

DATE ISSUED: June 15, 2000

REPORT NO. 00-132

ATTENTION: Honorable Mayor and City Council
Docket of June 20, 2000

SUBJECT: Debarment of Southern California Underground Contractors, Inc., of Brea, California

SUMMARY

Issue - Should the City Council permanently debar Southern California Underground Contractors, Inc., and its principals?

Manager's Recommendation - Adopt a resolution with findings of fact consistent with this report that Southern California Underground Contractors, Inc., (SCU) engaged in corrupt practices involving the administration of contracts with the City of San Diego, including the falsification of documents, and lack of business integrity. Based on these findings, permanently debar SCU and its principals, listed on California State Contractor's license number 611356, from performing any future contract work for the City of San Diego in accordance with Municipal Code Sections 22.0803(b), and 22.0805(b), Debarment Procedures for Procurement and Public Works Contracts.

Fiscal Impact - None.

BACKGROUND

SCU is a prime contractor currently performing work for the City of San Diego. Contracts under construction are listed below with the community area and status:

<u>PROJECT</u>	<u>COMMUNITY</u>	<u>STATUS</u>
Water & Sewer Group 464A	East Village	80% complete
Sewer & Water Group 496	La Jolla/Pacific Beach	99% complete
Sewer & Water Group 505	Kensington	95% complete
Sewer & Water Group 514	North Park	44% complete
Water & Sewer Group 530A	Old Town	65% complete
Sewer & Water Group 605	City Heights-East	35% complete
Sewer Group 623	Valencia Park	99% complete
Sewer Group 630	Grant Hill/Stockton	95% complete
Sewer Group 636	North Park	99% complete
Sewer Group 647	Talmadge	99% complete

SCU shall complete the projects in progress listed above.

Municipal Code Section 22.0803, Debarment Procedures for Procurement and Public Works Contracts, provides for Council to debar contractors from performing contract work for the City under either a temporary debarment (not to exceed three (3) years) for unsatisfactory performance of contracts (MC 22.0803(a)(3)); unjustified refusal to properly perform contract work (MC 22.0803(a)(5)); unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract (MC 22.0803(a)(6)); and any offense or action which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of the contractor on future contracts with the City (MC 22.0803(a)(10)), or a permanent debarment for corrupt practices involving the award or administration of a contract with the City (MC 22.0803(b)).

The Municipal Code also provides the contractor the opportunity to appear before City Council to show cause why the debarment should not be implemented. Notifications have been provided to SCU and its principals in accordance with the Municipal Code.

Pursuant to MC 22.0805(a), if SCU is debarred, all City departments are prohibited from executing contracts with a debarred contractor. SCU is currently the low bidder on seven (7) additional City water/sewer contracts with a total contract value in excess of \$8.4 million.

DISCUSSION

During the inspection of the aforementioned projects willful acts of corrupt practices, falsification of documents, deception, and lack of business integrity have been observed and documented by City staff as described below.

A. Use of City water without proper construction meters

On several occasions between December 17, 1999, and May 3, 2000, City staff discovered SCU improperly using City of San Diego water by filling water trucks directly from fire hydrants without using a water meter; by taking water from fire hydrants using an inoperable meter; by taking water from fire hydrants using a water meter which had been reported stolen; and by taking water from fire hydrants using a water meter which had not been properly registered with the Water Department. Such actions are in violation of Section 7-15 of the City of San Diego Supplement Amendments to the Standard Specifications For Public Works Construction (Greenbook) and MC 22.0803(a)(3), (5), (6) and (10).

Upon further investigation by City staff, it was discovered that while SCU had at least 10 active City construction contracts they had only 3 water meters registered with the Water Department (serial #'s 88537360, 91004201, & 99634524). Water is regularly required on all construction projects. Evidence gathered by City staff disclosed that of the 3 meters listed above, only one was properly registered and in good working condition. Two of the 3 meters being used by SCU on City construction projects had been reported lost or stolen by SCU and/or found to be inoperable. In these cases, SCU was using water for free, thereby stealing water.

