

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # B-6

Urgent

Routine

AGENDA DATE November 10, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Declare an Emergency in Accordance with Public Contract Code Section 22050 to Contract for Emergency Repairs at the 12th Street Office Building

STAFF RECOMMENDATIONS:

1. Approve to declare an Emergency in accordance with Public Contract Code Section 1102 for emergency repairs at the 12th Street Office Building.
2. Approve Staff recommendation to act in accordance with Public Contract Code Section 2250 in order to make immediate repairs at the 12th Street Office Building as follows:

By a 4/5 vote, make the following findings:

- a) that damages occurred at the 12th Street Office Building as a result of a vehicle driving into the building;

(Continued on Page 2)

FISCAL IMPACT:

On November 3, 2009, the 12th Street Office Building suffered damage to the interior and exterior as a result of a vehicle driving into the building. No more than the lowest current market prices shall be paid for materials whenever possible. Staff will work to ensure these limitations are maintained.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2009-766

On motion of Supervisor O'Brien, Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: Grover

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

STAFF RECOMMENDATIONS (Continued):

- b) that the repair of is necessary to permit the continued conduct of essential County operations or services;
 - c) that the emergency will not allow for a delay which would result if the project were competitively bid, and that the action to immediately repair the building on an emergency basis is necessary.
2. Delegate to the Chief Executive Officer or his designee, the authority to order any action appropriate to repair the, and to take any directly related and immediate action required by that emergency, and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let a contract.
 3. Require the Chief Executive Officer to report to the Board on the status of the emergency project at its next regularly scheduled meeting and every 14 days thereafter, as required by the Public Contract Code until the repairs are completed.

FISCAL IMPACT (Continued):

The building exterior and interior has been damaged as a result of the vehicle accident. This report recommends action to immediately repair the exterior portion of the building in accordance with the ownership agreements between the County, Westland Development Corporation and StanCERA, who co-own the building.

The costs of the repairs are currently being estimated. The public area of the building that needs repair would be temporarily funded through the Chief Executive Office Plant Acquisition budget and reimbursed by offsetting revenue once the claim is settled. There is insurance coverage for the building, with a \$10,000 deductible for which all members of the 12th Street Condominium Association are responsible to pay their fair share. The responsible party who drove into the building is insured. The Chief Executive Office - Risk Management Division will work on behalf of the County to settle the claim with the responsible party.

Public Contract Code Section 20134 provides that a contractor who provides equipment and materials on an emergency basis shall be paid the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration.

Currently the cost to repair the damage is being estimated, however staff does not believe it will exceed \$100,000. Repairing the interior damage, in the area occupied by Oak Valley Bank will be the responsibility of the owner and tenant of the space. All

exterior repair costs will be tracked and paid for separately from interior repair costs which will be the sole responsibility of Westland Development Corporation.

The Chief Executive Office Risk Management Division has notified the County's carrier of the loss and has documented the damage to the building. Until the County formally settles a claim for the losses incurred, the project costs will be temporarily funded out of the Chief Executive Office - Plant Acquisition budget out of existing appropriations previously approved by the Board.

Staff will return to the Board and report on the status of the emergency project within 14 days, as required by the Public Contract Code.

DISCUSSION:

The 12th Street Office Building is owned jointly by Stanislaus County, Stanislaus County Employees Retirement Association (StanCERA), and a private developer, Westland Development Corporation. The facility was completed and opened in 2006.

On November 3, 2009, the building suffered damage to the structure of the building, as well as to the interior tenant improvements in leased space as a result of a vehicle driving into the building. The leased space that suffered damage to interior tenant improvements is occupied by Oak Valley Bank.

A structural engineer conducted an assessment of the damage to the building. The initial findings of the engineer indicated there was no structural damage, but the engineer's report documented concern related to the damage incurred to the brick façade.

While the building is structurally sound, the brick façade poses a public safety risk and needs repairs. In addition, the roof drain is being temporarily repaired before the next rain storm to prevent water damage in the space. Portions of the exterior façade of the building along 12th Street near I Street including the brick veneer wall, store front window system and the granite bay were destroyed and must be replaced. The light gage steel stud wall framing for the exterior column façade and the interior column furring located in the conference has been dislodged at the base and the overflow drain drop is no longer connected to the piping which drains to the sidewalk. Some utilities were also damaged, such as roof drains and possibility some electrical circuits.

Public Contract Code Section 20134 and 22050 authorize the County to repair or replace facilities without adopting plans and specifications and without the necessity of going through the competitive bid process. Typically, it would take over 60-90 days to obtain design documents, and an additional 60 days to competitively bid and award a contract for this type of work. Acme Construction of Modesto, California constructed the 12th Street Office building as well the bank inside the first floor of the building. Acme has the ability to access the original suppliers and subcontractors to match the original

construction for the areas in need of immediate repair. Staff has discussed the needed repairs with the contractor and determined that they have the resources available to do the repairs needed. The County will benefit from ACME's thorough knowledge of the major systems and components of the building, and can assist in an expeditious manner on the proposed emergency repairs. Staff recommends the County contract with ACME Construction to make the repairs needed.

