

Shady Bidding Process Tarnishes Capitol Security Project

[Attachments follow summary]

In December 2004, non-union contractors learned that California's Department of General Services (DGS) planned to restrict bidding on the upcoming \$6.8 million State Capitol Park Safety and Security Improvements Project to contractors with unionized workers. The DGS even conducted a survey of its past contractors to determine which ones were unionized and therefore acceptable for Capitol work. It was rumored that powerful Democrat legislators had demanded that all future construction at the Capitol would be performed by union workers.

In May 2002, construction union officials had arrived at the State Capitol for a conference and found a non-union contractor repainting the Capitol exterior. Outraged that this contractor was painting a building that unions presumably owned, several hundred union activists picketed the Capitol. Some Democrats cancelled committee hearings and joined the picket lines in solidarity with a major source of their campaign funds.

The unions' problem was that the non-union contractor could get the work done right at the best price – its winning bid had been \$2.45 million while the second lowest bid was \$3.7 million. Unions needed a quick solution to eliminate the more efficient non-union competition from bidding on the Capitol security project. The answer was apparently to declare that the Senate Rules Committee owned the project and handle the bidding procedure under the table with irregular and restrictive rules.

In late April, a notice from a pre-selected union general contractor seeking subcontractors bluntly stated that the project was “to bid 100% union shop contractors only, at Owner's request.” Non-union contractors began asking the DGS about the origins of this requirement. “The non-union natives are restless at the Capitol,” stated one DGS official in an internal e-mail warning that the contractors “may get more vocal with the press.” At that time, a top official for the Senate Rules Committee directed the DGS to add a statement to bid documents that required contractors to employ an all union-workforce.

No law, regulation, or authority was cited for the union-only requirement. The DGS appeared to add the requirement by literally cutting and pasting a sentence into the original document stating “Workforce: contractor and subcontractors shall employ an all union workforce.”

Associated Builders and Contractors (ABC) of California, a trade association consisting predominantly of non-union contractors, began investigating how this union-only policy was implemented. ABC failed to find a public vote or public policy of the Legislature restricting Capitol construction contracts to unionized companies, despite the claim of a Senate Rules Committee staffer to the Sacramento Bee that such a policy was in effect.

In July, ABC used California's Legislative Open Records Act to request that the Secretary of the Senate provide all documents and policies associated with the requirement to use an all-union workforce. The response was that correspondence between legislators and their staff is exempt from the Legislative Open Records Act, and “...we are not in possession of any documents as described in your request, or the documents we do have fall within the above exemptions.” The response proved that the union-only policy for construction contracts is not a public policy.

Obviously the policy was instituted internally, without public scrutiny or debate, by one or more Democrat legislators and their staff, probably in consultation with union officials. Which legislator – Republican or Democrat – will dare to risk his or her assigned parking spaces and other Senate perks to investigate and expose the truth behind this waste of taxpayer money and brazen disregard for openness in government?



Howard S. Wright Construction Co.

ORIGINAL

"CAPITOL PARK SAFETY AND SECURITY IMPROVEMENTS PROJECT - SACRAMENTO"

BIDS ARE DUE IN TO HOWARD S. WRIGHT CONSTRUCTION - SACRAMENTO: TUESDAY MAY 17, 2005 @ 2:00PM



ONLY UNION SIGNATORY SUBCONTRACTORS ARE ALLOWED TO BID

Howard S. Wright Construction Co. (HSWCC) requests your competitive lump-sum bid and specified alternates, for this \$6.80 million project of site park security barriers, building security work, and construction of two 1,815 GSF building entry security pavilions to the State Capitol. The project has a 420-calendar day schedule with latest start by July 17, 2005. The scope of this project consists of, but is not limited to: demolition, site clearing, drilled concrete piers, asphalt and concrete paving, site utilities, landscape and irrigation, structural concrete, rebar, GFRC panels, stone veneer, structural steel metal deck, ornamental and miscellaneous metals, carpentry, bentonite/HDPE waterproofing, insulation, TPO roof, metal roof, sealants, door/frames/hardware, glass/aluminum, gypsum board, concrete floor stain, painting, security electronics/surveillance/metal detectors/fiber optics, mechanical, fire protection, electrical, fire alarm, and telecom. Please provide Howard S. Wright Construction Co. with complete information per plans and specifications regarding your scope inclusions/exclusions, lead times, special engineering requirements, alternates, etc. All bids must include delivery to site, clean up and haul-off, sales tax and acknowledge all addenda. All bids over \$50,000 may have to be 100% performance and payment bonded by a carrier acceptable to HSWCC, please provide your bond percentage to add to your bid. HSWCC will pay up to 2% of the bid for bond costs. Please provide scope of work letters in advance to HSWCC by no later than Monday, May 16, 2005 @ 3PM.

