

MEMORANDUM OF LAW

DATE: July 10, 1992

TO: Alan Langworthy, Deputy Director, Metro Division,  
Water Utilities Department

FROM: City Attorney

SUBJECT: Belt Filter Press Bid No. B 3071/92

In late March 1992, the Purchasing Agent issued a bid proposal to furnish and install four (4) sludge belt filter presses for use at Fiesta Island. The bid specifications require the vendor to assume responsibility for all of the equipment necessary for the system to function properly, including installation of the presses. The total estimated cost of the project was approximately \$1.2 million. The estimated cost of the equipment was \$1.12 million (93% of the total), and the estimated cost of the installation was \$80,000 (7% of the total). The equipment is to be attached to a concrete pad which already has been constructed by the City.

During the bidding period an addendum was issued to the bid requiring that installation of the equipment be performed by a contractor holding an "A" class license. On May 26, 1992, the bids for the contract were opened. The low bidder identified a subcontractor with an "A" class license to perform the installation of the presses. That same day Mr. Arthur S. Anderson of Gierlich-Mitchell, Inc., one of the nine bidders, contacted Mr. Jerry Williams of the Water Utilities Department to protest the bid. Mr. Anderson appears to claim that this is a public works contract and that only a contractor with a class "A" license therefore could be awarded the contract.

You contacted our office to review Mr. Anderson's claims and to determine whether the contract may be awarded to a vendor who subcontracts the installation of the equipment to a licensed California contractor. We conclude that the contract may be awarded to the vendor.

ANALYSIS

The premise of Mr. Anderson's argument is incorrect. This is not a public works contract. A public works contract is defined as "an agreement for the erection, construction, alteration, repair, or improvement of any public structure,

building, road, or other public improvement of any kind." Cal. Public Contracts Code Section 1101. The primary purpose of this agreement is to purchase equipment, i.e., belt filter presses. Installation of the equipment is merely an incidental part of the contract, comprising approximately seven percent (7%) of the total contract. Consequently, the contract does not fit the statutory definition of a public works contract. See, *Boydston v. Napa Sanitation Dist.*, 222 Cal. App. 3d 1362, 1366-1367 (1990). Inasmuch as this is not a public works contract, Mr. Anderson's claims are without merit.

#### CONCLUSION

Given the foregoing, we conclude that you may proceed with the award of the bid to the lowest responsible bidder. If you have any additional questions, however, please do not hesitate to contact our office.

JOHN W. WITT, City Attorney

By

Kelly J. Salt

Deputy City Attorney

KJS:jrl:400(x043.2)

cc Milon Mills

Henry Pepper

Chris Toth

Ralph Shackelford

Laurie Schwaller

ML-92-59