

DATE ISSUED: April 16, 2003

REPORT NO. 03-072

ATTENTION: Honorable Mayor and City Council
Docket of April 21, 2003

SUBJECT: Prevailing Wage Requirement, Miramar Water Treatment Plant
Upgrade and Expansion Contract A

SUMMARY

Issue - Should the City Manager issue an Addendum requiring Prevailing Wages to the Miramar Water Treatment Plant Upgrade and Expansion Contract A?

Manager's Recommendations - 1) Approve the Plans and Specifications and Authorize Award of the Miramar Water Treatment Plant Contract A without a Prevailing Wage Requirement; 2) Refer Discussion of the Issues Associated with Prevailing Wage Requirements to Committee and/or Council; 3) Create a Policy on Application of Prevailing Wages to Public Works Projects.

Other Recommendations – None.

Fiscal Impact - Potential increase of 6 to 10 percent on project costs.

BACKGROUND

In a memorandum dated March 18, 2003, Deputy Mayor Ralph Inzunza requested that the City Manager issue an addendum requiring prevailing wages to the Miramar Water Treatment Plant (WTP) Upgrade and Expansion Contract A (Miramar Contract A). Prevailing wage requirements are not currently included in the contract specifications because the Miramar WTP project is a municipal affair project and is not subject to the state's prevailing wage requirements. In addition, prevailing wage requirements are not included in accordance with City Council Resolution No. R-251555 which directs that

prevailing wages be required only when mandated by the use of state or federal funds or when a project is otherwise a statewide concern.

This report provides the Mayor and City Council with a summary of possible advantages and disadvantages associated with including prevailing wage requirements on the Miramar WTP project and on the City's public works projects generally. This report also highlights some of the potential impacts on the Miramar WTP project if construction of the project is delayed. Finally, this report concludes that further information and analysis are necessary in order to adequately address the impacts associated with prevailing wage requirements.

Attached is the original description of the project (Attachment 3) and Deputy Mayor Inzunza's March 18, 2003 memorandum requesting the consideration of prevailing wages (Attachment 4).

DISCUSSION

As a part of the Water Department Capital Improvement Program (CIP), the Miramar WTP is scheduled for expansion from its current capacity of 140 million gallons per day (MGD) to 215 MGD in order to meet the treated water demands of its City service area. This project will also improve operation and maintenance of the facility, and will ensure that the water treated at the Miramar WTP meets the new drinking water standards set by the EPA. Miramar Contract A represents the first of four contracts for the Miramar WTP project.

Staff has preliminarily identified the following potential advantages and disadvantages to the City associated with requiring prevailing wages:

Potential Advantages to the City Associated with Prevailing Wages:

- Requiring prevailing wages may standardize the labor costs for all bidding contractors. This could attract more bidders from union contractors that might not otherwise bid.
- Requiring prevailing wages may enhance the City's ability to better budget projects by facilitating estimation of costs for additional work during construction.
- Requiring prevailing wages may help to ensure that contractors use highly skilled labor and enhanced technology to deliver a high quality work product.

Potential Disadvantages to the City Associated with Prevailing Wages:

- Requiring prevailing wages does not guarantee that the City will receive a higher quality work product.
- Requiring prevailing wages may deter bids from qualified nonunion or "open shop" contractors.
- Requiring prevailing wages may impact the City's policy of encouraging inclusion of small and emerging businesses at the prime and subcontractor level, including businesses owned by women and people of color. Small and emerging

businesses often cannot absorb the additional administrative costs associated with prevailing wage requirements. Nevertheless, there are a number of small and emerging businesses that currently are utilized in State and Federal funded projects that require prevailing wages. In addition, technical assistance could be provided to small firms on the administration of prevailing wage projects.

- Requiring prevailing wages on all City public works projects would require additional staff in order to adequately perform monitoring requirements. Adequate staffing could cost approximately \$355,000 to \$640,000 annually. The staff cost estimate is based on the City of Los Angeles monitoring efforts of prevailing wages for its CIP Program, which would be similar in size to San Diego's CIP program.
- Requiring prevailing wages on all four phases (Contracts A-D) of the Miramar Project could increase the capital cost of the Project. Utilizing the RS Means Estimating Approach, comparing the differences between prevailing and non-prevailing rates would result in an estimated cost increase of \$7.6 to \$12 million. The estimated cost increase for Contract A above would be approximately \$5 to \$6.9 million. R.S. Means, a subsidiary of Reed Construction Data is a construction publisher. R.S. Means is in the business of researching, analyzing, and reporting construction costs. The data is collected on a daily basis and includes unit prices, productivity rates, crew composition, contractor's overhead and profit rates, and construction materials and techniques.
- Requiring prevailing wage on CIP projects that are not currently budgeted for prevailing wages could increase the capital cost of those projects by an estimated \$33 million in the next five years. This increase could result in the City's inability to complete the CIP program due to lack of available funds. If this occurs it may have to be disclosed in the City's annual bond disclosure. This could also have credit implications for the next series of bonds if the CIP program is not completed on schedule. Additionally, the Water Department's rate case did not contemplate substantial increases in the CIP program, thus rates may have to be increased and/or new bonds issued sooner than expected in order to fund the program.

