

**APPROVED**  
JAN 18 2006

REPORT OF GENERAL MANAGER

NO. 06-15

DATE January 18, 2006

**BOARD OF RECREATION  
and PARK COMMISSIONERS**

C.D. 1

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: **DOWNEY RECREATION CENTER – CHILD CARE CENTER (W.O. #E170227F)  
- REVIEW OF BIDS AND AWARD OF CONTRACT**

|            |       |           |           |
|------------|-------|-----------|-----------|
| J. Combs   | _____ | J. Kolb   | _____     |
| H. Fujita  | _____ | F. Mok    | _____     |
| S. Huntley | _____ | K. Regan  | _____     |
| B. Jensen  | _____ | *M. Shull | <u>MS</u> |

*Robert H. Jensen (R)*  
\_\_\_\_\_  
General Manager

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board:

1. Waive as an informality pursuant to the Charter Section 371(c) Tobo Construction, Inc.'s failure to meet the minimum participation level of 20% as discussed in this report, in as much as the variance is 1/2 of 1%, which is deemed inconsequential;
2. Accept the base bid of Tobo Construction, Inc., in the amount of \$1,790,000.00 as the lowest responsive and responsible bidder for the Downey Recreation Center – Childcare Center (W.O. #E170227F);
3. Award the contract in the amount of \$1,790,000.00 to Tobo Construction, Inc., all according to the plans and specifications;
4. Authorize the Chief Accounting Employee to encumber funds in the amount of \$1,790,000.00 from the following fund and account numbers under the awarding authority of this Board Report;

| <u>FUNDING SOURCE</u> | <u>FUND/DEPT/ACCOUNT NO.</u> | <u>AMOUNT</u>   |
|-----------------------|------------------------------|-----------------|
| Prop K - Year 2       | 43K/10/N234                  | \$ 660,000.00   |
| Prop K - Year 6       | 43K/10/T234                  | \$ 354,495.00   |
| Prop A                | 205/89/VH07                  | \$ 260,000.00   |
| CIEP                  | 100/54/T723                  | \$ 390,505.00   |
| CDBG                  | TBD                          | \$ 125,000.00*  |
|                       | TOTAL                        | \$ 1,790,000.00 |

\*These funds are subject to final approval by the Mayor.

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5. Request staff to prepare the contract including a “funding clause” limiting the City’s liability for contract payments to the amount of funding appropriated by the City for this contract which is \$1,707,628.00, as well as so limiting the contractor’s obligation to perform the contract, as further described in this report, after which the Board President and Secretary be authorized to execute the contract after the appropriate signatures by the other parties and approval as to form by the City Attorney have been obtained;
6. Receive and file the bid protest by A.W.I. Builders, Inc, dated October 14, 2005 and find that item number 1 in the protest is a minor informality and can be waived and that item numbers 2 and 3 have been found to have been completed by Tobo Construction, Inc. as discussed in this report; and,
7. Acknowledge that more than one work order number was referenced in the bid package and that the correct work order number for the project is W.O. E170227F.

### SUMMARY:

On August 9, 2005, the Board approved final plans and call for bids for the Downey Recreation Center – Childcare Center (W.O. # E170227F), located at 219 S. Avenue 18, Los Angeles, CA, 90031 (Board Report No. 05-212). The plans provide for the construction of a new childcare center. The following is a general list of the improvements:

1. Construct a new 3,400 square foot Child Care Center that includes a Fire/Life Safety and Security system.
2. Install a new 2,400 square foot concrete patio area.
3. Install a new 2,910 square foot parking lot.
4. Install site landscaping.
5. Install new retaining walls/fences/gates.
6. Provide a certified building pad.

On October 11, 2005, the following bids were received:

| <u>Designer</u>       | <u>Estimate</u> |
|-----------------------|-----------------|
| Bureau of Engineering | \$1,411,500.00  |

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| <u>BIDDER</u>                                  | <u>BID AMOUNT</u> |
|--|-------------------|
| 1. Tobo Construction, Inc.                     | \$ 1,790,000.00   |
| 2. Pac West Construction                       | \$ 1,812,000.00   |
| 3. AWI Builders, Inc.                          | \$ 1,979,911.00   |
| 4. Shefir Construction , Inc.                  | \$ 2,071,000.00   |
| 5. ABEAM Construction, Inc.                    | \$ 2,298,000.00   |
| 6. ICON West, Inc.                             | \$ 2,345,261.00   |
| 7. Metro Builders and Engineers Group, Limited | \$ 2,456,796.00   |
| 8. D A B Construction, Inc.                    | \$ 2,515,000.00   |
| 9. Morillo Construction                        | \$ 2,545,000.00   |
| 10. L.A. Builders                              | \$ 2,577,000.00   |
| 11. Torres Construction                        | \$ 2,698,000.00   |
| 12. Gonzales Construction                      | \$ 3,009,100.00   |
| 13. United Industrial Contractors              | \$ 3,047,876.00   |

Tobo Construction, Inc., submitted the lowest base bid, as shown above. The project was presented to the Prop K Steering Committee on January 13, 2006, and they are recommending that the Board award the Base Bid at \$1,790,000.00 with 10% construction contingency at this time.

