

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 93-1802  
EXECUTIVE OFFICER TO ENTER INTO A )  
CONTRACT WITH EMERICK CONSTRUCTION )  
COMPANY FOR WORK ASSOCIATED WITH )  
THE REPAIRS AND IMPROVEMENTS TO THE ) Introduced by Rena Cusma,  
ROOF AND VENTILATION SYSTEM AT ) Executive Officer  
METRO SOUTH STATION )

WHEREAS, The roof and ventilation systems at Metro South Station must be repaired, and;  
WHEREAS, This work has been approved as part of the renewal and replacement budget, and;  
WHEREAS, On March 11, 1993 the Metro Council authorized issuance of a Request for Bids  
for the above listed work; and

WHEREAS, Emerick Construction Company has been determined to be the lowest responsive,  
responsible bidder after an open competitive bid process; and


WHEREAS, it has been shown by the bid amounts that it is not economical to extend the  
warranty for the roof panels; and

WHEREAS, the award is conditioned upon the receipt of Performance and Labor and Materials  
Bonds and all other bid document submittal requirements; and

WHEREAS, This resolution, authorizing the Executive Officer to enter into a contract with  
Emerick Construction Company for bid alternate #1, plus replacement of the gutters, was submitted to  
the Executive Officer for consideration and was forwarded to the Metro Council for approval; now  
therefore,

BE IT RESOLVED, That the Metro Council authorizes the Executive Officer to enter into a  
contract with Emerick Construction Company in the amount of \$603,750 for work associated with the  
repairs and improvements to the roof and ventilation system at Metro South Station.

ADOPTED by the Metro Council this 27th day of May, 1993.

  
\_\_\_\_\_  
Judy Wyers, Presiding Officer

**CONSTRUCTION AGREEMENT**

This Construction Agreement is made by and between Emerick Construction Company, at 8850 S.E. Otty Rd., Portland, Oregon, hereinafter called Contractor and Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, hereinafter called Metro.

Contractor and Metro agree as follows:

1. Contract Documents

The Contract Documents consist of this Construction Agreement, the Advertisement for Bids, the Invitation to Bid, the Instructions to Bidders, the Bid Forms (including Schedule of Bid Prices, Surety, MBE/WBE Business Program Compliance, Prevailing Wage Rate Compliance, Resident/Non-resident Bidder Status, Signature Page, Non-Collusion Affidavit, Bid Bond, MBE and WBE Utilization), the Performance and the Labor and Materials Payment Bonds, the General Conditions, the Supplementary Conditions, the Technical Specifications, the Drawings, the approved and updated Construction Schedule, and other information and data as listed in the Supplementary Conditions, and any modifications of any of the foregoing in the form of Addenda or Change Orders in accordance with the terms of the Contract. Where applicable, reference to this Construction Agreement herein shall be deemed to refer to all of the Contract Documents.

These documents form the Contract and are, by this reference, expressly incorporated herein. All are as fully a part of the Contract as if attached to this Construction Agreement and repeated fully herein. No amendment made to this Contract nor Change Order issued shall be construed to release either party from any obligation contained in the Contract Documents except as specifically provided in any such amendment or Change Order.

2. Scope of Work

Contractor agrees to provide all labor, tools, equipment, machinery, supervision, transportation, permits, and every other item and service necessary to perform the Work described in the Contract Documents. Contractor agrees to fully comply with each and every term, condition and provision of the Contract Documents.

3. Contract Amount

As consideration for Contractor's performance hereunder, Metro agrees to pay contractor the Contract Amount as adjusted by approved Change Orders issued pursuant to the Contract Documents and subject to the availability of monies in the Construction Fund. Contractor agrees to accept the Contract Amount as full payment for contractor's performance of the above described Work.

The Contract Amount is SIX HUNDRED THREE THOUSAND SEVEN HUNDRED FIFTY and NO/100 DOLLARS (\$603,750.00).

Metro shall make payments to Contractor in the manner and at the times provided in the Contract Documents.

4. Additional or Deleted Work

Contractor shall, when so instructed by Metro under the procedures of the contract Documents, perform additional Work or delete Work in accordance with the Contract Documents. Any increase or decrease in the Contract Amount shall be determined pursuant to the applicable provisions of the Contract Documents.

