REPORT TO COUNCIL
City of Sacramento

915 I Street, Sacramento, CA 95814-2604
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CONSENT
June 12, 2007

Honorable Mayor and
Members of the City Council

Title: Contract: Declare Contract Award to Ferguson Enterprises a Nullity and Authorize Amendments to Plumbing Supplies Contracts

Location/Council District: Citywide

Recommendation: Adopt a **Resolution** 1) declaring the prior award of a contract to Ferguson Enterprises a nullity, 2) authorizing the City Manager to execute Amendment No. 1 to City Agreement 2005-0118 for the payment of outstanding invoices to Ferguson Enterprises for plumbing purchases in the amount of $196,531.10, and 3) authorizing the City Manager to execute Amendment No. 1 to City Agreement CO2007-035 with Groeniger & Company to include all items from Bid B071181026 into the current contract and increasing the contract amount from $1,665,000 to a total amount not-to-exceed $3,582,000.

Contacts: Syed Rizvi, Field Services Manager, 808-6217; Christopher Stewart, Procurement Services Manager, 808-6202

Presenters: Not Applicable.

Department: Utilities

Division: Field Services

Organization No: 3341

Description/Analysis:

Issue: On February 27, 2007, the City Council awarded contracts to Groeniger & Company and Ferguson Enterprises for the purchase of plumbing supplies, as a result of Bid B071181026. Groeniger & Company subsequently executed a contract, but Ferguson Enterprises refused to sign the Declaration of Compliance with the City's Equal Benefits Ordinance that is part of the City contract.

When a bidder to whom a contract is awarded fails to fully execute the contract, the City Code authorizes the City Council to declare the award a nullity and award the contract to the next lowest bidder. In this case, Groeniger & Company was the next lowest responsible bidder for all the bid categories included in the contract awarded to Ferguson Enterprises, as shown in Attachment 2. For this reason, staff recommends that the City Council award these bid items to Groeniger & Company by approving a contract amendment including all bid items into Groeniger's current contract and increasing the dollar amount of Groeniger's contract.

As the prior supply contract with Ferguson Enterprises (Contract No. 2005-0118) was not due to expire until August 15, 2007, City staff continued to place orders with Ferguson to meet ongoing plumbing requirements, not realizing that the contract dollar authority had been exceeded. Because these orders were placed by the City, and the supplies were received and will be used to meet ongoing City needs, staff recommends that the City Council approve payments to Ferguson Enterprises for these outstanding invoices in the amount of $196,531.10.

Policy Considerations: The recommendations in this report are in accordance with the provisions of the Sacramento City Code, Title 3.

Environmental Considerations: Under Section 15378(b)(2) of the California Environmental Quality Act (CEQA) Guidelines, CEQA review is not required for continuing administrative or maintenance activities, such as purchases for supplies.

Rationale for Recommendation: The Field Services Division of the Department of Utilities must maintain a large inventory of plumbing parts in order to provide residential and commercial customers with required and timely services at a reasonable price. As a result of Bid B071181026, the City Council on February 27, 2007, awarded contracts to Groeniger & Company and Ferguson Enterprises for a combined contract total of $3,582,000. Groeniger & Company subsequently executed a contract, but Ferguson Enterprises refused to sign the Declaration of Compliance with the City's Equal Benefits Ordinance that is part of the City contract. Compliance with these requirements is mandatory for City contracts of more than $25,000, unless a waiver is authorized under the City Code. The contract with Ferguson Enterprises did not qualify for a waiver under the City Code.

Financial Considerations: Plumbing supplies purchases are initially charged to Water Distribution's general inventory operating budget (organization 9200), and are subsequently debited to the Division's operating or CIP budgets as the items are disbursed. Sufficient funds are available in the FY 06/07 and proposed FY 07/08 Water Distribution inventory budgets to purchase plumbing parts. Sufficient funds are also available in the operating budgets of the Water, Sewer, and Drainage Divisions to pay the outstanding invoices to Ferguson Enterprises.

Emerging Small Business Development (ESBD): Neither Ferguson Enterprises nor Groeniger & Company is certified by the City of Sacramento as an Emerging/Small Business firm.

Respectfully submitted by: Craig B Lymus for
Christopher Stewart
Procurement Services Manager

Approved by:
Russ Fehr
Director of Finance

Approved by:
Gary A. Reents
Director of Utilities

Recommendation Approved:

Ray Kerridge
City Manager

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Attachment 1

Background

The Field Services Division of the Department of Utilities maintains a large inventory of plumbing parts in order to provide residential and commercial customers with required and timely services at a reasonable price. For over 15 years, the City of Sacramento has had uninterrupted contracts for plumbing parts with both Groeniger & Company and Ferguson Enterprises. In November 2006, the City solicited bids (Bid B071181026) to establish a new contract as the prior contracts with Groeniger & Company and Ferguson Enterprises would expire August 16, 2007.

As a result of Bid B071181026, the City Council on February 27, 2007, awarded contracts to both Groeniger & Company and Ferguson Enterprises. Groeniger & Company subsequently executed a contract, but Ferguson Enterprises refused to sign the Declaration of Compliance with the City's Equal Benefits Ordinance. Compliance with these requirements is mandatory for City contracts of more than $25,000, unless a waiver is authorized under the City Code. The contract with Ferguson Enterprises did not qualify for a waiver.

When a bidder to whom a contract is awarded fails to fully execute the contract, City Code Section 3.56.170 authorizes the City Council to declare the award a nullity and award the contract to the next lowest responsible bidder. In this case, based on the bid results for Bid B071181026, Groeniger & Company was the next lowest responsible bidder for all the bid categories included in the contract awarded to Ferguson Enterprises, as shown in Attachment 2. The additional cost incurred by the City because of Ferguson Enterprises' failure to enter into contract is approximately $25,952.50 per contract year. No additional funding is requested as dollar amounts are estimates only. Typically a decision to bid the plumbing requirements again occurs long before the contract expires due to fluctuation costs and specification changes.

