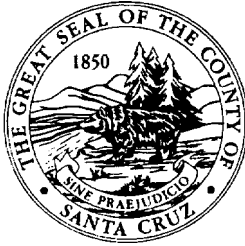


DEPARTMENT OF
PUBLIC WORKS

GOVERNMENTAL CENTER

JOHN A. FANTHAM
DIRECTOR OF PUBLIC WORKS



AGENDA: August 11, 1998

COUNTY OF SANTA CRUZ 215

701 OCEAN STREET, SANTA CRUZ, CALIFORNIA 950604070

(408) 454-2160

FAX (408) 454-2385

July 31, 1998

SANTA CRUZ COUNTY BOARD OF SUPERVISORS
701 Ocean Street
Santa Cruz, California 95060

SUBJECT: SEISMIC SAFETY RETROFIT ENGINEERING, AMENDED CONTRACT

Members of the Board:

On March 3, 1998, your Board approved a contract for engineering services with T.Y. Lin International to prepare plans and specifications for seismic retrofit of eight County bridges. The program is funded by the Federal Highway Administration (FHWA) and administered by CALTRANS. FHWA guidelines require that the contract be subject to state audit because the total exceeds \$250,000.00 (a program threshold). CALTRANS has recently completed the audit and has submitted to Public Works a report requiring amendments to the Independent Contractor Agreement. Following the Board's approval of the contract on March 3, 1998, CALTRANS Office of Investigations and Audits reviewed the contract's provisions and the consultant's accounting procedures. Based on Federal guidelines, CALTRANS' auditors determined that certain operating costs of the consultant are not reimbursable. The CALTRANS auditor calculated an acceptable overhead rate, and the consultant agreed to amend the fee proposal. This resulted in a net decrease of \$10,892.72 for the eight bridges. The state auditor's amendment wording has been reviewed and approved by County Counsel and signed by the consultant.


Attached for your Board's review and approval is the amended Independent Contractor Agreement between the Public Works Department and T.Y. Lin International, of San Francisco, California, in the amount of \$602,373.30. The Scope of Work remains unchanged,

It is therefore recommended that the Board of Supervisors take the following action:

1. Approve the attached amended Independent Contractor Agreement with T.Y. Lin International for engineering design services for seismic retrofit of eight County bridges.

2. Authorize the Director of Public Works to sign the Agreement on behalf of the County.

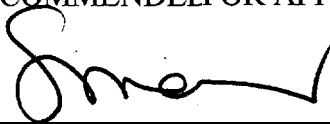
Yours truly,


JOHN A. FANTHAM *By TVB*
Director of Public Works

PTJ:rw

Attachments

RECOMMENDED FOR APPROVAL:



County Administrative Officer

copy to: T Y. Lin International
Dinh Le, CALTRANS Local Assistance
Public Works Department

Contract No. 71594

AMENDED
INDEPENDENT CONTRACTOR AGREEMENT

THIS CONTRACT replaces and supersedes Contract No. 71594 between the County of Santa Cruz and T.Y. Lin International, dated March 3, 1998.

THIS CONTRACT is entered into this ____ day of _____ 19__, by and between the County of Santa Cruz, hereinafter called COUNTY, and T.Y. Lin International, hereinafter called CONTRACTOR. The parties agree as follows:

1. DUTIES. CONTRACTOR agrees to exercise special skill to accomplish the following results: Prepare seismic retrofit plans and specifications for the bridges listed in Attachment 1.
2. COMPENSATION. The County of Santa Cruz shall reimburse the contractor for hours worked specified in the Contractor's Cost Proposal (Attachment 1). The specified hourly rates shall include direct salary costs, employee benefits, overhead and fee. The total amount payable by the COUNTY, for all Task Orders resulting from this contract, shall not exceed \$602,373.30. It is understood and agreed that this total is an estimate, and that there is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under this contract through Task Orders. Any subcontract, entered into as a result of this contract, shall contain all of the provisions of this article.

The CONTRACTOR shall be reimbursed for direct costs, other than salary costs, that are identified in an executed Task Order.

The CONTRACTOR shall be reimbursed for actual travel expenses incurred in the performance of this work, including the use of private cars at the rate of 31.0 cents per mile, while traveling away from consultant's headquarters which is hereby designated as San Francisco, CA. In addition, CONTRACTOR'S personnel shall be reimbursed for per diem expenses at a rate not to exceed that currently authorized for State employees under State Department of Personnel Administration rules.

