

APPROVED
APR 05 2006

REPORT OF GENERAL MANAGER

NO. 06-78

DATE April 5, 2006

BOARD OF RECREATION
and PARK COMMISSIONERS

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BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: STUDIO CITY RECREATION CENTER – BUILDING IMPROVEMENTS
(PRJ1814A) – PROJECT CLOSEOUT AND FINAL DISPOSITION OF FUNDS

J. Combs _____	J. Kolb _____
H. Fujita _____	F. Mok _____
S. Huntley _____	K. Regan _____
B. Jensen _____	*M. Shull _____

M. Fuller

Robert Jensen (fn)
General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Acknowledge the completion of Studio City Recreation Center – Building Improvements (PRJ1814A) project, initiated through the bid process with a private contractor, Damon General Construction (Damon) and completed by the Department of Recreation and Parks facility repair staff as outlined in the body of this report; and,
2. Authorize the forfeiture of \$39,191.28 of the retention monies withheld from Damon as restitution for underpayment of the prevailing wage rate by Damon and nine of Damon’s subcontractors; and,
3. Instruct the Department’s Chief Accounting Employee to transfer the aforementioned forfeiture funds to the Bureau of Contract Administration's Office of Contract Compliance (OCC).

SUMMARY:

A construction contract (Contract No. 2919) in the amount of \$269,000 for the Studio City Recreation Center – Building Improvements (PRJ1814A) project was awarded to Damon on December 8, 1999 (Board Report No. 505-99). The total project funding available was \$653,545, which consisted of \$415,864 in Quimby funds and \$237,681 in Proposition A funds. The project

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scope included renovation of the existing restrooms for ADA compliance and adding a 1,200 square-foot area to accommodate a new director's office, entry lobby, restrooms, and a classroom. The original contract time was 160 work days or until July 17, 2000.

As a result of Damon's continued lack of progress, the Board terminated Damon's contract for cause (Board Report No. 02-167) on September 20, 2002, in accordance with General Provisions Sections 5, 6, 17(a), 21, 29, 51 and 54. During the course of construction, 55 change orders had been issued that increased the total contract amount to \$432,661.40. At the time of the contract cancellation, the Department had paid Damon \$352,721.47 in progress payments, and withheld \$39,191.28 in retention monies.

Due to the urgent necessity to expedite project completion and to avoid a lengthy process to negotiate a take-over or tender agreement with the surety, the Department's facility repair supervisor and staff took over the completion of the construction project and performed the following tasks:

1. Corrected substandard work done by Damon due to poor workmanship;
2. Completed the remainder of the contract work; and,
3. Completed additions to the scope of work including painting the stage area and classroom, and replacing kitchen cabinets.

A letter dated November 4, 2002, was furnished by XL Surety (Damon's surety) that acknowledged and agreed to the arrangement by which City forces would complete the construction using the remaining project funds. All work was completed in January, 2003, and a dedication ceremony was held on February 20, 2003. The remaining project funds were sufficient to cover the costs of the work completed by Department forces.

It was determined by the Bureau of Contract Administration's Office of Contract Compliance (OCC) that Damon failed to submit payroll documents in a timely manner and therefore was in violation of Section 1776 of the California Labor Code; and that Damon and nine of his subcontractors failed to pay their workers the proper prevailing wage rate as mandated in the California Labor Code. The total assessment for the violations, as determined by OCC, was \$194,034.08, which was comprised of \$68,404.28 in wage restitution, \$44,508.96 in liquidated damages, \$80,250.00 in penalties, and \$870.84 in unpaid training fund contributions.

However, Damon filed a delay claim against the City on this project. In late 2005, the City Attorney's Office settled that claim and on December 14, 2005, the City Attorney briefed the Board in a closed session on the settlement agreement and the assessed penalties. Pursuant to the settlement agreement, the City Attorney Liability Fund will pay \$49,850 to Damon representing settlement of

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the delay claim. The Department would also transfer \$39,191.28 of the retention monies withheld from Damon to OCC to pay for the assessed wage restitution, in furtherance of the settlement agreement with Damon by discharge of the OCC assessment.

FISCAL IMPACT STATEMENT:

The facility has been staffed and in operation since the dedication in February 2003. The City Attorney's Liability Fund paid the settlement paid to Damon. The operating and maintenance costs for Studio City Recreation Center are \$204,451 per year, which is included in the Department's General Fund budget appropriation.

Prepared by Paul Tseng, Project Manager, Bureau of Engineering (BOE) Architectural Division. Reviewed by Neil Drucker, Program Manager, BOE Recreational and Cultural Facilities Program; by Bradley Smith, Chief Deputy City Engineer, BOE; by Eric Brown, Deputy City Attorney, City Attorney's Office; by Chris Jenson, OCC, Bureau of Contract Administration.