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AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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June 28, 2002

To: Supervisor Zev Yaroslavsky, Chairman  
Supervisor Gloria Molina  
Supervisor Yvonne Brathwaite Burke  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: J. Tyler McCauley  
Auditor-Controller

Subject: **DEPARTMENT OF PUBLIC WORKS – DOMINGUEZ GAP BARRIER PROJECT**

On June 18, 2002, your Board instructed the Auditor-Controller, in conjunction with County Counsel and the Department of Public Works (DPW), to review the Invitation to Bid (IFB) process that DPW used to retain a contractor for the Dominguez Gap Barrier Project. Specifically, our review focused on whether the IFB clearly defined "Specialty Items" and the manner in which bidders should consider "Specialty Items" in determining if they were contracting out no more than 50% of the contract price as required in the IFB.

Our review included interviewing managers and staff from DPW and County Counsel, as well as a representative from Modern Continental. We also reviewed the IFB documents and the submitted bids.

**Summary of Findings**

The IFB and related documents stated that subcontracted "Specialty Items" would not be included in the calculation to determine whether more than 50% of the contract price was being contracted out. Although "Specialty Items" were listed in the related specifications, the IFB did not clearly state which bid items in the Schedule of Prices were applicable to the "Specialty Items." This created the possibility for bidders to treat certain bid items as "Specialty Items" when they were not actually "Specialty Items." Accordingly, a bidder might have believed it complied with the 50% rule when in fact it had not. DPW normally includes a list of specific bid items in the Schedule of Prices that are applicable to each "Specialty Item", but erroneously excluded the listing in this IFB.

After the June 18 Board meeting, DPW and County Counsel informed my office that DPW is planning to recommend to the Board that the contract be re-bid. According to DPW and County Counsel, the recommended bidder, Mladen Buntich Construction Company, submitted a bid that took advantage of a DPW engineering estimate that significantly understated the amount of work needed for a portion of the project.

Below are the results of our review.

### **Background**

The IFB's Instructions to Bidders (Section H.9) states that the bidder must perform, with its own organization, work amounting to at least 50% of the contract price, excluding the value of those items designated as "Specialty Items." This requirement is also contained in the Standard Specification for Public Works Construction ("Greenbook"), which is part of the project specifications. Bids that failed to meet this requirement may be considered nonresponsive and rejected. DPW listed three "Specialty Items" in the IFB: Air Compressor Systems, Microtunneling Items, and Microfiltration, Plant and Strainer. Further, DPW provided detailed specifications for each of these "Specialty Items."

Three firms submitted bids as follows, from lowest contract price to highest:

<b>Firm</b>	<b>Contract Price</b>
Modern Continental	\$12,160,229
Mladen Buntich	\$12,786,132
Colich & Sons, L.P.	\$14,585,958

### **The Solicitation Documents**

The IFB and related documents defined the work included in the "Specialty Items". However, the IFB and related documents did not clearly state which bid items were applicable to the "Specialty Items". Therefore, some bidders may have included incorrect costs in calculating compliance with the 50% rule. Two of the bidders, Mladen Buntich and Colich & Sons, each proposed to contract out less than a third of the total contract price, so this issue was not applicable to them. However, the issue was applicable to the third bidder, Modern Continental, who proposed to contract out over 50% of the total contract price.

In the absence of clear instructions stating otherwise, Modern Continental incorrectly classified some items as "Specialty Items" and deducted their costs in calculating compliance with the 50% rule. According to DPW, it normally includes a list of bid items under each "Specialty Item" category that bidders should deduct in calculating compliance with the 50% rule, but DPW erroneously did not include the list in this IFB.

At the bidders' conference, none of the bidders questioned the absence of a list of specific bid items applicable to the "Specialty Items". However, the division of Modern

Continental involved with the bid has limited experience in dealing with DPW solicitations and may have been unaware the list was erroneously omitted from the solicitation package. We also noted that DPW does not require bidders to formally calculate and document their compliance ratio using this listing of deductible costs.

