act as co-counsel for Robinson. The letter from Lynn K. Woods dated June 13, 1990 raises substantially the same issues as a letter dated June 6, 1990 which the same firm directed to the Executive Officer, as a bid appeal on behalf of Slayden. Slayden's appeal was not timely under Metro's bid appeal procedures, and was rejected by the Executive Officer as untimely. Slayden has not appealed that decision of the Executive Officer.

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Rather, it appears that Slayden's attorneys now act as co-counsel for Robinson, and are attempting to expand substantially the citation of law, rule, regulation or procedure from that which was presented to the Executive Officer.

Metro's bid appeal procedure is specific. Section 2.04.031(b)(1) provides that all bid appeals are to be made in writing and "must describe the specific citation of law, rules, regulation, or procedure upon which the appeal is based." The bid protest which attorney Larry Moomaw initially made on June 4, 1990 on behalf of Robinson to the Executive Officer complied with this requirement, and specifically cited alleged defects, discussed at length above. These are the issues which were investigated by the Executive Officer and Metro staff, and were the subject of the Executive Officer's decision which is being appealed to you.

Since none of the issues discussed in Ms. Woods' letter, whether factual contentions or legal argument, were cited by Robinson in its written protest, your Executive Officer and staff have had no opportunity to conduct investigation, perform analysis or make recommendation to you with respect to them.

It is a well-established principal in the appeal of a legal determination that the appeal be reasonably confined to the issues originally determined. Oregon Constitution, Article VII, Section 3. Cf., ORS 19.125. This principal is included within the Administrative Procedure and Rules controlling determinations of contested matters by all state agencies and departments. ORS 183.450(2); ORS 183.415(11). The Oregon courts have expressly held that board review must be confined to the record presented. Rolfe v. Psychiatric Security Review Board, 53 Or App 941, 951 (1981); rev den., 292 Or 334 (1981). Cf., Amundson v. AFS, 63 Or App 313, 318 (1983).

Without inquiring into the motivation or agreements which may underlie Slayden's attorneys now serving as co-counsel to Robinson, the untimely introduction of these issues is a serious affront both to the orderly functioning of Metro's bid appeal procedures and the fundamental fairness owed to other affected bidders.

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Even if newly-raised issues are considered, Emerick is clearly entitled to award.

Robinson/Slayden's second, separate presentation, consisting of Ms. Woods' written argument and a series of affidavits, is no more persuasive than the first. The second presentation begins with an effort to set forth assumedly undisputed facts about the bidding, including that "Slayden's bid was approximately \$10,000 higher than Emerick's bid." Emerick's bid to you was in the amount of \$2,784,000, and Slayden's bid to you was in the amount of \$2,812,908, a difference of \$28,908. Why this difference is calculated as "approximately \$10,000" is unclear. More importantly, since Slayden is not a party to the protest, the relevance of this disparity is remote. Robinson's bid of \$2,849,849 is \$65,849 more than Emerick's bid, but of course, none of these dollar differences are properly considered in determining whether or not Emerick complied with the Disadvantaged Business Program.

The second submission of Robinson/Slayden also has several listed subparts. First, it is contended that Emerick's contacts with Marmolejo Contractors, Inc. somehow lacked required good faith efforts, were improperly documented or violated state statute. Second, it is contended that Emerick's documentation failed to utilize bids from Westlake and others. Third, it is argued that Emerick failed to send solicitation letters to DBE/WBE firms from which bids were already anticipated. Fourth, it is contended that Emerick's solicitation letters were too general in describing the units of work. Fifth, it is contended that Emerick's bid should be rejected because its MBE documentation was incomplete. Sixth, several speculative scenarios are set forth to show how Emerick could have met the goals, implying that a failure to meet the goals cannot ever be in good faith. In the event that the Board may consider these issues, a detailed response is required, and itemized consistently with Ms. Woods' letter of June 13, 1990.

2.1 The centerpiece of the Robinson/Slayden challenge is an affidavit from Ed Marmolejo, who claims that Emerick's log of a telephone conversation with him is inaccurate. This is a simple disagreement over what occurred during that telephone conversation. Joe Kennedy, Emerick's estimator who

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spoke with Mr. Marmolejo, stands by his log. See Affidavit of Joe Kennedy. Mr. Marmolejo's affidavit is more akin to a legal argument than a statement of fact, and it relies on his own telephone log. However, the affidavit is much more effusive than the log and it seems that Mr. Marmolejo now recalls a number of important statements that he chose not to include in his extensive contemporaneous notes. For instance, his notes do not record what he now remembers saying about his capability to provide his own bonding and his capability to perform "many different types of work." Similarly, they do not record that he "would be able to put together a bid in a very short time frame." This whole issue boils down to which party failed to follow up with a further phone call. On this, the facts are clear. The Affidavit, and the Robinson/Slayden argument, complain that Marmolejo "never heard any more" from Emerick, but Mr. Marmolejo's own notes record his statement that he "would try to call [Mr. Kennedy] tomorrow."

More importantly, those issues are absolutely irrelevant. Metro's Program requires that its contractors make written solicitation and follow-up phone calls to encourage DBE/WBE participation. The whole concept of "good faith efforts" recognizes that all firms solicited or contacted may not actually submit bids. Emerick fulfilled its obligations, and whether Marmolejo prepared a bid was its responsibility. See Affidavit of Jack Kalinoski.

2.2 Ms. Woods' letter makes much of Emerick's alleged "(failure) to acknowledge the bid, much less accept the bid, of Westlake Consultants, Inc." That allegation is supposedly supported by an attached Affidavit from Judi Haney, President of Westlake. In fact, despite assurances from Westlake that it would bid, no such bid was submitted or received. A careful review of Ms. Haney's affidavit, the foundation of Slayden's allegations does not claim otherwise. It may be that Westlake intended to quote the same price for the same work on the second letting, but there is absolutely no evidence anywhere that that intent was communicated to Emerick. See also, Affidavit of Kevin Spellman.

2.3.1 Robinson/Slayden accuses Emerick of seeking only technical compliance with the Program, while not truly attempting to garner DBE/WBE participation. In support of this proposition, Emerick is taken to task for not sending letters to DBE/WBEs who had bid previously. Although

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Ms. Woods' letter claims four such firms, only three are mentioned. The logic of this criticism escapes us since Emerick in fact received bids from, and intend to contract with, two of those firms. Emerick called Apply-A-Line to secure its updated bid, and negotiated a revised scope of work with Brainard on which it in fact did bid. The challenge seems to be that Emerick did not include these extraordinary actions as evidence of its good faith effort.

2.3.2 Robinson/Slayden also claims that Emerick should have abandoned all those DBE/WBEs who chose, for one reason or another, not to bid in March. Emerick took the opposite view, namely that the optimum way to increase DBE/WBE participation was to include those very firms. This it did, and with some success. In any event, nothing in the Program or in common sense precludes a continuing effort to develop participation for the second bidding.

2.4 Robinson/Slayden has submitted affidavits from four DBE/WBE firms which extended price quotations to Emerick, but which do not appear in Emerick's submitted documentation of its good faith efforts. It is implied that these are low quotations which Emerick rejected, but that implication is false, to the point of being ludicrous. Emerick acknowledges that these four bids were received and considered, and that they are not included in the summary of bids received. In one instance, the receipt of the bid, and the fact it was not low, is recited in the submitted documentation, although it is inadvertently omitted from the summary sheet. In a second instance, although a bid was telephoned to Emerick, the caller didn't identify the firm as a DBE or MBE. In two instances, Emerick did receive last-minute bids which were not low, and which were inadvertently omitted from supporting documentation.

It is extremely important to note that this aspect of the appeal is based upon alleged defects in Emerick's documentation of its good faith efforts, and not upon alleged defects in Emerick's efforts. There is no dispute that, in each instance, bids were properly solicited by Emerick from the DBE/WBE firms in question, nor is there any issue as to the amount of the bids. Rather, Robinson/Slayden contends that Emerick's bid should be rejected because the four firms

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in question were not listed in the post-bid documentation of good faith efforts which Emerick submitted pursuant to the Program.

As is explained in the Affidavit of Kevin Spellman, the "bid cards" in Emerick's office, prepared during the telephone bids received from the four firms in question, had been removed from the "bid board." Each of the bids was analyzed as part of a series of "packages" to try and develop the lowest cost to Metro for the performance of a series of items of work. See also, Affidavit of Dennis Barstad. Mr. Kennedy of Emerick, who had primary responsibility for assembling the summary of good faith efforts, was unaware that some bids had been removed from the bid board for analysis in packages, and therefore did not see those bids in preparing his summary. See also, Affidavit of Joe Kennedy.

EDT is not listed on Emerick's post-bid summary of bids received, but the supporting phone log submitted by Emerick shows that the bid was received, and was not low. Under §2.04.160(b)(7) of the Program, a DBE bid which is not low is properly rejected. The EDT bid for demolition was analyzed by Emerick in a series of sitework "packages," and the "bid card" was removed from the "bid board" to make those analyses. See Affidavit of Dennis Barstad. Mr. Kennedy, as recited in his Affidavit, did not see the bid card in preparing the summary of bids received. This oversight is particularly unfortunate in that Emerick had taken especially active steps to involve EDT in the project, and to negotiate a successful scope of work. So the record is clear, Mr. David Gilmore has prepared a supplemental Affidavit to that supplied by Robinson/Slayden, which is submitted herewith.

Through an oversight, Emerick's summary did not record the bids received from McCalib Concrete Service or S & L Landscaping. These bids had also been removed from the bid board for more detailed analysis in packages with other bids. Both were received within the last hour before Emerick's bid was required to be delivered to Metro. However, it is one thing to admit this oversight and it is another to say as Robinson/Slayden does, that S & L and McCalib were low bidders. The fact that they were not low with Slayden either does nothing to deter those allegations. They were not low

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bidders and were properly rejected. See Affidavit of Dennis Barstad. Consequently, there was no prejudice as a result of this oversight.

As can be seen from the exhibits attached to Joe Kennedy's Affidavit, Emerick's bid card form has a space to indicate whether the bidder is a DBE or WBE. Buffalo Welding had not submitted any type of correspondence to Emerick about the project prior to bidding, and was not one of the more than 100 DBE/WBE firms solicited by Emerick for a quotation. In submitting a telephone quotation to Emerick on the day before bidding, Buffalo's representative did not identify the firm as a DBE or WBE, and so Emerick's bid card was not so marked. In preparing its summary of good faith efforts, Emerick had no reason to identify Buffalo as a DBE/WBE firm, and accordingly did not do so. Buffalo Welding's bid was not low as part of any package.

4. Finally, Robinson/Slayden argues that even if Emerick's good faith efforts comply with Metro's Program, they are inadequate under state law because Emerick did not "negotiate" with DBE/WBE firms, especially Marmolejo. Metro's Program was drafted in an effort to implement state law, and the allegation of inconsistency is simply wrong. ORS 200.045 does not define "negotiation," and Metro's Program attempts to supply that definition by specific provisions regarding solicitation, follow-up and work scope. In any event, it is clearly established that Emerick had extended "negotiations," however defined, with several DBE/WBE firms. See Affidavits of Kevin Spellman, Joe Kennedy, David Gilmore (EDT), and Kerry Brainard (Brainard Sheet Metal).

Conclusion

Emerick has submitted to you a low, responsive and responsible bid for an important project. Emerick has documented its extensive good faith efforts to achieve DBE/WBE participation, fully in accord with the spirit and the letter of Metro's Program. Nonetheless, those efforts are criticized by the third bidder which claims to have achieved the goals by subcontracting its prime contractor responsibilities for "contract administration." Robinson's

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Contract Review Board

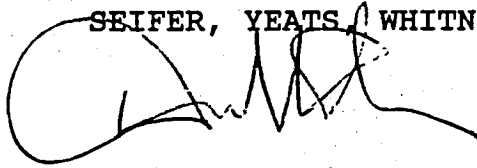
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criticisms are groundless, and you should quickly affirm the rejection of this appeal.

Emerick thanks you for your consideration.

Very truly yours,

SEIFER, YEATS, WHITNEY & MILLS

A handwritten signature in black ink, appearing to read 'Daniel J. Seifer', written over the typed name of the law firm.

Daniel J. Seifer

cc Daniel Cooper
Neil E. Saling
Amha M. Hazen
Rob Smoot
Larry Moomaw
Lynnia Woods

METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATIONS
OREGON CITY, OREGON

AFFIDAVIT OF KEVIN SPELLMAN

State of Oregon)
) ss.
County of Clackamas)

I, Kevin Spellman, do hereby depose and say as follows:

1. I am President of Emerick Construction Company. I make this affidavit based on my own personal knowledge of the matters herein.

2. I actively participated in the 1987 task force that worked on the drafting of the current Metro Disadvantaged Business Program and appeared before the Council at that time to urge its adoption. I am therefore very well acquainted with both the spirit and the letter of the Program. In a letter dated June 13, 1990, I have been invited by Metro to participate in a further review of the Program, in light of subsequent legislative and legal developments. A copy of that letter is attached.

3. Because of this background in the Metro Program, I took a particular interest in Emerick's efforts to meet the DBE/WBE goals established for the Metro South Station Modifications bid of May 22, 1990. I convened our estimating team, consisting of Larry Sitz, Dennis Barstad and Joe Kennedy, on two occasions prior to bid and once after bid to review with them the requirements of the Metro DBE/WBE Program. I told them that every effort must be made

to encourage DBE/WBE's to participate in the bid and reviewed with them the detailed requirements of the Program. It was our intent to meet the established goals.

4. As part of this effort, I instructed Joe Kennedy to mail letters of invitation to each of the DBE/MBE's listed in Emerick's submission to Metro, and to follow through thereafter with telephone calls to each. He was to encourage each of those firms to bid and was to place no restriction on them with regard to scope of work or any other aspect of the bids.

5. To ensure compliance with the spirit of the Program, Emerick went far beyond the technical requirements. Rather than simply identify some economically feasible units of work as required by the Program, we designated almost every piece of work that we expected to subcontract. We sent 170 solicitation letters to 113 DBE/WBE's and followed up with at least one, and often more than one, telephone calls to further encourage participation. Where less than five specialist DBE/WBE contractors existed for a particular section of work, we solicited bids for DBE/WBE general contractors and encouraged them to package a group of sub-trades, if necessary, in order to increase the DBE/WBE participation in the Contract. I believe that these efforts far exceed the Program's requirements and more than constitute a valid good faith effort.

6. After the bid, when it was apparent that our bid had not reached the DBE/WBE goals, I conferred with Mr. Barstad and Mr. Kennedy on the requirements of the Metro Code with regard to post-

bid submissions. Part of the requirement was to provide a summary of each DBE/WBE bid received, along with a note that the bid had been accepted or, if rejected, the reason for the rejection. The Metro Code is specific in that it states that the fact that a bid is not low is a valid reason for rejection.

7. Subsequent to that submission, we have discovered that we failed to include acknowledgement of bids for EDT Construction, S & L Landscaping, Buffalo Welding and McCalib Concrete Service in our summary. Each of these bids had been removed from our bid board for more detailed analysis by our estimators because, in order to properly analyze these bids, they each had to be combined with other bids for comparison. Mr. Kennedy was unfamiliar with that practice and failed to locate those DBE/WBE bids for inclusion in our summary.

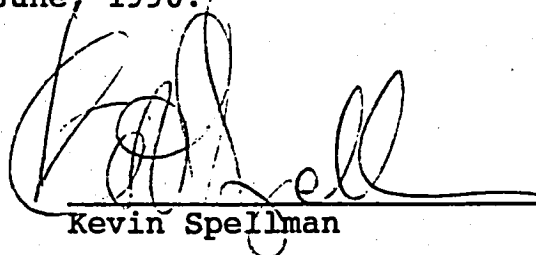
8. It is the practice at Emerick, in lump sum bid preparations, to include in our bid to the Owner the lowest bid from subcontractors on every relevant phase of the work. As in this case, additional efforts are made in an attempt to have DBE/WBE's submit the low bids in their various areas of expertise. It is not our practice, nor would it be consistent with our effort to submit the lowest bid to the Owner, to ignore or fail to use low bids submitted by subcontractors, whether DBE/WBE's or not. I have reviewed the bids received from EDT Construction, S & L Landscaping, Buffalo Welding and McCalib Concrete Service and have confirmed that none of these subcontractors submitted a low bid to

us. I also notice that none of these companies were named as successful low bid subcontractors by the second bidder.

9. It has been alleged that we failed to acknowledge a bid from Westlake Consultants, Inc. In support of that allegation, an affidavit from Ms. Judi Haney, president of Westlake, has been submitted. Careful review of Ms. Haney's affidavit shows that she does not claim that Westlake submitted a bid to Emerick for the May 22 bid. I have reviewed the records of bids received by us and can find no evidence that any such bid was received. Westlake did submit a bid to us for the March 21 bid, but our analysis showed it to be incomplete.

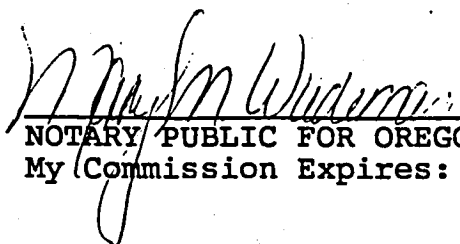
10. I have reviewed the documents submitted in support of our good faith effort contentions and have spoken to each of the estimators involved. I believe that Emerick's effort far exceeds a minimum technical compliance with the Program and is more than consistent with the spirit and intent behind the Program.

Dated this 20th day of June, 1990.



Kevin Spellman

SUBSCRIBED AND SWORN to before me this 20th day of June, 1990.



NOTARY PUBLIC FOR OREGON
My Commission Expires: 12-31-91



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

RECEIVED
EMERICK CONSTR.