3. TIME OF BEGINNING AND COMPLETION. Time of beginning and completion shall be as described: From Board of Supervisors' approval through project completion.

The CONTRACTOR shall not commence performance of work or services until this contract has been approved by the COUNTY and notification to proceed has been issued by the County's Contract Manager. No payment will be made for any work performed prior to the approval of this contract.

4. EARLY TERMINATION. The COUNTY reserves the right to terminate this contract upon thirty (30) calendar days written notice to the CONTRACTOR with the reasons for termination stated in the notice.

5. INDEMNIFICATION FOR DAMAGES. TAXES AND CONTRIBUTIONS.

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CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with, or caused, or claimed to be caused, by the willful misconduct or negligent acts, errors or omissions of the CONTRACTOR and its agents, officers, or employees in performing the work or services herein, and all expenses of investigating and defending against same; provided, however that the CONTRACTORS duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole active negligence or willful misconduct of the COUNTY, its agents, officers, or employees,

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

6. INSURANCE. CONTRACTOR at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of CONTRACTORS insurance coverage and shall not contribute to it.

If CONTRACTOR utilizes one or more subcontractors in the performance of the Agreement, CONTRACTOR shall obtain and maintain Independent Contractor's Insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of CONTRACTOR in this Agreement, unless CONTRACTOR and COUNTY both initial here _____ / _____

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts, This insurance coverage shall not be required if the CONTRACTOR has no employees and certifies to this fact by initialing here _____

(2) Automobile Liability Insurance for each of CONTRACTORS vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by CONTRACTOR is not a material part of performance of this Agreement and CONTRACTOR and COUNTY both certify to this fact by initialing here _____ / _____

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad-form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$1,000,000 combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and COUNTY WLB (WLB). Robert L. De Witt and Associates. \$500,000.00 Professional Liability Insurance combined single limit. All other sub-consultants and contractor in compliance.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof CONTRACTOR may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz."

(3) All required insurance policies shall be endorsed to contain the following clause: "This insurance shall not be canceled until after thirty (30) days prior written notice has been given to:

Bill Williamson
County of Santa Cruz Public Works
701 Ocean Street, Room 410
Santa Cruz, CA 95060.

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to: Bill Williamson

County of Santa Cruz Public Works
701 Ocean Street, Room 410
Santa Cruz, CA 95060

7. EQUAL EMPLOYMENT OPPORTUNITY. During and in relation to the performance of this Agreement, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: recruitment; advertising; layoff or terminate; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion and transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Agreement provides compensation in excess of \$25,000 to CONTRACTOR the CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status or any other non-merit factor unrelated to job duties.

C. The CONTRACTOR shall comply with the Federal Disadvantaged Business Enterprises (DBE) Consultant Contract Requirements as outlined in Attachment No. 2.

(1) The CONTRACTOR shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 4012) identifying the sex, race, physical or mental disability and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority/Women/Disabled Business Enterprises.

(2) In the event of the CONTRACTORS non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further agreements with the COUNTY.

D. The CONTRACTOR shall cause the foregoing provisions of Subparagraphs 7B. and 7C. to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$25,000, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

8. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) the skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by job rather than by time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) the COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

By their signatures to this Agreement each of the undersigned certifies that it is his or her considered judgement that the CONTRACTOR engaged under this Agreement is in fact an independent contractor.

9. CONTRACTOR represents that its operations are in compliance with applicable County planning, environmental and other laws or regulations.

10. COST PRINCIPLES. Code of Federal Regulations (CFR) 48 Chapter 1, Part 3 1 shall be used to determine the allowability of the individual items of cost. The contractor agrees to comply with federal procedures in accordance with CFR 49, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payments have been made to the contractor, which are determined by subsequent audit to be unallowable under CFR 48, Chapter 1 Part 3 1, are subject to repayment by the contractor to the County of Santa Cruz, the State and the Federal Government. Any subcontract, entered into as a result of this contract, shall contain all of the provisions of this article.

