



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Christopher Burton

**SUBJECT:** SEE BELOW

**DATE:** July 25, 2022

Approved

Date

7/29/2022

**SUBJECT: CITY INITIATIVES ROADMAP – SOFT STORY RETROFIT:  
AGREEMENT WITH DAVID BONOWITZ, S.E., FOR CONSULTANT  
AND PROFESSIONAL ENGINEERING SERVICES FOR SOFT STORY  
SEISMIC RETROFIT PROGRAM PROJECT (DR-4344-212-106)**

## **RECOMMENDATION**

Adopt a resolution authorizing the City Manager to negotiate and execute an agreement and all related amendments with David Bonowitz, S.E., a sole proprietor, for engineering consultant services for the Soft Story Seismic Retrofit Program (Project) from the date of execution to June 30, 2026, with a maximum total compensation amount up to \$1,325,825.

## **OUTCOME**

Approval of the agreement will enable the City of San José (City) to obtain engineering consultant services for the Project and provide the City with the ability to advance the Project.

## **BACKGROUND**

The City of San José has adopted building standards to ensure that newly constructed buildings can withstand most seismic events. However, older buildings in San José were built to previous building code standards that were less stringent with respect to seismic safety. One type of seismically vulnerable building is multifamily “soft story” buildings. A soft story building is a multi-story building in which one or more floors have windows, wide doors, large unobstructed commercial spaces, or other openings in places where a shear wall would normally be required for stability as a matter of earthquake engineering design<sup>1</sup>. Soft story buildings pose a concern because one floor of the building (usually the ground floor parking or commercial space) has significantly less lateral rigidity than stories on top of them. These buildings have a greater risk

<sup>1</sup> [Soft story building - Wikipedia](#)

than average of collapsing during an earthquake, which would render homes uninhabitable and could physically endanger residents. A 2003 report from the Association of Bay Area Governments (ABAG) estimated that soft story buildings would account for two-thirds of the uninhabitable buildings that could result from a major earthquake along the Hayward fault.<sup>2</sup> An earthquake of this magnitude could cause significant impacts in San José in terms of loss of life, response, and recovery costs. A study conducted in 2002 by San Jose State University's Engineering Department estimated that San José had approximately 1,100 soft story multifamily buildings accounting for nearly 11,000 apartments housing more than 22,000 residents (assuming an average of 2 residents per apartment).

At the June 26, 2018 City Council meeting, the City Council accepted a staff report on the seismic retrofit of multifamily “soft story” buildings and directed staff to develop a policy framework for a mandatory multifamily soft story seismic mitigation ordinance and to explore strategies that incentivize the redevelopment of multifamily soft story buildings into quality, affordable housing while minimizing displacement.

The City applied to the Federal Emergency Management Agency (FEMA) for a Hazard Mitigation Grant Program to develop a Soft Story Seismic Retrofit program for the City. On October 19, 2021, the City received notification from the California Office of Emergency Services (CalOES) that the grant was approved in two phases. Phase I will consist of Program Development/Management, Community Outreach, an Engineering Evaluation Report, Engineering/Design Plans, Plan Check, Environmental and Historic Preservation Review, an Engineering Design Grant Application, and the selection of projects and submittal to FEMA. Phase II will commence upon programmatic review and Environmental and Historic Preservation approval. It will include the implementation of retrofit activities and may not commence until written approval and additional funds are received from FEMA.

The grant will be jointly administered by the Office of Emergency Management, the Housing Department, and Planning, Building, and Code Enforcement representatives. Phase I is estimated to take 18 months to complete; as per the FEMA agreement, the Phase I completion date is February 20, 2023. All work must be completed, and related documentation submitted to FEMA by the Phase I completion date. Any time extensions needed will be requested with adequate justification, a revised schedule, and a listing of activities completed and activities to be completed.