1990 JUN 15 AM 9:00

PEL [initials] PEL LAS
JDM WGT ET SS DLB
[initials]

June 13, 1990

Mr. Kevin Spellman, President
Emerick Construction
P.O. Box 66100
Portland, OR 97266-0100

Dear ~~Mr.~~ ^{Kevin} Spellman:

Metro finds itself out of step with the changes being made in the ESB/DBE programs at the State level. Specifically, the agencies of the State of Oregon are developing programs which are race and gender neutral in response to actions taken during the last legislative session.

You served Metro well as we developed our present DBE Program in 1987. We would like to again have your participation.

A draft of a revised program is currently being assembled for your review. This strawman should be available during the week of June 19, 1990.

I would hope to convene the small working group of which you will be a member in early July.

Please contact me at 221-1646, Ext. 167 if your schedule will not allow you to work with Metro in this endeavor.

Sincerely,

Neil E. Saling, Acting Director
Finance & Administration

NES:jp

cc: Tanya Collier, Presiding Officer - Metro Council
Rena Cusma, Executive Officer

Executive Officer
Rena Cusma

Metro Council

Tanya Collier
Presiding Officer
District 9

Gary Hansen
Deputy Presiding
Officer
District 12

Mike Ragsdale
District 1

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Roger Buchanan
District 10

David Knowles
District 11

METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATIONS
OREGON CITY, OREGON

AFFIDAVIT OF DENNIS BARSTAD

State of Oregon)
) ss.
County of Clackamas)

I, Dennis Barstad, do hereby depose and say as follows:

1. I am a project manager/estimator for Emerick Construction Company. I make this affidavit based upon my own personal knowledge of the matters herein.

2. I was a primary estimator on behalf of Emerick in the preparation of a bid submitted at 11:00 a.m. on May 22, 1990 on the Metro South Station Modification Project at Oregon City, Oregon.

3. On the morning of May 22, 1990, I received a telephone bid from John McGill of EDT Construction, Inc., a certified DBE, in the amount of \$521,352 for excavation and utilities work per their scope letter received on May 21, 1990. I wrote the bid on their transmittal letter, which is attached as exhibit A.

A. The scope of this quotation was consistent with the discussions that occurred a few days previously. I had arranged that meeting with David Gilmore of EDT, to clarify the scope of EDT's quotation and to therefore increase the likelihood of DBE participation in Emerick's bid. EDT had submitted a bid for some work to Emerick in March, but that

bid covered a scope of work that was not comparable to other bids, and therefore not usable.

- B. After receiving EDT's May 22 bid, I took the bid letter and made an analysis of that bid and compared it to bids from Bill Erickson and B & R Excavating. In order to make that comparison, I had to add amounts to each bid in order to properly compare those bids. A copy of my analysis is attached as Exhibit B. After making that analysis, B & R's adjusted bid of \$447,500 was low, and that amount was incorporated into our bid to Metro.
- C. Because of this procedure used in analyzing the more complex bids in packages, EDT's bid was removed from the bid board, where most of the telephone bids were located.

4. On the morning of May 22, 1990, I received a bid, by fax, from S & L Landscaping, Inc., a certified DBE and WBE, with a transmission time of 10:10 a.m. noted, in the amount of \$251,992.00 for Specification Section 02810, 02920, 02930 and 02950.

- A. I had been expecting a bid from S & L since they had advised Joe Kennedy during his follow up telephone calls to DBE's seven days previously that they would bid. However, I had no advance warning that the scope of the bid would be incomplete. In fact, they quoted the labor only for Section 02270 - Slope

Protection, in the amount of \$15,000.00. A copy of this quotation is attached as Exhibit C.


B. The scope of other landscape subcontractors included both labor and material for the work in Section 02270. In order to compare S & L's bid to the other landscape bids, I had to add the value of the total work in Section 02270 to S & L's bid. With less than 45 minutes until bid time, in order to determine the value of this work, I used the only breakout I had available for this Section which was from Teufel Landscape in the amount of \$78,325. My analysis showed S & L's total amount for the same scope bid by Ben Fox Landscaping to be \$330,317.00 compared to \$323,000.00. Therefore, I determined that Fox's bid of \$323,000.00 was low and that amount was incorporated into our bid to Metro. A copy of my analysis is attached as Exhibit D.

C. Because of this procedure used in analyzing the more complex bids in packages, S & L's bid was removed from the bid board, where most of the telephone bids were located.


5. On the morning of May 22, 1990, I received a bid, by fax, at 10:41 a.m. from McCalib Concrete Service, a certified DBE. The bid consisted of unit prices for the concrete curbs and the trailer storage slabs. A copy of this quotation is attached as Exhibit E.

- A. I compared their unit prices to other unit prices that we had received for this work and determined that they were not the low bidder. Rose City Concrete was the low bidder at unit costs of \$7.00/LF - Type A, \$10.00/LF - Type A 2-sided, and \$5.00/LF - Type C for the concrete curbs. We had estimated the cost of the trailer slab work at \$1.96/SF and intended to do this work ourselves. Therefore, these amounts were incorporated into our bid to Metro.
- B. Because of this procedure used in analyzing the more complex bids, McCalib's bid was removed from the bid board, where most of the telephone bids were located.

Dated this 21ST day of June, 1990;


Dennis Barstad

SUBSCRIBED AND SWORN to before me this 21st day of June, 1990.


NOTARY PUBLIC FOR OREGON
My Commission Expires: 12-21-91

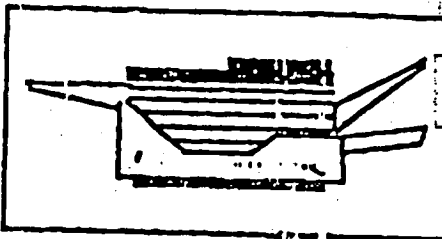
ADAMS THOMPSON INSURANCE AGENCY

FAX Customer Transmittal Cover Sheet

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1990 MAY 21 PM 4:06

521,352



RECEIVED
MAY 21 1990
LAS
DLE
FILE

- PER JOHN -
5/22/90

Adams-Thompson Insurance Agency
P.O. Box 5279 / 7409 NE Hazel Dell Ave.
Vancouver, Wa. 98668 98665
694-2515 FAX # 1-206-699-5135

Date: May 21, 1990

Sent to: Emerick Construction

Attn: Kenneth Berstad

Voice Phone Number: 503-777-5531

FAX Phone Number: 503-771-2933



From: EDT Const.

Voice Phone Number: 206-699-5275

FAX Phone Number: 206-699-5135

Comments: _____

Number of Cover Pages: 1
Total Number of Other Pages: 2

Paid: yes No

EXHIBIT A

MAY-21-90 MON 14:38 ADAMS-THOMPSON INSURANCE 1.01

EDT Construction, Inc.
7409 N.E. Hazel Dell Ave.
Vancouver, Wa. 98665
(206)699-5275

Project: South Station Modification
Bid Date: 5-22-90

Items

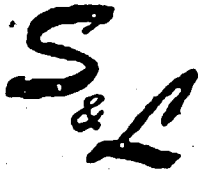
Mob
Demolition
Access & New Appr.
Building Exc.
Footing Exc.
Foundation B/F
Mass Exc
Strip&Place topsoil
Embankment
Retain Wall Exc.
Wall B/F
Finish S.G.
Slab on Grade
RCP
RCP
18" RCP
21 RCP
24" RCP
4" PVC
6" PVC
10" PVC Sch 80
6" DIP
8" DIP
6" Water
8" DIP Temp
Fire Hydrant
48" Manholes
48" Sand-Oil Seperator
Curb Inlets
Trench Exc.
Pipe Bedding

Wetland Grading

- Clear & Grub
- Strip Topsoil
- Grade Pond S.G.
- Screen Topsoil
- Spread Topsoil
- Bentonite
- Fine Grade Site
- Rip Rap
- Flow Control Gate
- Wood Parking Bumper

Exclusions:

- Permits & Fees
- Engineering
- Concrete Work (footings, retaining walls, bridge)
- Foot Bridge
- Lift Stations (Prime set, We excavate & backfill)
- Crushed rock & Paving
- Pathways
- Landscaping & Irrigation



Landscaping Inc.

Audrey Castile President

Phone (503) 639-1395

TRANSMITTAL

DATE: May 22, 1990 TIME: 10:10 a.m.

ATTENTION: _____

WITH: EMFRICK CONSTRUCTION

FAX NUMBER: 771-2933

FROM: Audrey Castile

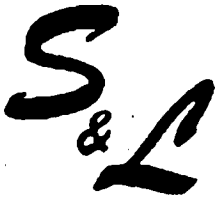
S & L LANDSCAPING, INC.

FAX NUMBER: 624-8280

REGARDING: Metro South Station Bid

NUMBER OF PAGES: 2
(INCLUDING COVER SHEET)

P.O. Box 23702 Tigard, Oregon 97223



Landscaping Inc.



8100 SW Durham Road • Tigard, Oregon 97224

Phone (503) 639-1395

**BID QUOTE
METRO SOUTH STATION
May 22, 1990**

BID SECTIONS:

- #02810 Irrigation
- #02920 Soil Preperation
- #02930 Lawns & Grass
- #02950 Trees, Shrubs, & Groundcover

TOTAL BID.....\$ 261,992.00

TOPSOIL:

To be supplied at.....\$ 6.25 per yd.
 To be placed at.....\$ 4.00 per yd.

FILTER FABRIC:

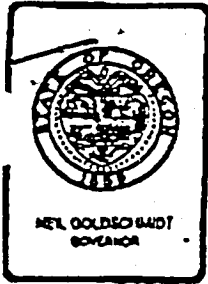
Labor ONLY.....\$ 15,000.00

INCLUSIONS:

Gravel walkway

EXCLUSIONS:

- Bentonite sealing
- Entry sign
- Bridge
- Rip rap
- Anything related to grading and/or installing of pond



Executive Department

155 COTTAGE STREET NE, SALEM, OREGON 97310-0310

December 7, 1989

S & L Landscaping, Inc.
P.O. Box 23702
Tigard, OR 97223

**CERTIFICATION TYPE: DISADVANTAGED BUSINESS ENTERPRISE (DBE)
WOMEN BUSINESS ENTERPRISE (WBE)**

We are pleased to inform you that, based upon your completed recertification application, the Oregon Office of Minority, Women & Emerging Small Business has recertified your firm. Your firm shall be subject to the requirements of state (ORS 279.059) and federal (49 CFR 23) regulations and all of the laws of this state applicable to the transaction of business.

The certification expiration date appears at the bottom of this letter. Prior to this expiration date, you will be sent information regarding your recertification for the following year.

Please remember you must notify us any time there is a change in ownership or control of your firm. If you have a change in telephone number, mailing address, or person to contact, let us know immediately so we can make the correction in our Certified DBE/MBE/WBE Directory.

Good luck in your business endeavors.

Richard E. Acevedo, Manager
Minority, Women, Emerging Small Business
(503) 378-5651

EXPIRATION DATE: JANUARY 1, 1991

JOB NAME: METRO

BID NO.: 008

DATE: 5-22-90

PACKAGE BIDS

INDIVIDUAL BIDS

| SUB NAME | FOX | DAVIS 206- | TEUFEL | A#G | S#L |
|-----------------------|----------|---------------|----------|----------|----------|
| SUB PHONE | 654-8816 | 696-0845 | 646-1111 | 747-9371 | 639-1395 |
| CONTACT/ADDENDA | BEN | JIM | ROSE | GARY | |
| \$ As Bid | | | SEE | | |
| Description | 323,000 | | BELOW | 335,300 | 251,992 |
| 2270 SLOPE PROTECTION | INCL. | | 78,325 | INCL | 78,325 |
| 22810 IRRIGATION | INCL. | | 54,627 | INCL. | INCL. |
| 22920 SOIL PREP | | | 71,276 |) |) |
| 22930 LAWNS & GRASSES | | | 21,194 |) |) |
| 22950 TREES & SHRUBS | INCL. | | 33,840 | INCL | INCL. |
| PRUNE TREES - INCL | | | | | |
| IN BUY OUT OF C.S./ | - | | - | - | - |
| WONT ADD ANY \$ | | | | | |
| COMPOSITE TOTAL \$ | 323,000 | | 359,212 | 335,300 | 330,317 |

~~TEUFEL~~
78,325

~~C.S.~~
960

EXHIBIT D

AUTOMATIC COVER SHEET

DATE: MAY-22-90 TUE 10:34

TO:

FAX #: 7712933

FROM: McCalib Concrete Service

FAX #: 5036931712

02 PAGES WERE SENT

(INCLUDING THIS COVER PAGE)

McCALIB CONCRETE SERVICE
Paving, Curb, and Commercial

2050 N.W. Connell
Hillsboro, Oregon 97124
(503) 640-3832
(503) 693-1712 FAX

RECEIVED
EMERICK CONSTR.

1990 MAY 22 AM 10:41

Date of Bid: May 22 March 14, 1990 SUBCONTRACTOR QUOTE
 Project Name/Location: Metro South Station Modification, Oregon City Owner: Metro Service District
 Prepared By: Bruce McCalib

| Item # | Description | Quantity/Unit | Unit Price | Total |
|--------|--|--------------------------------|------------|-------|
| 1 | Type 'A' Curb & Gutter Detail Sheet C-7 | Approx 860/LF Per Sheet C-3 | \$10.00/LF | |
| 2 | Type 'A' Curb & Gutter 2 sided detail Sheet C-7 Location per Sheet C-3 | Approx 180/LF | \$16.50/LF | |
| 3 | Type 'C' Curb at Washington No detail except as noted Sec A, Sheet C-5 | Approx 620/LF | \$5.10/LF | |
| 4 | 5 1/2" Trailer Storage Slabs 5' x 1500' = 7500 SF Detail Sheet C-6 Location Sheet C-1 | Approx 7500/SF | \$3.00/SF | |

EXCLUSIONS & CONDITIONS

| Item # | Comments |
|--------|---|
| 1 & 2 | Includes 1 move in. Subbase grade +/- .05' by others, includes 3 pieces #4 continuous. |
| 3 | Includes 1 move in. Subbase grade +/- .05' by others, includes 3 pieces #4 continuous. Note if additional 2000 SF for - chg. SF to 4.90/ev. |
| 4 | One move in included. Subbase grade +/- .05' by others. Includes steel in slab. |
| ALL | Line & grade and traffic control provided by others. |
| NOTE: | There is a discrepancy between the access roadway section sheet C-6 & location of curb sheet C-3. |

MBE - Oregon Yes No
 DBE - Oregon Yes No
 MBE - Washington Yes No
 DBE - Washington Yes No

Addendas (Circle) 1 2 3 4 5 6
 Bond Included - 2.5% Yes No
 Tax Included Yes No
 Quote Void After April 14, 1990

METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATIONS
OREGON CITY, OREGON

AFFIDAVIT OF JOE KENNEDY

State of Oregon)
) ss.
County of Clackamas)

I, Joe Kennedy, do hereby depose and say as follows:

1. I have been employed by Emerick Construction Company for 18 months and have been involved in estimating for the past 4 months. I make this affidavit based on my own personal knowledge of the matters herein.

2. My primary duty during the more than two weeks prior to the bid date of May 22, 1990 for the Metro South Station Modifications was to comply with the Metro Disadvantaged Business Program in our effort to achieve the DBE/WBE goals.

3. In performance of that duty, I worked with Kevin Spellman and Dennis Barstad of our office to develop and designate the maximum number of economically feasible units of work which we hoped and intended would maximize the likelihood of DBE/WBE participation in the Contract. I then prepared and mailed 170 solicitation letters to 113 DBE/WBE firms to alert them to the opportunities surrounding the Contract. I then telephoned each of those firms at least once, and in many cases several times, to give further details of the bid and the work and to encourage them to

participate in the bidding process. Wherever appropriate, I offered assistance with bonding, insurance and lines of credit, if such assistance would enable the DBE/WBE to participate in this bid.

4. On May 14, 1990, I called Marmolejo Contractors, Inc. ("Marmolejo") and spoke to Dan Anderson who identified himself as an estimator. I discussed with Mr. Anderson the project, the bid date, the size of the project and the various locations, including our office, where the plans could be reviewed. I solicited Marmolejo's bid for asphalt paving and pavement marking. Mr. Anderson told me that Marmolejo was interested in providing a bid for excavation and utilities, and I encouraged him in that regard. He told me that he would proceed to look at the plans and specifications.

5. On May 17, 1990, I received a call from Mr. Ed Marmolejo in reference to the Contract.

A. Mr. Marmolejo asked how large the project would likely be, and I told him that it would be in the region of \$2.3 million and \$2.7 million. We discussed the fact that there were goals of 10% DBE and 3% WBE on the Contract but did not discuss specific dollar figures.

B. Mr. Marmolejo asked how much DBE participation we were getting. Since subcontract bids are not routinely received until a matter of hours before the bid hour, I told him that it was too early to tell. I also told him that, in the course

of my solicitations, I was encouraged by the significant number of DBE/WBE's who told me that they were looking at the Contract.

C. Mr. Marmolejo told me that his company's schedule did not permit them to bid on the Contract, but that Marmolejo was an active DBE and would like to work with Emerick in the future. He told me that he would call me again to inquire how we were doing with DBE participation. Mr. Marmolejo has not called me since, nor did Marmolejo submit a bid to Emerick on the Contract.

6. As was my custom, I immediately recorded the relevant substance of our conversation on our MBE/WBE Contact Log. A copy of my log is attached.

7. As part of my duties subsequent to the bid submission, I prepared a summary which was intended to record every DBE/WBE bid received by Emerick and, where appropriate, to indicate the successful bidders. Where a DBE/WBE bid had been rejected, the Summary was to show the reason for the rejection.

