

(RA-96-121) COR.COPY
05/09/96

REDEVELOPMENT AGENCY OF

THE CITY OF SAN DIEGO

RESOLUTION NO. 2653

ADOPTED ON MAY 14, 1996

WHEREAS, on November 1, 1994, a public hearing was docketed on the regular agenda of the Redevelopment Agency of The City of San Diego ("Agency") to determine whether West Coast General Corporation ("WCG") was in default of Contract No. AC 9400474 ("Gaslamp Quarter Park Contract") and whether WCG had violated the Subletting and Subcontractors Fair Practices Act; and

WHEREAS, at the November 1, 1994, public hearing evidence was presented by staff from the Center City Development Corporation ("CCDC"), the Agency's contract administrator, which evidence included the following written material entered into the record: a staff report, a letter of protest from Will Bendix Inc. ("Bendix Letter"), and a letter of protest from the Latino Builders Association (the "Latino

Builders Letter"). In addition, the Agency heard oral testimony from: CCDC Senior Vice President Pamela M. Hamilton; CCDC Resident Field Engineer Gary Bosse; Tom Gade, Esq., representing complainant Will Bendix Inc.; Robert Marks, Esq., representing WCG; NOW, THEREFORE, having reviewed the entire administrative record and considering all the evidence,

BE IT RESOLVED, that the Redevelopment Agency of The City of San Diego hereby finds that:

1. Pamela Hamilton was a credible and believable witness.
2. The uncontroverted testimony of Pamela Hamilton established that CCDC was authorized by the Agency to administer the Gaslamp Quarter Park Construction contract.

3. Based on the testimony of Pamela Hamilton, the Bendix Letter, and the Latino Builders Letter with regard to the illegal practice of "bid shopping," we find that strict adherence to the Subletting and Subcontractors Fair Practices Act is necessary to maintain the integrity of the Agency's public bidding process.

4. As established by the testimony of Pamela Hamilton, the Subletting and Subcontractors Fair Practices Act requires prime contractors to list all subcontractors and to only utilize at the job site those subcontractors listed and authorized by the Agency.

5. Based on the uncontroverted testimony of Pamela Hamilton we find that WCG bid on the Gaslamp Quarter Park Contract along with three other prime contractors and when WCG submitted their bid they did not list an electrical subcontractor.

6. Based on the uncontroverted testimony of Pamela Hamilton we find that when CCDC questioned WCG regarding why their bid did not list an electrical subcontractor, WCG made an affirmative representation that

they had qualified journeymen as employees on their payroll who would perform the approximately \$100,000 worth of anticipated electrical work.

7. We find that Gary Bosse, CCDC's Field Engineer on the Gaslamp Quarter Park Contract, was a credible and believable witness.

8. Based on the uncontroverted testimony of Gary Bosse, we find on October 17, 1994, he observed a Knox Electric truck on the job site. This fact was also corroborated by observations made by William H. Bendix and Barbara K. Kerr, as set forth in the Bendix Letter.

9. Based on uncontroverted evidence submitted to us in the Bendix Letter, we find that Knox Electric is a licensed electrical contractor.

10. We find that the facts that Knox Electric is a licensed contractor and that their truck was observed at the job site are consistent with Knox Electric being utilized as a subcontractor by WCG for the Gaslamp Quarter Park Contract.

11. Based on the uncontroverted testimony of Gary Bosse, we find on October 17, 1994, he observed two men working out of the Knox Electric truck and engaged in the act of installing an electrical conduit in an electrical vault that was being constructed as part of the Gaslamp Quarter Park Contract.

12. We find that the facts that Knox Electric is a licensed contractor and that two men were observed at the job site working out of a Knox Electric truck and performing electrical work are consistent with Knox Electric being utilized as a subcontractor by WCG for the Gaslamp Quarter Park Contract.

13. Based on the uncontroverted testimony of Gary Bosse, we find on October 18 and 19, 1994, he observed a Knox Electric truck and men working out of that truck continuing to install electrical work at

the job site.

14. We find that based on the evidence of Knox Electric trucks and personnel at the job site on October 17, 18, and 19 of 1994 as observed by Gary Bosse and as corroborated by the Bendix Letter, and the fact that the evidence presented suggests that previous to that point in time no trucks had been at the job site with a Knox Electric logo shows that the electrical installation component of the Gaslamp Quarter Park Contract was being performed by an electrical subcontractor, consistent with a typical prime/subcontractor relationship.

15. Based on the uncontroverted testimony of Gary Bosse, we find that on October 20, 1994, a problem arose at the job site regarding the installation of electrical components and after Gary Bosse asked a representative from WCG to summon the responsible persons for a meeting to resolve the issue, when that meeting occurred on the morning of October 21, 1994, a representative from WCG showed up for the meeting with Craig Knox, who is known to Gary Bosse as the principal of Knox Electric, a licensed electrical subcontractor.

16. Based on the uncontroverted testimony of Gary Bosse, we find that Craig Knox took an active participatory role in the October 21, 1994, meeting which was called to solve an electrical installation problem at the job site.