Public Contract Code Section 22050 provides that the Board of Supervisors must make the finding, by a 4/5 vote, that the emergency will not permit a delay resulting from the competitive solicitation for bids and that the action is necessary to respond to an emergency. The section also provides that the Board of Supervisors, by a 4/5 vote, may delegate to a County administrative officer the authority to order the actions and to take any directly related and immediate action required by that emergency, and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let a contract.

On October 8, 2002, the Board of Supervisors approved the 12th Street Master Agreement. On August 28, 2007, the Board of Supervisors authorized the Chief Executive Officer on behalf of the County and the 12th Street Condominium Association, and to negotiate and execute revisions to the 12th Street Master Agreement.

Section 10.01 of the Master Agreement provides that in the event of any destruction of any portion of the Building, the repair or replacement of which is the responsibility of the Association, shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical.

According to the Master Agreement, the Management Committee, subject to approval of the Board, shall decide if restoration is feasible in the event of an uninsured damage or destruction and may elect to restore and repair or not.

The Management Committee of the 12th Street Condominium Association will meet on Monday, November 9, 2009, to recommend approval to the Board of Supervisors for the County to make the emergency necessary repairs to permit the continued conduct of essential county operations and services.

Public Contract Code Section 22050 requires staff to report on the emergency action every 14 days until the action is terminated.

POLICY ISSUES:

Approval of this action will address this unexpected situation and promote efficiency in the administration of the County's operations. Additionally, this action supports the Board's priorities of *A safe community, A healthy community, Effective partnerships, and Efficient delivery of public services.*

STAFFING IMPACT:

Existing Chief Executive Office - Capital Projects staff will manage this effort and coordinate with the Tenants of the 12th Street Office Building in the procurement of services and to permit the conduct of essential County operations and services.

Stanislaus County Capital Projects
 825 12th Street, Modesto, CA 95354
 Phone: (209) 525-4380 Fax: (209) 525-4385

TRANSMITTAL

TO: Kent Newswander
 Acme Construction Company, Inc.
 1565 Cummings Drive
 Modesto, CA 95358

SUBJECT: STANISLAUS COUNTY 12th STREET PROJECT
REFERENCE: AUTOMOBILE ACCIDENT REPAIR

DATE: 11/30/09

We are sending you X attached under separate cover the following material:

- | | | |
|---|---------------------------------------|--|
| <input type="checkbox"/> Shop Drawings | <input type="checkbox"/> Change Order | <input type="checkbox"/> Specifications |
| <input type="checkbox"/> Copy of Letter | <input type="checkbox"/> Plans | <input type="checkbox"/> Computer Printout |
| <input type="checkbox"/> Prints | <input type="checkbox"/> Samples | <input type="checkbox"/> Updates |

COPIES	DATE	DESCRIPTION
1		Fully Executed Agreement

2009 DEC - 3 A 11: 32
 BOARD OF SUPERVISORS

REMARKS:

For your files.

Board Note: The attached agreement was approved by the Board on November 10, 2009 in Resolution No. 2009-766.

COPIES: Patricia Hill Thomas, Copy
 Don Phemister, Transmittal Only)
 Liz King, Clerk of the Board, Original
 Tom Flores, Auditor, Copy + Original
 File X 2.1.1 (1637)
 File X 15.78.2

SIGNED: *Teresa Vander Veen*
 Teresa Vander Veen

AGREEMENT

THIS AGREEMENT, dated this 10th day of November, 2009 by and between **Acme Construction Company, Inc.** whose place of business is located at **1565 Cummings Drive, Modesto, CA 95358** ("Contractor"), and the **COUNTY OF STANISLAUS** ("County"), acting under and by virtue of the authority vested in the County by the laws of the State of California.

WHEREAS, County, by its **Board Order No. 2009-766** adopted on the 10th day of November, 2009 awarded to Contractor the following Contract:

**12th Street Emergency
Automobile Accident Repairs**

at

**832 12th STREET
MODESTO, CA 95354**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and County agree as follows:

Article 1. Work

- 1.1 Contractor shall repair damage to the building caused by the automobile accident of November 2, 2009. The Contractor shall do its best efforts to restore the building to its original condition.

