ITEM NO. 16

STAFF REPORT

CITY OF OCEANSIDE

DATE: January 14, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department

SUBJECT: **AUTHORIZATION TO AWARD A CONTRACT AND APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR THE 1617 MISSION REMODEL PROJECT**

SYNOPSIS

Staff recommends that the City Council award a contract in the amount of $749,000 to Avi-Con, Inc., dba as CA Construction of Riverside for the 1617 Mission Avenue Remodel project; authorize the City Manager to execute the agreement upon receipt of all supporting documents; approve a Professional Services Agreement in the amount of $149,800 with Dudek, Incorporated, of Encinitas for construction management services for the project; and authorize the City Manager to execute the agreement.

BACKGROUND

On April 11, 2007, the City Council accepted the demolition work removing the concrete jail cells formerly attached to the building at 1617 Mission Avenue. The project also removed some dilapidated shed structures and added a new exterior framed wall where the jail cells had once stood.

On April 16, 2008, the City Council approved a property lease agreement with the Veterans Association of North County to use the building at 1617 Mission Avenue for programs and activities benefitting the community of veterans. In its present condition, the building shell cannot be used because it does not meet current seismic and other structural code requirements that have evolved since the structure was built in 1968.

On June 11, 2008, the City Council approved the plans and specifications for the remodel work and authorized a call for bids. Notices inviting sealed bids were advertised in local newspapers, on the City's web site, and trade journals in accordance with the City's standard bidding procedures.

On August 13, 2008, the City Council approved a professional services agreement with Dudek, Incorporated, for construction management services for the El Corazon Senior Center, which is continuing its construction progress towards a scheduled completion of May 2009.

ANALYSIS

The proposed remodel work will strengthen the roof and exterior wall framing for earthquake resistance. A new interior wall along the Mission Avenue side of the building will separate the interior space into two areas: 3,500 square feet on the north (Mission Avenue side) for future City office space, and 10,000 square feet on the south side for future interior improvement by the veterans and volunteers. The smaller office space area will be improved with a suspended ceiling, lighting, wall finish, carpeting, tile, and bathroom fixtures. The larger veterans' use area will be completely unfinished on the inside except for basic lighting and ventilation to accommodate interior remodeling work by the veterans.

The bare exterior west wall will be finished with stucco, and the missing section of roof mansard will be completed. The unreinforced brick facing on the other exterior walls will be removed and the walls also refinished with new stucco, paint, and windows. Basic parking lot and sidewalk improvements will provide ADA access to the front of the building. Water and sewer services will be reconnected to the building from Mission Avenue.

Staff is meeting regularly with representatives of the Veterans Association of North County (VANC) to discuss additions and enhancement to the City's remodel work to facilitate their future interior work in adapting the building shell space for use as a veterans' center. Where these additions and enhancements make sense and provide a net cost savings to build with this stage of construction, staff may be returning to the City Council in the future with requests to approve construction change orders for the additional enhancements. The currently appropriated project funds are sufficient for reasonable enhancements.

Avi-Con Incorporated, dba CA Construction, and addressed in Riverside, submitted the lowest of the sixteen bids received. Staff has verified their contractor's license and references for recently completed work, and found them to be satisfactory.

Current Engineering Division staff members are fully occupied in managing current construction projects or readying other projects for construction in 2009 in anticipation of new Federal aid available for public works projects that are ready for construction. For this reason, staff recommends use of a consultant construction manager and requests City Council approval of a professional services agreement with Dudek for this service. Dudek is currently providing a construction manager, clerical support person, and an inspector at the El Corazon Senior Center. As that project nears completion, the same Dudek personnel will have the availability to simultaneously manage the 1617 Mission Avenue Remodel work for the City. As a percentage of the construction contract, the $149,800 cost for Dudek to manage the 1617 Mission Avenue remodel work is higher than the work for the El Corazon Senior Center. However, this is because of the nature of the remodel work, which requires Dudek to provide special inspectors approved by the Building Department for the field welding and new structural connections related to the earthquake strengthening.

