

DATE November 16, 2005

C.D. 12

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: NORTHRIDGE PARK - POOL AND BATHHOUSE (W.O. #170600F) – REVIEW OF BIDS AND AWARD OF CONTRACT

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



 General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATION:

That the Board:

1. Find that Morillo Construction, Inc., whose base bid was \$4,690,000.00, is the lowest responsive, responsible bidder for the Northridge Park Pool and Bathhouse Project (W. O. #E170600F);
2. Waive as an informality pursuant to Charter Section 371 (c), Morillo Construction, Inc.'s deviation from the bid requirement that the prime contractor perform at least 50% of the work, in as much as they will be performing approximately 46% of the work (See Ghilotti Construction Co. vs. City of Richmond, 1996, as discussed below);
3. Award the contract, exercising the Deductive Alternate Nos. 1, 2, and 3, in the amount of \$116,700.00, \$198,700.00, and \$202,400.00, respectively, resulting in a total contract amount of \$4,172,200.00 to Morillo Construction, Inc., all according to plans and specifications;
4. Authorize the Chief Accounting Employee to encumber funds in an amount not to exceed \$172,200.00 from the following fund and account numbers under the authority of this Board Report;

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APPROVED FUNDING

<u>Funding Source</u>	<u>Fund/Dept./Acct. No.</u>	<u>Award Amount</u>	<u>Available Balance</u>
Prop. K YR 08	43K/10/W564	\$ 117,691.00	\$ 100,000.00
Prop. K YR 09	43K/10/Y564	\$ 382,184.00	\$ 300,000.00
Quimby	302/89/460KNT	\$ 90,000.00	\$ 90,000.00
Quimby	302/89/440KNT	\$ 60,000.00	\$ 60,000.00
<u>Seismic Bond Fund</u>	<u>608/50/P435</u>	<u>\$ 2,500,000.00</u>	<u>\$ 2,162,200.00</u>
Total		\$ 3,149,875.00	\$ 2,712,200.00

PENDING FUNDING

<u>Funding Source*</u>	<u>Fund/Dept./Acct. No.</u>	<u>Requested Amount</u>	<u>Pending Appropriation Amount</u>
Prop. 12 - RZH	TBD	\$ 446,706.00	\$ 300,000.00
Prop. 40 - 1/3 Per Cap	TBD	\$ 372,089.00	\$ 300,000.00
Prop. 40 - RZH	TBD	\$ 373,381.00	\$ 360,000.00
<u>Sites & Facilities</u>	<u>209/88/W232</u>	<u>\$ 500,000.00</u>	<u>\$ 500,000.00</u>
Total		\$ 1,692,176.00	\$ 1,460,000.00

* Funding availability is conditional upon the City's request and receipt of the grant authorization for the project from the State for Proposition 12 and Proposition 40 and the reallocation of the Sites and Facilities Funds for the project.

5. 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 \$2,712,200.00, as well as so limiting the contractor's obligation to perform the contract, as further described in this report; and
6. Authorize the Board President and Secretary to execute the contract subject to City Attorney approval as to form.

SUMMARY:

On July 13, 2005, the Board approved final plans and call for bids for the Northridge Park Pool and Bathhouse, W. O. # E170600F, located at 10058 Reseda Boulevard, Northridge, CA 91324 (Report No. 05-196).

The low bidder was defined in the bid documents to be the responsive, responsible bidder submitting the lowest base bid. On September 6, 2005, the following bids were received:

<u>Designer</u>	<u>Estimate</u>
Jones & Madhavan Architecture Engineering Thousand Oaks, CA	\$3,400,000.00

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Bidder Name	Base Bid	Ded. Alt. No. 1	Ded. Alt. No. 2	Ded. Alt. No. 3
Morillo Construction, Inc.	\$ 4,690,000.00	\$ 116,700.00	\$ 198,700.00	\$ 202,400.00
Tobo Construction, Inc.	\$ 4,865,900.00	\$ 110,000.00	\$ 120,000.00	\$ 125,000.00
USS Cal Builders, Inc.	\$ 4,887,850.00	\$ 78,000.00	\$ 110,000.00	\$ 135,000.00
United Riggers & Erectors, Inc.	\$ 5,608,175.00	\$ 94,921.00	\$ 100,000.00	\$ 163,494.00

Morillo Construction submitted the lowest base bid, as shown above. Three deductive alternates were also included in the bid packages. It is anticipated that upon the reallocation of Sites and Facilities Funds and the City's request and receipt of the remaining grant authorization for the project from the State, that there will be sufficient funds to award the base bid exercising the deductive alternates.

The total project budget is \$5,142,176.00, excluding deductive alternates totaling \$517,800.00, of which \$4,172,200.00 will be for the construction contract. Currently, there is only \$2,712,200.00 available for construction in Proposition K, Seismic Bond, and Quimby funds, as indicated below. The remaining funds, in the amount of \$1,460,000.00, required to fully encumber the contract are contingent upon the reallocation of Sites and Facilities funds (\$500,000.00) and the City's request of the remaining grant authorization from the State when the Notice to Proceed is issued for the project. These State grant funds, totaling \$1,192,176.00, are from the following: Proposition 12 RZH (\$446,706.00), Proposition 40 1/3 Per Capita (\$372,089.00), and Proposition 40 RZH (\$373,381.00). If these funds are appropriated, the Department's Chief Accounting Employee will be able to encumber the balance required to fund the project. The contractor would be notified of the amount of the appropriation being made to the contract from the additional funding and to continue working until project completion, or until the appropriated funding for the project is expended, which ever comes first. The L. A. for Kids Steering Committee will be made aware that full encumbrance of the contract amount is contingent upon approval of these funds and the receipt of funds from the State at the next scheduled meeting on November 17, 2005.