Bidders acknowledge that if Howard S. Wright Construction Co. accepts their proposal, they must enter into an agreement using the Howard S. Wright Construction Co. "Standard Subcontract and Supply Agreement", a copy of which is available for review at our Sacramento office. Participants will be required to meet or exceed the insurance requirements attached with the agreement, including providing "waiver of subrogation", "additional insured", and "per occurrence" coverage. Please note that HSW is a union carpenters and laborers signatory and a drug-free company that requires all subcontractors to drug test their employees. Howard S. Wright Construction Co. is an equal opportunity employer and actively requests quotations from small, disadvantaged, veteran, disabled, minority, and women-owned business enterprises. This project is prevailing-wage. This project is to bid 100% union shop contractors only, at Owner's request.

Bid documents including addendum #0 can be reviewed at our Sacramento regional office in the subcontractor's document room. Bid documents can be reviewed in person at California Department of General Services, Real Estate Services Branch at 707 3rd Street, West Sacramento, CA, Suite 3-306. Call Mike Moore at 916-376-1885. Bid documents can be reviewed in person or on-line at the Builder's Exchanges listed below. Full sets only can be purchased for \$95 check direct from WindowReprographics, 2337 Lexington Street, Sacramento, CA 95815. Call Steve Fankhauser at 916-921-9311. Full and partial sets may be reviewed & purchased on-line using their Brownies PlanWell, please see instructions below.

Please reply in 48 hours with your intent to bid so we may contact you and fax you any further information, addenda, etc.

HSWCC Sacramento Regional Office: 3960 Industrial Boulevard Suite 600, West Sacramento, CA 95691
Phone: (916) 231-3200 Fax: (916) 231-3210 Attention: Wright Wood Email: woodw@hswcc.com

Sacramento Builder's Exchange: Phone (916) 442-8991 Fax (916) 446-3117 Website: www.sbxchange.com

To view and to purchase on-line using Brownies PlanWell, go on the Internet to www.browniesrepro.com, click on the PlanWell logo at the top of the page, at "Guest Access" enter exactly the Project Number: brow_Capitol Park Improvements, enter the lower-case Password: hswcc. Click "Most Current Set" to view drawings. Use the pull-down folders and interactive menus to view and purchase whatever you wish, to your account only. Contact the information on their website if you have problems viewing and ordering the documents.

Do you intend to bid this project? Yes ___ No ___ Union Only ___

Addendum #0 Issued X/2005

Company and Contact: _____

Phone: _____

Spec Sections: _____

Moore, Mike

From: Moore, Mike
ent: Friday, April 29, 2005 2:16 PM
To: 'Felte, Keith'
Cc: Kaneko, Teresa; Cavanagh, Anne
Subject: RE: RE: Requests from non-union companies and local builder exchanges (WO 114342)

4/29/05

Keith,

I received another call from Michelle today (see below) requesting a return call (FYI).

On another related matter, per our conversation yesterday, I am including a statement in Addendum #1 that requires bidders to utilize an all union work force.

Mike

-----Original Message-----

From: Moore, Mike
Sent: Wednesday, April 27, 2005 10:08 AM
To: 'Felte, Keith'
Cc: Kaneko, Teresa; Cavanagh, Anne
Subject: RE: Requests from non-union companies and local builder exchanges (WO 114342)

4/27/05

Keith,

Following up on our earlier telephone conversation, here are two calls that I received and am providing you with information so that you can follow up with the individual callers:

Michelle (received call yesterday @ 8:49AM)

McGraw Hill

(800) [REDACTED] ext. [REDACTED]

RE: Requesting a set of bid documents so subcontractors can bid on project. McGraw Hill is a local builder's exchange that functions as a clearing house for prospective bidders to view bid documents.

Dottie Fisher (received call today @ 8:45 AM)

Dual-Cal Builders

(916) [REDACTED]

RE: This is a small business/woman owned/non-union general contractor who wants an explanation as to why non-union contractors are not being allowed to bid this project.

Thank you for returning these calls – let me know if I can be of further assistance.

Mike

7. Verify characteristics of interrelated operating equipment are compatible; coordinate work having interdependent responsibilities for installing, connection to, and placing such equipment in service.

