



MEMORANDUM

TO: Rudy Garza, Assistant City Manager
Toby Futrell, City Manager

FROM: *J. Ramos*
for Sondra Creighton, P.E., Director
Department of Public Works

V. Hsu
Victoria Hsu, P.E., Director
Watershed Protection and Development Review Department

DATE: July 17, 2007

SUBJECT: Request for M/WBE Goals Waiver
Fort Branch Creek Channel Restoration – Westminster Dr to Manor Rd

A comprehensive study of the Lower Fort Branch Watershed Management Area was conducted and eleven segments within this area were prioritized with integrated solutions relating to flooding, erosion, and water quality. Reach 1, located between Westminster Drive and Manor Road, consists of approximately 2,200 feet of stream and was identified as having the worst erosion problems relative to the other reaches in the watershed.

In June 2004, a storm event scoured away approximately 150 feet of the west bank of the lower end of Reach 1 just upstream of Manor Road. Subsequent storm flows in November 2004 scoured away an additional 300 feet of vulnerable bank. Erosion rapidly advanced into three (3) residential properties, exposed two (2) electric power poles and threatened the concrete channel lining at the Manor Road bridge. The City completed an emergency stabilization project in August 2005 to prevent future flows from inflicting further damage. This emergency project stabilized approximately 600 feet of the west channel bank.

Storm flows from January 2007 through June 2007 have scoured away an additional several hundred feet of stream bank. The scoured areas range from 10 to 18 feet in height. An imminent structural threat exists to electric power poles and services, storage buildings and fences. Numerous yards have experienced massive slope failures resulting in the loss of 10 to 20 feet of land towards the homes along the creek. There are serious safety concerns for residents, their children and pets where fences and significant portions of their backyards have been lost due to unstable stream bank conditions.

Attached are photographs depicting the current condition of this segment of Fort Branch Creek. Due to the existing safety concerns, an emergency purchase affidavit was signed by Victoria Li, P.E., Director of Watershed Protection and Development Review Department on June 11, 2007 (also attached).

The project went out to bid on June 25, 2007. Bids were opened on July 13, 2007. Austin Filter Systems, Inc. (non-MWBE) submitted the only bid for this project and was declared non-compliant by the Department of Small and Minority Business Resources (DSMBR). MWBE participation subgoals do not apply to emergency projects. Even though it was not required, this project was bid with subgoals in support of increasing minority subcontracting opportunities.

| <u>Company</u> | <u>Base Bid</u> |
|--|-----------------|
| Austin Filter Systems, Inc. (Non-MWBE) (Bid declared non-compliant) | \$ 3,667,926.00 |

The project was bid with composite subgoals. Participation subgoals stated in the solicitation were: 12.90% MBE and 12.60% WBE. Participation submitted by the only bidder is as follows:

| <u>Austin Filter Systems, Inc.</u> | <u>Goal</u> | <u>Compliance Plan</u> | <u>(Below)/Above</u> |
|------------------------------------|-------------|------------------------|----------------------|
| MBE | 12.90% | 12.389% | (0.511%) |
| MBE African American | | 7.238% | |
| MBE Hispanic | | 5.151% | |
| WBE | 12.60% | 13.29% | 0.69% |

DSMBR determined the M/WBE Compliance Plan submitted by Austin Filter Systems, Inc. (Non-MWBE) does not adhere to Chapter 2-9A of the City Code. DSMBR deemed Austin Filter Systems, Inc. to be non-compliant because they did not meet the MBE goals. Austin Filter Systems, Inc. made an error when transferring the subcontract value of a MBE African American firm to the compliance plan form. Subsequently, Austin Filter Systems, Inc. did not submit any Good Faith Effort documentation that all certified M/WBEs were solicited since they believed they met the subgoals when the compliance plan was submitted with their bid documents.