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<u>Funding Source</u>	<u>Fund/Dept./ Acct. No.</u>	<u>Award Amount / Requested Amount</u>	<u>Encumbrance Amount</u>
General Fund	100/78/3040	\$ 300,000.00	\$0
Prop. K	TBD	\$ 125.00	\$0
Prop. K YR 08	43K/10/W564	\$ 117,691.00	\$ 100,000.00
Prop. K YR 09	43K/10/Y564	\$ 382,184.00	\$ 300,000.00
Quimby	302/89/460KNT	\$ 90,000.00	\$ 90,000.00
Quimby	302/89/440KNT	\$ 60,000.00	\$ 60,000.00
<u>Seismic Bond Fund</u>	<u>608/50/P435</u>	<u>\$ 2,500,000.00</u>	<u>\$ 2,162,200.00</u>
<u>SUBTOTAL APPROVED FUNDING</u>		<u>\$3,450,000.00</u>	<u>\$2,712,200.00</u>
Prop. 12 - RZH	TBD	\$ 446,706.00	\$ 300,000.00
	Pending Grant Award		
Prop. 40 - 1/3 Per Cap	TBD	\$ 372,089.00	\$ 300,000.00
	Pending Grant Award		
Prop. 40 - RZH	TBD	\$ 373,381.00	\$ 360,000.00
	Pending Grant Award		
Sites & Facilities	209/88/W232	\$ 500,000.00	\$ 500,000.00
	Pending Reallocation		
Proposed CIEP 05/06	TBD	\$ 500,000.00	\$0.00*
	Pending Council Approval		
<u>SUBTOTAL PENDING FUNDING</u>		<u>\$2,192,176.00</u>	<u>\$1,460,000.00</u>
GRAND TOTAL		\$5,642,176.00**	\$4,172,200.00

* If approved, these funds will be used to fund the deductive alternates.

** Of this amount, \$2,192,176.00 is conditional upon City Council approval for the proposed CIEP Fund (FY 05/06), the City's request and receipt of the grant authorization for the project from the State for Proposition 12 and Proposition 40, and the reallocation of the Sites and Facilities Funds for the project.

The contract will provide that the City's liability for the contract payments under this contract shall only be to the extent of the City appropriation to fund the contract. If the City does appropriate the additional funding through the reallocation of the Sites and Facilities Funds, the City Council approval of the proposed CIEP Fund (FY 05/06), and the receipt of the funds from the State, the City's liability for contract payments shall be extended to the extent of such appropriation, subject to the terms and conditions of this 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.

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Currently, there are funds available (\$2,712,200.00) to award the contract for this project as outlined in the above table.

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

Staff has reviewed the outreach effort made by Morillo Construction, Inc., and based on the documents submitted, has determined that a "good faith" effort has been made. The contractor satisfied 90 of the 100 points outlined by the Board's Outreach Program, thereby passing the required Good Faith Outreach level of 75 points. They obtained a MBE participation of 1.2% and a WBE participation of 0.1% in this contract. The Outreach Document Package is on file in the Board Office and a synopsis of said package is attached. Morillo Construction, Inc., proposes to perform approximately 46% of the contract work, and will subcontract 54% of the work.

The bid documents for this project state that "the Prime contractor shall perform, with its own organization, contract work amounting to at least 50%." Recreation and Parks staff calculated Morillo Construction, Inc.'s total listed subcontracting work amount to be 54%, or a total deviation of 4% from the required contractor participation. Staff recommends that the Board find that this small deviation in the prime contractor participation amount submitted by Morillo Construction, Inc., to be inconsequential and that permitting the deviation does not affect the bid amount or give Morillo Construction, Inc., 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 subcontractor bid.

The California Appellate Court Case entitled Ghilotti Construction Co. vs. 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 to self-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.

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Based on the above, staff recommends that the Board find that this small deviation in the bid of Morillo Construction, Inc., could not have affected Morillo Construction, Inc.'s bid amount, or given Morillo Construction, Inc., an advantage or benefit not allowed to other bidders. The 4% of the 50% requirement translates to \$166,888.00. Even if 100% of this amount is applied to the advantage of Morillo Construction, Inc., 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 including exercising the deductive alternates to Morillo Construction, Inc. The other bids were higher than the available funds.

Staff recommends that the Board accept Morillo Construction, Inc., bid as submitted. If approved by the Board, staff will remind Morillo Construction, Inc., that the acceptance of the bid does not constitute Board approval to deviate from the prime participation requirements in future bids. The Bureau of Contract Administration staff will continue to monitor Morillo Construction, Inc., for compliance with their subcontracting pledges, as well as, all other requirements.

Staff reviewed the responsiveness and the work performance of Morillo Construction, Inc., on other City projects and found them to be satisfactory. The Department of Public Works, Office of Contract Compliance (OCC), indicated that there has been no labor compliance violation and that all other legal requirements has been complied with by the bidder.

FISCAL IMPACT STATEMENT:

As shown above, there are adequate funds proposed for the project. Therefore, there is no anticipated fiscal impact to Recreation and Parks departmental funds. All funds are provided by the above-listed funding sources specifically identified and approved for use on this project. The assessments of future operations and maintenance costs have yet to be determined.

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

GOOD FAITH EFFORT CHECKLIST- EVALUATION RESULTS

BIDDER: MORILLO CONSTRUCTION, INC.

BID DATE: 9/6/05

PROJECT: NORTHRIDGE PARK POOL AND BATHHOUSE - W.O. E170600F

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.		0	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	10
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 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.		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	0
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				90

MBE/WBE % ACHIEVED: 1.3%

MBE=1.2% WBE=0.1%(can only credit 1 time/ 1side i.e. MBE or WBE) OBE=52.7% PRIME=46