

APPROVED
JUL 23 2008

REPORT OF GENERAL MANAGER

NO. 08-228

DATE July 23, 2008

**BOARD OF RECREATION
and PARK COMMISSIONERS**

C.D. 14

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: BOYLE HEIGHTS SPORTS CENTER - SOCCER STADIUM AND ENHANCED LANDSCAPING (W.O. #E170193F) – AWARD OF ADDITIVE ALTERNATES AND ADDITIONAL FUNDING

R. Adams _____	J. Kolb _____
H. Fujita _____	F. Mok _____
S. Huntley _____	K. Regan _____
V. Israel _____	*M. Shull _____

RAH

Roy Coleman
General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

- Award all four (4) Additive Alternates Nos. 1, 2, 3, and 4, all according to the plans and specifications to Park West Landscape, Inc., for a total contract amount of \$1,549,550;
- Authorize the Chief Accounting Employee to encumber an additional \$35,675 in available funds in the following fund and account numbers for a total encumbrance amount of \$1,549,550;

ADDITIONAL FUNDING

<u>FUND SOURCE</u>	<u>FUND NO./ DEPARTMENT NO./ ACCOUNT NO.</u>	<u>AVAILABLE AMOUNT</u>	<u>PREVIOUS FUNDING PER BR 08-192 AMOUNT</u>	<u>ENCUMBRANCE AMOUNT</u>
Board Report No. 08-192	Board Report No. 08-192		\$ 1,513,875.00	\$ 1,513,875.00
Proposition K YR 10 Inflation	43K/10/A574	\$ 457,160.00		\$ 35,675.00
TOTAL FUNDING				\$ 1,549,550.00

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3. Request the staff to prepare a contract, including a “funding clause,” limiting the City’s liability for the contract payments to the amount of funding appropriated by the City for this contract, which is \$1,249,550, limiting the contractor’s obligation to perform the contract, as further described in this report; and

SUMMARY:

Board Report No. 08-192 was before the Board of Recreation and Park Commissioners (Board) on July 9, 2008. The report recommended that Park West Landscape, Inc., (Park West) be found unresponsive due to its failure to submit City Ethics Commission (CEC) Form 50. It also recommended that Environmental Construction, Inc., (ECI) be found the lowest responsive and responsible bidder for the Boyle Heights Sports Center – Soccer Stadium and Enhanced Landscaping project. During the meeting, Park West protested the recommendation to find them unresponsive. Park West stated that the CEC Form 50 was submitted with their bid package and that they should be awarded the contract. The Board Secretary, Bureau of Engineering, and the City Attorney provided additional testimony for the Board’s consideration. See attached excerpt from the Board meeting dated July 9, 2008.

On July 9, 2008, the Board approved the award of contract to Park West on the condition that no later than the close of the business day, July 9, 2008, that they provide to the Department an affidavit under penalty of perjury swearing that they had included the required CEC Form 50 in their original submission. If Park West provided the affidavit, then they would be awarded the contract and if they failed to provide the affidavit, the award would go to the second lowest bidder, ECI as originally recommended in Board Report No. 08-192. The intention of the Board was not to waive the obligation, but rather to give credence to Park West’s assertion that they met the obligation.

The Board received the notarized letter from Park West, prior to close of business, July 9, 2008. The letter states the following: “This is to certify that the Bidder Certification CEC Form 50... was wet signed and attached to our proposal which was submitted on April 22, 2008. I certify under PENALTY OF PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.” Park West met the conditions of the Board and therefore, they have been awarded the contract.

The original board report provided funding instructions in Recommendations No. 4 and 5. The funds provided for the ECI Base Bid amount of \$1,171,250 plus four (4) Additive Alternates in the amount of \$342,625 for a total award amount of \$1,513,875. Additional funding need to be encumbered because Park West’s bid including the additive alternates exceed this amount. Park West’s Base Bid amount of \$1,110,636 plus four (4) Additive Alternates in the amount of \$438,914 total \$1,549,550. Therefore, it is necessary to encumber an additional \$35,675 to fully fund the contract.