17. We find that the fact that Craig Knox is a principal of the electrical contractor, whose employees were working on the electrical installation component of the Gaslamp Quarter Park Project, and the fact that Craig Knox was actively involved in a meeting called to resolve an electrical installation issue at this job site are consistent with Knox Electric being used as a subcontractor by WCG for the Gaslamp Quarter Park Contract.

18. Based on the uncontroverted testimony of Gary Bosse, we find that after a resolution to the electrical installation conflict was

reached at the meeting, Craig Knox took affirmative action on the resolution by telephoning another person and instructing that individual to return to the job site to remove the existing electrical conduit.

19. We find that the fact that Craig Knox, the principal of Knox Electrical, took responsibility for removing the existing conduit at the job site shows that the electrical installation component of the Gaslamp Quarter Park Contract was being performed in a manner consistent with a typical prime/ electrical subcontractor relationship.

20. Based on the uncontroverted testimony of Gary Bosse, we find that on October 24, 1994, he telephoned Craig Knox to inquire about the status of the removal of the existing electrical conduit.

21. We find that the fact that Gary Bosse was given the

impression that Craig Knox was the person responsible for ensuring that the electrical problem was resolved, and the fact that it was Craig Knox with whom Bosse consulted to determine the status of the removal of the electrical conduit are more consistent with Knox Electric being used as a subcontractor by WCG for the Gaslamp Quarter Park Contract than with the Knox personnel acting as employees of WCG.

22. Based on the uncontroverted testimony of Gary Bosse, we find that on October 27, 1994, the WCG superintendent informed Gary Bosse that Craig Knox had a question for Mr. Bosse regarding light fixture locations.

23. We find that the fact that Craig Knox queried CCDC's field engineer for further detailed electrical site information, and the fact that Bosse testified that this is typical behavior for a subcontractor with responsibility for the electrical component of a project are more consistent with Knox Electric being used as a subcontractor by WCG for the Gaslamp Quarter Park Contract than with the Knox personnel acting as employees of WCG.

24. Based on the uncontroverted testimony of Gary Bosse, we find that on October 25, 1994, after learning Gary Bosse had contacted Craig Knox directly, Dave Davey, Vice President of WCG, instructed Gary Bosse not to speak with his subcontractors directly.

25. We find that the fact that Dave Davey, a highly ranked executive at WCG, considered Craig Knox a subcontractor of WCG on the Gaslamp Quarter Park Contract is consistent in showing that Knox Electric was being used as a subcontractor on the project.

26. Based on the uncontroverted testimony of Gary Bosse, we find that WCG's superintendent understood that Knox Electric planned to move onto the job site the week after the 27th of October, 1994, and Knox was observed on site on both October 28 and October 31, 1994, by Gary Bosse.

27. We find that the evidence of Knox's continued presence at the job site on October 28 and 31 of 1994, as observed by Gary Bosse, shows that the electrical installation component of the Gaslamp Quarter Park Contract was being performed in a manner consistent with a typical prime/electrical subcontractor relationship.

28. Based on the uncontroverted testimony of Gary Bosse, we find that Mr. Knox was initially unaware that the Gaslamp Quarter Park Contract was a City project or that he was an unlisted subcontractor.

29. We find that counsel for WCG, Robert Marks, gave inconsistent testimony and was less credible than was Gary Bosse.

30. Based on Robert Marks' testimony and Gary Bosse's uncontroverted testimony, we find that Mr. Knox was aware there was no contractual method to ensure he would be paid for extra work outside the scope of his original WCG agreement, which included his employment by

WCG as a consultant.

31. Based upon the testimony of Robert Marks, we find WCG knowingly used Knox Electric personnel and vehicles and involved the personal services of Craig Knox in the electrical component of the Gaslamp Quarter Park Contract.

32. We find that Robert Marks' testimony that WCG was employing Knox Electric personnel and using Knox Electric trucks with the permission of Craig Knox and Knox Electric, but without a subcontractor relationship, was not credible.

33. We find that Gary Bosse's uncontroverted testimony that based upon his four years of experience as a resident engineer in San Diego, he found the interaction between WCG and Knox Electrical to be typical of a prime/subcontractor relationship, and the fact that Craig Knox had substantial involvement in the details of the electrical work on the Gaslamp Quarter Park Project performed by Knox Electric personnel, and the fact that Robert Marks failed to offer a satisfactory explanation for the involvement of Knox Electric's personnel, equipment, and principal in the project are facts more consistent with Knox Electric acting as an electrical subcontractor than with the Knox personnel acting as employees of WCG.

34. We find, having considered the above-stated findings collectively, that WCG utilized Knox Electric in the capacity of a subcontractor on the Gaslamp Quarter Park Project.

APPROVED: JOHN W. WITT, General Counsel

By
Richard A. Duvernay
Deputy Counsel

RAD:lc
05/03/96
05/09/96 COR.COPY
Or.Dept:Atty.

Aud.Cert:N/A
RA-96-121
Form=ra.nt