Due to the limited resources available in-house, the magnitude and complexities of the project, and FEMA compliance requirements, the City opted to utilize the assistance of a qualified consultant to achieve the goals set forth by the City Council and the grant. The City released a Request for Proposal (RFP) from qualified consultant firms on April 30, 2022, with a closing date of May 20, 2022.

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<sup>2</sup> The HayWired Scenario: [https://pubs.usgs.gov/sir/2017/5013/sir2Q175Q13ah\\_v\\_1.1.pdf](https://pubs.usgs.gov/sir/2017/5013/sir2Q175Q13ah_v_1.1.pdf)

This memorandum provides the results of the RFP and recommends the adoption of a resolution authorizing the City Manager to negotiate and execute all related agreements and amendments.

## **ANALYSIS**

On April 30, 2022, the City issued an RFP for engineering consultant design services with specialties in structural, civil, mechanical, geotechnical, environmental, and electrical fields for the Soft Story Seismic Retrofit project. The RFP was successfully advertised to over 15,000 registered Biddingo users. In addition, the City outreached through the Daily Journal Corporation and utilized the State of California CalTrans database to extend the outreach. The closing date to respond was May 20, 2022.

A total of 15 firms either viewed or partially downloaded the RFP documents. Approximately four firms downloaded the entire package. Of these, three firms decided to collaborate as sub-consultants with a fourth firm being the primary consultant.

City staff solicited feedback from the consultant firms who viewed and/or downloaded the RFP on why they did not submit a proposal. The reasons for not submitting proposals included:

- The level of effort and the cost to prepare a thoughtful proposal was too great;
- consultants preferred to serve as a sub rather than a prime due to the breadth of disciplines needed for the project; and
- consultants did not have the needed expertise or experience to perform the work.

The City received one proposal from David Bonowitz, S.E., a sole proprietor. The sub-consultants, working with David Bonowitz, S.E., for this project include:

1. Biggs Cardosa Associates, Inc.
2. ImageCat, Inc.
3. Zylent, Inc.
4. Strategic Economics, Inc.

City staff found the proposal to be responsive, and an Evaluation Panel consisting of three City staff subject matter experts determined that David Bonowitz, S.E., and the team of sub-consultants were qualified to provide the engineering services for the project. After the initial proposal evaluation, staff interviewed David Bonowitz, S.E., on June 14, 2022, to further evaluate the potential consultant's ability to deliver services on time and collaborate with multiple stakeholders on behalf of the City.

The evaluation criteria used by the panel members and the Final Score for the winning consultant is shown below.

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		Total possible score With Oral Interview	Final Score for David Bonowitz, S.E.
Proposal Responsiveness	Pass/Fail		
Minimum Qualification	Pass/Fail		
Technical Evaluation Criteria			
Expertise <ul style="list-style-type: none"> <li>• Personnel Resume</li> <li>• Organization Chart</li> <li>• Subconsultant listing</li> </ul>		15%	14%
Experience <ul style="list-style-type: none"> <li>• Design Projects</li> <li>• FEMA/Federally Funded Projects</li> <li>• Construction Management Support</li> <li>• Customer Reference</li> </ul>		35%	29%
Approach <ul style="list-style-type: none"> <li>• Future Hazard Mitigation Measures</li> <li>• Project Cost Estimates</li> <li>• Conceptual to Final Design</li> <li>• Schedule</li> <li>• Cost Benefit Analysis</li> </ul>		20%	16%
Cost Proposal/Fee Schedule		0%	0%
Oral Interview		30%	25%
Small Business, Minority Business, Women-Based Enterprise		0%	0%
<b>TOTAL SCORE</b>		<b>100%</b>	<b>84%</b>

Since this project is a FEMA-funded project, Small Business or Local Business preferences were not given. At the same time, efforts were made to ensure outreach to all disadvantaged, minority, and women-based enterprises.