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Following the Board meeting, ECI submitted a protest letter. The protest letter dated July 9, 2008 states the following: "Park West Landscape, Inc omitted the CEC Form 50 from their bid, this constitute a material defect to their bid, it is our understanding the Board of Supervisors does not have the Authority to Waive a material defect on a Public Contract bid. We request in accordance with the Public Contract Code that the Bid of Environmental Construction, Inc be found the Lowest, most Responsible/Responsive bid."

The Board sent a response letter to the protest. The response letter dated July 14, 2008 states the following: "Please be advised that the Commission did not waive the non-submittal of the CEC Form 50, but instead found, on the basis of the evidence presented to the Commission, that the form was submitted with their bid."

Attached are copies of the protest letters from ECI and the Board's response.

A second protest letter was submitted by the Legal Firm of Monteleone and McCrory, LLP, on behalf of ECI on July 14, 2008. The letter states the following: "The basis for this formal bid protest is that the lowest bidder, Park West Landscape, Inc ("Park West") is non-responsive pursuant to the bidding criteria established by the City of Los Angeles ("City") in its bid documents as well as Los Angeles Municipal Code Section 48.09(H). Specifically, Park West failed to submit City Ethics Commission Form 50 with its bid..." The Board has not responded to Monteleone and McCrory's letter, but may do so during the meeting when this report is considered.

FISCAL IMPACT STATEMENT:

There is no anticipated fiscal impact to the Department's General Fund. The project's costs will be fully funded by the above listed funding sources specifically identified and approved for this project. The assessments of the future operations and maintenance costs have yet to be determined and would be addressed in a future budget request.

This report was prepared by Cathie Santo Domingo, Recreation and Cultural Facilities Program, Bureau of Engineering. Reviewed by Neil Drucker, Program Manager, Recreational and Cultural Facilities Program, Bureau of Engineering; Deborah Weintraub, Chief Deputy City Engineer, Bureau of Engineering; and Michael A. Shull, Superintendent, Planning and Development, Department of Recreation and Parks.

EXCERPT FROM THE MINUTES OF THE SPECIAL MEETING
 BOARD OF RECREATION AND PARK COMMISSIONERS
 JULY 9, 2008

GENERAL MANAGER'S REPORT:

08-192

BOYLE HEIGHTS SPORTS CENTER - SOCCER STADIUM AND ENHANCED
 LANDSCAPING (W.O.#E170193F) - REVIEW OF BIDS AND AWARD OF CONTRACT

Neil Drucker, Bureau of Engineering, amended the "Approved Funding" on Page 2 of the report as follows:

FUND SOURCE	FUND NO./ DEPARTMENT NO./ ACCOUNT NO.	GRANT AMOUNT	AVAILABLE AMOUNT	ENCUMBRANCE AMOUNT
Proposition K YR 9	43K/10/Y574	\$ 200,000.00	\$ 160,230.95	\$ 160,230.95
Proposition K YR 10	43K/10/A574	\$ 1,300,000.00	\$ 1,300,000.00	\$ 1,000,000.00
Proposition K YR 10 Inflation	43K/10/A574	\$ 457,160.00	\$ 457,160.00	\$ 53,644.05
Proposition 12 Youth Soccer ⁽¹⁾	205/891/AG04	\$ 300,000.00	\$ 300,000.00	\$ 300,000.00 ⁽²⁾
TOTAL FUNDING		\$ 2,257,160.00	\$ 2,217,390.95	\$ 1,513,875.00

President Barry Sanders motioned to amended the report as follows:

"This contract be awarded to Park West Landscape on the condition that no later than close of business today, they provide to the Department an affidavit under penalty of perjury swearing that they had included the required Ethics document in their original submission. If they do that they get the award. And, if they fail to do that the award should go to the second lowest bidder that was earlier recommended. The intention is not, in fact, to waive the obligation, it is rather to give credence to their assertion that they met the obligation."