→ **"E. Work Force: contractor and subcontractors shall employ an all union work force."**

1.02 LOCATIONS, ELEVATIONS, AND LAYOUT OF WORK

- A. Property lines, location ties, and elevations of components of the Project to be built under this Contract are shown on the Drawings. Grade elevations shown for various parts of the Work are taken from a bench mark shown on the Drawings, or if not shown, will be designated by the State. In case of conflict therein, notify the State in writing before starting work.
- B. On building structures, Contractor shall lay out on forms, walls, floors, and columns, the exact location of partitions as guide to all trades.

1.03 SCHEDULES AND MEETINGS

- A. Planning and Scheduling: Refer to Section 01321.
- B. Project and Preinstallation Meetings: Contractor or his duly appointed representative shall attend project meetings at regular intervals as set by the State and shall attend preinstallation meetings as required by pertinent Specification Sections. Attendance shall be limited to the Contractor and his immediate subordinates, subcontractors where so specified, the State, and representatives of the Architect and Consultants, as requested. State, or State's duly appointed representative, will keep minutes of meetings; with copies sent to all who attend. Meetings shall be held at job site at the contractor's construction office.
- C. Project Construction Phases: Work of this Contract shall be executed in several phases as follows:
- West elevation of vehicle barriers to commence and be completed in Summer (beginning 6/21/05).
 - South elevation of vehicle barriers to commence and be completed in Fall (beginning 9/22/05).
 - North elevation of vehicle barriers to commence and be completed in Spring (beginning 3/20/05).
 - East elevation of vehicle barriers to commence and be completed in Winter (beginning 12/21/05).
 - North elevation pavilion to commence in the Spring (beginning 3/20/05) and be completed before work on the South elevation pavilion begins.

1.04 ALLOWABLE ENTRANCE

- A. Contractor, subcontractors, their employees, suppliers and delivery persons shall enter and exit property via designated entrance.

END OF SECTION

Potential Bidders - Capitol Security Project - WO #114342

Bidder	Union Company?	Sign a single agreement - Yes?	Sign a single agreement - No?
John F. Otto, Inc. (916) 441-6870 (Rick McVey) 1717 2nd Street Sacramento, CA 95814	Yes		
Unger Construction Co. (916) 325-5500 (Scott Maxwell) 910 X Street Sacramento, CA 95818	Yes		
Hensel Phelps Construction (408) 452-1800 (Dale Weislack) 2107 North 1st Street, Suite 101 San Jose, CA 95131	Yes		
Howard S. Wright Construction (916) 979-1111 (Rich Gangitano) 3960 Industrial Blvd, Suite 600 West Sacramento, CA 95691	Yes		
Turner Construction (916) 614-9311 (Frank Dai Zovi) 2484 Natomas Park Drive, Suite 101 Sacramento, CA 95833	Yes		
J.R.Roberts (916) 729-5600 (Tag Gebhart)	No		X
Westcon Construction (916) 663-2425 (Eric Campbell)	No		X
Rudolph & Sletten (650) 572-1919 (Gary Waltz)	Yes		
Interstate Construction (916) 351-0622 (Loren Barnes)	No		
Kimmel Construction (916) 452-6691 (Mike Kimmel)	?		

Cavanagh, Anne

From: Cavanagh, Anne
Sent: Monday, May 02, 2005 5:59 PM
To: Rusk, Rick
Cc: Moore, Mike; Kaneko, Teresa
Subject: Capitol Security

In the category of a "heads up" the non-union natives are restless at the Capitol. Currently the Senate Rules Committee is out to bid for the Capitol Security construction project with Mike Moore providing management support. The bid opening in mid May. Senate Rules invited only a few union contractors to bid on the project. More and more Mike Moore is getting calls from plan rooms and non-union contractors asking why they can't bid the project.

One of the "invited" contractors took a set of plans to a plan room which sort of started this complaining and knowing there is a selective bid out there. Mike at my direction has been referring any questions regarding why are only union contractors bidding to Senate Rules so they can answer for themselves. But I thought you should be aware, they may get more vocal with the press, etc.

The Legislature's process for awarding the contract has angered nonunion firms, which were excluded from submitting bids.

Associated Builders and Contractors of California, representing nonunion crews, sent a letter to Senate President Pro Tem Don Perata requesting that new bids be sought to allow a "fair and open competition."

Felte said there was nothing unusual about the process: The Legislature - led by Democrats - has had a long-standing practice of requiring union workers for projects under its control.

The Department of General Services, by contrast, solicits bids from both union and nonunion contractors for other state construction work.

Regardless of which firm ultimately is hired for a state project, prevailing wages must be paid, said Matt Bender, a DGS spokesman.

Matt Tennis, of Associated Builders and Contractors, said that limiting the number of firms competing for the barrier project - six were invited, three submitted bids - cheated taxpayers and likely drove up costs.