Currently, there is \$1,707,628.00 available in funding, as indicated below. The remaining funds required to fully encumber the contract are still pending final approval. The Steering Committee was made aware of this cash flow shortfall and supported going forward with awarding based on the currently available funds, with the remaining funds being made available over the coming months. Therefore, the contract will include the standard "funding liability clause." Under that clause, the City's liability for contract payments under this contract shall only be to the extent of the City appropriation to fund the contract. If the City appropriates the additional funding, the City's liability for contract payments shall be extended to the extent of such appropriation, subject to the terms and conditions of the contract. The Contractor will not be required to do any work in excess of the amount of the current funding, plus additional funding appropriated by the City, if any, for this project.

| <u>Funding Source</u>                  | <u>Budget</u>          | <u>Appropriation</u>   | <u>Fund/Dept/Acct</u> | <u>Avail Balance</u>      |
|--|------------------------|------------------------|-----------------------|---------------------------|
| Fidelity & Guaranty Insurance Company* | \$ 432,732.00          |                        | TBD                   |                           |
| Prop K - Yr 2                          | \$ 978,375.00          | \$ 978,375.00          | 43K/10/N234           | \$ 660,000.00             |
| Prop K - Yr 6                          | \$ 354,495.00          | \$ 354,495.00          | 43K/10/T234           | \$ 354,495.00             |
| Prop A                                 | \$ 300,000.00          |                        | 205/89/VH07           | \$ 260,000.00             |
| CDBG**                                 | \$ 125,000.00          |                        | TBD                   | 0.00                      |
| CIEP                                   | \$ 433,133.00          | \$ 433,133.00          | 100/54/T723           | \$ 433,133.00             |
| <b>Total</b>                           | <b>\$ 2,623,735.00</b> | <b>\$ 1,332,870.00</b> |                       | <b>\$ 1,707,628.00***</b> |

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- \* Settlement agreement was approved by City Council on 10/12/05 (CF 05-1622) but surety is now refusing to execute the settlement agreement. The matter has been referred to the City Attorney, but the funds are not available for the project at this time.
- \*\* Reprogrammed funding approved by City Council on 11/18/05 (CF-05-0093-S4) from the 29<sup>th</sup> and 30<sup>th</sup> Years and currently awaiting verification of eligibility from Community Development and final approval by Mayor.
- \*\*\* This amount does not include the reimbursement of the in-house design labor (to date, \$400,000.00), which will be deferred by the Bureau of Engineering at this time until the CAO has encumbered the additional funding to reimburse staff costs. It is estimated that \$2,204,000.00 will be required to cover all construction related costs (bid plus 12% contingency of \$215,000.00 and construction management/inspection of \$125,000.00).

The bid documents for this project state, "The Prime contractor shall perform, with its own organization, contract work amounting to at least 20 percent." However, their Good Faith Effort Checklist submitted with the bid indicated that the prime would perform 19.5 percent of the work. Tobo Construction, Inc., listed the total subcontracting work amount as 62 percent of the contract amount. The remainder of the work (18.5 percent) would be done either by subcontracts for less than \$10,000.00 each or by Tobo Construction, Inc's., own forces. Tobo Construction, Inc., acknowledges this limitation and understands that the Board cannot approve the inclusion of a new subcontract in excess of \$10,000.00. Staff recommends that the Board find that this small, 1/2 of 1 percent deviation in the prime contractor participation amount submitted by Tobo Construction, Inc., to be inconsequential and that it could not have affected the bid amount or given Tobo Construction, Inc., an advantage or benefit not allowed to other bidders. The Board, in making its determination, may consider the following information:

The capability of each prime contractor and the need for subcontracting work differs among the 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. In addition, subcontracting provides an additional risk for a prime contractor since the prime is responsible for the performance of the subcontractor's share of the work. Essentially, if the subcontractor defaults or does a bad job, the prime contractor is responsible for correcting any problems. This increases the overhead costs for the prime contractor.

The California Appellate Court Case entitled Ghilotti Construction Co. v. City of Richmond (May 1996), involved a similar deviation from a required percentage of work requirement for a prime contractor. In the Ghilotti case, the awarding authority had a requirement that the 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, "strict compliance with bidding requirements does not preclude the contracting entity (the Board of Public Works in this case) from waiving inconsequential deviations." The court ruling advised that to be considered inconsequential, a deviation must neither give the

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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 the bid of Tobo Construction, Inc., could not have affected Tobo Construction, Inc.'s, bid amount or given Tobo Construction, Inc., an advantage or benefit not allowed to other bidders. Staff recommends that the Board accept the bid of Tobo Construction, Inc., as submitted. Staff also recommends that the Board remind Tobo Construction, Inc. that the acceptance of the bid does not constitute Board approval to deviate from the prime participation requirement in future bids. The Bureau of Contract Administration's staff will continue to monitor Tobo Construction, Inc., for compliance with their subcontracting pledges as well as all other requirements.