Motion

It was moved by President Sanders, seconded by Commissioner Spelling that Report No. 08-192 be approved as amended. There being no objections, the Motion was unanimously approved.

ENVIRONMENTAL CONSTRUCTION, INC.

**General Engineering Contractors
21550 Oxnard Street, Suite 1050
Woodland Hills, CA 91367**

July 9, 2008

City Of Los Angeles Department of Recreation and Parks
1149 S. Broadway
Los Angeles, CA 90015

Att: Somsak Poolperm
Project Manager

Re: Boyle Heights Sports Center W.O. #E170193F

Gentleman:

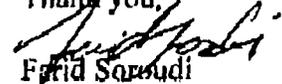
Environmental Construction, Inc hereby submit a protest on their Bid of Park west Landscapes Inc. for the above noted Project.

Park West Landscape, Inc omitted the CEC form 50 from their bid, this constitute a material defect to their bid, it is our understanding that the Board of Supervisors does not have the Authority to Waive a material defect on a Public Contract bid.

We Request in accordance with the Public Contract Code that the Bid of Environmental Construction, inc be found the Lowest, most Responsible/Responsive Bid.

For Additional Information Please contact me at (818) 449-8920

Thank you,


Farid Samudi
President

RECEIVED
CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS
JUL 10 2008 11:17 AM

BOARD OF RECREATION AND
PARK COMMISSIONERS

BARRY A. SANDERS
PRESIDENT

LUIS A. SÁNCHEZ
VICE PRESIDENT

MARIA A. CASILLAS
CANDY SPELLING
JOHNATHAN WILLIAMS

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

DEPARTMENT OF
RECREATION AND PARKS
1200 W. 7TH ST.
SUITE 762
LOS ANGELES, CA 90017

(213) 928-9040
FAX - (213) 928-9048

JON KIRK MUKRI
GENERAL MANAGER

July 14, 2008

VIA FAX AND CERTIFIED MAIL

Environmental Construction, Inc.
General Engineering Contractors
21550 Oxnard Street, Suite 1050
Woodland Hills, CA 91367

Attention: Mr. Farid Soroudi

RE: **BOYLE HEIGHTS SPORTS CENTER (W.O. #170193F) - PROTEST OF
CONTRACT AWARD**

Dear Mr. Soroudi:

This letter is in response to your letter received in our office July 9, 2008 protesting the award of the Boyle Heights Sports Center (W.O. #170193F) project to Park West Landscapes, Inc.

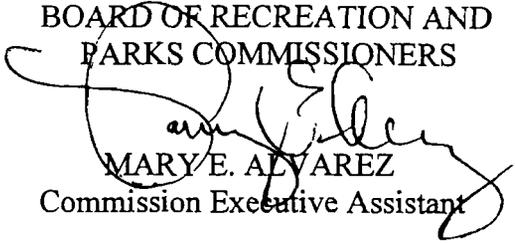
In your letter, you stated that the Board of Commissioners does not have the authority to waive the non-submittal of the CEC Form 50 for the Park West Landscapes, Inc., bid. Please be advised that the Commission did not waive the non-submittal of the CEC Form 50, but instead found, on the basis of the evidence presented to the Commission, that the form was submitted with their bid.

The Board appreciates your interest in bidding on this project and hopes that you will participate in future bidding.

If you have any questions or concerns, please contact the undersigned at (213) 928-9040.

Sincerely,

BOARD OF RECREATION AND
PARKS COMMISSIONERS


MARY E. ALVAREZ
Commission Executive Assistant

cc: Mark Brown, Sr. City Attorney
Regina Adams, Executive Officer
Mike Shull, Planning & Development
Neil Drucker, BOE

Sent By: Monteleone;

213 812 9830;

Jul-14-0 2:40PM;

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STEPHEN MONTELEONE
(800-1987)**MONTELEONE & McCRORY, LLP**

LAWYERS

A LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATION
225 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90012-5448
TELEPHONE (213) 612-9800
FACSIMILE (213) 612-9830ORANGE COUNTY OFFICE
480 WEST FOURTH STREET, SUITE 150
SANTA ANA, CALIFORNIA 92701TELEPHONE
(714) 506-3170FACSIMILE
(714) 506-3171