Staff also requests that the City Council approve the professional services agreement with Dudek as a sole-source procurement with respect to the work on the 1617 Mission Avenue Remodel project. The January 24, 2008, "Procurement of Goods and Services Directive" provides that the City Council make any sole-source procurement directive for amounts over $50,000. Staff cannot provide reasonable competitive alternatives to Dudek for managing the 1617 Mission Avenue remodel because:

1. It is difficult to obtain competent professional engineering field staff on less than a full-time basis. The scale of the El Corazon Senior Center construction allows for full-time construction management coverage, but the 1617 Mission Avenue Remodel does not.

2. The 1617 Mission Avenue Remodel project requires special inspectors with appropriate certifications for welding, structural steel work, and other specialties. These specialty inspectors must be pre-approved by the City Building Division, which verifies the individual's qualifications. The pool of qualified individuals is very small, and staff is aware of only a single firm (MTGL) with enough qualified personnel to assure staffing is available when required. Dudek is subcontracting with MTGL for the special inspection work.

COMMISSION OR COMMITTEE REPORTS

Does not apply.

FISCAL IMPACT

The CIP project account (503.837493) has an approximate available balance of $1,184,341 from FY 2007-08 carry forward.

The project costs are estimated as follows:

Construction award amount		$749,000
Construction contingency (20%)		$149,800
Construction management (Dudek)		$149,800
Architectural construction support (estimated)		$ 50,000
Staff time and administration (estimated)		$ 80,000
	Total	$1,178,600

CITY ATTORNEY'S ANALYSIS

The bid documents were previously reviewed by the City Attorney and approved as to form. The construction contract must be awarded to the lowest responsible bidder. The Public Contract Code defines "responsible bidder" as a bidder who has demonstrated the attributes of trustworthiness as well as quality, fitness, capacity and experience to satisfactorily perform a public works contract. The City Council also has the discretion to reject all bids and re-advertise.

The professional services agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council award a contract in the amount of $749,000 to Avi-Con, Inc., dba as CA Construction of Riverside for the 1617 Mission Avenue Remodel project; authorize the City Manager to execute the agreement upon receipt of all supporting documents; approve a Professional Services Agreement in the amount of $149,800 with Dudek, Incorporated, of Encinitas for construction management services for the project, and authorize the City Manager to execute the agreement.

PREPARED BY:

Gary Kellison
Senior Civil Engineer

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

George Buell, Development Services Director

Scott O. Smith, City Engineer

Teri Ferro, Financial Services Director

Attachment:
- Professional Service Agreement
- Bid tabulation sheet

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: 1617 Mission Avenue Remodel, Project 503.837493

THIS AGREEMENT, dated 1-14, 2009, for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Dudek, Incorporated, hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: The CONSULTANT shall provide construction management and special inspection services for the 1617 Mission Avenue Remodel project. The scope of service provided by the CONSULTANT shall include, but not necessarily be limited to, the following tasks:

- Conduct the preconstruction meeting, and regular jobsite meetings at a frequency of one per week. Prepare meeting minutes and agenda
- Facilitate the document flow among CITY, the construction contractor, and the project architect by preparing and tracking the resolution and disposition of Requests for Information, Proposed Change Orders, Correction Notices, Architect or CITY-initiated construction changes.
- Complete construction control documentation such as the Weekly Statement of Working Days, Inspector's Daily Diary, Construction Change Orders, Monthly Pay Estimates, and keep all construction-related documents filed and organized.
- Provide Building Department Special Inspection services, and on a daily basis, submit the Special Inspection reports for all special inspection items to the Building Official's designee.
- Assure construction quality by verifying that throughout construction all of the construction contractor's work is in conformance with the plans and specifications.
- Look for opportunities to save the CITY money by recommending more cost effective construction materials and methods, subject to approval by the CITY and the project architect, while maintaining the desired function and aesthetics for the remodel work.
- Be available to meet with and discuss construction progress with CITY staff and representatives of the future tenant of the project – the Veterans Association of North County.
- Coordinate and facilitate reconnecting utilities as a part of the construction contractor's work, including water, sewer, fire service, electricity, alarms, and telephone.
- Provide for documentation of the construction as-built plans.