11. NON-ASSIGNMENT. CONTRACTOR shall not assign this Agreement without the prior written consent of the COUNTY.

12. RECORD RETENTION AND AUDIT. CONTRACTOR shall retain records pertinent to this Agreement for a period of not less than five (5) years after final payment under this Agreement or until a final audit report is accepted by COUNTY, State and the Federal Highway Administration, or their duly authorized representatives, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, the Federal Highway Administration or the designee of either for a period of five (5) years after final payment under this Agreement. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

13. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Agreement shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

14. COVENANT AGAINST CONTINGENT FEES. The CONTRACTOR warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONTRACTOR, to solicit or secure this agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this agreement without liability, or at its discretion to

deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

15. DESIGN STANDARDS. The CONTRACTOR shall conform with standards for design as required by the COUNTY, State of California and the Federal Highway Administration. All documents required under this Agreement, including but not limited to plans, specifications, estimates, reports and investigations, shall be prepared in accordance with guidelines established by the COUNTY, State of California and the Federal Highway Administration.

16. OWNERSHIP OF DOCUMENTS. All tracings, plans, specifications and maps prepared or obtained under the terms of this agreement shall be delivered to and become the property of the COUNTY. Basic survey notes and sketches, charts, computations and other data prepared or obtained under this agreement shall be made available, upon request, to the COUNTY without restriction or limitation on their use. The COUNTY shall not reuse or make any modification of the plans and specifications without the prior written authorization of the CONTRACTOR.

17. CHANGES IN WORK. Changes in work shall be set forth in a supplemental agreement which shall specify, in addition to the work to be done in connection with the changes made, adjustment of contract time, if any, and the basis of compensation for such work. A supplemental agreement shall not become effective until approved by the COUNTY. When compensation for an item of work is subject to adjustment, the CONTRACTOR shall, upon request, furnish the COUNTY with adequate detailed cost data for such item of work.

18. DELAYS AND EXTENSIONS. If work called for under the agreement is not finished within the specified time period, the COUNTY may extend the period of the contract. The COUNTY may charge the CONTRACTOR for overhead expenses which are directly chargeable to the contract and accrue during the extension. The CONTRACTOR shall notify the COUNTY of any delays, in writing, within 15 days of the beginning of any delay. The CONTRACTOR shall have no claim for damage or compensation for any delay unless otherwise agreed to by the COUNTY.

19. SUBCONTRACTORS ASSIGNMENT AND TRANSFER. The CONTRACTOR shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the County of Santa Cruz's Contract Manager, except that which is

expressly identified in the Contractor's Cost Proposal. Any subcontract in excess of \$25,000, entered into as a result of this contract, shall contain all the provisions stipulated in this contract to be applicable to subcontractors. Any substitution of subcontractors must be approved in writing by the County of Santa Cruz's Contract Manager. 223

20. CONTRACTOR'S ENDORSEMENT OF PS&E AND OTHER DATA. The responsible CONTRACTOR shall sign all plans, specifications, estimate, PS&E and engineering data furnished by him/her and where appropriate, indicate his/her registration number.

21. GOVERNMENT CODE SECTION 7550. The CONTRACTOR shall be subject to the following part of Government Code Section 7550 concerning required notice on any documents or written reports that he/she has prepared:

"Any document or written report prepared for or under the direction of the State or Local Agency, which is prepared in whole or in part by non-employees of such Agency, shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report; provided, however, that the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.. ."

"When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports."

22. CERTIFICATION BY CONTRACTOR AND BY COUNTY. At the time of execution of this agreement, the CONTRACTOR shall execute Attachment No. 3, "Certification of Consultant" and the COUNTY shall execute Attachment No. 4, "Certification of Local Agency."

23. ATTACHMENTS. This Agreement includes the following attachments:

- Attachment No. 1 - Scope of Work
- Attachment No. 2 - Disadvantaged Business Enterprises (DBE) Consultant Contractor Requirements
- Attachment No. 3 - Certification by Consultant
- Attachment No. 4 - Certification by Local Agency

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first
above written.

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COUNTY OF SANTA CRUZ

CONTRACTOR
T.Y. LIN INTERNATIONAL

By: _____
Director of Public Works

By: William Challe
T.Y. Lin International

Address: 825 Battery Street
San Francisco, CA 94111

Telephone: (415) 291-3700

APPROVED AS TO FORM:

By: D. McRae 7-31-98
Assistant ~~Chief~~ County Counsel

DISTRIBUTION: Auditor-Controller
Risk Management
Contractor
Public Works