"There are huge disparities in what different companies are able to offer," he said.

Perata could not be reached for comment Friday.

California Highway Patrol officials have pushed hard for the security barrier, saying the attack by Bowers and the East Coast terrorism of Sept. 11, 2001, are vivid examples of how public buildings can be targets for murder or mayhem.

Bowers' ramming of the Capitol in an 80,000-pound truck traveling at nearly 50 mph forced the evacuation of lawmakers and staffers from a late-night session on California's energy crisis.

His 18-wheel truck carried evaporated milk, not explosives, but the incident scared officials and demonstrated how vulnerable the Capitol is to intruding vehicles.

CHP Capt. Robert Maynard said the barrier will enhance statehouse security without detracting from its visual charm.

"We have a responsibility to thousands and thousands of visitors that go through that building every week," he said. "We need to keep everyone safe and keep government functioning."

The security barrier will ring the Capitol along an eight-block stretch from L to N streets, and from 10th Street to a portion of Capitol Park between 12th and 13th streets.

Hydraulic metal posts, or bollards, will be installed on key pedestrian entrances to the Capitol grounds so that officials can lower such barriers to provide vehicle access in emergencies. Other key design components include 50-by-20-foot concrete planter boxes; 5-foot-long, bollard-reinforced benches; and steel cable connected to concrete posts standing 10 feet apart.

Sacramento city officials and local preservationists have reacted more warmly to the current



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July 13, 2005

Mr. Gregory Schmidt
Secretary
California State Senate
State Capitol Building, Room 3044

SUBJECT: Public Records Act Request

Dear Mr. Schmidt:

An e-mail from Mike Moore at the California Department of General Services to Keith Felte of the Senate Committee on Rules (see attachment 1) indicates that on April 28, 2005, Mr. Felte instructed Mr. Moore to add a statement to bid specifications for the Capitol Park Safety and Security Improvements Project requiring bidders to use an all-union workforce. This statement became Part 1, Section 1.01 E of Section 01310 (Project Management and Coordination) of the Project Manual (see attachment 2).

This is a request under the California Public Records Act, Government Code Sections 6250-6270, for a copy of all documents associated with Mr. Felte's directive to require an all-union workforce, including any written and electronic correspondence to or from Mr. Felte regarding this requirement. Please also include any written policies of the Senate Committee on Rules concerning the requirement for a union-only workforce on the Capitol Park Safety and Security Improvements Project, and provide the dates and results of the votes on such policies in the Senate Committee on Rules.

Sincerely,

MATT TENNIS
Legislative Director
Associated Builders and Contractors of California

CC: Members, Senate and Assembly Rules Committees



Secretary of the Senate

GREGORY SCHMIDT

STATE CAPITOL
SACRAMENTO, CA 95814

(916) 445-4311

July 19, 2005

Matt Tennis
Legislative Director
Associated Builders and Contractors of America
1029 K Street, Suite 32
Sacramento, CA 95814

RE: LEGISLATIVE OPEN RECORDS ACT REQUEST PERTAINING TO CAPITOL PARK SAFETY AND SECURITY IMPROVEMENTS PROJECT

Dear Mr. Tennis:

We are in receipt of your request pursuant to the California Public Records Act dated July 13, 2005, for "all documents associated with Mr. [Keith] Felte's directive to require an all-union workforce, including any written and electronic correspondence to or from Mr. Felte regarding this requirement . . . any written policies of the Senate Committee on Rules concerning the requirement for a union-only workforce on the Capitol Park Safety and Security Improvements Project, and . . . the dates and results of the votes on such policies in the Senate Committee on Rules." The State Legislature is not subject to the requirements of the Public Records Act (see subd. (f), Sec. 6252, Gov. C.), but we have construed your request as one made pursuant to the Legislative Open Records Act (see Art. 3.5 (commencing with Sec. 9070), Ch. 1.5. Pt. 1, Div. 2, Title 2, Gov. C.).

The Legislative Open Records Act exempts from mandatory production records that constitute preliminary drafts, notes, or memoranda, as well as correspondence of and to individual Members of the Legislature and their staff (see subd. (a) and (h), Sec. 9075, Gov. C.). Upon reviewing our records, we find that we are not in possession of any documents as described in your request, or the documents we do have fall within the above exemptions. Accordingly, we have no documents to provide you in response to your request.

Sincerely,

A handwritten signature in black ink that reads "Greg Schmidt".

Gregory Schmidt
Secretary of the Senate

cc: Aaron Silva, Office of Legislative Counsel