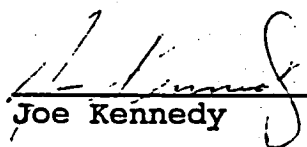
8. In preparing the Summary, I reviewed the estimate "head sheet" which constitutes Emerick's final bid and lists all the successful subcontract bidders. I included all DBE/WBE subcontractors from that "head sheet" in the summary.

9. I then reviewed every bid card that was collected on the bid board to determine what other DBE/WBE bids had been received, and included those in the summary together with the reason for

rejection. I was unaware at the time that certain bid cards had been removed from the bid board for more detailed analysis in packages with other bids. I have since determined that the bids of EDT Construction, S & L Landscaping, Buffalo Welding and McCalib Concrete Service were not on the bid board at that time, and were therefore not included in the Summary. Had any of them been the low bidder, they would have been listed on the "head sheet" and I would have located their bid from that source and included it in the Summary.

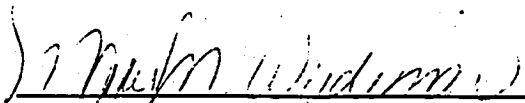
10. Even if I had come across the bid from Buffalo Welding, I would not have recognized it as a DBE bid. Buffalo Welding was not one of the 113 DBE/WBE's that I had contacted and they did not identify themselves as a DBE when they submitted the bid. Attached is a cop of the bid card which shows no check mark at the MBE/WBE designation.

Dated this 20 day of June, 1990;



Joe Kennedy

SUBSCRIBED AND SWORN to before me this 20 day of June, 1990.



NOTARY PUBLIC FOR WASHINGTON
My Commission Expires: 12 31 91

**EMERICK CONSTRUCTION COMPANY
MBE/WBE CONTACT LOG**

PROJECT: METRO SOUTH STATIONS MODIFICATIONS BID DATE: MAY 22, 1990
 BID TIME: 11:00 AM

NAME: MARMOLELO CONTRACTORS, INC.

ADDRESS: _____

PHONE: () 630-6379

KIND OF WORK: ASPHALT PAVING

SIZE OF WORK CAN HANDLE: _____

| DATE | PERSON CONTACTED | CONTACTED BY | TIME | COMMENTS/DISCUSSIONS |
|------|------------------|--------------|------|--|
| 5/14 | DAN ANDERSON | JOE KENNEDY | 3:45 | INTERESTED WILL LOOK AT DRAWINGS. INTERESTED IN THE UTILITIES & EXCAVATION. |
| 5/17 | ED MARMOLELO | JOE KENNEDY | 3:15 | NOT HAVE TIME TO E.D THIS PROJECT BUT WANT TO WORK WITH US ON ANY OTHER UP COMING PROJECT. |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

RESULTS OBTAINED

| BID SUBMITTED | DECLINED | NO RESPONSE |
|---------------|------------------------|-------------|
| | PER 5/17 CONVERSATION. | |
| | | |
| | | |
| | | |
| | | |
| | | |

MBE \$ _____

UNION

WBE \$ _____

NON-UNION

NAME BUFFALO WRADING

000

MAY 22 1990

: GILBERT DAVALOS

PHONE: 632-6043

BASIC BID: 32,570⁰⁰

FOB Installed

ADDENDA 1

Rec'd By: AS

ALT. AS REQUIRED

NOTES

NO. _____ BID _____

FURNISH & INSTALL ALUMINUM RAILS

EXCLUSIONS

ITEM

SPEC SECTION

ALUMINUM RAILS

05520

AFFIDAVIT OF JACK KALINOSKI

STATE OF OREGON)
) ss.
County of Washington)

I, Jack Kalinoski, do hereby depose and say as follows:

1. I am Executive Director of the Oregon-Columbia Chapter of the Associated General Contractors.

2. I was involved in the 1987 task force that worked on the drafting of the current Metro Disadvantaged Business Program and am therefore intimately acquainted with the letter and the spirit behind that Program.

3. I have reviewed the submission of Emerick Construction Company in support of its contention that it made a good faith effort to achieve the DBE-WBE goals on the Metro South Stations Modifications bid of May 22, 1990.


4. On the basis of that review, I believe that Emerick's actions are entirely consistent with the spirit and intent of the Program, and that they constitute a legitimate good faith effort. If this is not a good faith effort under the terms of the Program, then I believe that Metro has adopted an impossible standard.

5. While I recognize that there is a difference of opinion concerning the contents of a telephone conversation between Edward Marmolejo and Joe Kennedy of Emerick, it is irrelevant because both

////
////

agree that written solicitation and telephone follow-up were made,
and that Marmolejo did not submit a bid to Emerick.

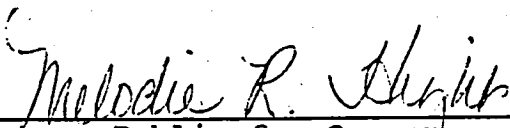
DATED this 21st day of June, 1990.



Jack Kalinoski

STATE OF OREGON)
) ss.
County of Multnomah)

SUBSCRIBED AND SWORN to before me this 21st day of June,
1990.



Notary Public for Oregon
My Commission Expires: 7-23-90

METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATIONS
OREGON CITY, OREGON

AFFIDAVIT OF DAVID GILMORE

State of Washington)
) ss.
County of Clark)

I, David Gilmore, do hereby depose and say as follows:

1. I am General Manager of EDT Construction, Inc. ("EDT")
I make this affidavit based upon my own personal knowledge of the
matters herein.

2. EDT is a certified DBE and appears in the Directory of
DBE/MBE/WBE ("DBE") prepared by the Executive Department of the
State of Oregon.

3. EDT received a letter from Emerick Construction Company
("Emerick") requesting a bid from EDT on the Metro South Station
Modification Project at Oregon City, Oregon (the "Contract").

4. Three or four days before bid opening, I met with Dennis
Barstad of Emerick and discussed the type of work Emerick wanted
us to quote and what type of work EDT would be willing to quote.

5. The morning of May 22, 1990 at 8:15 a.m., before bid
opening, I had John McGill of my office call Dennis Barstad and
submitted EDT's quote. EDT quoted Emerick \$521,352 for all
demolition work, except for the face of the building, dirt, and
underground work, excluding only the pumping station.

6. I have reviewed the bid analysis undertaken by Emerick on the Contract and am satisfied that EDT's bid was not the low bid and should not have been utilized by Emerick in its preparation of a general bid for Metro.

Dated this 19 day of June, 1990;

David Gilmore
David Gilmore

SUBSCRIBED AND SWORN to before me this 19 day of June, 1990.

Sherry L. Brandona
NOTARY PUBLIC FOR WASHINGTON
My Commission Expires: 12/1/90

METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATIONS
OREGON CITY, OREGON

AFFIDAVIT OF KERRY BRAINARD

State of Oregon)
) SS.
County of Multnomah)

I, Kerry Brainard, do hereby depose and say as follows:

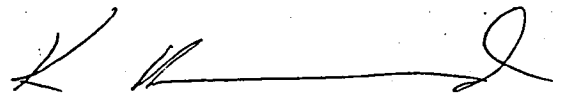
1. I am the estimator for Brainard Sheetmetal who signed the bid and who represented Brainard Sheetmetal in discussions of this project. I make this affidavit based upon personal knowledge of the matters herein.

2. Brainard Sheetmetal is a certified MBE/DBE firm and appears in the directory of DBE/MBE/WBE firms prepared by the Executive Department of the State of Oregon.

3. Brainard Sheetmetal faxed (see attached Fax Quote) a bid to Emerick Construction Company ("Emerick"), for the Metro South Station Project at Oregon City, Oregon (the "Project"). Shortly after forwarding the fax, I received a phone call from Larry Sitz ("Sitz") of Emerick. Sitz said that my price for the entire scope was non-competitive, asking me for an approximate split between Division 15 and Division 7 work. I told Sitz that the HVAC and Winch Work was about \$50,000. Sitz said that the Division 15 work was not competitive. Sitz then asked if I would quote just 07410 Prefomed Siding and 07600 Flashing and Sheet Metal. I said I

would, and that I would call him back as soon as I had the quote together. Upon completing that quote, I called at 10:30 a.m. with an amount of \$15,323 for the requested scope. I then confirmed that quote with a fax at 10:54 a.m. (see attached).

Dated this 20th day of June, 1990.



Kerry Brainard

SUBSCRIBED AND SWORN to before me this 20th day of June, 1990.

Elaine Annette Chamberlain

Elaine Manthey

NOTARY PUBLIC FOR OREGON

My Commission Expires: 4/8/94

F 6-20-90 FAXED D



BRAINARD SHEETMETAL

159 South 47th Street Springfield, Oregon 97478

Phone (503) 726-8931

May 22 1990

RECEIVED

1990 MAY 22 AM 10:28
Fax (503) 747-2893

METRO STATION SOUTH

NDM | WC | BT | SS | DLB
LA WIFE

Description :

| | | |
|-------|--|------------|
| 07410 | PREFORMED SIDING | } - 15,323 |
| 07600 | FLASHING AND SHEET METAL | |
| 15500 | HEATING, VENTILATING, & AIR CONDITIONING | |
| 15600 | WINCH | |

10:45 a.m.
from Kerry

Inclusions :

Preformed Roofing and Siding Complete, HVAC System Complete, Winch System Supplied and Installed Complete

Exclusions :

NO MISTING SYSTEM

Total Base Bid \$ 67,371.00

MBE / DBE / EBE

CERTIFIED IN OREGON , WASHINGTON AND IDAHO

TELEPHONE (503) 726-8931

Estimator : Kerry Brainard

FAX (503) 747-2893



BRAINARD SHEETMETAL

159 South 47 TH. STREET SPRINGFIELD, OREGON 97478

Phone (503) 726 - 8931

RECEIVED
MAY 22 AM 10:54
PEE KOS MM PEL LAS
JDM May 22 1990 DLD

Fax (503) 747 - 2893

METRO STATION SOUTH

Description :

| | |
|-------|--------------------------|
| 07410 | PREFORMED SIDING |
| 07600 | FLASHING AND SHEET METAL |

Inclusions :

Preformed Roofing and Siding Complete and General Metal

Exclusions :

None

Total Base Bid \$ 15,323.00

MBE / DBE / EBE

CERTIFIED IN OREGON , WASHINGTON AND IDAHO

TELEPHONE (503) 726-8931

Estimator : Kerry Brainard

FAX (503) 747-2893

METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATIONS
OREGON CITY, OREGON

AFFIDAVIT OF JAMES CASON

State of Oregon)
) ss.
County of Multnomah)

I, James Cason, do hereby depose and say as follows:

1. I am President of Pen-Nor, Inc. ("Pen-Nor") and make this affidavit based on my own personal knowledge of the matters herein.

2. Pen-Nor is a certified DBE and appears in the Directory of DBE/MBE/WBE ("DBE") prepared by the Executive Department of the State of Oregon.

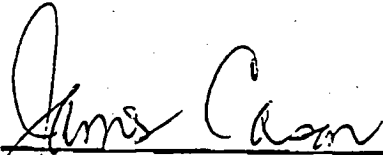
3. I am Chairman of the D/WBE Committee of the Oregon-Columbia Chapter of the Associated General Contractors and am familiar with the many issues surrounding DBE contracting. I am also familiar with the Metro Disadvantaged Business Program ("Program").

4. Pen-Nor submitted bids to several general contractors for certain work on the Metro South Station Modifications Project (the "Contract").

5. I have reviewed the efforts made by Emerick Construction Company ("Emerick") to meet the DBE/WBE goals on the Contract and have reviewed Emerick's documentation that was submitted to Metro.

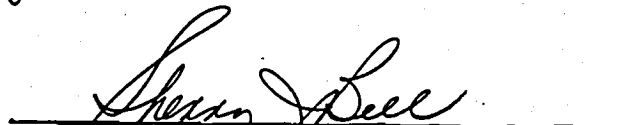
6. I have concluded that Emerick's efforts more than comply with the requirements of the Program and that DBE/WBE bids were treated fairly in Emerick's compilation of its bid to Metro.

Dated this 20 day of June, 1990;



James Cason

SUBSCRIBED AND SWORN to before me this 20 day of June, 1990.



NOTARY PUBLIC FOR OREGON
My Commission Expires: 11-19-93



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 7, 1990

RECEIVED

JUN 11 1990

TIME: 1:40 PM
METRO SERVICE DISTRICT
GENERAL COUNSEL

Mr. Randy S. Robinson
Robinson Construction Company
7320 S.W. Hunziker, Ste #300
Tigard, Oregon 97223

Dear Mr. Robinson

Re: Metro South Station Modification Contract Bid Appeal

On June 4, 1990, Metro received a bid appeal from Robinson Construction Company (hereinafter Robinson). Based on a thorough review of the bid file, I have determined that Emerick Construction Company (hereinafter Emerick) substantially complied with Metro's Disadvantaged Business Enterprise Program Procedures (hereinafter, "DBE/WBE"), and qualifies as the low, responsive bidder for the Metro South Station Modification Contract.

BACKGROUND

On April 24, 1990, Metro issued an Invitation for Bids (IFB) for modifications to the Metro South Station (MSS). The IFB required bidders to comply with Metro's DBE/WBE procedures. A copy of Metro's DBE/WBE procedures was included in the IFB. The DBE goal for the MSS Modification Contract was ten (10) percent. The WBE goal was three (3) percent.

On May 22, 1990, Metro received five bids for the Metro South Station Modification Contract.

Emerick, the apparent low bidder, submitted documentation of good faith effort to comply with Metro's DBE/WBE requirements. Metro staff evaluated the good faith efforts documentation submitted by Emerick. Based on a review of that documentation, it has been determined that Emerick materially complied with the good faith effort requirements of Metro's DBE/WBE program.

Notice of Conditional Award was issued to Emerick Construction Company on May 25, 1990. Robinson's bid appeal was received by Metro on June 4, 1990.

Executive Officer
Rena Cusma

Metro Council

Tanya Collier
Presiding Officer
District 9

Gary Hansen
Deputy Presiding
Officer
District 12

Mike Ragsdale
District 1

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Roger Buchanan
District 10

David Knowles
District 11

Randy S. Robinson
June 6, 1990
Page 2.

The basis of the appeal is that Emerick Construction Company failed to establish that it complied with the good faith effort requirements set out in the Metro Code.

ANALYSIS

Robinson's first contention is, "Emerick has failed to break the Project down into the most efficient, economically feasible units and those with the greatest likelihood of increasing participation by DBEs and WBEs." Robinson cites Metro Code 2.04.160 (b) (2) which states that good faith effort shall include:

"Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises."

Emerick identified twenty-eight such units of work. These included:

Surveying; Demolition; Site Preparation & Earthwork; Pile Driving & Shot Crete; Site Utilities; Asphalt Paving & Base; Pavement Marking; Fencing; Landscaping & Irrigation; Concrete Cutting; Reinforcing Steel Furnish & Place; Concrete Curbs & Gutters; Precast Concrete; Metal Fabrications & Railings; Structural Steel Erection; Insulation; Roofing; Flashing, Sheet Metal & Metal Siding; Unit Masonry; Metal Framing, Drywall & Acoustical Ceilings; Painting; Mechanical & Fire Protection; Electrical Division; Joint Sealer; Steel Doors, Frames & Finished Hardware; Aluminum Windows, Glass & Glazing; Resilient Flooring; Conveying System.

Robinson states that:

1) two of Emerick's identified units of work ("Pile Driving and Shot Crete" and "Mechanical and Fire Protection") combine unrelated specialty items; and

2) that four units of work ("Reinforcing Steel Furnish & Place", "Flashing, Sheet Metal & Metal Siding", "Metal Framing, Drywall & Acoustical Ceilings", and "Steel Doors, Frames & Finished Hardware") combine specialty items that are not typically performed by a single firm.

Randy S. Robinson
June 6, 1990
Page 3.

Metro has broken out the 15 specialty items that are combined in these six units of work identified by Emerick and has determined that the effort made to solicit bids for each specialty item is in compliance with the Metro Code.

Pile driving: Bid solicited from the only firm listed.

Shot crete: No firms listed.

Mechanical: Five bids solicited.

Fire protection: Bid solicited from the only firm listed.

Reinforcing steel furnish: Bids solicited from the only two firms listed.

Reinforcing steel place: Five bids solicited.

Flashing and sheet metal (clearly related specialty items): Five bids solicited. Metro considers the subcontract with Brainard Sheetmetal, Inc. to indicate that a successful solicitation was made to Brainard.

Metal siding: No firms listed.

Metal framing: No firms listed.

Drywall: Bids solicited from all three firms listed.

Acoustical ceilings: One firm listed as reconditioning suspended and acoustical ceilings. this firm was not contacted, however, this project is to furnish and/or install, not recondition.

Steel doors: No firms listed.

Door frames: No firms listed.

Finish hardware: No firms listed.

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Page 4.

2. Robinson's second basis of appeal is that Emerick failed to comply with Section 2.04.160 (b) (4) which sets forth the minimum requirement of the written notice required for solicitation of sub bids from DBE/WBEs. Robinson contends Emerick has failed to comply due to the following five reasons.

a. Emerick failed to send written notice soliciting sub bids to not less than five DBEs and WBEs for each specific economically feasible unit selected by Emerick. This is demonstrated in reference to the roofing unit, although Emerick sent six letters in this category only four of the letters were sent to certified DBEs and WBEs. See Exhibit B. page 2, item 17, which sets forth the businesses mailed to by Emerick for compliance with the roofing unit, and you will note that two of the six mailings were to entities which do not and did not qualify as certified DBEs or WBEs.