Article 2. Architect/Engineer and Project Manager

Not Used

Article 3. Contract Time and Liquidated Damages

- 3.1 Contract Time

Not Used

Article 4. Contract Sum

- 4.1 County shall pay Contractor the Contract Sum for completion of Work in accordance with Contract Documents as set forth in Contractor's Proposed Scope of work, attached hereto. The contractor shall be reimbursed its cost for doing the work plus 15% of the cost as authorized by Public Contract Code 20134.

Article 5. Contractor's Representations

In order to induce County to enter into this Agreement, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work

or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

- 5.2 Contractor has examined thoroughly and understood as-built drawings, products or reports, available.
- 5.3 Not used
- 5.4 Not used

Article 6. Contract Documents

- 6.1 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00520	Agreement
Document 00550	Notice to Proceed
Document 00680	Escrow Agreement for Security Deposit in Lieu of Retention
Document 00700	General Conditions
Document 00821	Supplementary Conditions – Insurance
Document 00822	Apprenticeship Program
Division One Specifications	

- 6.2 There are no Contract Documents other than those listed in this Document 00520, Article 6. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

Article 7. Miscellaneous


- 7.1 Terms and abbreviations used in this Agreement are defined in Document 00700 (General Conditions) and Section 01420 (References and Definitions) and will have the meaning indicated therein.
- 7.2 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of County or acting as an employee, agent, or representative of County, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the County is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.3 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*
- 7.4 Not Used
- 7.5 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time County tenders final payment to Contractor, without further acknowledgment by the parties.
- 7.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at County's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §1861, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require

every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

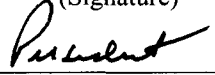
- 7.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 7.8 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Stanislaus, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Stanislaus County Superior Court. Contractor accepts the Claims Procedure in Document 00700, Article 12, as a claims procedure by agreement under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.

IN WITNESS WHEREOF the parties have executed this Agreement in quadruplicate the day and year first above written.

CONTRACTOR: ACME CONSTRUCTION COMPANY, INC.

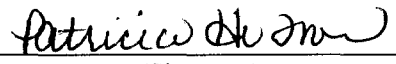
By: 
(Signature)

By: _____
(Signature)

Its: 
Title (If Corporation: Chairman, President or Vice President)

Its: _____
Title (If Corporation: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer)


COUNTY: COUNTY OF STANISLAUS

By: 
(Signature)

Patricia Hill Thomas
(Print Name)

Chief Operations Officer
(Title)

APPROVED AS TO FORM AND LEGALITY
THIS 13 DAY OF November, 2009

By: 
John P. Doering, County Counsel

COUNTY RESOLUTION NO. 2009-766

END OF DOCUMENT

Acme Construction Company, Inc.

1565 Cummins Drive • Modesto, California 95358
P. O. Box 4710 • Modesto, California 95352

November 6, 2009

Don Phemister
Stanislaus Capital Projects
825 12th Street
Modesto, CA 95354

RECEIVED

NOV 06 2009

STANISLAUS COUNTY
CAPITAL PROJECTS

RECEIVED

Don.

Randy.

NOV 06 2009

X 2.1.2(2509)

X 15.78.1

STANISLAUS COUNTY
CAPITAL PROJECTS

Subject: 12th Street Emergency Automobile Accident Repairs
Stanislaus County

Reference: Preliminary Cost Estimate

Dear Don:

Based on preliminary cost information listed below is a budget cost breakdown to repair the 12th Street Project at the Great Valley Bank where a automobile damaged the exterior wall. We understand that the work will be performed on a Time and Material basis. Budget includes only the exterior wall inside and outside but not other interior damage.

Demo / Temporary Barriers	\$4,500
Metal Framing	2,500
Lath and Plaster	3,500
Drywall	1,500
Painting	1,500
Plumbing	700
Storefront / Glass	10,000
Tile and Stone Work	10,000
General Conditions	10,000
Bond / Insurance	663
Markup 15%	6,729
Total Budget	\$51,592

Sincerely,

Acme Construction Company, Inc.