Details of findings are as follows:

Sewer Group 647: City staff discovered SCU filling a water truck from a City of San Diego fire hydrant without a meter on December 17, 1999. SCU was immediately notified verbally that a fully functional water meter, properly registered with the City of San Diego Water Department was required before using any more City water.

Water & Sewer Group 464A: City staff discovered SCU filling a water truck from a City of San Diego fire hydrant without a meter on February 15, 2000. SCU was notified verbally on February 15, 2000 and in writing on February 18, 2000, that a water meter was required. On April 13, 2000, City staff discovered SCU using an inoperable meter (serial # 91004201) connected to a City fire hydrant to get water for flushing a large volume of water through a new water main. City staff confiscated the meter at the request of the Water Department and delivered it to the City Meter Shop on April 21, 2000. It was subsequently determined that the confiscated meter was registered to SCU but had been reported stolen by SCU approximately three months earlier.

Water & Sewer Group 530A: City staff discovered SCU using an inoperable meter (serial # 88537360) connected to a City fire hydrant on April 28, 2000. SCU was immediately notified, both verbally and in writing, that a fully functional water meter, properly registered with the City of San Diego Water Department was required before using any more City water. Upon further investigation it was discovered that this meter was registered to SCU but had been reported stolen by SCU and was overdue for reading.

Sewer Group 636: City staff checked the water meter used on this project on May 3, 2000, and recorded the serial number (# 89542881) so it could be verified if it was registered with the Water Department. City staff discovered that SCU reported this meter lost or stolen in December 1999.

When confronted with these facts, SCU returned the registered meters in their possession to the Water Department and rented five (5) new meters in early May 2000, thereby admitting by action violation of MC 22.0803(a)(6) and (10).

B. Public Safety and Health

SCU has demonstrated a consistent disregard for public health and safety. On several occasions City staff witnessed SCU working in the City right-of-way without required traffic control permits. On other occasions, SCU was found to be performing work in violation of their approved traffic control permit(s) and refused direction by City staff to take action needed to comply with the permit(s) thereby jeopardizing safety of pedestrians and motorists.

Details of findings are as follows:

Water & Sewer Group 464A: Prior to beginning work, City staff gave written notification on October 12, 1999, and November 29, 1999, to SCU of their obligation to submit traffic control plans and obtain valid traffic control permits. SCU failed to comply and

began work in the public right-of-way without the required permit(s). City staff issued 3 separate violation notices to SCU on January 12, 2000, January 31, 2000, and February 2, 2000. Despite these notices, SCU still failed to fully comply with the requirements of their contract. NOTE: See item "C" below for more information regarding traffic control violations on this project.

Sewer & Water Group 496: City staff notified SCU of deficiencies regarding traffic control on several occasions. Notification was given both verbally and in writing. In one case, a violation notice was issued (on February 3, 1999). Deficiencies included: 1) failure to install required traffic control devices to warn motorists of construction activities and guide them safely through the work zone, 2) failure to provide continuous access for emergency vehicles and local traffic as required, 3) failure to remove construction debris from the public right-of-way, and 4) failure to cease work and move out of the right-of-way during peak traffic hours as required by SCU's traffic control permit(s).

Sewer & Water Group 605: City staff discovered SCU working in the public right-of-way without valid traffic control permit(s) and/or without proper implementation of safe and adequate work zone traffic control on several occasions. In addition to regular verbal warnings, written notification of traffic control deficiencies was given to SCU on January 27, 2000 (Stop Work Notice), February 16, 2000, February 25, 2000, March 2, 2000 (Violation Notice), March 17, 2000 (Violation Notice), and May 23, 2000 (Violation Notice). City staff were forced to call the Police Department on March 17, 2000, to get SCU to comply with traffic control requirements. In addition, SCU was cited by the Police Department on April 3, 2000 for working in the right-of-way without a valid traffic control permit.