After receipt of the bids, DPW notified Modern Continental that it was not in compliance with the 50% rule. Modern Continental responded by claiming that it had made an inadvertent clerical error at the time of the bid. Relying upon California Public Contract Code Section 4107.5, Modern Continental sought to eliminate two of its listed subcontractors on grounds that the work they were to perform was actually being performed by a third listed subcontractor. At that time, Modern Continental corrected its bid by deleting two subcontractors and re-calculated its compliance ratio, which according to Modern Continental, was 49.1%. However, DPW indicated that Modern Continental's corrected bid still exceeds the 50% ratio. The discrepancy is attributable to certain items that Modern Continental believes are "Specialty Items", but DPW does not.

On June 21, 2002, DPW and County Counsel informed my office that the recommended bidder, Mladen Buntich, submitted a bid that took advantage of a DPW engineering estimate that significantly understated the volume of contaminated soil to be removed on the project, which could increase the project's cost significantly. DPW and County Counsel believe a re-bid is necessary to correct this "unbalanced condition". Attached is DPW's explanation of this "unbalanced condition", as well as other reasons DPW believes the solicitation should be re-bid.

For future solicitations that involve "Specialty Items," DPW management should ensure that the IFB documents include a list of specific bid items applicable to each "Specialty Item" that bidders can deduct in calculating compliance with the 50% rule. DPW should also develop a standard form on which bidders formally calculate and document their compliance ratio using the listing of deductible costs.

### **Recommendations**

#### **DPW management:**

- 1. Include in its IFB a list of specific bid items applicable to each "Specialty Item" that bidders can deduct in calculating compliance with the 50% rule.**
- 2. Develop a standard form on which bidders formally calculate and document their compliance ratio using the listing of deductible costs.**

**Acknowledgement**

We would like to thank DPW and County Counsel management and staff for their cooperation and active participation during this review process. If you have any questions, please contact me or have your staff contact DeWitt Roberts at (213) 974-0301.

Attachment

JTM:DR:DC

c: David E. Janssen, Chief Administrative Office  
James A. Noyes, Director, Department of Public Works  
Lloyd W. Pellman, County Counsel  
Violet Varona-Lukens, Executive Officer  
Public Information Office  
Audit Committee (6)

# MEMORANDUM

June 28, 2002

TO: J. TYLER McCAULEY  
Auditor-Controller

FROM: JAMES A. NOYES JAN  
Director of Public Works

RE: DOMINGUEZ GAP BARRIER PROJECT

As background information, the bids for this project were opened on June 4, 2002. Modern Continental (lowest bidder) listed 67.5 percent of the contract work to be subcontracted as compared with the maximum of 50 percent allowed by the specifications (exclusive of "Specialty Items").

On June 6, we received a letter from Modern Continental claiming a clerical error in their subcontractor listing (the California Public Contract Code gives bidders two days to claim an inadvertent clerical error in the listing of subcontractors). They claimed that they inadvertently listed multiple subcontractors to perform the same work on their subcontractor's list. They deleted two subcontractors from their list. The two subcontractors dropped from the list provided us with letters agreeing with Modern Continental that they were listed in error.

On June 6, Modern Continental also provided a list of what they considered Specialty Items in their subcontractor's list. Specialty Items were excluded from the calculation determining the percentage of work performed by subcontractors.

Taking into consideration Modern Continental's deletion of two subcontractors and their position on Specialty Items, we recalculated the percentage of work to be subcontracted by Modern Continental. The revised number was 56 percent and, therefore, still exceeded the 50 percent allowed in the specifications. On June 10, we informed Modern Continental that their bid was considered nonresponsive because they exceeded the 50 percent requirement for listing of subcontractors.

On June 11, we received another letter from Modern Continental which included a revised Specialty Item breakdown list. Modern Continental had added to the

Specialty Item list 70 percent of the project's electrical work. With this addition, Modern Continental claimed they were subcontracting less than 50% of the work. We disagreed with Modern Continental's contention because the electrical work is not related to the listed Specialty Items (microtunneling items, air compressor system, or the microfiltration plant and strainer).

To maintain the option of awarding the Dominguez Gap Barrier Project during Fiscal Year 2001-02, the project was listed in the Award letter submitted to the Executive Officer on June 11, 2002, for the June 18, 2002, Board hearing. The Award letter sought to award the contract to Mladen Buntich Construction Company, Inc., the second lowest bidder.

