

REPORT

DATE ISSUED: April 24, 2009 REPORT NO: HCR 09-046

ATTENTION: Chair and Members of the Housing Commission  
For the Agenda of May 15, 2009

SUBJECT: Award of Contract for Exterior Improvements at Various Housing Commission  
Sites (Districts 2 & 3)

REQUESTED ACTION:

That the Housing Commission award a construction contract to the lowest responsive bidder in the amount of \$128,500 for Exterior Improvements at Various Housing Commission Sites located in the City of San Diego.

STAFF RECOMMENDATION:

- 1) Recommend that the Housing Commission approve the award of a contract to Industrial Coating and Restoration Service, Inc., in the amount of \$128,500 for exterior improvements at various Housing Commission sites located in the City of San Diego.
- 2) Authorize the President & Chief Executive Officer or designee to execute the contract (Attachment 1) and expend up to a ten percent contingency (\$12,850) if necessary, for items not anticipated in the original scope of work.

BACKGROUND:

The Housing Commission has an ongoing requirement to improve the physical condition of its existing housing stock to assure that such projects continue to be available as affordable housing for eligible residents. The proposed work under this contract generally provides for the replacement of damaged exterior wood trim and exterior painting at eight (8) Housing Commission developments, totaling forty (40) units, located throughout the City of San Diego (Attachment 2). Additional exterior work including but not limited to fencing, stucco, and roofing is to be performed on a site specific basis.

FISCAL CONSIDERATIONS:

Funding for this contract is included in the FY09 Housing Commission budget previously approved by the Housing Commission on April 25, 2008 and Housing Authority on June 10, 2008.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On February 10, 2009, an Invitation For Bids was issued for this work. Bid advertisements were placed in the *San Diego Union Tribune*, the *San Diego Daily Transcript*, *La Prensa* and the *Voice and Viewpoint*. In addition, One Hundred Fifty-Seven (157) invitations were sent as outreach to general contractors.

On February 24, 2009, a pre-bid conference was conducted with twenty-five (25) firms in attendance. During the bid period, bid packages were provided to a total of thirty-five (35) interested contractors and five (5) plan rooms.

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At bid closing on March 11, 2009, six (6) bids were received. Information on the submitted bids is outlined below:

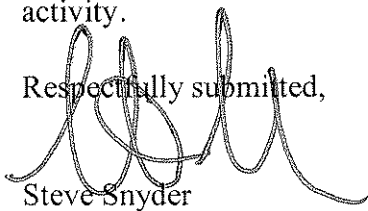
<u>Bidder</u>	<u>Amount</u>	<u>Responsive Bidder</u>	<u>DBE</u>
Enterprise Developer Corporation	\$90,000	No	No
Industrial Coating & Restoration Service, Inc.	\$128,500	Yes	No
Fordyce Construction, Inc.	\$156,405	No	No
Strong Arm Construction and Co., Inc.	\$166,274	No	No
Gamma Builders, Inc.	\$183,300	Yes	No
Healey Construction Co.	\$336,077	Yes	No

Subsequent to the bid closing, an evaluation of all submitted bids was performed. It was determined that the bid submitted by the apparent low bidder, Enterprise Developer Corporation, was non-responsive to the requirements of the bid solicitation for failing to acknowledge issued addenda. Staff analysis indicates that the second low bidder, Industrial Coating and Restoration Services, Inc., has provided the lowest responsive bid and is capable of performing the work.

ENVIRONMENTAL REVIEW:

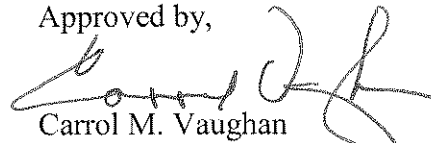
This action is categorically exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to State CEQA Article 19 Guidelines Section 15301 (existing facilities). Processing under the National Environmental Policy Act is not required as no federal funds are implicated in this activity.

Respectfully submitted,



Steve Snyder  
Director of Asset Management

Approved by,



Carrol M. Vaughan  
Executive Vice President &  
Chief Executive Officer

Attachments: 1- Contract  
2- List of Sites for Service

**EXTERIOR IMPROVEMENTS AT  
8 HOUSING COMMISSION SITES**

**WITH**

**INDUSTRIAL COATING AND RESTORATION SERVICE, INC.  
Contract No. CI-09-15**

THIS AGREEMENT "Contract", entered into the \_\_\_\_ day of \_\_\_\_\_ 2009,

between the Commission:

**SAN DIEGO HOUSING COMMISSION**  
1122 Broadway, Suite 300  
San Diego, California 92101  
Tel: (619) 231-9400

and the Contractor:

**INDUSTRIAL COATING AND RESTORATION  
SERVICE, INC.**  
2534 Oceanside Blvd.  
Oceanside, CA 92054  
Tel: (760) 500-9264

WITNESSETH, that the Contractor and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish all labor, material, equipment and services, and perform and complete all work required for exterior improvements at eight Housing Commission sites located in the City of San Diego, in strict accordance with the Specifications dated February 10, 2009 and Addendum number (1) dated March 1, 2009 and Addendum number (2) dated March 5, 2009. Specifications and Addenda are incorporated herein by reference and made a part hereof.

ARTICLE 2. The Contract Price: The Commission shall pay the Contractor for all performance of the Contract, in current funds, subject to additions and deductions as provided in the Specifications, the sum of ONE HUNDRED TWENTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS AND NO/100 (\$128,500.00).