Sewer Group 630: SCU regularly performed work in the public right-of-way during peak traffic hours in violation of their approved traffic control permit(s). This was done even after City staff had agreed to extend the traffic control work hours in the afternoon from 3:30 p.m. to 4:30 p.m. as a courtesy to SCU. Even given this extra working hour each day, SCU habitually worked past 4:30 p.m. As a result, City staff was forced to rescind the additional time granted previously. SCU was notified of this in writing on August 27, 1999.

These actions were in violation of MC 22.0803(a)(3), (6) and (10).

C. Falsification of traffic control documents

On 2 occasions, City staff monitoring Water & Sewer Group 464A determined that SCU had falsified traffic control permits and performed work in the public right-of-way without approved traffic control plans or permits. In both instances, SCU staff admitted that they had either made unauthorized modifications to official documents issued by the City's Traffic Engineer, or had fabricated documents which must be obtained only from City Traffic Engineers.

In the first instance, SCU staff modified the valid traffic control permit to make it appear that the

permit included areas for which City Traffic Engineers had not issued a permit. City staff determined this by comparing the permit presented by SCU at the work site to a copy of the permit obtained directly from the Engineering and Capital Projects Department.

In the second of the two instances, a falsified document was presented by SCU to City staff at the work site with the express purpose of deceiving City staff so that SCU would be allowed to continue working in the public right-of-way. In coordination with staff from the City Traffic Engineering Section, it was determined that SCU had fabricated the traffic control drawing by cutting an approval stamp from another drawing and pasting it on the fabricated drawing. SCU made photo copies to make it appear to be valid. When City staff confronted SCU with the forged drawing, SCU admitted to falsifying the approval.

These actions were in violation of MC 22.0803(a)(3), (6) and (10).

D. Unsatisfactory work practices, deceptive work practices, misrepresentation of work

Sewer & Water Group 505: Residents in the Kensington community had their vehicles towed away in late March 2000, due to SCU's failure to properly schedule placement of No Parking signs for paving work and the use of incorrect signs. When questioned about this, SCU claimed that the signs had been placed in accordance with the contract requirements. Upon further investigation, City staff determined that the signs were placed too late and did not contain specific information about the parking restrictions. This resulted in an inexcusable burden to community residents.

Water & Sewer Group 530A: On March 30, 2000, SCU encountered a concrete encased high voltage electric conduit while excavating for a new water facility in the Old Town area. City staff directed SCU to avoid impacting the conduit and to perform measurements to determine if the water facility could be installed without disturbing the concrete encasement. SCU staff indicated that they would comply with this direction. The following day, March 31, 2000, SCU told City staff that measurements had been taken which indicated that the water facility could be installed without impacting the electric conduit. For reasons unknown, SCU then began chipping away at the concrete encasement with a large hydraulic chipping device attached to a backhoe, thus directly disregarding the direction of City staff to avoid contact with the encasement. SCU's backhoe broke through the encasement thereby damaging the electrical conduit and caused a power outage in the surrounding area. Luckily, no injuries occurred .

Sewer Group 647: SCU failed to perform required work to replace sewer laterals between the street and the property line of the right-of-way as required by the contract. During the course of work, City staff noticed that SCU had removed and replaced portions of the sidewalk and other surface improvements at several locations giving the appearance that the sewer laterals had been replaced at these locations. When questioned by City staff, SCU claimed that the sewer laterals had been replaced as required. Since City staff had not observed the work, SCU was required to perform excavation to show that the required work had been performed satisfactorily. When SCU exposed a portion of the sewer lateral as directed, City staff discovered that the sewer lateral had not been replaced and the existing lateral was, in fact, in very poor condition. City staff then gave

written direction to SCU on December, 7, 1999, to expose the sewer laterals at 3 other locations which SCU claimed to have replaced. After receiving this written direction, SCU performed unauthorized work over the weekend of December 18/19, 1999 to excavate at the 3 locations without City staff present to observe. When City staff arrived at the site in December 20, 1999, the sewer laterals had been replaced. City staff were therefore unable to determine if the sewer laterals were replaced initially.