2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Engineer. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the City Engineer. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT 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 the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

4. **LIABILITY INSURANCE.**

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	$ 1,000,000
General Aggregate	$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	$ 1,000,000
General limit project specific aggregate	$ 2,000,000

Automobile Liability Insurance	$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over $25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.

4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.

5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars ($1,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of CONSULTANT'S work, including the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees founded upon, resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of $149,800. The CONSULTANT'S billable hours shall be limited to the following rates:

• Director	$135 per hour
• Construction Manager	$100 per hour
• Quality Control Manager	$90 per hour
• Clerical	$68 per hour
• Sub-contracted special inspection services through MTGL:	Invoice amount
• Reimbursable expenses such as office supplies and prints:	Actual cost

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the City Engineer. CONSULTANT shall obtain approval by the City Engineer prior to performing any work, which results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing.

   CONSULTANT shall provide the CITY's Building Department daily special inspection reports for each day that CONSULTANT provides special inspection services. The special inspection reports shall be completed the same day that the inspection services are performed and turned in to the Building Official or his designated representative no later than the following work day.

9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

    The CONSULTANT shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

    Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

12. **SIGNATURES**. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

1617 Mission Avenue Remodel, Project 503.837493

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

DUDEK INCORPORATED

By: _____
Frank Dudek, President

Date: 12/30/08

By: _____
~~June Collins, Vice President~~
D. Mike Metts, Asst. Sec.

Date: 12/30/08

95-3873865
Employer ID No.

CITY OF OCEANSIDE

By: _____
Peter Weiss, City Manager

Date: _____

APPROVED AS TO FORM:

_____, Asst.
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

N:\Engineering\Engineering\ADMIN\Admin Docs - Specs and Staff Reports\Current Engineering Staff Reports\04-14-09 PSA Dudek 1617 Mission Aven No. 4.doc

(Revised 11-2008)

URAT

State/Commonwealth of California
County of San Diego } ss.

Subscribed and sworn to (or affirmed) before me this 30th (Date) day of December (Month), 2008 (Year) by

(1) Frank Dudek
Name of Signer #1

(2) ~~Dave~~ ~~Carter~~ D. Mike Metts.
Name of Signer #2

J. SKEENS
Commission # 1730144
Notary Public - California
San Diego County
My Comm. Expires Apr 7, 2011

Place Notary Seal and/or Any Stamp Above

J Skeens
Signature of Notary Public

J. Skeens, Notary Public
Other Required Information (Printed Name of Notary, Residence, etc.)
605 Third Street Encinitas CA 92024

OPTIONAL

Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document #503.8371493 City of Oceanside

Title or Type of Document: Professional Services Agr.

Document Date: not dated Number of Pages: 6

Signer(s) Other Than Named Above: —

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here

© 2002 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 Item #5914 Reorder: Call Toll-Free 1-800 US NOTARY (1-800-876-6827)

BIDS RECEIVED FOR 1617 MISSION AVENUE REMODEL PROJECT

COMPANY NAME	CITY	AMOUNT
1. Avi-Con Incorporated, dba CA Construction	Riverside	$749,000
2. Straight Line General Contractors, Inc.	Oceanside	$749,800
3. HAR Construction, Inc.	Chula Vista	$780,000
4. Desert Ranger Construction, Inc.	Rancho Mirage	$849,000
5. Fordyce Construction	Santee	$863,000
6. EC Construction, Inc.	El Cajon	$873,399
7. Marcotte & Hearne Builders, Inc.	San Diego	$873,800
8. Schafer Construction	Temecula	$900,389
9. Davis and Adams Construction, Inc.	San Diego	$901,000
10. 3D Construction, Inc.	Escondido	$909,600
11. ATK Construction, Inc.	Oceanside	$933,404
12. Randall Construction, Inc.	San Diego	$945,000
13. Murray Builders	San Diego	$967,000
14. Grahovac Construction	La Mesa	$968,105
15. Healey Construction Company	National City	$1,058,395
16. Dick Miller, Inc.	San Marcos	$1,105,363