5. Time of Completion; Adjusted Payments

Time is of the essence of this Construction Agreement. The Contract Time shall commence upon issuance of the Notice to Proceed. Contractor shall commence work under this Contract within ten (10) calendar days after issuance of written Notice to Proceed. Contractor shall bring the work to substantial completion no later than November 15, 1994. By executing this Construction Agreement, Contractor confirms and accepts that the Contract Time so stated is a reasonable period for performance of all of the Work.

If Contractor fails to substantially complete the Work, within the Contract Time, as determined by Metro in accordance with the Contract Documents, Contractor shall be liable for adjusted payments to Metro as described in the Contract Documents.

6. Bonds

Contractor submits herewith a Performance Bond and a separate Labor and Materials Payment Bond, both in a form acceptable to Metro and otherwise in accordance with the Contract Documents and each in the Contract Amount to ensure full compliance, execution and performance of this Contract by Contractor and payment by Contractor of labor and material Suppliers as more fully described in the Contract Documents.

7. Remedies for Default

If Contractor fails to perform as specified in the Contract Documents, Metro shall be entitled to all the rights and remedies which this Contract provides, as well as all remedies provided by law. This Contract shall not be construed as limiting or reducing the remedies provided by law which Metro would have in the absence of any provision of the Contract.

8. Laws of Oregon Apply

The law of Oregon shall govern the interpretation and construction of this Construction Agreement and all of the Contract Documents.

**9. Entire Agreement**

The Contract Documents constitute the final written expression of all of the terms of this Construction Agreement and are a complete and exclusive statement of those terms. Any and all representations, promises, warranties, or statements by either party that differ in any way from the terms of this written agreement shall be given no force and effect. This Contract shall be changed, amended, or modified only by written instrument signed by both Metro and Contractor. This Contract shall not be modified or altered by any course of performance by either party.

**EMERICK CONSTRUCTION COMPANY      METRO**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_



# METRO

2000 SW First Ave.  
Portland, OR 97201-5398  
(503) 221-1646

## Procurement Review Summary

To: Procurement and Contracts Division

Vendor

From

Date 5/6/93

EMERICK CONSTRUCTION

Department SOLID WASTE

8850 S.E. OTTY RD.

Division ENGINEERING

Subject

PORTLAND, OR

Name ROB SMOOT

Bid

Contract

Vendor no. 4348

Title ENGINEER

RFP

Other

Contract no. 903040

Extension 2932

Purpose NEW ROOF FOR METRO SOUTH STATION

### Expense

Procurement

Personal/professional services

Services (L/M)

Construction

IGA

### Revenue

Budget code(s)

Price basis

Term

Contract

531-314400-574520-52100

Unit

Completion

Grant

Total

Annual

Other

Other

Multi-year\*\*

This project is listed in the  
199 2 -199 3 budget.

Payment required

5/28/93

Yes

Type A

Lump sum

Beginning date

No

Type B

Progress payments

1/31/94

Ending date

### Total commitment

Original amount

\$ 603,750.00

Previous amendments

\$

This transaction

\$

Total

\$ 603,750.00

A. Amount of contract to be spent fiscal year

\$ 500,000.00

B. Amount budgeted for contract CONSTRUCTION WORK / MATERIALS

\$ 540,000.00

C. Uncommitted/discretionary funds remaining as of 4/30/93

\$ 505,174.00

Approvals

Jim Watkins  
Division manager

[Signature]  
Department director

Labor

Fiscal

Budget

Risk

Legal

Competitive quotes, bids or proposals:

H & A CONSTRUCTION	626,900.00		OREGON
Submitted by MICHAEL J. WATT	\$Amount 729,000.00	M/W/DBE	Foreign or Oregon Contractor
Submitted by EMERICK CONSTRUCTION	\$Amount 603,750.00	M/W/DBE	Foreign or Oregon Contractor
Submitted by	\$Amount	M/W/DBE	OREGON Foreign or Oregon Contractor

Comments:

- Attachments:
- Ad for bid
  - Plans and specifications
  - Bidders list (M/W/DBEs included)

Instructions:

1. Obtain contract number from procurement division.  
Contract number should appear on the summary form and all copies of the contract.
2. Complete summary form.
3. If contract is:
  - A. Sole source, attach memo detailing justification.
  - B. Less than \$2,500, attach memo detailing need for contract and contractor's capabilities, bids, etc.
  - C. More than \$2,500, attach quotes, evaluation form, notification of rejection, etc.
  - D. More than \$10,000 or \$15,000 attach RFP or RFB respectively.
  - E. More than \$50,000, attach agenda management summary from council packet, bids, RFP, etc.
4. Provide packet to procurement for processing.