Kent Newswander

Estimator/Project Manager

(209) 523-2674 Extension 105

File: Stanislaus Capital Project

PROFESSIONAL BUILDERS SINCE 1947

Web Site: www.acmeconstruction.com • E-Mail: acme@acmeconstruction.com

Telephone: (209) 523-2674 • Fax: (209) 523-0213 • License No. 167130

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6DJY073

**Bank
Locally**
Here... at Home



MODESTO POLICE DEPARTMENT

CASE NUMBER

09-93444

OFFENSE CODE

1182

DATE

11-3-09

PHOTOGRAPHER

Tanner

MISC







Bank
Locally
Help is at Home
Open accounts online
@evcb.com

12th Street Office Building Emergency Repairs

PowerPoint Presentation

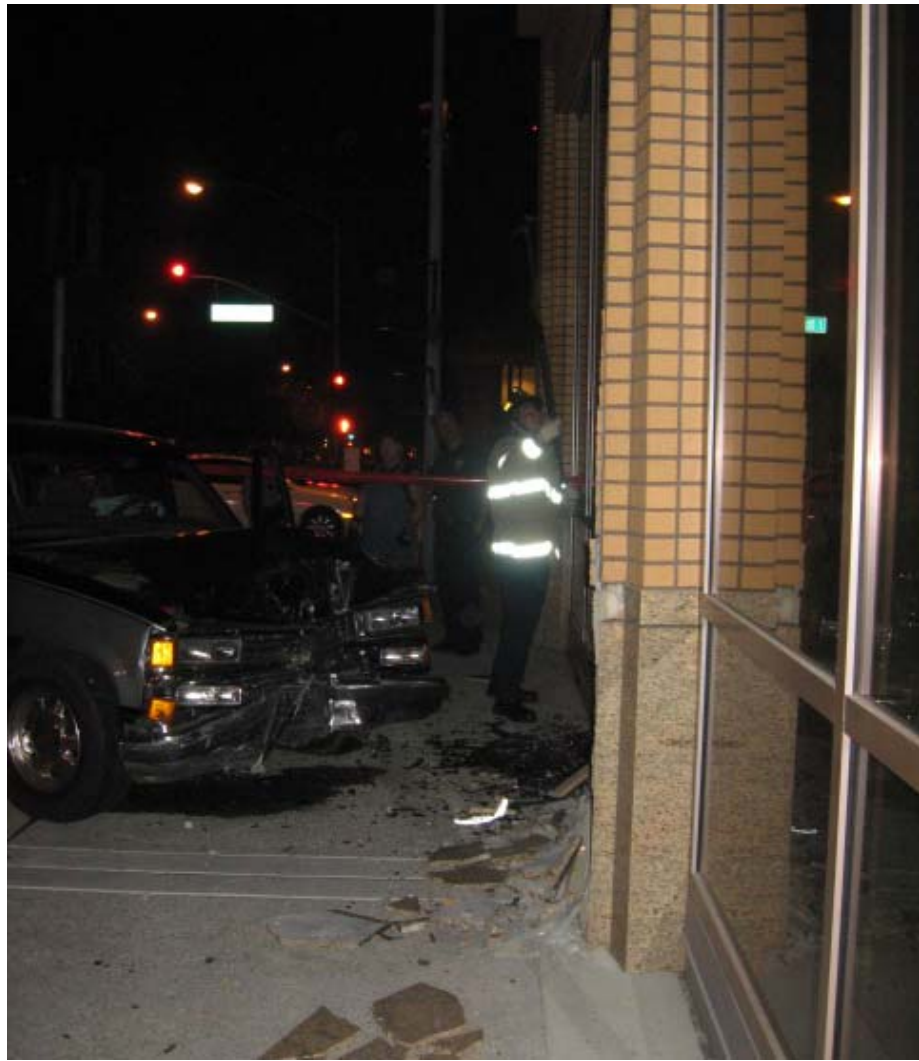
12th Street Office Building Emergency Repairs

- November 3, 2009 the 12th Street Office Building suffered damage as a result of a vehicle driving into the building

12th Street Office Building Emergency Repairs

- Jointly owned by the Stanislaus County, Stanislaus County Retirement Association, and Westland Development Corporation















12th Street Office Building Emergency Repairs

- The building insurance deductible is \$10,000
- All member owners of the 12th Street Condominium Association will pay their fare share

12th Street Office Building Emergency Repairs

- Chief Executive Office Risk Management Division will work on behalf of the County to settle claim with responsible party

Staff Recommendations

1. Approve to declare an Emergency in accordance with Public Contract Code Section 1102 for emergency repairs at the 12th Street Office Building.

Staff Recommendations

2. Approve Staff recommendation to act in accordance with Public Contract Code Section 2250 in order to make immediate repairs at the 12th Street Office Building as follows:

Staff Recommendations

By a 4/5 vote, make the following findings:

- a) that damages that occurred at the 12th Street Office Building as a result of a vehicle driving into the building;
- b) that repair of the building is necessary to permit the continued conduct of essential county operations and services;

Staff Recommendations

By a 4/5 vote, make the following findings:

- c) that the emergency will not allow for a delay which would result if the project were competitively bid, and that the action to immediately repair the building on an emergency basis is necessary

Staff Recommendations

3. Delegate to the Chief Executive Officer or his designee, the authority to order any action appropriate to the repair the building, and to take any directly related or immediate action required by that emergency, and to procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let a contract.

Staff Recommendations

4. Require the Chief Executive Officer to report to the Board on the status of the emergency project at its next regularly scheduled meeting and every 14 days thereafter, as required by the Public Contract Code until the repairs are completed.

Comments