A Notice of Intent to Award was published on June 17, 2022, with a 10-day protest period. No protests were received. After the 10-day protest period, staff began working closely with the City Attorney’s Office, and the consultant was selected to develop and finalize the agreement. The agreement provides for consultant support for both Phase I and Phase II of the Project. To be noted, Phase II of the project will be implemented only on approval of the Phase I deliverables, Phase II activities, and allocation of additional funds by FEMA/CalOES.

## **CONCLUSION**

City staff evaluated the sole proposal received and with a score of 84% has determined that the firm David Bonowitz, S.E., and its sub-consultants are qualified and has the necessary expertise, experience, and approach to achieve the goals set forth in the RFP.

City staff conducted the necessary due diligence to ensure maximum outreach to potential proposers. Staff reached out to CalOES who concurred that the City met the RFP competitive bid process. Therefore, staff recommends that the City enter into an agreement with David Bonowitz, S.E., to provide engineering design services and related professional support to develop a Soft Story Seismic Retrofit Program for the City and further recommends that the City Council approves the recommendations set forth in the “RECOMMENDATION” section of the memorandum.

## **EVALUATION AND FOLLOW-UP**

Staff will bring forward for Council approval a proposed Soft Story Seismic Retrofit ordinance, an implementation plan, and potential funding mechanisms for property owners at the end of the process. The Project is currently within budget. The FEMA agreement for Phase I ends on February 20, 2023. An extension will be requested from FEMA to allow the City to complete the work by summer 2023. The consultant agreement term is from the contract date to June 30, 2026, which will account for any potential delays, acceptance of Phase I deliverables, and the implementation of Phase II project activities. Time extension requests will be submitted to FEMA with justification and an updated schedule.

Since the current action is for the award of a consultant agreement for consultant and professional engineering services only, staff will return to City Council with any construction contract award recommendations after the final designs and bidding processes are complete.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

## **POLICY ALTERNATIVES**

*Alternative #1: Direct City staff to perform the work using in-house resources*

**Pros:** Staff would have the opportunity to work on a unique project that is multi-disciplinary, requiring structural engineering, geotechnical, structural engineering, project management, and community engagement disciplines.

**Cons:** The lack of in-house technical and design expertise to support this project. The impact on current workloads will require additional staff.

**Reason for not recommending:** This complex project requires the use of design professionals with experience and expertise that is not available among City staff, including performing localized structural assessments, geotechnical investigation, future mitigation, and permitting work.

## **PUBLIC OUTREACH**

The RFP was issued and was successfully advertised to over 15,000 registered Biddingo users. The City utilized the newspaper publications in the Daily Journal Corporation newsgroup to outreach through the following:

- San Francisco Daily Journal,
- Business Journal, Riverside
- Daily Commerce, Los Angeles
- Los Angeles Daily Journal
- Orange County Reporter, Santa Ana
- San Jose Post-Record, San José
- The Daily Recorder, Sacramento
- The Daily Transcript, San Diego
- The Inter-City Express, Oakland

Utilizing the Caltrans database (<https://dot.ca.gov/programs/civil-rights/debe-search>) and the Small Business Administration website ([https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm)), and emails inviting businesses to participate were sent to 32 companies registered as Disadvantaged Business Enterprises and 37 registered as Woman-Owned Business Enterprises.

This memorandum will be posted on the City's website for the August 9, 2022 City Council meeting.

## **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the Housing Department, and the City Manager's Office of Emergency Management.

## **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

## **FISCAL/POLICY ALIGNMENT**

On February 25, 2021, City Council approved the 2021-2022 City Initiatives Roadmap which included the “Soft Story Building Earthquake Retrofit Policy” initiative (CR 26) as part of the “Emergency Management and Preparedness” Enterprise Priority. On May 16, 2022, City Council approved the 2022-2023 City Initiatives Roadmap which continued the prioritization of the “Soft Story Building Earthquake Retrofit Policy” as part of the scope of the “Disaster Ready and Climate Smart” initiative, part of the “Resilient and Sustainable City Infrastructure and Emergency Preparedness” Enterprise Priority. The scope of this initiative is to develop a multifamily soft story seismic mitigation ordinance and an incentive retrofit program. The policy seeks to mitigate the loss of life by reducing the structural vulnerabilities of buildings that are at risk of collapse in a seismic event.