Therefore, it appears the interests of the City of Austin would be best served by awarding the construction contract to the only bidder, Austin Filter Systems, Inc. for the following reasons:

1. Due to the abnormal number of heavy rain events in the last six months, the existing condition of this segment of the Fort Branch Creek is threatening the safety of our residents, their children and pets where fences and significant portions of their backyards have been lost due to unstable stream bank conditions.

2. If approval of award for this construction contract is not made now, a delay of at least 6-8 weeks will occur. Further exposing the area to the severe erosion problem.
3. Austin Filter Systems, Inc. was the only bidder for this project.
4. Although goals were not required, Austin Filter Systems, Inc. missed the participation subgoals by 0.179%.
5. The current appropriation is sufficient to award this contract. The bid received is within budget and within 10% of the engineer's construction estimate.
6. Austin Filter Systems, Inc. is a reputable local construction firm that has provided quality construction services on other City projects.

Please sign below to indicate your concurrence or non-concurrence with our recommendation to award the construction contract to Austin Filter Systems, Inc.

If you have any questions, please call Sondra Creighton at 974-7175 or Christina Calvery at 974-7094.

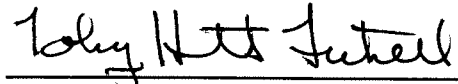
I Concur:

 8/6/07

Rudy Garza Date
Assistant City Manager

I Do Not Concur:

Rudy Garza Date
Assistant City Manager

 8/3/07

Toby Hammett Futrell Date
City Manager

Toby Hammett Futrell Date
City Manager

STATE OF TEXAS


EMERGENCY PURCHASE AFFIDAVIT

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, personally appeared Victoria J. L. Hsu, P.E. who being by me first duly sworn, upon oath depose and stated: "My name is Victoria J. L. Hsu, P.E. I am over eighteen (18) years of age. I am the Director of the City of Austin Watershed Protection and Development Review Department. I have personal knowledge of the facts set forth below and am competent and authorized to make this affidavit.

Storm flows from January 2007 through June 2007 have scoured away several hundred linear feet of stream bank along **Fort Branch Creek between Manor Road and Westminster Drive**. The scoured areas range from 10 to 18 feet in height. An imminent structural threat exists to electric power poles and services, storage buildings, fences and numerous yards have experienced massive slope failures resulting in loss of 10 to 20 feet of land towards the homes along the creek. If the stream banks are not stabilized quickly, it is anticipated that homes and additional utilities may be threatened. There are serious safety concerns for residents, their children and pets where fences and significant portions of their backyards have been lost due to unstable stream bank conditions. A project to stabilize the creek has been designed and funded, but several easements have yet to be recorded. It is City policy not to permit a project before all easements are recorded. It is also City policy not to advertise for construction until a permit is issued. Due to the dynamic nature of the creek and progressive threat to life and property it is recommended that the project be advertised before the permit is issued and the final easements is acquired.

The situation described above is a threat to public health and safety that requires the immediate appropriation of money to be resolved. I believe that future storms will further danger both public and private amenities and necessitate emergency repair immediately. "Further Affiant sayeth not."


Signature

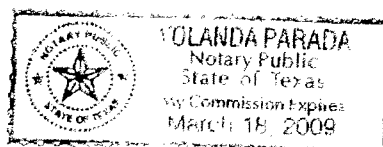
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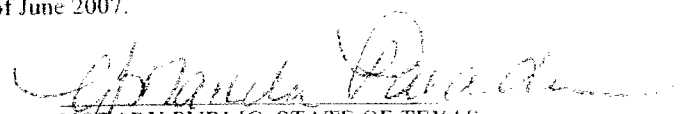
STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned notary public, personally appeared Victoria J. L. Hsu, P.E. (the "claimant") known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that Claimant executed the same for the purpose and consideration therein expressed, in the capacity therein stated, and that each and every statement therein is within Claimant's knowledge and is true and correct.

Given under my hand and seal of office on the 11th day of June 2007.




NOTARY PUBLIC, STATE OF TEXAS
YOLANDA PARADA
Printed Name of Notary

My Commission Expires: 3/15/2009