At the prebid conference held on May 1, 1990, Neil Saling, Acting Director, Finance & Administration and DBE/WBE liaison officer, instructed all bidders to use the March issue of the DBE/WBE directory as the list of certified DBE/WBEs. The five firms that Robinson has identified as not appearing in the May directory do appear in the March directory.

b. The solicitations mailed by Emerick did not include details regarding where Project specifications may be reviewed, Emerick only listed three plan centers - Daily Journal of Commerce, Portland, Oregon; Construction Data West, Portland, Oregon; and Impact Business Development, Portland, Oregon, while failing to list Construction Data East, Portland, Oregon and Valley Plan Center, Kent, Washington.

Metro code 2.04.160 (b)(4) requires bidders to include in their sub bid solicitation letters, information regarding where project specifications may be reviewed. Emerick listed three plan centers - Daily Journal of Commerce, Construction Data West and Impact Business Development. The number of plan centers contacted is determined to be sufficient and in compliance with Metro code 2.04.160. The Metro code does not specify a minimum number of plan centers to be contacted.

Randy S. Robinson
June 6, 1990
Page 5.

c. The notices sent by Emerick were of a general and standardized form which did not specify the portions of work each sub was solicited to perform nor did they offer to subdivide units into more feasible units for DBE/WBE subcontractors. Forty-three of the letters contained the wrong name for the contact person, in that the name used for company A was actually the contact person for company B. One can see by reviewing the letters that it is apparent the computer simply was not properly programmed. This happened in forty-three instances. Please see column 2 of Exhibit B in this regard.

The written notice mailed by Emerick to subcontractors included a description of work for which subcontract bids were being solicited, a complete information on bid deadlines and included a listing of plan centers where the project specifications could be reviewed. The description was sufficiently detailed and is in conformance with Metro Code 2.04.160 (b)(2).

The instances where the wrong contact name was used in mailing solicitation letters was determined to be a minor irregularity since Emerick followed up the mailings with phone calls.

d. Emerick made extensive utilization of DBE and WBE general contractors for solicitation of specialty work and you will note that not one of said general contractors submitted a bid to Emerick. Emerick further utilized specialty firms without the proper description for the various work units. Please see Exhibit A for an outline of these instances.

The Metro code does not preclude bidders from using certified DBE/WBE general contractors for specialty work as long as the DBE/WBE performs a commercially useful function for that particular work. The general contractors listed by Emerick were found to be capable of fulfilling a commercially useful function for the sub contract work they were listed.

e. It should be noted that of the one hundred seventy solicitation letters Emerick sent, only eighty-six were to single subs and the remaining eighty-four were to twenty-seven subs who received from two to nine letters each.

Randy S. Robinson
June 6, 1990
Page 6.

This is outlined in Exhibit C enclosed herewith for your review. This very definitely does not comply with the intent of Metro's Disadvantaged Business Program.

The Metro code does not preclude bidders from soliciting more than one sub bid from a DBE/WBE subcontractor.

3. Emerick failed to comply with Metro Code section 2.04.060 (b) (5) in that Emerick does not demonstrate any efforts to followup on disconnected numbers and Emerick does not document that on followup phone calls to subs who received multiple solicitations that inquiry was made to all categories for which a solicitation was mailed to the sub, in one instance this would have meant inquiring as to nine different categories.


Bidders are required to make followup phone calls after providing written notices to subcontractors. If a phone number listed on the DBE/WBE directory is disconnected, bidders are not required to make additional efforts to locate the firm.

CONCLUSION

For the reasons discussed, Metro believes that Emerick substantially complied with the procedures for establishing its good faith effort to obtain DBE/WBE subcontractors. Emerick's efforts resulted in contracts with DBE firms for 1.3% of the total contract and WBE firms for 0.7% of the total contract.

Robinson's bid appeal is rejected. Please be advised that, in accordance with Metro Code Section 2.04.031 (b), Robinson Construction Company has five working days from the postmarked date of this decision in which to preserve its appeal to the Contract Review Board.

Cordially,


Rena Cusma
Executive Officer

cc: Neil Saling, Acting Director of Finance & Admin.
Amha Hazen, Contracts Administrator
Rob Smoot, Projects Manager
✓ Monica M. Little, Legal Counsel
Gwen Ware-Barett, Clerk of the Council



METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

RECEIVED

JUN 11 1990

TIME: 1:40 pm
METRO SERVICE DISTRICT
OFFICE GENERAL COUNSEL

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 7, 1990

Mr. Bruce Slayden
Slayden Construction
P.O. Box 625
Stayton, OR 97383

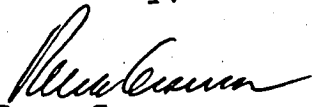
Re: Metro South Station Modifications Bid Appeal

The Notice of Award for the above referenced contract was sent on May 25, 1990. The notice was sent by certified mail and the return receipt shows your company received the notice on May 29, 1990.

Per Metro Code 2.04.03 (b) (1) all appeals shall be delivered to the Contracts Administrator at Metro's main office within five (5) working days of the postmarked date on the Notice of Award.

Your bid appeal was received on June 6, 1990, more than five (5) working days from the postmarked date on the Notice of Award. Therefore, your bid appeal has been rejected.

Cordially,


Rena Cusma
Executive Officer

RC:jp

cc: Neil E. Saling, Acting Director - Finance & Admin.
Amha M. Hazen, Contracts Administrator
Rob Smoot, Projects Manager - Solid Waste
Monica Little, Legal Counsel
Gwen Ware-Barrett, Clerk of the Council

Executive Officer
Rena Cusma

Metro Council

Tanya Collier
Presiding Officer
District 9

Gary Hansen
Deputy Presiding
Officer
District 12

Mike Ragsdale
District 1

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Roger Buchanan
District 10

David Knowles
District 11

MOOMAW, MILLER & REEL
ATTORNEYS AT LAW
12275 S.W. Second Street
Beaverton, Oregon 97005
(503) 646-0566

ALLEN REEL
ROBERT J. MILLER, SR.
LARRY D. MOOMAW
JEFFREY W. BELLIS
BRIEN F. HILDEBRAND
LILIAN BIER

MAILING ADDRESS
P.O. BOX 1609
BEAVERTON, OREGON 97075
FAX (503) 644-9574

June 4, 1990

Mr. Amha M. Hazen
Contracts Administrator
Metropolitan Service District
2000 S.W. First
Portland, Oregon 97221

Re: Metro South Station Modifications
Appeal of Notice of Award to Emerick Construction Company

Dear Mr. Hazen:

This office represents Robinson Construction Co. ("Robinson"). This letter constitutes a formal appeal of the Notice of Award to Emerick Construction Company ("Emerick") in the above-referenced Project. The bid of Emerick should be rejected as nonresponsive for the reason that Emerick has failed to comply with Metro's Disadvantaged Business Program goals or to demonstrate that a good faith effort has been made to meet the goals. If this appeal or copies thereof should be forwarded elsewhere, please do so as appropriate.

The bidding documents for the Project require compliance with Metro's Disadvantaged Business Program contained in Metro Code 2.04. Emerick's bid does not satisfy the DBE/WBE goals for this Project and Emerick has failed to demonstrate that they have made good faith efforts to achieve the goals. Emerick has failed to comply with the minimum good faith requirements set forth in Metro Code section 2.04.160(b) as follows:

1. Metro Code section 2.04.160(b)(2) requires Emerick to identify and select specific economically feasible units of the Project to be performed by DBEs or WBEs. Emerick has broken the Project into twenty eight feasible units for DBE/WBE subcontractors. Of these twenty eight units, two of the units, "Pile driving and shot crete" and "mechanical and fire protection" combine unrelated specialties. Pile driving and shot crete are performed by two separate types of specialty firms as are mechanical and fire protection.

Received 6/4/90
3:43 P.M.
J. Phillips, secretary

SEARCHED
SERIALIZED
JUN 4 1990
FBI - PORTLAND

Mr. Amha M. Hazen
June 4, 1990
Page 2

Emerick furthermore combined the furnishing of reinforcing steel and the placement of reinforcing steel as a single unit, combined flashing and sheet metal with metal siding, combined metal framing and drywall with acoustical ceilings, and combined the providing of steel doors and frames with the providing of finished hardware. While there may be one or two firms that would provide these combinations, this is not the industry standard, as each of these specialties is generally provided by a separate specialty firm.

In summary, Emerick has failed to break the Project down into the most efficient, economically feasible units and those with the greatest likelihood of increasing participation by DBEs or WBEs. See Exhibit A enclosed herewith.

2. Metro Code section 2.04.160(b)(4) sets forth the minimum requirements of the written notice required for solicitation of DBEs or WBEs. Emerick has failed to comply with these requirements as follows:

(a) Emerick failed to send written notice soliciting sub bids to not less than five DBEs or WBEs for each specific economically feasible unit selected by Emerick. This is demonstrated in reference to the roofing unit, although Emerick sent six letters in this category only four of the letters were sent to certified DBEs or WBEs. See Exhibit B, page 2, item 17, which sets forth the businesses mailed to by Emerick for compliance with the roofing unit, and you will note that two of the six mailings were to entities which do not and did not qualify as certified DBEs or WBEs.

(b) The solicitations mailed by Emerick did not include details regarding where Project specifications may be reviewed, Emerick only listed three plan centers - Daily Journal of Commerce, Portland, Oregon; Construction Data West, Portland, Oregon; and Impact Business Development, Portland, Oregon, while failing to list Construction Data East, Portland, Oregon and Valley Plan Center, Kent, Washington.

(c) The notices sent by Emerick were of a general and standardized form which did not specify the portions of work each sub was solicited to perform nor did they offer to subdivide units into more feasible units for DBE/WBE subcontractors. Forty three of the letters contained the wrong name for the contact person, in that the name used for company A was actually the contact person for company B. One can see by reviewing the letters that it is apparent the computer simply was not properly

Mr. Amha M. Hazen
June 4, 1990
Page 3

programed. This happened in forty-three instances. Please see column 2 of Exhibit B in this regard.

(d) Emerick made extensive utilization of DBE and WBE general contractors for solicitation of specialty work and you will note that not one of said general contractors submitted a bid to Emerick. Emerick further utilized specialty firms without the proper description for the various work units. Please see Exhibit A for an outline of these instances.

(e) It should be noted that of the one hundred seventy solicitation letters Emerick sent, only eighty-six were to single subs and the remaining eighty-four were to twenty-seven subs who received from two to nine letters each. This is outlined in Exhibit C enclosed herewith for your review. This very definitely does not comply with the intent of Metro's Disadvantaged Business Program.

3. Emerick failed to comply with Metro Code section 2.04.060(b)(5) in that Emerick does not demonstrate any efforts to followup on disconnected numbers and Emerick does not document that on followup phone calls to subs who received multiple solicitations that inquiry was made to all categories for which a solicitation was mailed to the sub, in one instance this would have meant inquiring as to nine different categories.

It should be noted at this time, although a Notice of Award has not been delivered to Slayden Construction, Inc. ("Slayden"), that Slayden's bid is nonresponsive for the reason that it does not meet Metro's Disadvantaged Business Program goals. Robinson submits that Slayden does not meet the goals for the reason that its DBE listing of Pen-Nor, Inc. ("Pen-Nor") should be reduced from \$229,000 to the bid amount of \$65,280, which is the amount Pen-Nor bid to Robinson and Emerick for the mechanical. Pen-Nor did not bid "site utilities" to Emerick or Robinson. Pen-Nor's description of work set forth in the Oregon Certified D/M/WBE Directory does not include "site utilities", and it is not the standard industry practice to subcontract the site utilities with the mechanical subcontractor. Due to the fact that Pen-Nor is not qualified and experienced to do this work Pen-Nor will be required to subcontract out the site utilities. The subcontracting of the site utilities by Pen-Nor does not comply

Mr. Amha M. Hazen

June 4, 1990

Page 4

with Metro Code section 2.04.075(a)(3), (4) and (5) in that the subcontracting out of over 250% of their own work (in dollars) to another firm does not perform a commercially useful function.

It should be acknowledged that Emerick, by its efforts to comply with the demonstration of good faith efforts requirements of Metro Code section 2.04.160(b), has not attempted to comply with the policy statement of Metro's program contained in the bid documents and Metro Code Section 2.04.105. Emerick's effort has been an attempt at technical compliance and not good faith compliance, and as we have demonstrated above, does not qualify as a technical compliance. I believe this point is born out by the fact that Emerick only received twenty-one DBE/WBE bids and of those four were from DBE/WBE subcontractors who were not solicited by Emerick. Furthermore, of these four, three were the low bidders and were utilized by Emerick in its bid. This is even more interesting when it is noted that Emerick only utilized eight DBE/WBE subcontractors, almost half of whom were not solicited by Emerick.

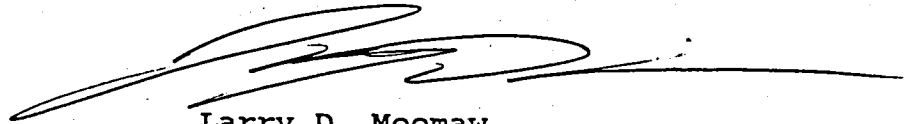
In summary, Emerick's good faith effort does not satisfy Metro's requirements for all the reasons set forth above, but emphasis should be placed on its failure to list all plan centers where project specifications could be reviewed and its failure to mail five notices soliciting DBEs or WBEs for the roofing item identified by Emerick as a specifically economically feasible unit of the Project to be performed by DBEs or WBEs. (Historically Metro has found the latter to be sufficient to reject a bid.)

Article 12 of section 00700 General Conditions mandates that the Contractor shall comply with all pertinent provisions of Metro's Disadvantaged Business Program. The foregoing conclusively demonstrates that Emerick and Slayden have not complied with all pertinent provisions of Metro's Disadvantaged Business Program and Metro must therefore reject the bids of Emerick and Slayden and award the contract to Robinson as the lowest responsible bidder. The only other alternative to Metro is to reject all bids, which necessitates a finding that it is in the public interest to do so.

Mr. Amha M. Hazen
June 4, 1990
Page 5

In the event the bid for this project is awarded to Emerick or Slayden, Robinson fully intends to pursue its appeal rights and to seek a judicial remedy to this matter after exhausting its administrative remedies.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Moomaw", with a long horizontal flourish extending to the right.

Larry D. Moomaw

LDM:sp
cc: Robinson Construction

1358

EXHIBIT A



INDUSTRY STANDARDS
SPECIALTY FIRMS (SF)

GC.

FEASIBLE UNITS FOR DBE/WBE SUBCONTRACTORS

- 1 Surveying - IIII
- 2 Demolition - IIII
- 3 Site Preparation & Earthwork - IIII
- 4 Pile Driving & Shot Crete - IIII (S.F. & S.F.) 4 G.C.
- 5 Site Utilities - IIII (S.F.)
- 6 Asphalt Paving & Base - IIII (S.F.)
- 7 Pavement Markings - IIII (S.F.)
- 8 Fencing - IIII (S.F.)
- 9 Landscape & Irrigation - IIII (S.F.)
- 10 Concrete Cutting - IIII (S.F.) - 2 G.C.
- 11 Reinforcing Steel Furnish & Place IIII (S.F.)
- 12 Concrete Curbs & Gutters - IIII
- 13 Precast Concrete IIII (S.F.)
- 14 Metal Fabrications & Railings IIII (S.F.) - 2 G.C. / 2 S.F. w/o PROPER DESCRIPTION
- 15 Structural Steel Erection IIII (S.F.) - 2 G.C. / 1 S.F. w/o P.D.
- 16 Insulation IIII (S.F.) - 3 G.C. / 1 FIRM CANCELLED
- 17 Roofing IIII (S.F.) - 1 G.C. / 1 S.F. w/o P.D. / 2 CANCELLED
- 18 Flashing, Sheet Metal & Metal Siding - IIII (S.F. & S.F.) 1 G.C. / 2 S.F. w/o P.D. / 1 FIRM CANCELLED
- 19 Unit Masonry - IIII (S.F.) 2 G.C.
- 20 Metal Framing, Drywall & Acoustical Ceilings - IIII (S.F. & S.F.) 3 G.C. / 1 FIRM CANCELLED
- 21 Painting - IIII (S.F.) 1 FIRM CANCELLED
- 22 Mechanical & Fire Protection - IIII (S.F. & S.F.)
- 23 Electrical Division - IIII (S.F.)
- 24 Joint Sealer IIII 5 G.C.
- 25 Steel Doors, Frames & Finished Hardware IIII (S.F. & S.F.) 6 G.C.
- 26 Aluminum Windows, Glass & Glazing IIII (S.F.) 6 G.C. / 1 FIRM w/o P.D.
- 27 Resilient Flooring IIII (S.F.) 1 G.C.
- 28 Conveying System IIII (S.F.) 6 G.C.

ROBINSON

CONSTRUCTION CO.

