

REPORT OF GENERAL MANAGER

NO. 05-57

DATE March 2, 2005

C.D. 14

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: STATE STREET RECREATION CENTER - FIELD IMPROVEMENTS
(#1353A)(W.O. # E170957F) - REVIEW OF BIDS AND AWARD OF
CONTRACT

* K. Chan	<u><i>Kel</i></u>	J. Kolb	_____
J. Combs	_____	F. Mok	_____
H. Fujita	_____	K. Regan	_____

Robert H. Jensen
General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATION:

That the Board:

1. Find that it is in the best interest of the City to waive as an informality, in accordance with Charter Section 371c, the requirement of Thomsen Landscape, to perform no less than 50% of the work, and find that this omission does not disadvantage other bidders.
2. Accept the base bid of Thomsen Landscape in the amount of \$161,400.00 as the lowest responsible bidder;
3. Award the contract in the total amount of \$161,400.00 to Thomsen Landscape, all according to plans and specifications;
4. Authorize the Chief Accounting Employee to encumber funds in the amount of \$161,400.00 from the following fund and account numbers under the awarding authority of this Board Report;

<u>FUNDING SOURCE</u>	<u>FUND/DEPT/ACCT NO.</u>	<u>AMOUNT</u>
Prop 12 Per Capita	45W/22/V434	\$ 120,000.00
Quimby	302/89/440KST	\$ 41,400.00

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5. Request staff to prepare a contract subject to approval of the City Attorney, after which the President and Secretary be authorized to execute the same after the appropriate signatures by the other parties thereto and approval as to form by the City Attorney have been obtained thereon.

SUMMARY:

On October 20, 2004, the Board approved final plans and call for bids for the State Street Recreation Center – Field Improvements (#1353A)(W.O. #E170957F), located at 716 N. State Street, Los Angeles, CA 90033 (Report No.04-312). The scope of work includes the following:

1. Replacement of the irrigation system at the sportsfield.
2. Replacement of infield mix at the baseball field.
3. Replacement of the existing electrical service.
4. Renovation of the sportsfield

On December 7, 2004, the following bids were received:

<u>Designer</u>	<u>Estimate</u>
Recreation and Parks Planning & Construction Division	\$116,400.00

<u>BIDDER</u>	<u>Base Bid</u>	<u>Deductive Alternate No. 1</u>
Thomsen Landscape	\$161,400.00	\$45,000.00

<u>BIDDER</u>	<u>Base Bid</u>	<u>Deductive Alternate No. 1</u>
Ryco Construction, Inc.	\$224,422.00	\$34,441.00

<u>BIDDER</u>	<u>Base Bid</u>	<u>Deductive Alternate No. 1</u>
Belaire-West Landscape, Inc.	\$178,450.00	\$45,000.00

Thomsen Landscape submitted the lowest base bid, as shown above. One deductive alternate was also included in the bid packages, but as there are sufficient funds to award the Base Bid and to allow for contingencies during the construction of the project, it is recommended that the project be awarded without the deductive alternate being exercised. The project was presented to the Prop K Steering Committee on February 24, 2005, and they are recommending that the Board award the Base Bid amount of \$161,400.00, at this time.

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Staff has reviewed the outreach effort made by Thomsen Landscape and, based on the documents submitted, has determined that a "good faith" effort has been made. The contractor obtained a MBE/WBE participation of 2% and satisfied 80 of the 100-point requirements outlined by the Board's outreach program. The outreach Document Package is on file in the Board Office and a synopsis of said package is attached. Thomsen Landscape proposes to perform approximately 48.4% of the contract work, and will subcontract 51.6% of the work.

The bid documents for this project state "the Prime contractor shall perform, with its own organization, contract work amounting to at least 50%." Recreation and Parks staff calculated Thomsen Landscape's total listed subcontracting work amount to be 51.6%, or a total deviation of 1.6% from the required contractor participation. Staff recommends that the Board find that this small deviation in the prime contractor participation amount submitted by Thomsen Landscape to be inconsequential and that did not affect the bid amount or give Thomsen Landscape an advantage or benefit not allowed to other bidders.

The capability of each prime contractor and the need for subcontracting work differs among prime contractors, but historically, subcontracting work generally tends to be more costly to the prime contractor than doing the work with its own forces. This is because of the added profit and added overhead of the subcontractor which have to be built into the sub-bid.

The California Appellate Court Case entitled; Ghilotti Construction Co. v. City of Richmond (May 1996), involved a similar deviation from the required percentage of work requirement for a prime contractor. In the Ghilotti case, the awarding authority had a requirement for a prime contractor perform 50% of the contract work and the prime contractor's bid only demonstrated that it was going to do approximately 44.5% of the work. The awarding authority, after review of all the facts, found this to be an "inconsequential deviation" from the 50% requirement. The Appellate Court agreed with the awarding authority and further stated that "strict compliance with bidding requirements does not preclude the contracting entity (the Board of Public Works in this case) from waiving inconsequential deviation." The court ruling advised that to be considered inconsequential, a deviation must neither give the bidder an unfair competitive advantage nor otherwise defeat the goals of insuring economy and preventing corruption in the public contracting process.