Special program requirements:

- General liability: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_
- Liquidated damages \$ \_\_\_\_\_ day
- Workers comp
  - Prevailing wages
  - Auto
  - Non-standard contract
  - Professional liability
  - Davis/Bacon

Dates:

- Ads \_\_\_\_\_ (Publication) \_\_\_\_\_
- Pre-bid meeting \_\_\_\_\_ Bid opening\*\* \_\_\_\_\_
- Filed with council \_\_\_\_\_ For action \_\_\_\_\_
- Filed with council committee \_\_\_\_\_ For hearing \_\_\_\_\_

Project estimate: \_\_\_\_\_

Funding:

- Local/state
- Federal
- Other

Bond requirements:

- \_\_\_\_\_ % Bid \$ \_\_\_\_\_
- \_\_\_\_\_ % Performance \$ \_\_\_\_\_
- \_\_\_\_\_ % Performance/payment\* \$ \_\_\_\_\_
- \_\_\_\_\_ % LM \$ \_\_\_\_\_

\* Separate bonds required if more than \$50,000.

\*\* Minimum period: two weeks from last day advertised.

**STAFF REPORT**

**IN CONSIDERATION OF RESOLUTION NO. 93-1802 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO A CONTRACT WITH EMERICK CONSTRUCTION COMPANY FOR WORK ASSOCIATED WITH THE REPAIRS AND IMPROVEMENTS TO THE ROOF AND VENTILATION SYSTEM AT METRO SOUTH STATION.**

**Date: May 3, 1993**

**Presented by: Rob Smoot  
Jim Watkins**

**PROPOSED ACTION**

Adopt Resolution No. 93-1802 to authorize the Executive Officer to execute a contract with Emerick Construction Company, which is the lowest responsive, responsible bidder for work associated with the repairs and improvements to the roof and ventilation system at Metro South Station. The Contract is recommended for award conditioned upon receipt of Performance Bond, Insurance Certificates, and other bid document submittal requirements, which are required after Council approval.

**FACTUAL BACKGROUND AND ANALYSIS**

Metro awarded a contract to SJO Consulting Engineers to prepare bid documents for repairs and improvements to the roof and ventilation system at Metro South Station. These documents were complete and the Metro Council authorized release of those documents on March 11, 1993.

A Request for Bids was issued on March 12, 1993. Advertisements were published in Portland newspapers and sent to a list of potentially interested parties. Prebid conferences were held on April 5 and 14, 1993. The purposes of these conferences were to present highlights of the project, review Metro requirements, including the M/WBE program, and to receive questions from interested parties. Representatives from approximately 27 businesses attended the prebid conferences.

Two addenda to the Request for Bids were issued. The items in these addenda were found by General Counsel not to materially change the Bidding Documents.

Three bid submittals were received and opened during a public bid opening on April 23, 1993. The Bidders are listed below with their prices for Alternate #1, plus the amount bid for gutter replacement.

<u>COMPANY NAME</u>	<u>Alt. #1</u>	<u>Gutters</u>	<u>TOTAL</u>
Emerick Construction Company	\$599,000	\$4,750.00	\$603,750.00
H & A Construction	\$620,000	\$6,900.00	\$626,900.00
Michael J. Watt, Inc.	\$720,000	\$9,000.00	\$729,000.00

As requested by the Council the request for bids included three alternates which varied the type of warranty required for the roof panels. Alternate #1 requires the manufacturers standard warranty, while alternates 2 and 3 require a 20 year warranty of the roof panel for excessive chalking, cracking or loss of film adhesion and to remain watertight. Alternate #2 included a light colored paint on the panel while alternate #3 included a dark colored panel.