7320 S.W. HUNZIKER
P.O. BOX 23248
TIGARD, OREGON 97223

EXHIBIT B

DISCONNECTED
W/NO FOLLOWUP

Feasible
Units

TOTAL # = 43
WRONG CONTACT NAME ON LETTER (TYPICALLY COMPETITOR'S NAME)

| Company Name | Feasible Units | Contact Status | Notes |
|--|----------------|----------------|--------------|
| WESTLAKE CROSS CONTINENT CENTRAC ASSOC ANTORIA INFRARED CONSULTANTS PREMSIGH & ASSOC. SURVEYORS WEST | ① | X | |
| NATHAN MILLAGE MRC COMPANY YOUNG, INC. | ② | X | |
| ✓* DYNAMIC ROAD - II ✓* J. MURPHY CONST - II ✓* WHITE BUFFALO - II | | X | |
| ✓* EDT CONST - II ✓* CONMX - II ✓* BONSTAN - II ✓* J. MURPHY CONST ✓* DYNAMIC ✓* BENGE CONST. ✓* SALT & PEPPER | ③ | X | |
| ✓* GERVAS CONST. - III ✓* VERSATILE DRILLING ✓* SA INDUSTRIES ✓* G.P.D. CONST - IIII ✓* OHIO CONST ✓* RAM, INC. | ④ | X | |
| ✓* WHITE BUFFALO ✓* ALCCO ✓* BONSTAN ✓* NORTH'S PLOG ✓* C.M. GEN'L CONT. ✓* K & R PLOG | ⑤ | X | TOO BIG X |
| ✓* LOPEZ FENCING ✓* HENDERSON & CO. ✓* S & S CORP. ✓* MARMELEJO CONTRACT. - II ✓* AUSTIN CLAYTON - II ✓* AMERICAN CONT. CENTER - II | ⑥ | X | |
| ✓* MARMELEJO ✓* AMERICAN CONT. CENTER ✓* AUSTIN CLAYTON ✓* EDT CONST ✓* WESTLINE CONST. ✓* HOLESFIELD'S G.C. | ⑦ | X | |
| ✓* PETE'S WESTSIDE FENCING ✓* JUNLO CORP ✓* PACIFIC STEELOCK ✓* POWER FENCE ✓* PACIFIC NW GUARDRAIL ✓* E.M.W. CONST. | ⑧ | X | |
| ✓* WILCOTT LANDSCAPE ✓* A & G LANDSCAPE ✓* GREEN ART LANDSCAPE ✓* SAS BLDG & LANDSC ✓* S & L LANDSCAPING ✓* POLYNESIAN LANDSC | ⑨ | X | X |
| ✓* BAKHMAN & SONS ✓* CARR CONST. - IIII ✓* SEA-PORT GEN'L - IIII ✓* ELIS'ALDA, HENRY ✓* BROTHERS CONC. ✓* INDIAN INC. - II | ⑩ | X | |

ROBINSON

CONSTRUCTION CO.

7320 SW HUNZIKER
PO. BOX 23248
TIGARD, OREGON 97223

Feasible
Units

WRONG CONTRACT

DISCONNECTED NO FOLLOW UP

SMITH CO.
TRIAD STEEL CO.
RAINIER STEEL
CONMX
DIVERSIFIED - II
JAMES CONST - III

(11)

XX
XX
X

RIVIERA CONST - II
LOPEZ CONC.
M'CALIS CONC.
CAPITOL CONC.
CASTLE ROCK CONST.
RETANA ENT.

(12)

XX
XX
XX

GERVAIS CONST.
WOODBURN CONST - III II
MERIDITH CONST.
RIVIERA CONST.
BALLARD CONST
DIYERSIFIED CONST.

(13)

XX
XX

MCGRATH, WILL. - II
ROBERT ALT - III III
OGILVIE CO. - II
BEAVERCREEK - II
ALUM & BRONZE FAB
GPO CONST

(14)

X

GERVAIS CONST
ROBERT ALT
WILLIAM MCGRATH
INDIAN INC
ROBERT EARLE - II
RECORD STEEL & CONST

(15)

ROBERT ALT
WOODBURN CONST.
AGUILERS/WHITE - III (16)
CWH CONST. - II
JAMES CONST.
INTERSTATE INSULATIONS

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY (1990)

G.P.D. CONST
CASCADE ROOFING - II (17)
ALL AMERICAN CONST. - II
ATS-2 ROOFING
BORING GUTTER LADY
ROOF SYSTEMS

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY (1990)

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY X (1990)

CARR CONST
OGILVIE CO.
EBA-SHT MTL
CASCADE ROOFING
BEAVERCREEK MTL.

(18)

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY (1990)

WOODBURN MASONRY
J & S MASONRY
SCOTT'S MASONRY
MEDINA MOSAIC
ROBERT ALT
WOODBURN CONST

(19)

X

WOODBURN CONST
PORTLO CUSTOM INTERIORS
SEA-PORT GEN'L
CWH CONS (20)
ROBERT ALT
AGUILERS/WHITE

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY (1990)

ROBINSON

CONSTRUCTION CO.

7320 S.W. HUNZIKER
P.O. BOX 23248
TIGARD, OREGON 97223

Feasible
Units

wrong contract

DISCONNECTED

JIM MILLER CONST
ACE OF SHADES
JOHN BURNS
CMB & ASSOC. ←
PORTLAND CUSTOM INT.
PATCHETT/SNIDGE

(21)

CANCELLED IN MAY UPDATE OF CERTIFIED DIRECTORY (1990)

X

CE BUTLER
ADAMS MECH
MSI - MECHANICAL
SPEARS MECH
THERMAL MECH
PEN-NOR MECH

(22)

X

FLOYD BROWN
PACIFIC ENERGY
AARON EASTSIDE
CYDELL CORP
JACKSON ELEC
BLESSING ELEC.

(23)

X

CARR CONSTRUCTION
SEA-FORT GEN'L
ROBERT ALT
WOODBURN CONST CO
JAMES CO,
SPOKANE CONC, CUTTING

(24)

JAMES CONST
WOODBURN CONST
SEA-FORT GEN'L
ROBERT ALT
CARR CONST
AGUILERA/WHITE

(25)

WITHERS LUMBER CO.
WOODBURN CONST CO
ROBERT ALT
JAMES CONST.
SEA-FORT GEN'L
CARR CONST
AGUILERA/WHITE CONS

(26)

LOPEZ CARPETS / DRAPES
COMMERCIAL INT & SPEC
ECS & ASSOCIATES
LUTTONS DECORATING CENTER
AGUILERA/WHITE CONS
LACUNA INTERIORS

(27)

ROBERT ALT
G.P.D. CONST
SEA-FORT GEN'L
CARR CONSTRUCTION
AGUILERA/WHITE
ROBERT EARLE

(28)

X

170
111 different
or sub
59 repeat
letters

ROBINSON

CONSTRUCTION CO.

7320 S.W. HUNZIKER
P.O. BOX 23248
TIGARD, OREGON 97223

EXHIBIT C

| | # OF LETTERS SENT | |
|-----------------------|-------------------|---|
| 1 DYNAMIC | - 2 ✓ | |
| 2 J MURPHY | - 2 ✓ | |
| 3 WHITE BUFFALO | - 2 ✓ | |
| 4 EDT CONST | - 2 ✓ | |
| 5 CONHX | - 2 ✓ | |
| 6 BONSTAN | - 2 ✓ | |
| 7 GERVAIS | - 3 ✓ | - HIGHWAY/ROAD GENERAL CONTRACTOR |
| 8 G.P.D. | - 4 ✓ | - GENERAL CONTRACTOR |
| 9 MARMELEJO | - 2 ✓ | |
| 10 AUSTIN CLAYTON | - 2 ✓ | |
| 11 AMERICAN CONT CNTR | - 2 ✓ | |
| 12 CARR CONST | - 6 ✓ | - RES/COMM'L GEN. CONTRACTOR |
| 13 SEA - PORT GEN'L | - 6 ✓ | - RES/COMM'L GEN. CONTRACTOR |
| 14 INDIAN INC | - 2 ✓ | |
| 15 DIVERSIFIED | - 2 ✓ | |
| 16 JAMES CONST | - 5 ✓ | - WEATHERIZATION & RENNOVATION, INSULATION, DOORS & WINDOWS, PAINTING, DEMOLITION |
| 17 RIVIERA CONST | - 2 ✓ | |
| 18 WOODBURN CONST | - 7 ✓ | - SINGLE/MULTI FAMILY RESIDENTIAL/LIGHT COMMERCIAL (UP TO 85,000) TO THREE STORIES COMPLETE CONSTRUCTION CAPABILITIES. DRYWALL, MASONRY, PAINTING, FENCING, FRAMING, EXCAVATING |
| 19 WILL, M'GRATH | - 2 ✓ | |
| 20 ROBIT ALT | - 9 ✓ | - RES/COMM'L GEN. CONTRACTOR SPECIALIZING IN INTERIOR PARTITIONING, REMODELING, STEEL FABRICATION |
| 21 OGILVIE CO, | - 2 ✓ | |
| 22 BEAVERCREEK | - 2 ✓ | |
| 23 ROBERT EARLE | - 2 ✓ | |
| 24 ABULERA/WHITE | - 6 ✓ | - RES/COMM'L GENERAL CONTRACTOR. PAINTING, CONSTRUCTION CLEAN UP |
| 25 CW H | - 2 ✓ | |
| 26 CASCADE ROOFING | - 2 ✓ | |
| 27 ALLAMERICAN CONST | - 2 ✓ | |

84 LETTERS

86 SUBS SENT 1 LETTER EACH - 86

27 SUBS SENT 2-9 LETTERS EA - 84

113

170 LETTERS

June 6, 1990

Ms. Rena Cusma
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201

Re: Metro South Station Modifications, Oregon
City, Oregon, Project
Subject: Bid Protest of Award to Emerick Construction
Co.
Our File No. 2803.11

Dear Ms. Cusma:

Slayden Construction, Inc. ("Slayden") submits this letter and the accompanying affidavits in support of Slayden's protest of the award of the Metro South Station Modifications Contract ("Contract") to Emerick Construction Company ("Emerick"). Slayden's protest is two-part: first, Emerick failed to make good faith efforts as defined in Metro Code Section 2.04.160(b); second, even if you determine that Emerick complied with the good faith efforts required by Metro Code Section 2.04.160(b), the definition of good faith efforts contained in that section is preempted by the definition of good faith efforts in ORS 200.045(3) and as a matter of common law.

1. The Facts.

Emerick is the apparent low bidder on the Contract. Slayden is the apparent second low bidder on the Contract. Slayden's bid was approximately \$10,000 higher than Emerick's bid.

The Contract had goals of 10 percent DBE participation and 3 percent WBE participation. Slayden's bid exceeded both goals. Emerick certified that it intended to subcontract 1.01 percent to WBEs and 1.84 percent to DBEs. Emerick chose to rely upon making good faith efforts rather than meeting the goals.

This is the second time that the Contract has been bid. The Contract was originally bid on March 21, 1990. The first four low bidders, including Emerick, failed to meet the DBE and WBE goals or to make good faith efforts as required by Metro Code Section 2.04.160(b). Slayden did not bid the Contract on March 21, 1990. Slayden was able to meet the WBE and DBE goals with very little effort.

2. Emerick Has Failed to Make Good Faith Efforts as Defined in Section 2.04.160(b).

Emerick has failed to make good faith efforts as required by Metro Code Section 2.04.160(b) by failing to work with Marmolejo Construction, Inc. ("Marmolejo"), by failing to acknowledge the bid, much less accept the bid, of Westlake Consultants, Inc. ("Westlake"), and by failing to send the letters required by Metro Code Section 2.04.160(b) in a manner best calculated to secure maximum DBE and WBE participation.

2.1 Emerick Failed to Make Good Faith Efforts to Obtain a Bid From Marmolejo and Failed to Accurately Reflect a Telephone Conversation With Ed Marmolejo in its Telephone Log.

Metro Code Section 2.04.100(b) requires bidders on locally funded contracts to achieve applicable contract goals for DBE/WBE participation or to demonstrate that they have made good faith efforts to achieve the goals. The section states that good faith efforts shall include written documentation of certain actions by the bidders. Section 2.04.100(b)(4) requires a bidder to send solicitation letters to not less than five DBEs or WBEs for each economically feasible unit of the project, which it has identified as being a unit capable of performance by DBEs or WBEs. The letters must be sent not less than 10 days before bids are due. Metro Code Section 2.04.100(b)(5) requires the bidder, not less than five days before bids are due, to make follow-up contractors to all DBEs and WBEs who have not responded to the solicitation letters. The bidder is required to maintain a telephone log showing the dates and times of follow-up calls and the results from each solicitation letter sent.

On May 17, 1990, Ed Marmolejo, who is president of Marmolejo, a certified MBE/DBE, received a letter inviting Marmolejo to bid on the project. On the same day, Mr. Marmolejo called Joe Kennedy, Emerick's estimator responsible for bidding the contract. Mr. Marmolejo asked Mr. Kennedy how large the project would be. Mr. Kennedy indicated that he estimated the project to be between \$2.3 million and \$7 million, with 10 percent DBE and 3 percent WBE requirements. Mr. Marmolejo asked

Mr. Kennedy if Emerick needed any DBE assistance. Mr. Marmolejo told Mr. Kennedy that Marmolejo was available to take on any amount of work. They concluded that there would be approximately \$400,000 of DBE participation required to meet the goals. Mr. Kennedy said that he did not know how much DBE participation Emerick would receive and that it was too soon to tell. Mr. Marmolejo assured Mr. Kennedy that Marmolejo would be available and that Mr. Marmolejo would meet with him when Mr. Kennedy found out how much DBE participation he was going to need. (See Affidavit of Ed Marmolejo.)

Despite Mr. Marmolejo's offer to Mr. Kennedy, Mr. Marmolejo never heard any more from him. The telephone log submitted by Emerick does not accurately reflect the telephone conversation between Mr. Marmolejo and Mr. Kennedy on May 17, 1990. Mr. Marmolejo routinely takes notes of all telephone conversations. A copy of his notes are attached to his affidavit. Mr. Kennedy stated in his notes that Marmolejo did "not have time to bid this project, but want (sic) to work with us on any other upcoming project." Mr. Marmolejo did not tell Mr. Kennedy that Marmolejo did not have time to bid the project. Mr. Marmolejo told him that Marmolejo would be willing to work with Emerick so that they would be able to meet their DBE participation requirements. Mr. Kennedy's failure to accurately reflect the telephone conversation and his failure to call Mr. Marmolejo when he was unable to meet the DBE participation goals shows that Emerick did not make good faith efforts. Emerick simply followed the pro forma requirements of sending out letters and making telephone calls. Emerick did not utilize the offer of assistance from a DBE to actually fill the DBE goals. Inaccurately reflecting the telephone conversation between Mr. Kennedy and Mr. Marmolejo is an act of bad faith.

Mr. Marmolejo told Mr. Kennedy that Marmolejo would be able to put together a bid in a very short time-frame if Emerick was unable to get adequate DBE participation. Mr. Marmolejo told Mr. Kennedy that Marmolejo was capable of providing its own bonding and of performing many different types of work. Emerick failed to accept Marmolejo's offer of help to meet the DBE goals. (See Affidavit of Ed Marmolejo.)

2.2 Emerick Failed to Make Good Faith Efforts by Failing to Acknowledge and Utilize Westlake's Bid.

Westlake is a certified WBE. Westlake appears in the directory of DBE/MBE/WBE firms prepared by the Executive Department of the State of Oregon. Westlake submitted bids to Emerick when the contract was bid on March 21 and on May 22. On March 14, 1990, Westlake faxed a letter proposal and scope of

services to Emerick for the March 21 bid. Copies of the letter and scope of services are attached as Exhibit 1. Emerick failed to use Westlake's bid and failed to include it on its list of DBE subcontractor bids. A copy of Emerick's list of DBE contractors for the March 21, 1990 bid is attached to the affidavit of Judy Haney. Emerick did not send Westlake a solicitation letter for the March 21 bid. Westlake took the initiative, discovered the contract itself, and submitted a bid to Emerick. (See Affidavit of Judy Haney)

For the May 22 bid, Emerick sent a letter to Judy Haney dated May 10, 1990 requesting a quotation on surveying. On May 15, 1990, Westlake's estimator, Mike Hargrave, talked with Joe Kennedy of Emerick. Emerick's telephone log indicates that Westlake was "bidding" the surveying work, a copy of which is attached as Exhibit 2. Westlake determined that there were no substantial changes in the contract since the May 21 bid and maintained its lump sum bid price of \$19,000 for the surveying work.

Emerick's summary of DBE bids, a copy of which is attached as Exhibit 3, indicates that Emerick used the bid amount of \$19,000 for survey work. Emerick's summary lists Cross Continent Engineers and Premsingh & Associates as DBE companies bidding on the surveying work. Emerick's list of DBE subcontractors does not make any mention of Westlake's bid. The summary does indicate that the amount of the bid used was \$19,000. Further, Emerick's list of all subcontractors, including non-DBE and WBE subcontractors, does not mention Westlake. A copy of the summary is attached as Exhibit 4. It appears that Emerick either obtained an identical quote from some other surveyor, which it fails to list on its list of subcontractors, or plans to do the work itself. In either situation, Emerick had a WBE bid in the same amount as the bid that it chose to use. Emerick's failure to use the WBE bid strongly evidences the fact that the letters sent and the telephone calls made by Emerick were for the purpose of meeting the good faith efforts criteria specified in Metro Code Section 2.04.160(b), but were not really intended to obtain DBE and WBE participation.

2.3 The Solicitation Letters Sent by Emerick Pursuant to Metro Code Section 2.04.160(b) Were not Submitted in a Manner Calculated to Obtain DBE and WBE Participation.

The solicitation letters sent by Emerick were not calculated to obtain maximum DBE/WBE participation. While facially appearing to send the correct number of letters for each economically feasible unit identified for DBE/WBE participation,

Emerick did not actually make good faith efforts in sending the letters.

2.3.1 For the May 22 Bid, Emerick Failed to Send Letters to Four DBE/WBE Companies who Submitted Bids to Emerick.

Emerick's summary of DBE/WBE bids submitted in support of good faith efforts for its March 21 bid, a copy of which is attached as Exhibit 1, shows that it received bids from Rio Construction, Apply-A-Line, and Brainard Sheetmetal. The summary indicates that Rio and Brainard submitted bid packages that were unclear and that Emerick could not determine whether they were low bidders. On at least a portion, Apply-A-Line was the low bidder. For the May 22 bid, Emerick did not send letters to any of these three DBE/WBE bidders. Attached as Exhibit 5 is a summary of the letters sent by Emerick to DBE/WBE firms. The summary shows the economically feasible unit and the DBE/WBE contractors to whom Emerick sent solicitation letters.

