

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SCHRAM CONSTRUCTION, INC.,

Plaintiff and Appellant,

v.

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA et al.,**

Defendants and Respondents;

SOUTHLAND INDUSTRIES,

**Real Party in Interest and
Respondent.**

A125808

**(City & County of San Francisco
Super. Ct. No. 09-509241)**

**ORDER MODIFYING OPINION
AND DENYING REHEARING
[CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on August 24, 2010, be modified as follows:

1. On page 15, line 18, delete the word “believing” and replace with “claiming it believed,” so that the sentence reads as follows: “But SCI did not bid on an alternative package with the same scope of work, claiming it believed it could be awarded BP1 and BP2, if its combined best value ratios on these packages were less than those on BP ALT-1, 2.”

2. On page 21, line 3, of the first full paragraph beginning “We conclude the . . .” add additional citations following § 10520: “(§ 10520; see *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 908 [setting aside a contract, not on minor technicalities, but when the deviation is capable of facilitating corruption or

extravagance, or is likely to affect the amount of bids or the response of potential bidders]; see also *Konica Business Machines U.S.A., Inc. v. Regents of University of California* (1988) 206 Cal.App.3d 449, 456-457 [contract set aside for failure to strictly comply with bidding requirements]; *Charles L. Harney, Inc. v. Durkee* (1951) 107 Cal.App.2d 570, 578 [statute requiring the letting of contracts by competitive bidding is mandatory, and a contract made without compliance is void and unenforceable as in excess of the agency's power].)”

3. On page 22, delete “DISPOSITION” and accompanying paragraph and replace with:

“DISPOSITION¹⁷

The judgment is reversed. The matter is remanded to the trial court with directions to enter a new and different judgment granting the petition, issue a writ of mandate setting aside the subcontract between Southland and DPR, and conduct such further proceedings in this matter as it may deem advisable and within its jurisdiction, in a manner consistent with the views expressed in this opinion.¹⁸ Costs are awarded to SCI.”

¹⁷ Following oral argument and submission of the cause for decision, the parties advised the court that they had reached a settlement, “conditioned upon (1) this court granting a stay of this matter; (2) the nonissuance of a decision on the appeal to allow the settlement to move forward; and (3) approval by the Regents [of the University] on September 15, 2010.” Because this case presents issues of continuing public interest that are likely to recur, we decline to order a stay of this matter and, in our discretion, decide the appeal on the merits. (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2009) § 6:125.1; *Cadence Design Systems, Inc. v. Avant! Corp.* (2002) 29 Cal.4th 215, 218, fn. 2; *Baluyut v. Superior Court* (1996) 12 Cal.4th 826, 829, fn. 3.)

¹⁸ The court expresses no opinion as to what extent the University may be required to conduct a rebid for the mechanical and plumbing work on the Energy Center and Outpatient Building.

The order modifying the opinion in this matter changes the appellate judgment.
(Cal. Rules of Court, rule 8.264(c)(2).)

The petitions for rehearing are denied.

Date _____ P.J.

Superior Court of the City and County of San Francisco, No. 09-509241, Peter J. Busch, Judge.

Leonidou & Rosin, Janette G. Leonidou and A. Robert Rosin for Plaintiff and Appellant.

Charles F. Robinson, Stephen P. Morrell, David E. Bergquist, University of California, Office of the General Counsel for Defendant and Respondent The Regents of the University of California.

Allen Matkins Leck Gamble Mallory & Natsis, Raymond M. Buddie, Rick W. Grady for Defendant and Respondent DPR Construction, Inc.

Woodruff, Spradlin & Smart, M. Lois Bobak, for Real Party in Interest and Respondent.