Based on the above, staff recommends that the Board find that this small deviation in Thomsen Landscape's bid could not have affected Thomsen Landscape's bid amount or given Thomsen Landscape an advantage or benefit not allowed other bidders. The 1.6% above the 50% requirement bldg. translates to only \$2,600.00. Even if 100% of this amount is applied to the advantage of Thomsen, this is still not enough to bridge the gap between the other bidders. Based on this, it is staff's view that the amount is not significant. It should be noted that there are only sufficient funds to award the base bid of Thomsen Landscape. The other bids were higher than the available funds. Staff recommends that the Board accept Thomsen Landscape's bid as submitted. If approved by the Board, Staff will remind Thomsen Landscape that the acceptance of the bid does not constitute Board approval to deviate from the prime participation requirements in future bids. The Bureau of

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Contract Administration staff will continue to monitor Thomsen Landscape for compliance with their subcontracting pledges as well as all other requirements.

The City Attorney and staff have reviewed the bids submitted by Thomsen Landscape and found them to be in order. Thomsen Landscape is the lowest responsible bidder.

Staff reviewed the responsiveness and work performance of Thomsen Landscape on past Department projects and found them to be satisfactory. The Department of Public Works, Office of Contract Compliance (OCC) indicated that there have been no labor compliance violations and that all other legal requirements have been complied with by the bidder.

This report was prepared by Robert Gutierrez, Project Manager, and reviewed by Neil Drucker, Program Manager, Recreational and Cultural Facilities Program; and by Bradley M. Smith, P.E., Bureau of Engineering.

GUIDELINES FOR EVALUATION OF GOOD FAITH EFFORT CHECKLIST

Bidder: Thomsen Landscape

Bid Date: December 7, 2004

Project Name: State Street Recreation Center - Field Improvements - W.O. #E170957F

Indicator	Required Documentation	Description of Submitted or Missing Documentation	Points	
1	The bidder's or proposer's efforts to obtain participation by MBEs, WBEs and other business enterprises could reasonably be expected by the Board of Recreation and Park Commissioners (the "Board") to produce a level of participation by interested sub-contractors, including 15% MBE and 2% WBE.		10	0
2 Pre-Bid Meeting	a) Attend pre-bid meeting and be listed on the attendance sheet; or b) Submit a letter prior to the pre-bid meeting either by fax to (213) 847-5172, or by mail to the Bureau of Engineering, Project Award and Control Division, 600 S. Spring, 6 th Floor, Los Angeles, Ca. 90014		10	0
3 Work Areas	Proof of this must be demonstrated in either Indicator 4 or 5.		13	13
4 Ad	A copy of the advertisement or a proof of publication statement or other verification which confirms the date the advertisement was published. The advertisement must be specific to the project, not generic, and may not be a planholder advertisement provided by the publication. It should include the City of Los Angeles project name, name of bidder, areas of work available for subcontracting, and a contact person's name and telephone number, information on the availability of plans and specifications and the bidder's policy concerning assistance to subcontractors in obtaining bonds, lines of credit and/or insurance. Consideration will be given to the wording of the advertisement to ensure that it did not exclude or seriously limit the number of potential respondents.		9	9
5 Letters to Potential Subs	A copy of each letter sent to available MBEs, WBEs and OBEs for each item of work to be performed. If there is only one master notification, then a copy of the letter along with a listing of all recipients will suffice. Faxed copies must include the fax transmittal confirmation slip showing the date and time of transmission. Mailed letters must include copies of the metered envelope or certified mail receipts. Letters must contain areas of work to be subcontracted, City of Los Angeles project name, name of the bidder, and contact person's name, address, and telephone number.		10	10
6 Follow-up to Letters	A copy of telephone logs. These logs must include the name of the company called, telephone number, contact person, who did the calling, time, date, and the result of the conversation. Bidder must follow-up with all subcontractors to whom they sent letters.		10	10
7 Plans	Include in Indicator 4 or 5, information detailing how, where and when the bidder will make the required information available to interested subcontractors.		5	5
8 Outreach Letters	A copy of each letter sent to outreach agencies requesting assistance in recruiting MBEs, WBEs and OBEs. Faxed copies must include the fax transmittal confirmation slip showing the date and time of transmission. Mailed letters must include copies of the metered envelopes or certified mail receipts. Letters must contain areas of work to be subcontracted, City of Los Angeles project name, name of the bidder, and contact person's name, address, and telephone number.		10	10
9 Negotiate in Good Faith	a) Copies of all MBE/WBE/OBE bids or quotes received; and b) Summary sheet organized by work area, listing bids received and the subcontractor selected for that work area. If the bidder elects to perform a listed work area with its own forces, they must include a bid that shows their own costs for the work.		26	26
10 Bonds	Include in Indicator 4 or 5, information about the bidder's efforts to assist with bonds, lines of credit and insurance.		7	7
TOTAL POINTS ACHIEVED			80	
MBE =0% WBE= 2% OBE=49%			MBE/WBE ACHIEVED: 2%	
PRIME=48.4%				