OUR FILE NUMBER

July 10, 2008

14687

VIA CERTIFIED U.S. MAIL
(Return Receipt Requested)Somsak Poolperm
Project Manager
City of Los Angeles
Department of Recreation and Parks
1149 S. Broadway
Los Angeles, CA 90015***Bid Protest***Boyle Heights Sports Center -- Soccer Stadium and Enhanced Landscaping
(W.O. #E170193F)
Bid Date: April 22, 2008

Dear Mr. Poolperm:

This office represents Environmental Construction, Inc. ("ECI"), the second lowest bidder on the above-referenced project. Please consider this letter ECI's protest of the award of a contract for this project to any bidder other than ECI.

The basis for this formal bid protest is that the lowest bidder, Park West Landscape, Inc. ("Park West") is non-responsive pursuant to the bidding criteria established by the City of Los Angeles ("City") in its bid documents as well as Los Angeles Municipal Code section 48.09(H). Specifically, Park West failed to submit City Ethics Commission Form 50 with its bid for the above-referenced project.

As set forth in Municipal Code section 48.09(H), "Any bidder for a contract, as those terms are defined under the Contractor Responsibility Program provided for in Los Angeles

LAW OFFICES
MONTELEONE & MCCRODY, LLP

Somsak Poolperm
July 10, 2008
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Administrative Code Section 10.40.1, shall submit with its bid a certification, on a form proscribed by the City Ethics Commission, that the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if the bidder qualifies as a lobbying entity under the Ordinance. . . . Each City department shall include a copy of the Municipal Lobbying Ordinance in each invitation for bids, request for proposals, request for qualifications or other solicitation related to entering into a contract with the City."

Not only does Park West's failure to submit City Ethics Commission Form 50 render its bid non-responsive, but it also gives Park West an unfair competitive advantage. By failing to submit the required ethics form with its bid, Park West could look at all the bids after the bid opening date, decide it does not like the results (i.e., if it determines its bid was too low), and then disclose (either directly or through a proxy) that it failed to submit all the required documentation so that it would not be awarded the project.

Moreover, it sets a troubling precedent: Anytime a bidder fails to submit a required document or form with its bid either because it wants to give itself an opportunity to back out of a bid or because it simply has failed to complete the document on time (such as, for example, an MBE/WBE/OBE Outreach Document Package, payment/performance bonds or other necessary documents), the bidder could simply assert in a declaration that it timely submitted the required documents and claim the City lost them. This gives Park West a benefit not available to the other bidders who scrupulously adhered to the City's bidding instructions.

Another troubling aspect of awarding the project to Park West is the appearance of favoritism. ECI is aware of no other public works project where a contractor who failed to submit bidding documents mandated by law has been permitted to avoid the consequences of its non-responsive bid by filing a declaration claiming it did submit its documents.

Inasmuch as this constitutes an unfair competitive advantage, the law is clear that these irregularities cannot be waived by the City. *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 49 Cal.Rptr.2d 184. Competitive bidding for public contracts is intended to stimulate advantageous marketplace competition by ensuring a level playing field for bidders in the public works arena. *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 173, 36 Cal.Rptr.2d 521. To award Park West under these circumstances would undermine the integrity of the public bidding process and would set a dangerous precedent.

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Somsak Poolperm

July 10, 2008

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For all of these reasons, ECI protests the award of a contract for the project to Park West Constructors, Inc., and requests that the contract for the project be awarded to the lowest responsible and responsive bidder, ECI. It is ECI's hope that these issues can be resolved through this bid protest letter and without further action.

Very truly yours,

MONTELEONE & McCRORY, LLP

By: 
JEFFREY S. HURST

cc: Mark Brown, Esq. (Via fax & First Class U.S. Mail)
Office of the City Attorney
200 N. Main St. 700 CHE
Los Angeles, CA 90012
Fax (213) 978-8211