Listed below are items which led us to request that the award of the Dominguez Gap Barrier Project listed under Item No. 97 on the June 18, 2002, Board agenda be returned to the Department of Public Works.

- Proposed Spring Street Improvements:

At the time the recommendation to award to Mladen Buntich was made, it was our understanding that the City of Long Beach was anxious to begin construction of Spring Street within this project's limits. Therefore, we did not want to inconvenience the City any more than necessary and were anxious to award as soon as possible. However, subsequent discussions with the City indicate that a delay of a few months will not jeopardize their funding nor have a serious impact on local residents and businesses.

- Lowest Bid Higher than Engineer's Estimate and Additional Competition:

Modern Continental's bid is 13% higher than the Department's engineer's estimate. Mladen Buntich's bid is approximately \$625,000 more than Modern Continental's bid and is 19% higher than the engineer's estimate. When the lowest bid is higher than the engineer's estimate, we generally review the procurement to determine why bids came in higher than anticipated. We also consider whether a re-bid will generate additional competition and, thus, bids more in-line with the engineer's estimate. Only three

contractors bid this job, but we know of at least two others that expressed serious interest in bidding, but were unable to do so. One of these was attempting to finalize a bid minutes before the deadline for submission, but failed to complete the bid in time. Therefore, particularly because the engineer's estimate is significantly lower than the bids received, we feel there is a strong possibility that lower bids will be received in a re-bid.

- Items That Need To Be Clarified/Corrected In The Project Plans And Specifications:

Specialty Items:

Identify the bid items numbers and the exact description of each item as listed in the "Schedule of Prices" under the "Specialty Items" section of the General Specifications. This mechanism is far clearer than the more general description of the speciality items now included in the specifications.

Storage Tank (Bid Item #11):

The project called for an 18-foot diameter concrete storage tank; however, there were no structural details provided to build or prefabricate the storage tank. The question was raised by Mladen Buntich and was answered in Addendum No. 2 by giving the bidders two options, of which only one has proven to be feasible after closer examination. The first option was to bid on two 12-foot diameter precast tanks and the other one was to build a cast-in-place tank without any structural details. The bid documents will be revised to only include the precast option.

Prefabricated Metal Building (Bid Item #13):

The plans called for an "18 gauge steel bullet proof walls" for the prefabricated metal building. We were told by one of the bidders that bullet proof walls are not available. After researching the issue and talking to manufactures, we were

advised to change our specifications to “bullet resistant walls” instead of “bullet proof walls.” Furthermore, 18 gauge wall thickness is also unavailable from the supplier specified on the plans. The plans will be revised to require material for the walls which is readily available.

Lead Contaminated Soil (Bid Item #26):

The schedule of prices included a bid item to transport, treat, and dispose of 75 tons of lead contaminated soil cuttings. However, after bid opening, we discovered that the actual quantity will be approximately 1,800 tons instead of 75 Tons. This was simply an oversight due to a last minute geological information which was not incorporated in an addendum.

The price bid by Mladen Buntich for this item is relatively high compared to the engineer’s estimate and the other bidders, perhaps because of the relatively small quantity indicated in the estimate. However, based on the current estimate and the price bid for this item, the increase in contract cost could be quite significant. While the contract specifications provide that the unit price can be renegotiated when quantities exceed the estimate by more than 25%, arriving at a negotiated price that is fair to both the contractor and the County can be problematical. By including the correct quantity in the bid documents, the unit price to handle this material will likely be reduced and the amount to be paid will be determined competitively.

Incorporate the Addenda in the Specifications:

Three addenda were issued for this project during the bid period, one of which was issued on June 3, 2002, the day before the bid opening. While issuing addenda is not uncommon, it does make it more difficult for contractors to understand the specifications and to prepare accurate bids. By incorporating the addenda into the specifications, the specifications will be easier to understand.

As a result of the above-listed items, we concluded that rejecting all bids and readvertising the project would assure that competitive bids are received for the work to be done and thus requested that the Dominguez Gap Barrier Project award item be returned to the Department.

The "Instructions to Bidders" included in the bid documents provides for the rejection of all bids by your Board if such action is in the best interest of the County.

DAJ:sma

June 28, 2002