Although Apply-A-Line and Brainard Sheetmetal submitted bids without receiving a solicitation letter, Rio Construction did not submit a bid for the May 22 bid. Emerick's failure to send solicitation letters to all DBE/WBE firms who had submitted bids for the March 21 bid evidences Emerick's failure to make good faith efforts. The most likely WBE/DBE firms to submit bids on the May 22 bid date were the ones who had submitted bids for the March 21 bid date because they had already prepared their bids. By failing to send solicitation letters and make telephone calls to these DBE/WBE firms, Emerick appeared to comply with the good faith efforts requirements, but in fact took actions that were inconsistent with increasing DBE/WBE participation.

2.3.2 Emerick's Solicitation Letters do not Clearly Identify the Economically Feasible Unit for Which Emerick is Soliciting Participation.

Metro Code Section 2.04.100(b)(4) requires solicitation letters to be sent to not less than five DBEs or WBEs for each subcontracting materials supply work item. The letter must identify the work item or the DBE/WBE has no way of determining what type of bid is being solicited. For certain economically feasible units of work, Emerick sent letters that referred to a general category of work that was not a defined economically feasible unit. For example, Marmolejo was sent one letter requesting a quote for "highway/road work." Emerick has used that letter to satisfy its solicitation letter requirements of its economically feasible units No. 6, Asphalt Paving and Base, and No. 7, Pavement Markings. The letter is far too general to

identify either economically feasible unit. For solicitation letters in the Pavement Marking economically feasible unit, Emerick submitted letters to the American Contractor Center, G. Clayton Austin Company, and Westline Construction, Inc. that requested quotes for "highway/roadway" work. These did not identify pavement markings as an economically feasible unit.

Further, by attempting to utilize a general letter to meet the requirements of sending out notices to five DBEs for each economically feasible unit, Emerick has failed to make good faith efforts. The list of certified DBE/WBE firms published by the Executive Department includes the following DBE/WBE firms identified pavement or asphalt markings as specialty items: Apply-A-Line; Holefield's General Contracting; Junlo Corporation; Maravilla Enterprises, Inc.; Tri-County Ceiling & Oiling; and Westline Construction, Inc. Emerick could have sent letters to all of these contractors who identified pavement markings as a sub-specialty item. Instead, at least three of the letters sent were to contractors who had not specifically identified asphalt marking as a sub-specialty item. Emerick's letters were not sent in a manner calculated to obtain WBE/DBE participation. They were sent merely to meet the number of letters requirement of the Metro Code Section.

For the May 22 bid, Emerick sent letters to DBEs who failed to bid the March 21 contract and to firms who Emerick learned during the March 21 bid had disconnected telephones, were out of business, or who declared that the work was not within their type of work.

The summary of letters, which is Exhibit 5, sent by Emerick to DBEs and WBEs shows that in each category, there were a substantial number of letters sent to DBE/WBE firms who declined to bid to Emerick on March 21. Emerick should have deleted those DBE/WBE firms from its mailing list and included new firms, unless there were no other subcontractors available for that unit of work. Certain units of work, such as No. 3, Site Preparation and Earth Work, and No. 5, Site Utilities, are the specialties listed by numerous DBE/WBE firms. As you will note from reviewing the summary, Emerick sent letters to Bonstan for each of those units of work, although Bonstan had declined to bid the job for the March 21 bid. Likewise, J. Murphy, North's Plumbing, Inc., and K&R Plumbing for those units had already declined to bid on March 21. Dynamic Road Construction and CM General Contracting each had their phones disconnected at the time that Emerick called for the March 21 bid. Nevertheless, Emerick sent letters to them again for the May 22 bid. Sending letters to DBE/WBE firms who are obviously out of business and who have declined to bid the first time fails to meet the number of

letters requirement and fails to meet the standard of good faith efforts anticipated by the Metro Code. The actions taken by Emerick should have been calculated to increase DBE/WBE participation, not decrease it. Sending letters to people who failed to bid the first time and who were known to Emerick to be out of business based upon prior telephone calls is not calculated to achieve maximum DBE/WBE participation. These are only examples from two economically feasible units. You should carefully review the entire Exhibit 5 summary.

2.4 With Minimal Effort, Emerick Could Have Met the DBE/WBE Goals.

With a minimum amount of effort, Emerick could have met the DBE/WBE goals. Slayden was able to meet the goals and is approximately only \$10,000 higher for the entire project than Emerick.

We have reason to believe but have not had adequate time within which to obtain affidavits, that the following DBE/WBE firms submitted quotes to Emerick but are not listed on Emerick's WBE/DBE summary stating the reasons why their bids were rejected: McCalib Concrete Service; S&L Landscaping; Buffalo Welding; and EDT Construction.

We are in the process of trying to obtain affidavits from those firms. Certainly, the affidavit of Judy Haney of Westlake indicates that at least a DBE/WBE bid that was submitted was not acknowledged and Emerick did not list the reason for rejecting it.

Further, we believe that for some of the bids that are not listed, such as S&L Landscape, which bid \$251,992, if Emerick had used good faith efforts, Emerick would have obtained an erosion fabric cost and would have added it to the bid so that it would have been. We believe that McCalib Concrete Service utilized unit prices for curbs and flatwork and, if Emerick had supplied its own estimate of the units McCalib would have been low.

3. Metro Code Section 2.04.100, Which Defines the Minimum Efforts Required for the Good Faith Efforts, is Preempted by the Definition of Good Faith Efforts in ORS 200.045(3).

As you will note, ORS 200.045(2), a copy of which is attached as Exhibit 3, sets out the good faith standards for emerging small business contracts. ORS 200.045(3) sets out the definition for all public contracts within the State of Oregon. The definition requires the bidder to have "negotiated in good faith with interested, capable, and competitive minority or

ALLEN, KILMER, SCHRADER, YAZBECK & CHENOWETH

Ms. Rena Cusma
June 6, 1990
Page 8

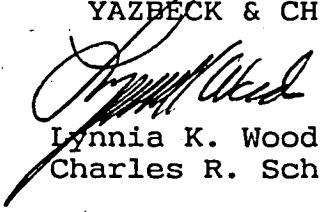
business enterprises submitting bids." The requirements of the Metro Code do not include that requirement. There are other differences, but that is the most major difference. Emerick made no efforts to negotiate with any DBE/WBE firm. The prime example is evidenced by the Affidavit of Edward Marmolejo.

The requirements of ORS 200.045(3) have been recognized by a sufficient number of cases to create a common law definition of good faith efforts. Public policy requires that the good faith efforts outlined in ORS 200.045 preempt Metro Code Section 2.04.100.

We will submit additional affidavits and legal analyses shortly.

Very truly yours,

ALLEN, KILMER, SCHRADER,
YAZBECK & CHENOWETH, P.C.



Lynn K. Woods
Charles R. Schrader

Enclosures

SLAYBR\Cusma.01(A)

MARCH 22, 1990

| SPEC. SECTION | DBE SUBCONTRACTOR | DBE BID | LOW SUBCONTRACTOR | LOW BID |
|---------------|------------------------|-------------|-----------------------|-----------|
| EARTHWORK | E.D.T. CONSTRUCTION | * \$263,661 | BILL ERICKSON | \$441,200 |
| 02513 & 02222 | BENGE CONSTRUCTION | \$324,048 | PARKER NORTHWEST | \$264,562 |
| 02513 & 02222 | LOPEZ PAVING | \$355,264 | PARKER NORTHWEST | \$264,562 |
| 02577 | HOLEFIELDS GEN. CONTR. | \$5,000 | APPLY-A-LINE | \$3,761 |
| 03201 | RAINEER STEEL | \$33,663 | C & J REBAR | \$26,240 |
| 03410 | APPLY-A-LINE | \$7,550 | EMERICK CONSTRUCTION | \$2,003 |
| 07511 | ROOF SYSTEMS | \$13,236 | ABC ROOFING | \$6,810 |
| 09650 | COMMERCIAL INTERIORS | \$975 | COMMERCIAL INTERIORS | \$975 |
| DIV. 16000 | BLESSING ELECTRIC | \$292,915 | TIGARD ELECTRIC | \$184,000 |
| | RIO CONSTRUCTION | \$64,460 | UNCLEAR PACKAGED BIDS | |
| | BRAINARD SHEET METAL | \$63,779 | | |

** E.D.T. CONSTRUCTIONS BID WAS INCOMPLETE FOR THE EARTHWORK PACKAGE. DOLLARS HAD TO BE ADDED TO THEIR BID WHICH MADE THEM HIGH.

**EMERICK CONSTRUCTION COMPANY
MBE/WBE CONTACT LOG**

PROJECT: METRO SOUTH STATIONS MODIFICATIONS BID DATE: MAY 22, 1990
 BID TIME: 11:00 AM

NAME: WEST LAKE CONSULTANTS INC.

ADDRESS: _____

PHONE: () 689-0652

KIND OF WORK: SURVEYING

SIZE OF WORK CAN HANDLE: _____

| DATE | PERSON CONTACTED | CONTACTED BY | TIME | COMMENTS/DISCUSSIONS |
|-------------|-----------------------|--------------------|--------------|----------------------|
| <u>5/15</u> | | <u>VAL TIEFFER</u> | <u>11:00</u> | <u>CO. 131</u> |
| <u>5/15</u> | <u>MIKE HANGLER'S</u> | <u>JOE KENNEDY</u> | <u>11:40</u> | <u>BIDDING</u> |
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RESULTS OBTAINED

| BID SUBMITTED | DECLINED | NO RESPONSE |
|---------------|----------|-------------------------|
| | | <u>BID NOT RECEIVED</u> |
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**METRO SOUTH STATION MODIFICATIONS
2.04.160 DETERMINATION OF GOOD FAITH EFFORTS
SUBPARAGRAPH (5) DOCUMENTATION**

EMERICK CONSTRUCTION COMPANY

| <u>SUB/SUPPLIER NAME</u> | <u>MINORITY STATUS</u> | <u>TYPE OF WORK</u> | <u>BID AMOUNT</u> | <u>BID AMOUNT USED</u> | <u>REASON REJECTED</u> |
|------------------------------|------------------------|--------------------------------------|-------------------|--------------------------|------------------------|
| Lopez Paving, Inc. | DBE | Asphalt Paving & Base | \$310,560 | 257,795 | Not Low Bidder |
| A & G Landscape | WBE | Landscape & Irrigation | 335,300 | 323,000 | Not Low Bidder |
| Lopez Concrete Service | DBE | Concrete Curb & Gutters | 50,964 | 26,400 | Not Low Bidder |
| Apply-A-Line | DBE | Pavement Markings | 3,761 | 3,761 | Low Bidder |
| Pacific Steelock Fence | DBE/WBE | Fencing | 18,059 | 12,410 | Not Low Bidder |
| | | | | (used Pete's Westside) | |
| Pete's Westside Fence | WBE | Fencing | 12,410 | 12,410 | Low Bidder |
| Triad Steel Inc. | DBE | Reinforcing Steel Furnish & Place | 81,383 | 75,440 | Not Low Bidder |
| Ballard Construction Co. | WBE | Reinforcing Steel Furnish | Unit Price | 26,850 | Not Low Bidder |
| Rainier Steel Inc. | DBE | Reinforcing Steel Furnish | Unit Price | 26,850 | Not Low Bidder |
| Northwest Concrete Pumping | WBE | Concrete Pumping | Unit Price | Unit Price | Low Bidder |
| Brainard Sheet Metal | DBE | Flashing, Sheet Metal & Metal Siding | 15,323 | 15,323 | Low Bidder |
| Commercial Interior & Spec. | DBE | Resilient Flooring | 975 | 975 | Low Bidder |
| Pro-Sign | WBE | Site Signage | 7,350 | 7,350 | Low Bidder |
| Pen-Nor Inc. | DBE | Mechanical | 65,280 | 32,822 | Not Low Bidder |
| Paragon Fire Sprinkler, Inc. | WBE | Fire Protection | 22,489 | 17,630 | Not Low Bidder |
| MSI Mechanical System | WBE | Mechanical | 32,822 | 32,822 | Low Bidder |
| EBA Sheet Metal | DBE | HVAC Only | 25,490 | 32,822 | Not Low Bidder |
| | | | | (used MSI complete mech) | |
| Blessing Electric | DBE/WBE | Electrical | 259,000 | 194,500 | Not Low Bidder |
| Cross Continent Engr. | DBE/WBE | Surveying | Unit Price | 19,000 | Not Low Bidder |
| Brothers Concrete Cutting | DBE | Concrete Cutting | Unit Price | Unit Price | Low Bidder |
| Premising & Associates | DBE | Surveying | Unit Price | 19,000 | Not Low Bidder |

May 22, 1990

Metropolitan Service District
2000 SW First Avenue
Portland, Oregon 97201-5398

ATTN: Mr. Rob Smoot

Reference: METRO SOUTH STATION MODIFICATIONS
OREGON CITY, OREGON

Per Section 00110 - Instruction To Bidders, Item 14, please find the following list of subcontractors and suppliers we propose to use.

| <u>Item of Work</u> | <u>Subcontractor</u> | <u>Amount</u> |
|------------------------|---------------------------|---------------|
| Earthwork | B & R Excavation | \$440,000 |
| Piling | Riedel | 270,000 |
| Asphalt Paving | Lakeside | 257,795 |
| Pavement Markings | Apply-A-Line | 3,761 |
| Landscape | Ben Fox | 323,000 |
| Fencing | Pete's Westside Fence | 12,410 |
| Reinforcing Steel | Farwest Rebar | 48,590 |
| Rebar Installation | C & J Rebar, Inc. | 26,850 |
| Concrete Pumping | N.W. Concrete Pumping | 4,500 |
| Concrete Cutting | Brothers Concrete Cutting | 2,000 |
| Shotcrete | Blue Mountain Pool | unit price |
| Precast Concrete | Olympian | 72,681 |
| Structural Steel | GTE | 121,315 |
| Sheet Metal and Siding | Brainard Sheet Metal | 15,323 |
| Roofing | Snyder | 9,430 |
| Hollow Metal | Mercer | 2,689 |
| Windows | Mountain Glass | 15,758 |
| Drywall | Harlen's | 4,534 |
| Acoustical Ceiling | Columbia Acoustical | 782 |
| Flooring | Commercial Interiors | 975 |
| Painting | Ferguson | 16,847 |
| Signage | Prosign | 7,350 |
| Conveyor | Transco | 46,750 |
| Fire Protection | Grinnell | 17,630 |
| Mechanical | MSI Mechanical | 32,822 |
| Winch | Allied | 12,500 |
| Electrical | Tigard Electric | 194,500 |

If you have any questions concerning this please do not hesitate to call.

Yours truly,


Kevin J. Spellman
President

EXHIBIT 4
PAGE 1 OF 1

8850 S.E. Otty Road P.O. Box 66100 Portland, Oregon 97266-0100 TEL (503) 777-5531 FAX (503) 771-2933

Member Associated General Contractors
Oregon Registration #10723
Washington Registration #EMERIC-379NT

May 22, 1990 Bid

Letters to DBEs were
sent 5/10/90

Bid Date: 5/22/90
10 days before: 5/11/90
5 days before: 5/17/90

* Bid

** Low Bidder

< DBE/WBE firms who did not bid on March 21 Contract bid >
<<DBE/WBE who Emerick loss for March 21 Contract Bid indicate were
out of business or their phones were disconnected>>

FEASIBLE UNITS FOR DBE/WBE SUBCONTRACTORS

1. Surveying

- 1.1 Westlake Consultants, Inc. - Emerick States Westlake did not bid, but note of 5/15 call indicates Westlake is "bidding". Calls: 5/14 and 5/15
- *1.2 Cross-Continent Engineers (C2E) - Bid - not low (unit price). Calls: 5/14 and 5/15
- 1.3 Centrac Associates, Inc. - Did not bid - design firm only. Calls: 5/14
- 1.4 Antoria Infrared Consultants - Did not bid - note says they only perform infrared surveys. Calls: 5/15 and 5/16
- *1.5 Premsingh & Associates, Inc. - Bid - not low (bid \$50 an hour - unit price). Call: 5/15
- 1.6 Surveyors West - Did not bid - project is too far away. Calls: 5/14 & 5/15

2. Demolition

- 2.1 Millage, Nathan, Trucking - Did not bid - note says they only have end dumps and belly dumps. Calls: 5/14, 5/15 and 5/16
- 2.2 MRC Company - Did not bid. Calls: 5/14, 5/15, 5/16

- <2.3 Young, Inc. - Did not bid - note says that they will supply explosives, no demolition work. Calls: 5/14, 5/15, 5/16>
- <<2.4 Dynamic Road Construction Corp. Did not bid. Calls: Attempted call 5/14 - disconnect, no new listing>>
- <2.5 J. Murphy Construction. Did not bid. Calls: Attempted call 5/14 - disconnected, no new listing>
- 2.6 White Buffalo Construction, Inc. - Did not bid. Call: 5/14

3. Site Preparation & Earthwork

- *3.1 E.D.T. Construction, Inc. - Bid - not low. Call: 5/14
- 3.2 Conmix, Inc. - Did not bid. Calls: 5/14, 5/15, 5/16
- <3.3 Bonstan - Did not bid. Call: 5/14>
- <3.4 J. Murphy - Did not bid. Calls: Attempted call 5/14 - disconnect, no new listing>
- <<3.5 Dynamic Road Construction Corp. - Did not bid. Calls: Attempted call 5/14 - disconnect, no new listing>>
- 3.6 Bengé Construction Co. - Did not bid. Call: 5/14
- 3.7 Salt & Pepper Construction - Did not bid - but notes state "Salt & Pepper are joint venturing this bid with Waybo, Inc. Bidding..." Calls: 5/14 and 5/15

4. Pile Driving & Shot Crete

- 4.1 Gervais Construction, Inc. - Did not bid - Notes say "has merged with Ross Brothers..." Call: 5/14