These actions were in violation of MC 22.0803(a)(3), (5), (6) and (10).

E. False claims for wages for extra work

SCU submitted many Daily Extra Work Reports (DEWR) to the City as a result of extra work performed by SCU on Water & Sewer Group 464A, Sewer & Water Group 514, Water & Sewer Group 530A, and Sewer Group 636. After several attempts by City staff to verify the rates claimed by SCU, it was determined that the rates for compensation of labor on each DEWR were inflated by SCU in an attempt to gain unjust enrichment at the City's expense. SCU was charging the City \$28.00 per hour for labor when their actual rates were less than \$11.00 per hour. This was in direct violation of MC 22.0803(a)(6) and (10), and Greenbook sub-section 3-3.2.2, Basis for Establishing Costs, paragraph (a), Labor, which states in part; "*The costs of labor will be the actual cost for wages of workers performing the extra work at the time the work is done,...*". After several written requests, SCU finally submitted their actual labor rates, which were significantly lower than the rates initially claimed, and agreed to revise the submitted DEWRs to reflect the actual labor rates.

F. False representation of equipment claimed on Daily Extra Work Reports

SCU submitted several DEWRs to the City as a result of extra work performed by SCU on Water & Sewer Group 464A. While evaluating these DEWRs, City staff noted a discrepancy regarding the model number and hourly rate for a backhoe used by SCU. Upon further investigation, City staff discovered that the model number on SCU's backhoe had been tampered with so that the original number, JD 310D, was changed to make it appear that it was a JD 510D. SCU submitted DEWRs to the City charging the hourly rate for a JD 510D (\$22.67), which is greater than the hourly rate for a JD 310D (\$16.52). City staff then conducted a physical examination including photographs of the backhoe in question which confirmed that the decals on the exterior of the backhoe had been modified sometime after work began on the project to make it appear that the JD 310D machine was the more costly JD 510D machine. While the diligence of City staff prevented SCU from profiting from this tampering, it is yet another example of SCU attempting to deceive City staff in an effort to gain unjust enrichment at the City's expense.

These actions were in violation of MC 22.0803(a)(6) and (10).

G. False Workers' Compensation Claims

On Sewer & Water Group (Group) 605, SCU filed 3 workers' compensation claims against the Water Department Owner Controlled Insurance Program (OCIP). Upon independent investigation by the OCIP Risk Manager, it was found that these workers involved were not

assigned to the Group 605 site on a full time basis and/or that the workers' injuries did not occur while performing work at the site as alleged by SCU. In one of the cases, work on Group 605 had been shut down at the date and time during which the injury was alleged to have occurred. All 3 workers' compensation claims were denied by the City.

These actions were in violation of MC 22.0803(a)(6) and (10).

CONCLUSION

It is apparent the quantity and gravity of these acts by SCU are severe, nor circumstantial. They are willful acts of corruption, deception, and unacceptable business practices that have occurred consistently on nine separate City projects. These acts demonstrate a consistent and pervasive disregard for public safety and health. The cost of construction management of SCU's projects by City staff has increased significantly due to the need to monitor their performance more closely. In addition, SCU's lack of business integrity makes it very difficult for other, reputable established and emerging contractors to compete for City water/sewer contracts. Therefore, it is not in the best interests of the City or its constituents to allow SCU to continue to bid on and perform future City public works contracts.

ALTERNATIVES

1. Debar SCU and its principals from performing public works contract work for the City for a period of three (3) years or less. The grounds stated above for permanent debarment are clearly also sufficient to support a lesser debarment of three years under Municipal Code Section 22.0803 (a)(3), (5), (6) and (10). This three (3) year debarment is not recommended because the punishment would not correspond to the number and/or severity of the violations.
2. Do not debar SCU and allow the award of seven (7) pending contracts with the City. This is not recommended because it would be unfair to the many reputable and emerging contractors doing business with the City who are capable of satisfactorily performing these contracts.

Respectfully Submitted,

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Approved: Frank Belock, Jr.
Acting Deputy City Manager