Therefore, staff recommends approval of a contract amendment to Groeniger & Company's current contract (CO2007-035) to include all bid items into the contract, and increasing the dollar amount from $1,665,000 to a not-to-exceed amount of $3,582,000 for this three year contract. The contract total for Bid B07118026 has not been increased, as $3,582,000 was the original contract amount to be expended between Groeniger & Company and Ferguson Enterprises.

In anticipation of a pending contract, and knowing that their previous contract was still in effect, the City placed plumbing orders with Ferguson Enterprises to handle ongoing requirements, not realizing that the contract dollar authority had been exceeded. Ferguson received and filled City orders in a total amount of

$196,351.10. These orders were filled at the unit prices specified in contract No. 2005-0118, which resulted from the competitive bid B051181019, that will remain in effect through August 15, 2007,. Staff will more closely monitor the availability of funds on the purchase order to be sure this does not recur in the future.

Attachment 2

Bid Results for #B071181026

(All City applicable preferences have been applied and sales tax is included)

	Groeniger	Ferguson**	National Meter	Water Rite
5% Small Business Preferences	None	None	None	5%
1% City Limit Preference	1%	1%	None	1%
Early Payment Preference	2%-30 Days	None	None	5%-21 Days
PLUMBING GROUPS				
Group I-Brass Valves & Accessories	**$49,012.14**	$52,930.15	$50,111.17	No Bid
Group II-Pipe Clamps	**$ 9,119,64**	$ 6,360.33	No Bid	No bid
Group III-Full Circle Tapping Sleeves	**$ 8,664.13**	$10,556.44	No Bid	No bid
Group IV-Flex Couplings	**$39,768.86**	$38,434.10	No Bid	No Bid
Group V-Leak Clamps	**$ 3,297.03**	$ 3,069.47	No bid	No Bid
Group VI-Brass Coupling Adapters	**$43,674.36**	$45,806.00	$48,096.26	No Bid
Group VII-Gate Valves	**$243,028.91**	$241,094.45	No Bid	No Bid
Group VIII-Full Circle Repair Bands/Tapping Sleeves	**$179,341.76**	$185,031.80	No Bid	No Bid
Group IX-Steel Pipe	**$29,038.80**	No Bid	No Bid	$98,104.50
Group X-Brass Meter Valves	**$14,823.87**	$15,747.69	$14,285.12*	No bid
Group XI-Meter Boxes & Lids	**$69,623.37**	$77,518.54	No Bid	$83,713.81
Group XII-Miscellaneous Meter Adapters	**$158,657.49**	$146,308.35	No Bid	No Bid
Group XIII-Flange Coupling Adapters	**$ 1,714.55**	$ 1,765.60	No Bid	No Bid
Group XIV-Megalugs	**$23,228.31**	$21,144.40	No Bid	No Bid
Group XV-Special Meter Boxes	**$50,526.16**	No Bid	No Bid	$52,583.63

*Not all items within this group were bid
**Ferguson Enterprises refused to fully execute a contract because of a signature requirement for the City's Equal Benefit Ordinance.

RESOLUTION NO. 2007-XXXX

Adopted by the Sacramento City Council

June 12, 2007

DECLARE CONTRACT AWARD TO FERGUSON ENTERPRISES A NULLITY AND AUTHORIZE AMENDMENTS TO PLUMBING SUPPLIES CONTRACTS

BACKGROUND

A. On February 27, 2007, the City Council awarded contracts to Groeniger & Company and Ferguson Enterprises for the purchase of plumbing supplies. Groeniger & Company subsequently executed a contract, but Ferguson Enterprises refused to sign the Declaration of Compliance with the City's Equal Benefits Ordinance, which is a part of the City contract. Compliance with these requirements is mandatory for City contracts of more than $25,000, unless a waiver is authorized under the City Code. The contract with Ferguson Enterprises did not qualify for a waiver.

B. When a bidder to whom a contract is awarded fails to fully execute the contract, City Code Section 3.56.170 authorizes the City Council to declare the award a nullity and award the contract to the next lowest responsible bidder. In this case, based on the bid results for Bid B071181026, Groeniger & Company was the next lowest responsible bidder for all the bid categories included in the contract awarded to Ferguson Enterprises.

C. The City has had uninterrupted plumbing supply contracts with both Groeniger & Company and Ferguson Enterprises for over 15 years. In anticipation of a pending contract, and knowing that Ferguson's previous contract was still in effect, the City placed plumbing orders with Ferguson Enterprises to handle ongoing requirements, not realizing that the maximum payment amount of the previous contract had been exceeded. Ferguson received and filled City orders in a total amount of $196,351.10. Because these orders were placed by the City, and the supplies will be used to meet ongoing City needs, City staff has recommended that the City Council approve payment to Ferguson Enterprises for these outstanding invoices.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The contract for plumbing supplies awarded on Bid B071181026 to Ferguson Enterprises on February 27, 2007, is declared a nullity due to Ferguson Enterprise's failure to enter into a contract.

Section 2. The City Manager is authorized to execute Amendment No. 1 to City Agreement 2005-0118 for the payment of outstanding invoices to Ferguson Enterprises for plumbing purchases in an amount not to exceed $196,532.

Section 3. The City Manager is authorized to execute Amendment No. 1 to City Contract CO 2007-035, awarded on February 27, 2007, to Groeniger & Company, to include all items from Bid B071181026 into the contract, and increase the dollar amount of the contract from $1,665,000 to a not-to-exceed amount of $3,582,000 for this three year contract.