ARTICLE 3. Indemnity: Subject to only the limitations of the applicable statutes of limitations as contained within applicable State and Federal law, Contractor agrees to save, indemnify and keep harmless City of San Diego ("the City"), the Commission and the Housing Authority of the City of San Diego ("the Housing Authority"), and each of them (hereinafter collectively referred to as Indemnatee), against any and all liability, claims, fines, penalties, judgments, complaints, causes of action, actions, or demands, including demands arising from injuries to or death of persons (Contractor's employees included) and damage to property, or any other loss, damage or expense, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor including those in part due to the negligence of Indemnatee save and except liability, claims, judgments or demands arising through the sole negligence or sole willful misconduct of Indemnatee or resulting from defects in design furnished by Indemnatee and Contractor will, if requested by Indemnatee, defend any such suits against the Commission, the City and/or the Housing Authority, at the sole cost and expense of Contractor, with counsel of Indemnatee's choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation concerning this Contract to receive attorneys' fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Contract.

## Attachment 1

ARTICLE 4. Governing Law: This Contract and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 5. Entire Agreement: This Contract contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect unless specifically incorporated herein.

ARTICLE 6. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 7. Severability: If any provision of this Contract or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

ARTICLE 8. Terminology: All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limits nor amplifies the provisions of the Contract itself, and all references herein to paragraphs thereof are to this Contract unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 9. Binding Agreement: Subject to any restrictions on the assignment of this Contract or rights thereto, this Contract shall inure to the benefit of and be binding upon Commission and Contractor and their respective successors, assigns or transferees.

ARTICLE 10. Procedure for Resolving Disputes: In the event of a dispute concerning this Contract, the same shall be resolved in San Diego Superior Court, Downtown Branch.

ARTICLE 11. Time is of the Essence: Time is of the essence in this Contract, as per the schedule submitted by Contractor and agreed upon by Commission.

ARTICLE 12. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the San Diego Housing Commission monies in accordance with Clause 33 of General Conditions, Section 0102.1 of the Technical Conditions and the Special Conditions at pages 138 and 144 as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the San Diego Housing Commission.

ARTICLE 13. Contract Documents:

This contract shall consist of the following component parts:

- a. This Instrument
- b. General Conditions
- c. Special Conditions
- d. Prevailing Wage Scales
- e. Technical Specifications
- f. Addendum to the Specifications and/or Drawings

## Attachment 1

This instrument, together with the other documents enumerated in Article 13, form the Contract and are as fully a part of the Contract as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

ARTICLE 14. Drug-Free Workplace: Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

A. Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

B. Establish a drug-free awareness program to inform employees about all of the following:

- 1) The dangers of drug abuse in the workplace.
- 2) The Contractor's policy of maintaining a drug-free workplace.
- 3) Any available drug counseling, rehabilitation and employee assistance programs.
- 4) The penalties that may be imposed upon employees for drug abuse violations.

C. Post the statement required by subdivision 1 in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

ARTICLE 15. Equal Opportunity Programs: During the performance of this Contract, the Contractor agrees as follows:

A. Contractor shall comply with all applicable Equal Opportunity Programs as described in the applicable State and Federal law. Contractor shall submit such forms and information as shall be requested by the Commission from time to time to verify the Contractor's compliance with applicable law.

B. Certificate of Compliance (attached) with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state law and regulations hereinafter enacted.

C. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin.

D. If any under representation is found after submission of Contractor's workforce, the Commission may request an equal employment opportunity plan (EEOP). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEOP has been approved by the Commission, the Contractor must adhere to said plan. In case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEOP updates as required.

E. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, Contractor may, at the election of the Commission, be disbarred from participating in a Commission project for not less than one (1) year.

## Attachment 1

ARTICLE 16. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Contract, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or modification of a Federal contract, grant, loan or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Contract; and,

D. Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 USC 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

ARTICLE 17. Necessary Approvals:

A. In the event that the initial amount of this Contract equals or exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), this Contract must be approved by the Housing Authority of the City of San Diego in order to be binding upon the Commission. In no event shall the Commission be bound by this Contract, unless and until such approval is obtained.

B. In the event that the initial amount of this Contract equals or exceeds One Hundred Thousand Dollars (\$100,000.00), this Contract must be approved by the Board of Commissioners of the Commission in order to be binding upon the Commission. In no event shall the Commission be bound by this Contract, unless and until such approval is obtained

Attachment 1

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.

**INDUSTRIAL COATING AND RESTORATION SERVICE,  
INC.**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_ 880502  
License Number

**Business Address**  
*2534 Oceanside  
Vista, CA 92084*

**SAN DIEGO HOUSING COMMISSION**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Carrol Vaughan  
Print Name

Title: \_\_\_\_\_ Executive Vice President & Chief Operating Officer

**Business Address**  
*San Diego Housing Commission  
1122 Broadway, Suite 300  
San Diego, CA 92101*

**APPROVED AS TO FORM  
CHRISTENSEN & SPATH LLP**

By: \_\_\_\_\_  
Charles B. Christensen, Esq.  
General Counsel  
San Diego Housing Commission

Date: \_\_\_\_\_

Attachment 2

**LIST OF SITES FOR SERVICE**

	Site Address	No. of Units	District
1.	2734-2736 44 <sup>th</sup> St.	4	3
2.	4390 Maple St.	6	3
3.	4632 33 <sup>rd</sup> St.	5	3
4.	4729 32 <sup>nd</sup> St.	5	3
5.	4720-4722 34 <sup>th</sup> St.	3	3
6.	2701-2711 Figueroa Blvd.	6	2
7.	2644 Hornblend St.	5	2
8.	2045-2049 Grand Ave.	6	2
<b>Total No. of Units</b>		<b>40</b>	