The Miramar Project will not be Adversely Affected by the Absence of a Prevailing Wage Requirement:

The Water Department does not believe the absence of a prevailing wage requirement from Miramar Contract A will result in the hiring of an unqualified workforce or in the delivery of an inferior project. First, the Water Department takes an active role in quality assurance on its construction projects. For all projects, the Water Department utilizes a consultant Construction Manager or the City's Field Engineering Division to oversee compliance with the architectural and engineering design specifications, and to coordinate inspections by appropriate agencies for compliance with applicable building codes. Further, design professionals are retained during construction to review shop drawings and respond to requests for information. In addition, materials testing is provided by the Water Department, either through the City's Materials Testing Laboratory or by an independent laboratory hired through the Construction Manager.

Second, all bidders on Miramar Contract A must successfully complete a two-step pre-qualification process. The City has implemented a citywide Contractor Pre-Qualification Program as part of its construction quality assurance process. This program is based upon the model developed by the California Department of Industrial Relations. By evaluating contractors' apprenticeship program participation, dispute record, safety performance, contractors' ability to meet equal opportunity participation levels and project references, the Contractor Pre-Qualification Program helps to ensure that low bid contractors will deliver projects that meet or exceed the City's expectations.

Third, the Miramar WTP and other large industrial facility projects require the use of skilled trades. Therefore, in order to meet the requirements of the contract specifications, a contractor must perform the project using skilled labor.

The Miramar WTP Project Should not be Delayed:

Delays in the construction of the Miramar WTP project could have severe impacts on the City. For example, the project must begin construction this year and be completed by June 2008 in accordance with Department of Health Services Compliance Order No. 04-14-96-022. As a result, if this project is delayed the City could face substantial fines and/or penalties. Additionally, this project is critical for meeting the City's treated water supply demands. Any major delay to the project could result in a shortage of water available to the City of San Diego by 2007 or 2008.

Further, a delay in the award of Miramar Contract A could result in an estimated \$200,000 per month in escalation costs. These escalation costs are associated with increased labor, material and equipment costs as a result of inflation. Escalation costs due to delays on the three subsequent contracts could amount to \$100,000 per month. Other costs associated with delays in construction of the project, including treated water purchases estimated at \$10,000 per day and additional design and project management costs, are not included in the escalation cost estimates.

Legal Issues:

The City Attorney's Office has advised that the Miramar WTP project is a municipal affair and is not subject to the state's prevailing wage laws. See attached Memorandum of Law dated April 11, 2003. The City Attorney's Office has also advised that under certain circumstances the Mayor and Council have the discretion to require prevailing wages on a public works municipal affair project. Prevailing wages should not be required on such projects, however, unless Resolution No. R-251555 is waived or rescinded. Refer to City Attorney Opinion Number 2003-1.

CONCLUSION

It is recommended that the Mayor and Council authorize award of Miramar Contract A without a prevailing wages specification. The absence of a prevailing wages specification will not adversely affect the Miramar Project: the "open shop" bidding process has worked for the Water Department's projects and based on statistical information potentially resulted in substantial cost savings for the ratepayers. It is not recommended

that the Mayor and Council defer authorization to award Miramar Contract A until resolution of the issues associated with prevailing wages. A deferral could result in major impacts to the CIP program and to the availability of the City's treated water supply.

It is also recommended that the Mayor and Council direct staff to thoroughly assess the impacts of prevailing wage requirements prior to implementing these requirements on the City's public works projects. This effort will take approximately 30 to 60 days to complete. More information is needed in order to adequately assess the advantages, disadvantages, and impacts. As part of the assessment, staff would develop possible criteria and generic findings that could allow for the Council to identify prevailing wage projects on a case-by-case basis. It is recommended that the issues associated with prevailing wages be referred to Committee and/or the City Council for review and discussion. The issues can then be thoroughly discussed based on sufficient information, including legal advice from the City Attorney's Office. Finally, it is recommended that a policy be created for City staff to provide guidance on the decision of whether to include a prevailing wage specification in the City's public works contracts when not otherwise required by law.

ALTERNATIVE

Authorize award of the Miramar Project Contract A subject to an addendum being issued to require prevailing wages. This would require Council to waive Council Resolution No. R-251555 and establish findings in accordance with City Attorney Opinion No. 2003-1.

Respectfully submitted,

Larry Gardner
Water Department Director

Approved: Richard Mendes
Utilities General Manager

GARDNER/VB

- Attachments: 1. Resolution No. R-251555
2. Memorandum of Law dated April 11, 2003
3. Project Description
4. Memorandum from Deputy Mayor Inzunza dated March 18, 2003

Note: The attachments are not available in electronic format. A copy of the attachments are available for review in the Office of the City Clerk.