Only Two of the three bidders included prices for alternates #2 and #3. The low bidder for all alternates was Emerick Construction Company. Their bid for alternates #2 and #3 was \$850,000. In discussions with Emerick it was discovered that the added cost for the extended warranty is essentially the cost of the roof panel. The manufacturers do not provide the warranty that is requested in the alternates therefore Emerick increased their alternate #1 bid price by the cost of replacing the panels to cover the extended warranty required in Alternates #2 and #3.

Michael J. Watt, Inc. misread the instructions and their price for alternates #2 and #3 is actually \$1,440,000 (not \$720,000 as shown on their bid). The cost of alternate #2 was the same as alternate #3 for the two bids received.

The manufacturer's standard warranty for the panel proposed for use by Emerick Construction Company is only for the panel coating and is not a watertight guarantee. The panel coating is guaranteed to not crack, check, blister, peel, flake or chip for twenty (20) years. The manufacturers standard warranty appears to be the most cost effective alternate, as the cost of securing extended warranties outlined in alternates #2 and #3 reflects the cost of replacing the roof panels within the 20 year warranty period.

The condition of the gutters at Metro South Station is being reviewed by Waste Management to determine if replacement is necessary. It is Metro's position that the deterioration of the gutters is due to lack of proper maintenance and care. Staff proposes to have the gutters replaced by Emerick Construction Company and then bill Waste Management. This arrangement is still being worked out with Waste Management.

Emerick Construction Company has previously performed work for Metro. They were awarded the Metro South Station Modifications Contract in June of 1990 and a contract extension to construct the Metro South Station HHW. Emerick satisfactorily completed the work on that contract in February of 1992. Although there were claims on the job, none resulted in litigation.

Emerick Construction Company has meet the requirements of the Metro Minority and Women Owned Business Program for good faith efforts. They will not be subcontracting to M/WBE Firms.

Emerick Construction Company has not included recycled products in their bid, nor did any of the other bidders.

### BUDGET IMPACT

It is expected that this work will begin in May 1993 and continue through November of 1993. \$500,000 has been set aside for this work as part of the renewal and replacement activities in FY 92-93, and \$500,000 has been proposed in FY 93-94.



**EXECUTIVE OFFICER RECOMMENDATION**

**The Executive Officer recommends that a contract be awarded to Emerick Construction Company for bid alternate #1 and Gutter replacement.**

**RRS:acy  
S:SHARESMOORMSSROOFSTAF0430.RPT**

## SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 93-1802, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO ENTER INTO A CONTRACT WITH EMERICK CONSTRUCTION COMPANY FOR WORK ASSOCIATED WITH THE REPAIRS AND IMPROVEMENTS TO THE ROOF AND VENTILATION SYSTEM AT METRO SOUTH STATION

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Date: May 19, 1993

Presented by: Councilor McFarland

**Committee Recommendation:** At the May 18 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 93-1802. Voting in favor: Councilors Buchanan, McFarland, McLain, Washington and Wyers.

**Committee Issues/Discussion:** Rob Smoot, Solid Waste Engineering Staff, explained that the purpose of this resolution is to award a contract to Emerick Construction to replace the roof at Metro South. The amount of the contract (\$603,750) is higher than the original estimated cost of \$560,000. Jim Watkins, Solid Waste Engineering Manager, noted that the balance in the Replacement and Renewal Account is more than adequate to cover the cost of the contract.

The Solid Waste Committee had requested that staff solicit warranties for the proposed work as a bid alternative. Smoot noted that the bidders generally doubled their bid prices to cover the cost of a "warranty". In effect, they asked for the entire cost of replacement to warranty their work. Due to the cost, staff rejected each of the proposed warranties. Watkins noted that money could be gradually accumulated in the Renewal and Replacement Account to cover any potential replacement or repair costs.

Councilor McFarland asked if we would be, in fact, "self-insuring" ourselves against the possibility of replacing or repairing the roof. Watkins responded that we would be.

Councilor McLain asked if other facilities with a similar roof systems had been checked out. Smoot noted that the panel system is superior to the present roof and that improvements in the ventilation system should impede rust formation.