- <<4.2 Versatile Drilling Contractors, Inc. - Did not bid - notes state "[d]o not do that much driven piles..." Call: 5/15 and 5/16>>
- <<4.3 3A Industries, Inc. - Did not bid - notes say "too busy..." Calls: 5/15 and 5/16>>
- 4.4 G.P.D. Construction Co. - Did not bid. Call: 5/15 - disconnect, no new listing.
- 4.5 Ohno Construction Company. Did not bid - notes say "too busy...". Call: 5/15
- <4.6 Ram Inc. Contractors - Did not bid - notes say "too busy". Call: 5/15>

5. Site Utilities

- 5.1 White Buffalo Construction, Inc. - Did not bid. Call: 5/14
- 5.2 ALCCO - Did not bid. Call: 5/14
- <5.3 Bonstan - Did not bid. Call: 5/14>
- <5.4 North's Plumbing, Inc. - Did not bid - notes say "project too big." Call: 5/14>
- <<5.5 C.M. General Contracting - Did not bid. Call: Attempted call 5/14 - disconnect, no new listing>>
- <5.6 K&R Plumbing - Did not bid - notes say "too busy". Call: 5/14>

6. Asphalt Paving & Base

- *6.1 Lopez Paving, Inc. - Bid - not low. Calls: 5/14
- <6.2 Henderson & Company - Did not bid. Calls: 5/14 and 5/15 left message on recorder, 5/16 called information and no listing. Unable to contact by phone.>
- 6.3 S and S Corporation - Did not bid. Calls: 5/14 and 5/15

- <6.4 Marmolejo Contractors, Inc. - Did not bid - notes state "not have time to bid this project...". Calls 5/14 and 5/17>
- <6.5 Austin G. Clayton, Company - Did not bid. Calls 5/14 and 5/15>
- 6.6 American Contractor Center - Did not bid - note says "not interested...". Call: 5/14

7. Pavement Markings

- 7.1 Marmolejo Contractors, Inc. - Did not bid. Calls: 5/14 and 5/17
- 7.2 American Contractor Center - Did not bid - note says "not interested...". Call: 5/14
- <7.3 Austin G. Clayton Company - Did not bid. Call: 5/14 and 5/15>
- 7.4 EDT Construction, Inc. - Did not bid - note says "Bidding". Call: 5/14
- <<7.5 West Line Construction, Inc. - Did not bid. Call: 5/15>>
- 7.6 Holesfield's General Contracting - Did not bid. Call: 5/15 and 5/16

8. Fencing

- **8.1 Pete's Westside Fence Company. - Bid - low bidder. Call: 5/11
- <8.2 Junlo Corporation - Did not bid - note says "too busy". Call: 5/14>
- *8.3 Pacific Steelock Fence Co. - Bid - not low. Call: 5/14
- <<8.4 Power Fence - Did not bid - note says "not enough fencing to travel to Portland." Call: 5/14>>

- <8.5 Pacific Northwest Guardrail & Supply Co. - Did not bid - note says "not interested only install guardrailing on roadways". Calls: 5/14>
- 8.6 E.M.W. Construction Co. - Did not bid. Calls: 5/14, 5/15 and 5/16

9. Landscape & Irrigation

- 9.1 Wilcott Landscape Company - Did not bid - note says "Interested. Has an estimator working on project". Calls: 5/14 and 5/15
- *9.2 A&G Landscaping, Inc. - Bid - not low. Calls: 5/14 and 5/15
- <9.3 Green Art Landscape and Irrigation Co. - Did not bid - note says "too much work". Calls: 5/14, 5/15 and 5/16>
- <<9.4 SAS Building and Landscaping - Did not bid - note indicates SAS planned to bid. Call: 5/14>>
- 9.5 S&L Landscaping, Inc. - Did not bid - note says "Bidding". Call: 5/14 and 5/15
- <<9.6 Polynesian Landscape Company - Did not bid. Call: Attempted call 5/14 - not at number listed and no new listing>>

10. Concrete Cutting

- 10.1 Baughman & Sons, Inc. - Did not bid - note says "They generally bid work on Southern coast...". Call: 5/14
- 10.2 Carr Construction, Inc. - Did not bid - note says "not interested." Calls: 5/14 and 5/15
- 10.3 Sea-Port General - Did not bid - note says "too busy". Calls: 5/14 and 5/15
- 10.4 Elis' alda Henry J. & Associates - Did not bid. Calls: Attempted to call on 5/14, 5/15 and 5/16 - no answer each time.

**10.5 Brothers Concrete Cutting, Inc. - Low bidder - gave quote over phone. Call: 5/14

*10.6 Indian Incorporated - Bid with Albany Electric - not low. Calls: 5/14.

11. Reinforcing Steel Furnish & Place

11.1 Smith Company, Inc. - Did not bid. Calls: Left message with answering service on 5/15 and 5/16

*11.2 Triad Steel Inc. of Oregon - Bid - not low. Calls: 5/15

*11.3 Rainier Steel - Bid - not low. Calls: 5/15 and 5/16

<11.4 Conmix, Inc. - Did not bid - note says "not interested. Not enough time to look at plans." Calls: 5/14 and 5/16>

11.5 Diversified Builders, Inc. - Did not bid - note says "too busy..." Calls: 5/14

11.6 James Construction - Did not bid - wants to do painting and insulation. Call: 5/14.

12. Concrete Curbs & Gutters

<<12.1 Rivera Construction, Inc. - Did not bid - note says "No bidding is closing down business." Call: 5/14>>

*12.2 Lopez Concrete Service - Bid - not low. Calls: 5/15, 5/16 and 5/21

12.3 McCalib Concrete Service - Did not bid - note he states he is "Bidding". Calls: 5/15 and 5/16

<12.4 Capital Concrete Construction - Did not bid - note says "will be bidding". Calls: 5/15 and 5/16>

<12.5 Castle Rock Construction, Inc. - Did not bid. Call: 5/15>

<12.6 Retana Enterprises, Inc. - Did not bid. Calls: 5/15 and 5/16>

13. Precast Concrete

<13.1 Gervais Construction, Inc. - Did not bid - note says "merged with Ross Brothers..." Call: 5/14>

<13.2 Woodburn Construction Company - Did not bid - note says "too much work..." Call: 5/14>

13.3 Meridith Construction, Inc. - Did not bid. Call: 5/14

<<13.4 Rivera Construction, Inc. - Did not bid - note says "no bid is closing down business." Call: 5/14>>

*13.5 Ballard Construction Company - Bid - Not low. Call: 5/14

13.6 Diversified Builders, Inc. - Did not bid - note says "too busy..." Call: 5/14

14. Metal Fabrications & Railings

14.1 McGrath, William M. Company - Did not bid - note says "will not be bidding, project is out of their area". Call: 5/14

<14.2 Alt, Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>

14.3 Ogilvie Company, Inc. - Did not bid - note says "Bid date too soon...". Call: 5/14

14.4 Beaver Creek Metal Products - Did not bid. Call: Attempted call 5/14 - number disconnected, no new listing.

<14.5 Aluminum & Bronze Fabricators, Inc. - Did not bid. Call: 5/14>

14.6 G.P.D. Construction Company - Did not bid. Call: Attempted call 5/15 - number disconnected; no new listing.

15. Structural Steel Erection

- <15.1 Gervais Construction, Inc. - Did not bid - note says "Have merged with Ross Brothers..." Call: 5/14>
- <15.2 Alt., Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>
- 15.3 McGrath, William M. Company - Did not bid - note says "project is out of their area". Call: 5/14
- *15.4 Indian Incorporated - Bid with Albany Electric - not low. Calls 5/14 and 5/15
- 15.5 Earle, Robert G., Inc. - Did not bid - note indicates they are "swamped" with work. Calls: 5/14 and 5/15
- <<15.6 Record Steel and Construction, Inc. - note says "she does not want to bid out of town". Did not bid. Calls: 5/14 and 5/15>>

16. Insulation

- <16.1 Alt., Robert W. Construction - Did not bid - note says "too much work..." Call: 5/14>
- <16.2 Woodburn Construction Company - Did not bid - note says "too much work..." Call: 5/14>
- <16.3 Aguilers/White Construction, Inc. - Did not bid - note says "too much work..." Calls: 5/14, 5/15, 5/16 and 5/18>
- 16.4 CHW Construction, Inc. - Did not bid. Call: 5/14
- <16.5 James Construction - Did not bid. Call: 5/14>
- <16.6 Interstate Insulations, Inc. - Did not bid - note says "has looked at drawings and he did not feel there is enough for them to bid on." Call: 5/14>

17. Roofing

- 17.1 G.P.D. Construction Company - Did not bid.
Call: Attempted call 5/14 - number
disconnected; no new listing.
- <17.2 Cascade Roofing - Did not bid. Call: 5/14 and
5/16>
- <17.3 All American Construction Company - Did not
bid. Calls: 5/14, 5/15 and 5/16>
- <<17.4 A-TS2 Roofing, Inc. - Did not bid. Call:
Attempted call 5/14 - number disconnected; no
new listing. Solicitation letter returned -
no forwarding address.>>
- 17.5 Boring Gutter Lady - Did not bid. Calls: 5/14
and 5/15
- 17.6 Roof Systems - Did not bid. Calls: 5/14, 5/15
and 5/16

18. Flashing, Sheet Metal & Metal Siding

- 18.1 Carr Construction, Inc. - Did not bid. Calls:
5/14 and 5/15
- 18.2 Ogilvie Company, Inc. - Did not bid - note says
"bid date too soon...". Call: 5/14
- <18.3 All American Construction Company - Did not
bid. Call: 5/14 - no answer.>
- *18.4 EBA Sheet Metal, Inc. - Bid - not low. Calls:
5/14, 5/15 and 5/21
- <18.5 Cascade Roofing - Did not bid. Calls: 5/14 and
5/16>
- <<18.6 Beaver Creek Metal Products - Did not bid.
Call: Attempted call 5/14 - number
disconnected; no new listing.>>

19. Unit Masonry

<19.1 Woodburn Masonry, Inc. - Did not bid. Calls: 5/14 and 5/16>

<<19.2 J&S Masonry - Did not bid - note says "not working in oregon at present time". Calls: 5/14>>

<19.3 Scott's Masonry, Inc. - Did not bid. Call: Attempted calls 5/14 and 5/15 - no answer; information had no listing>

<19.4 Medina Mosaic - Did not bid. Call: 5/14>

<19.5 Alt., Robert W. Construction - Did not bid - note says "has too much work". Call: 5/14>

<19.6 Woodburn Construction Company - did not bid - note says "have too much work..." Call: 5/14>

20. Metal Framing, Drywall & Acoustical Ceilings

<20.1 Woodburn Construction Company - Did not bid - note says "has too much work..." Call: 5/14>

20.2 Portland Custom Interiors - Did not bid. Call: 5/14

20.3 Sea-Port General - Did not bid - note says "too many other things going on". Call: 5/14 and 5/15

<20.4 CWH Construction, Inc. - Did not bid. Call 5/14 and 5/16>

<20.5 Alt., Robert W. Construction - Did not bid - note says "has too much work...". Call: 5/14>

<20.6 Aguilers/White Construction - Did not bid - note says "has too much work...". Calls: 5/14, 5/15, 5/16 and 5/17>

21. Painting

<21.1 Jim Miller Construction - Did not bid - note says "too many other things at present time". Call: 5/14>

<21.2 Ace of Shades Painting - Did not bid. Call:
Attempted call 5/14 - number listed
incorrectly; no phone listing>

<21.3 Burns, John W. & Sons, Inc. - Did not bid -
note says "too many other things going on."
Calls: 5/14 and 5/15>

<<21.4 CMB & Associates, Inc. - Did not bid. Calls:
5/14, 5/15 and 5/16>>

<21.5 Portland Custom Interiors - Did not bid. Call:
5/14>

<21.6 Patchett/Savidge Contractors - Did not bid.
Calls: 5/14, 5/15 and 5/16>

22. Mechanical & Fire Protection

<<22.1 Butler C.E. & Associates - Did not bid. Call:
Attempted call 5/14 - number disconnected;
solicitation letter returned with no forwarding
address>>

<22.2 Adams Mechanical - Did not bid - note says "too
busy". Call: 5/14>

*22.3 MSI - Mechanical systems - Low bidder. Calls:
5/14, 5/15, 5/16 and 5/17

<22.4 Spears Mechanical - Did not bid - note says
"Not interested..." Calls: 5/14, 5/15 and
5/16>

<22.5 Thermal Mechanical, Inc. - Did not bid. Calls:
5/14 and 5/15>

*22.6 Pen-Nor, Inc. - Bid - not low. Call: 5/14

23. Electrical Division

23.1 Brown, F. Electric Company - Did not bid.
Call: Attempted call 5/15 - phone
disconnected; phone listing

<23.2 Pacific Energy Management Corporation - Did not
bid. Calls: 5/15 and 5/16>

- <23.3 Aaron Eastside Electric - Did not bid - note says "not interested project too big..." Calls: 5/15 and 5/16>
- <23.4 Cydell Corporation, Inc. - Did not bid. Calls: 5/15 and 5/16>
- <23.5 Jackson Electric - Did not bid - note says "project too far away". Call: 5/15>
- *23.6 Blessing Electric - Bid - not low. Call: 5/15

24. Joint Sealer

- 24.1 Carr Construction, Inc. - Did not bid. Calls: 5/14 and 5/15
- 24.2 Sea-Port General - Did not bid - note says "too many other things going on." Calls: 5/14 and 5/15
- <24.3 Alt., Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>
- <24.4 Woodburn Construction Company - Did not bid - note says "has too much work..." Call: 5/14>
- 24.5 James Construction - Did not bid. Call: 5/14
- 24.6 Spokane Concrete Cutting, Inc. - Call: 5/15 - phone contact was made but solicitation letter was returned - no forwarding address.

25. Steel Doors, Frames & Finished Hardware

- 25.1 James Construction - Did not bid. Call: 5/14
- 25.2 Woodburn Construction Company - Did not bid - note says "has too much work..." Call: 5/14
- 25.3 Sea-Port General - Did not bid - note says "too many other things going on." Calls: 5/14 and 5/15
- <25.4 Alt., Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>

25.5 Carr Construction, Inc. - Did not bid - note says "not interested..." Calls: 5/14 and 5/15

<25.6 Aguilera/White Construction, Inc. - Did not bid - note says "too much work..." Calls: 5/14, 5/15, 5/16 and 5/18>

26. Aluminum Windows, Glass & Glazing

26.1 Withers Lumber Company - Did not bid - note says "they do not carry the special windows." Call: 5/15

<26.2 Woodburn Construction Company - Did not bid - note says "too much work..." Call: 5/14>

<26.3 Alt., Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>

26.4 James Construction - Did not bid. Call: 5/14

26.5 Sea-Port General - Did not bid - note says "too many other things going on..." Calls: 5/14 and 5/15

26.6 Carr Construction, Inc. - Did not bid. Calls: 5/14 and 5/15

<26.7 Aguilera/White Construction, Inc. - Did not bid - note says "too much work..." Calls: 5/14, 5/15, 5/16 and 5/18>

27. Resilient Flooring

<27.1 Lopez Carpets & Drapes - Did not bid. Call: 5/15>

**27.2 Commercial Interiors & Specialties - Low bidder - note states "Bidding." Calls: 5/15 and 5/16

27.3 ECS & Associates - Did not bid - note says they "do not do resilient flows." Call 5/15

27.4 Lutton's Decorating Center, Inc. - Did not bid - note says "too far away." Call: 5/15

<27.5 Aguilera/White Construction, Inc. - Did not bid - note says "too much work..." Calls: 5/14, 5/15 and 5/18>

27.6 Lacuna Interiors, Inc. - Did not bid - note says "No longer installing flooring." Call: 5/14

28. Conveying System

<28.1 Alt., Robert W. Construction - Did not bid - note says "has too much work..." Call: 5/14>

28.2 G.P.D. Construction Company - Did not bid. Call: Attempted call 5/15 - phone disconnected; no new listing

28.3 Sea-Port General - Did not bid - note says "too many other things going on." Calls: 5/14 and 5/15

28.4 Carr Construction, Inc. - Did not bid - note says "not interested..." Calls: 5/14 and 5/15

<28.5 Aguilera/White Construction, Inc. - Did not bid - note says "too much work..." Calls: 5/14, 5/15, 5/16 and 5/18>

<28.6 Earle, Robert G., Inc. - Did not bid - note indicates they are "swamped" with work. Calls: 5/14 and 5/15>

ALLEN, KILMER, SCHRADER, YAZBECK & CHENOWETH

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

1600 SECURITY PACIFIC PLAZA
1001 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204
TELECOPIER 503-222-5290
TELEPHONE 503-224-0055

June 6, 1990

HAND-DELIVERED

Ms. Rena Cusma
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201

Re: Metro South Station Modifications, Oregon City,
Oregon, Project
Subject: Bid Protest of Award to Emerick Construction
Co.
Our File No. 2803.11

Dear Ms. Cusma:

Enclosed are the following original affidavits:

- 1) Affidavit of Edward Marmolejo;
- 2) Affidavit of Judi Haney;
- 3) Affidavit of Susan McCalib;
- 4) Affidavit of Gilbert Davlos; and
- 5) Affidavit of David Gilmore.

We previously submitted to you unsigned copies of the Affidavits of Edward Marmolejo and Judi Haney. The original affidavits are being submitted to replace those copies.

The original affidavits of Susan McCalib, Gilbert Davlos and David Gilmore are submitted to show that the quotes of the DBE and WBE firms of McCalib Concrete Service, Buffalo Welding, and EDT Construction were submitted to Emerick Construction Company ("Emerick"). This issue is also discussed in paragraph 2.4 of my previous letter to you.