The third low bidder, A.W.I. Builders, Inc., had submitted a bid protest stating the bids of both the first and second low bidders were non-responsive. The following reasons were listed regarding Tobo Construction, Inc.'s bid:

1. "Price on the proposal form was crossed and corrected without initial"
2. "Schedule B was not filed out" (sic)
3. "The amount of work to be performed by the subcontractor plus the work to be performed by G.C. can not meet the proposed amount".

In item number 1, a correction was made in Tobo Construction, Inc.'s bid price without any initials. In order to submit the lowest bid price, the prime contractor must get the lowest possible prices from the interested subcontractors and suppliers. Routinely, subcontractors and suppliers often delay submitting their lowest prices to the prime contractor until just before the bid deadline in hopes that the prime contractor will not have sufficient time to shop for lower prices from other subcontractors or suppliers. It is not unusual for the prime contractor to cross-out and adjust their bid amount just minutes before the submission deadline to be competitive. As a result, omissions, such as initialing changes in the bid, sometimes occur. Therefore, staff recommends that Tobo Construction, Inc.'s, failure to initial their correction on the Proposal – Schedule of Work and Prices, be waived as a minor informality in accordance with Charter Section 371 (c). Item number 2 has no merit as Tobo Construction, Inc. had completed their Good Faith Effort to outreach to Minority and Women owned Businesses. Item 3 has no merit as previously discussed in this report, as subcontracts for less than ½ of 1% of the contract price or \$10,000.00, which ever is greater, do not have to be listed on Schedule "A" - Subcontractor and Suppliers.

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The City Attorney and staff have reviewed the bids submitted by Tobo Construction, Inc., and found them to be in order. Tobo Construction, Inc., is the lowest responsive and responsible bidder.

Staff has reviewed the outreach effort made by Tobo Construction, Inc., and, based on the documents submitted, has determined that a "good faith" effort has been made. The contractor obtained a MBE/WBE participation of 0% and satisfied 100 of the 100-point requirements outlined by the Board's outreach program thereby satisfying the 75-point minimum requirement. The outreach Document Package is on file in the Board Office and a synopsis of said package is attached.

Staff reviewed the responsiveness and work performance of Tobo Construction, Inc., on other jobs within the City of Los Angeles, and found them to be satisfactory. The Department of Public Works, Office of Contract Compliance (OCC) indicated that there have been no significant labor compliance violations and that the bidder has complied with all other legal requirements.

Staff had previously determined that this project was exempt from the provisions of the requirements of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 2(c) and Article VII, Section 1(c) Class 3 (17) and Section 1(k) Class 11 (7), of the City CEQA Guidelines. A Notice of Exemption was filed with the City Clerk's office on June 27, 2002 and with the County Clerk's office on June 27, 2002.

### FISCAL IMPACT STATEMENT:

There is no anticipated fiscal impact to the Department's budget. The assessments of the future operations and maintenance costs have yet to be determined.

This report was prepared by David Takata, Project Manager, and reviewed by Neil Drucker, Program Manager, Recreational and Cultural Facilities Program; Bradley M. Smith, P.E., Chief Deputy City Engineer, Bureau of Engineering

## GUIDELINES FOR EVALUATION OF GOOD FAITH EFFORT CHECKLIST

**Bidder:** Tobo Construction, Inc.

**Bid Date:** October 11, 2005

**Project Name:** DOWNEY RECREATION CENTER – CHILD CARE CENTER, W.O. # E170227F

| Indicator                         | Required Documentation   | Description of Submitted or Missing Documentation | Points                      |          |
|-----------------------------------|--|---|-----------------------------|----------|
|                                   |  |   | Possible                    | Achieved |
| 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.  |   | 0                           | 0        |
| 2<br>Pre-Bid Meeting              | a) Attend pre-bid meeting and be listed on the attendance sheet; or<br>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 <sup>th</sup> Floor, Los Angeles, Ca. 90014  |   | 10                          | 10       |
| 3<br>Work Areas                   | Proof of this must be demonstrated in either Indicator 4 or 5.   |   | 13                          | 13       |
| 4<br>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 plan holder 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. | No proof of publication                           | 9                           | 9        |
| 5<br>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<br>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<br>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<br>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<br>Negotiate in Good Faith      | a) Copies of all MBE/WBE/OBE bids or quotes received; and<br>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<br>Bonds                       | Include in Indicator 4 or 5, information about the bidder's efforts to assist with bonds, lines of credit and insurance.   |   | 7                           | 7        |
| <b>TOTAL POINTS ACHIEVED</b>      |  |   |                             | 100      |
| <b>MBE =0% WBE = 0% OBE = 62%</b> |  |   | <b>MBE/WBE ACHIEVED: 0%</b> |          |

PRIME=19.5%