This initiative aligns with the established City Enterprise Priority “Resilient and Sustainable City Infrastructure and Emergency Preparedness,” which states: Great cities are built on great infrastructure—often-invisible networks of pipes, wires, roads, facilities, and spaces that connect us—in every neighborhood. Today, our infrastructure is challenged by age, climate change, disasters, and is under pressure to grow. Only a “regenerative” approach to our City infrastructure can meet both the needs of our people (equity) and live within the capacity of the planet (environment). A regenerative approach shifts from excessive consumption to reuse (restoring what we consume) with resilience and sustainability built in. When it comes to resilience, the lives and safety of our residents is one of our most fundamental obligations and we must continue to prioritize the work of ensuring San José is well-prepared for the next disaster, with a clear focus on supporting those who are most vulnerable.

## **COST SUMMARY/IMPLICATIONS**

The goal of this project is to ensure a robust Citywide Soft Story Seismic Retrofit program. To that end, funds will be utilized to ensure goal achievement:

- a. Up to \$949,458 for Phase I which includes a 10% reserve fund for unforeseen items;
- b. Up to \$376,367 for Phase II which includes a 10% reserve fund for unforeseen items, contingent on approval of project submittals from Phase I and approval of Phase II implementation by FEMA; and
- c. Due to the nature of the project, some activities, such as within Program Development or FEMA compliance, will overlap between Phase I and II. Funds may be transferred between line items to accommodate these overlaps to ensure uninterrupted project progress.

### 1. COST ELEMENTS OF AGREEMENT/CONTRACT:

#### Phase I

Inventory Report	\$291,420
Mitigation Strategies	\$245,960
Program Development	\$135,204
Citywide Ordinance	\$29,048

FEMA compliance and Phase II application	\$161,512
10% Reserve for unforeseen items (upon request by City)	\$86,314
<b>Subtotal</b>	<b>\$949,458</b>

<u>Phase II</u> (Contingent on FEMA approval and release of additional funds)	
Program Implementation	\$342,152
10% Reserve for unforeseen items (upon request by City)	\$34,215
<b>Subtotal</b>	<b>\$376,367</b>

**AMOUNT OF RECOMMENDATION/CONTRACT** **\$1,325,825**

2. SOURCE OF FUNDING:  
General Fund (001) – Federal Hazard Mitigation Program Grant (Appropriation 221O)
3. FISCAL IMPACT:  
No additional cost increase is being recommended with this memorandum. The grant award provides a 75% Federal share and requires a 25% non-Federal share (local match) provided by the City. The total grant amount of \$1,405,979 has been appropriated to a Citywide appropriation in the General Fund, in addition to a local match of \$481,014 that has been appropriated in the Community Development Block Grant Fund and managed by the Housing Department.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum and any remaining project costs for Phase I activities. Phase II activities will be funded by FEMA upon the approval of all Phase I deliverables and the acceptance of Phase II scope of work.

Fund #	Appropriation #	Appropriation Name	Total Appropriation	Amt. for Consultant Agreement	2022-2023 Proposed Budget Page	Last Budget Action (Date, Ord. No.)
001	221O	Hazard Mitigation Grant Program	\$1,405,979	Up to \$949,458 (Phase I)	N/A	06/21/22 Ord. 30790

\*Additional Funds from FEMA will be brought forward for acceptance and appropriation by the City Council for Phase II at a later date.



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**CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (new or amended) resulting in no physical changes to the environment.

/s/

CHRISTOPHER BURTON

Director, Planning, Building and Code Enforcement

For questions, please contact Lisa Joiner, Deputy Director, Planning, Building, and Code Enforcement, at (408) 535-7757.