Although Westlake, McCalib, Buffalo, and EDT submitted quotes to Emerick, Emerick did not disclose those quotes on its summary of DBE bids received, a copy of which is attached as Exhibit 1. Metro Code Section 2.04.100(b)(5) requires:

ALLEN, KILMER, SCHRADER, YAZBECK & CHENOWETH

Ms. Rena Cusma
June 6, 1990
Page 2

[I]n instances where DBE/WBE were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with a reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

Emerick failed to fulfill that element of good faith efforts required by Metro's Code.

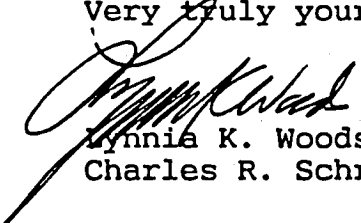
For the McCalib bid, if Emerick had provided the quantities necessary to calculate the price for the bid item quoted by McCalib, which was on a unit price basis, Emerick could have calculated McCalib's bid. It is quite possible that McCalib may have been low bidder. As evidenced by the DBE summary which is Exhibit 1, and the list of subcontractors, including non-DBE and WBE firms, which is attached as Exhibit 2, Emerick used at least two other contractors with unit prices. With a minimum amount of effort, Emerick could probably have used McCalib as a DBE subcontractor.

Emerick could have added Buffalo's quote for the aluminum rail to the steel price and erection quote used by Emerick. That also would have increased Emerick's DBE participation.

Further, the failure to acknowledge receipt of these bids raises substantial question regarding whether Emerick's actions were actually calculated to increase DBE/WBE participation. We do not believe that Emerick has met the good faith efforts requirements and that these affidavits are strong evidence of that fact.

Some of the information we have submitted is fairly complex. We will be happy to answer questions or sit down in person and go through our submittals with the appropriate Metro employees.

Very truly yours,



Lynn K. Woods
Charles R. Schrader

LKW/srr
Enclosures
SLAYDEN\Cusma.001 (srr)

ALLEN, KILMER, SCHRADER, YAZBECK & CHENOWETH

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

1600 SECURITY PACIFIC PLAZA
1001 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204
TELECOPIER 503-222-5290
TELEPHONE 503-224-0055

June 8, 1990

HAND-DELIVERED

Ms. Rena Cusma
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201

Re: Metro South Station Modifications, Oregon City,
Oregon, Project
Subject: Third Submittal in Support of Protest of Award
to Emerick Construction Co.
Our File No. 2803.24

Dear Ms. Cusma:

Enclosed is the Affidavit of Audrey Castile of S&L
Landscaping, Inc.

This affidavit is submitted in support of Slayden's position
that Emerick did not make good faith efforts to obtain WBE/DBE
participation, as discussed in my letters to you of June 6, 1990.

As the affidavit shows, S&L appears to be the low bidder on
the portion of work that it bid. Emerick could have used S&L's
bid. S&L's bid included all labor necessary for the landscape
portion of the contract and the inexpensive fabric for drainage.
S&L's quote excluded the erosion control fabric. Emerick could
have obtained a bid in the amount of \$50,000 to \$70,000 for the
erosion control fabric from some other vendor. With a minimum
amount of effort, Emerick could have met the WBE goal. We believe
that the enclosed affidavit further evidences the fact that Emerick
did a substantial amount of paperwork but did not make genuine
efforts to meet the DBE/WBE goals.

Metro Code Section 2.04.100(5) provides as follows:

In instances where DBE/WBE bids were rejected,
the dollar amount of the bid rejected from the
DBE/WBE must be indicated along with the reason

ALLEN, KILMER, SCHRADER, YAZBECK & CHENOWETH

Ms. Rena Cusma
June 8, 1990
Page 2

for rejection and the dollar amount of the bid which was accepted for that subcontract and material supply item.

S&L's affidavit is the fifth affidavit that we have obtained from DBE or WBE contractors evidencing the fact that they submitted quotes to Emerick but that their bids are not reflected on Emerick's summary which was submitted to show that Emerick complied with Section 2.04.100(5). Emerick has failed to meet the requirements of that subsection. Omitting one DBE or WBE subcontractor might be carelessness. Omitting five shows that Emerick neither complied with the good faith efforts requirements nor fairly treated the bids that it received.

The substantial amount of evidence that we have presented to you in our last two letters and this letter, clearly show that Emerick did not meet the requirements of Metro Code Section 2.04.100(b).

Very truly yours,



Lynn K. Woods

LKW/srr
Enclosure
cc: Dan Cooper
SLAYDEN\CUSMA.003(srr)

METROPOLITAN SERVICE DISTRICT
METRO SOUTH STATION MODIFICATION
OREGON CITY, OREGON

AFFIDAVIT OF AUDREY CASTILE

State of Oregon)
) ss.
County of Multnomah)

I, Audrey Castile, do hereby depose and say as follows:

1. I am the owner of S&L Landscaping, Inc. ("S&L"). I make this affidavit based upon my own personal knowledge of the matters herein.

2. S&L is a certified WBE/DBE and appears in the DBE/MBE/WBE directory prepared by the Executive Department of the State of Oregon.

3. During the morning, on May 22, 1990, I faxed a quote to Emerick Construction Company ("Emerick") for certain landscaping work for the Metro South Station Modification Project in Oregon City, Oregon (the "Contract"). A copy of the quote and fax journal showing Emerick's receipt of S&L's quote, are attached as Exhibit 1.

4. The plans and specifications for the Contract required two types of fabric: inexpensive fabric was required for drainage and an expensive fabric was required for erosion control. S&L's quote included the inexpensive fabric, but excluded the erosion control fabric.

5. S&L submitted a total bid in the amount of \$251,992.00 plus a lump sum on labor only for fabric installation and a unit

price on topsoil. I understand that Emerick used a bid for landscaping in the amount of \$323,000.00. Emerick could have used my bid in the amount of \$251,000.00, and obtained a price for erosion control fabric in the amount of \$50,000.00 to \$70,000.00 from some other vendor, which would have resulted in a lower price for the landscaping portion of this Contract than the bid used by Emerick. I think S&L was low bidder on the portion of work that it bid.

6. I have reviewed the summary of good faith efforts submitted by Emerick, a copy of which is attached hereto as Exhibit 2. I note that S&L's bid is not reflected on that summary. I have not been given any reason why Emerick did not acknowledge our bid on the summary. I do not believe that Emerick used good faith efforts to obtain WBE/DBE participation for this Contract.

Dated this 8 day of June, 1990.



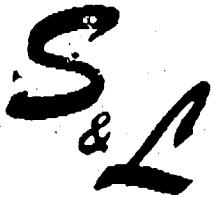
Audrey Castile

SUBSCRIBED AND SWORN to before me this 8th day of June, 1990.



NOTARY PUBLIC FOR OREGON

My Commission Expires: Aug. 4, 1990



Landscaping Inc.

8100 SW Durham Road • Tigard, Oregon 97224

Phone (503) 639-1395

BID QUOTE
METRO SOUTH STATION
May 22, 1990

BID SECTIONS:

- #02810 Irrigation
- #02920 Soil Preperation
- #02930 Lawns & Grass
- #02950 Trees, Shrubs, & Groundcover

TOTAL BID.....\$ 251,992.00

TOPSOIL:

- To be supplied at.....\$ 6.25 per yd.
- To be placed at.....\$ 4.00 per yd.

FILTER FABRIC:

Labor ONLY.....\$ 15,000.00

INCLUSIONS:

Gravel walkway

EXCLUSIONS:

- Bentonite sealing
- Entry sign
- Bridge
- Rip rap
- Anything related to grading and/or installing of pond

<<< JOURNAL >>>

| No. | OTHER FACSIMILE | MODE | PAGES | RESULT |
|-----|-----------------|------|-------|--------|
| 01 | 6909291 | TX | 01 | OK |
| 02 | INCOMING | RX | 02 | OK |
| 03 | 2350829 | TX | 01 | OK |
| 04 | 12054256962 | TX | 04 | OK |
| 05 | INCOMING | RX | 05 | OK |
| 06 | INCOMING | TX | 00 | 04 |
| 07 | 16543526 | TX | 03 | OK |
| 08 | 7712933 | TX | 03 | OK |
| 09 | 17492205 | TX | 03 | OK |

**METRO SOUTH STATION MODIFICATIONS
2.04.160 DETERMINATION OF GOOD FAITH EFFORTS
SUBPARAGRAPH (5) DOCUMENTATION**

EMERICK CONSTRUCTION COMPANY

| <u>SUB/SUPPLIER NAME</u> | <u>MINORITY STATUS</u> | <u>TYPE OF WORK</u> | <u>BID AMOUNT</u> | <u>BID AMOUNT USED</u> | <u>REASON REJECTED</u> |
|------------------------------|------------------------|--------------------------------------|-------------------|------------------------|--|
| Lopez Paving, Inc. | DBE | Asphalt Paving & Base | \$310,560 | 257,795 | Not Low Bidder |
| A & G Landscape | WBE | Landscape & Irrigation | 335,300 | 323,000 | Not Low Bidder |
| Lopez Concrete Service | DBE | Concrete Curb & Gutters | 50,964 | 26,400 | Not Low Bidder |
| Apply-A-Line | DBE | Pavement Markings | 3,761 | 3,761 | Low Bidder |
| Pacific Steelock Fence | DBE/WBE | Fencing | 18,059 | 12,410 | Not Low Bidder (used Pete's Westside) |
| Pete's Westside Fence | WBE | Fencing | 12,410 | 12,410 | Low Bidder |
| Triad Steel Inc. | DBE | Reinforcing Steel Furnish & Place | 81,383 | 75,440 | Not Low Bidder |
| Ballard Construction Co. | WBE | Reinforcing Steel Furnish | Unit Price | 26,850 | Not Low Bidder |
| Rainier Steel Inc. | DBE | Reinforcing Steel Furnish | Unit Price | 26,850 | Not Low Bidder |
| Northwest Concrete Pumping | WBE | Concrete Pumping | Unit Price | Unit Price | Low Bidder |
| Brainard Sheet Metal | DBE | Flashing, Sheet Metal & Metal Siding | 15,323 | 15,323 | Low Bidder |
| Commercial Interior & Spec. | DBE | Resilient Flooring | 975 | 975 | Low Bidder |
| Pro-Sign | WBE | Site Signage | 7,350 | 7,350 | Low Bidder |
| Pen-Nor Inc. | DBE | Mechanical | 65,280 | 32,822 | Not Low Bidder |
| Paragon Fire Sprinkler, Inc. | WBE | Fire Protection | 22,489 | 17,630 | Not Low Bidder |
| MSI Mechanical System | WBE | Mechanical | 32,822 | 32,822 | Low Bidder |
| EBA Sheet Metal | DBE | HVAC Only | 25,490 | 32,822 | Not Low Bidder (used MSI complete mech) |
| Blessing Electric | DBE/WBE | Electrical | 259,000 | 194,500 | Not Low Bidder |
| Cross Continent Engr. | DBE/WBE | Surveying | Unit Price | 19,000 | Not Low Bidder |
| Brothers Concrete Cutting | DBE | Concrete Cutting | Unit Price | Unit Price | Low Bidder |
| Prem Singh & Associates | DBE | Surveying | Unit Price | 19,000 | Not Low Bidder |



RECEIVED

JUN 13 1990

TIME: 1:16 pm
METRO SERVICE DISTRICT
OFFICE GENERAL COUNSEL

June 13, 1990

Ms. Rena Cusma, Executive Director
Metropolitan Service District
2000 SW First Avenue
Portland, Oregon 97201-5398

Reference: Metro South Station Modifications
Oregon City, Oregon

Dear Ms. Cusma,

I have reviewed a copy of a letter with no letterhead dated June 6, 1990 addressed to you and purporting to be a bid protest on behalf of Slayden Construction. I recognize that you have properly rejected that protest on the basis of untimeliness, and that the matter is therefore moot. However, the issues raised in that letter are so offensive and unfounded that I feel compelled to respond, lest Metro think less of this company because of them.

The letter is replete with innuendo, supposition and inaccuracies. Even the opening statement of "facts" is wrong and, while perhaps inconsequential on its face, it sets an inappropriate platform for the letter's later conclusions. Slayden's bid was not "approximately \$10,000 higher than Emerick's bid"; it was almost \$29,000 higher. It is not correct to say that the first four low bidders on March 21, 1990 "failed ... to make good faith efforts ..." As you know, neither Metro nor anyone else made such a determination.

On more direct matters, Slayden's letter makes much of our alleged "(failure) to acknowledge the bid, much less accept the bid, of Westlake Consultants, Inc." That allegation is repeated in the letter, and is supposedly supported by an attached Affidavit from Judi Haney, President of Westlake. In fact, despite assurances from Westlake that it would bid, no such bid was submitted or received. A careful review of Ms. Haney's affidavit, the foundation of Slayden's allegations, does not claim otherwise.

The other centerpiece of Slayden's challenge is an affidavit from Ed Marmolejo, who claims that our log of a telephone conversation with him is inaccurate. Here, unfortunately, we have a simple disagreement over what occurred during that telephone conversation. I have spoken with Joe Kennedy, our estimator who spoke with Mr. Marmolejo, and he stands by his log.

Ms. Rena Cusma
Metropolitan Service District
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Mr. Marmolejo's affidavit is more akin to a legal argument than a statement of fact, and it relies on his own telephone log. However, the affidavit is much more effusive than the log and it seems that Mr. Marmolejo now recalls a number of important statements that he chose not to include in his extensive contemporaneous notes. For instance, his notes do not record what he now remembers saying about his capability to provide his own bonding and his capability to perform "many different types of work". Similarly, they do not record that he "would be able to put together a bid in a very short time frame". On the other hand, the affidavit chides us for not further contacting him, while the log states that Mr. Marmolejo would attempt to call us again!

Obviously, I cannot speculate over Mr. Marmolejo's motivation for these unsupported allegations; however, there was absolutely no motivation imaginable for Mr. Kennedy to misstate himself in recording the telephone conversation.

Slayden's challenge then degenerates into absurdity. We are accused of seeking only technical compliance with the Code, while not truly attempting to garner DBE/WBE participation. In support of this proposition, we are taken to task for not sending letters to three DBE/WBE's who had bid previously. The logic of this criticism escapes us since we in fact received bids from, and intend to contract with, two of those firms. We called Apply-A-Line to secure its updated bid, and negotiated a revised scope of work with Brainard on which it in fact did bid. The challenge seems to be that we did not include these extraordinary actions as evidence of our good faith effort!

Similarly, Slayden claims that we should have abandoned all those DBE/MBE's who chose, for one reason or another, not to bid in March. We took the opposite view, namely that the optimum way to increase DBE/MBE participation was to include those very firms. This we did, and with some success.

We truly regret that, through an oversight, our summary did not record the bids we received from EDT Construction (although our telephone log shows that a bid was received, but was not low), McCalib Concrete Service, S & L Landscaping and Buffalo Welding. These bids had each been removed from our bid board for more detailed analysis in packages with other bids. Mr. Kennedy, who prepared our summary, was unfamiliar with that practice, and unfortunately failed to find and include those bids in the summary.

It is particularly unfortunate since we had taken especially active steps to involve EDT in the project. However, it is one thing to admit this oversight and it is another to say, as Slayden does, that S & L and McCalib were low bidders. (The fact that they were not low with Slayden either does nothing to deter those

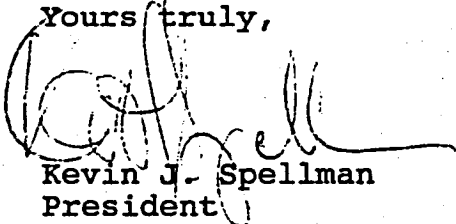


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allegations). They were not low bidders and we are prepared to show the evidence. Consequently, there was no prejudice as a result of this oversight. The innuendo again concerns me, however, as it implies that we deliberately ignored low DBE/MBE bids. Our bidding process, while maintaining the effort to maximize DBE/WBE participation in accordance with the Code, is designed to prepare and submit the lowest possible bid to Metro. To suggest otherwise is both absurd on its face and offensive in its implication.

You may recall that I was an active participant in the Task Force that helped Metro revise and adopt the present DBE/MBE Code. You will find no one more committed than I to ensuring the proper application of the Code, and this company's efforts support that commitment. We look forward to proceeding with the contract at the earliest possible time.

Yours truly,



Kevin J. Spellman
President

mmw

cc: Neil E. Saling, Acting Director - Finance & Administration
Amha M. Hazen, Contracts Administrator
Rob Smoot, Projects Manager - Solid Waste
Monica Little, Legal Counsel
Gwen Ware-Barett, Clerk of the Council





METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

RECEIVED

JUN 19 1990

TIME: 10:45 am
METRO SERVICE DISTRICT
OFFICE OF GENERAL COUNSEL

June 18, 1990

Mr. Kevin J. Spellman, President
Emerick Construction
8850 S.E. Otty Road
Portland, OR. 97266-0100

Re: Metro South Station Modifications

Dear Mr. Spellman:

Thank you for your June 13, 1990 letter which addresses the Slayden Construction protest of Metro's intent to award the Metro South Station Modifications contract to your firm. As you may be aware, I have rejected both the protest by Slayden as well as the protest by Robinson Construction Company, the second low bidder.

In accordance with the Metro Code, bid protest rejections by the Metro Executive Officer may be appealed to the Metro Council acting as the Contracts Review Board. Should Robinson and/or Slayden choose to appeal my decisions on the responsiveness of your bid, you will be afforded an opportunity to raise the points contained in your letter before that group.

Sincerely,

Rena Cusma
Executive Officer

RC:jp

cc: ~~Neil E. Saling, Acting Director - Finance & Admin.~~
~~Dan Cooper, General Counsel~~

Executive Officer
Rena Cusma

Metro Council

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