

REPORT OF GENERAL MANAGER

NO. 01-475

DATE December 13, 2001

C.D. _____

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: SUSPENSION OF WORK - DENKER RECREATION CENTER - NEW COMMUNITY BUILDING (#1838A); ROSS SNYDER RECREATION CENTER - NEW COMMUNITY BUILDING (#1725B)

J. Combs _____
A. Corpalles _____
J. Duggan _____
J. Kolb _____

H. Fujita _____
*M. Tamuri _____
M. Matthews _____



General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

It is recommended that the Board:

1. Find that Baltimore Construction, Inc. has failed to maintain a payment bond in accordance with General Condition 54, LOCAL, STATE AND FEDERAL REQUIREMENTS, General Condition 56, CONTRACT BONDS and Instructions to Bidders 8, BONDS FOR THE FAITHFUL PERFORMANCE AND FOR THE PAYMENT OF LABOR, MATERIALS AND SUPPLIES;
2. Suspend the work in accordance with General Provision 51 SUSPENSION AND TERMINATION OF CONTRACT as a result of Baltimore Construction Inc's. inability to secure replacement bond, which is a violation of State law and constitutes a material breach of contract; and
3. Authorize Staff to initiate all means necessary to protect the Work and to deduct the costs of protecting the Work from future payments owing to Baltimore Construction in accordance with General Provision 29 METHODS AND APPLIANCES (c).

DISCUSSION

On June 21, 2000, the Board awarded contracts to Baltimore Construction Inc. for the construction of the Ross Snyder Recreation Center Community Building, (#1725B) project (Board Report No. 00-238), and the Denker Recreation Center Community Building, (#1838A) project, (Board Report No. 00-239).

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The Ross Snyder Community Building is a 11,004 square foot facility consisting of a gymnasium with high school regulation basketball court and volleyball courts, two (2) multi-purpose rooms, kitchen, public restrooms, director's office, ancillary storage and circulation space. Exterior improvements are limited to the restoration of landscape and irrigation disturbed during the construction of the new facility. The progress of the work is at approximately 60%. The original contract value was \$2,203,000.00, and the amount expended to date is \$1,542,417.46. The Department is currently holding \$154,068.94 in retention.

The Denker Community Building is a 12,400 square foot facility consisting of a gymnasium with a high school regulation basketball and volleyball courts, stage, community room, classroom, kitchen, public restrooms, director's office, ancillary storage and circulation space. Exterior improvements are limited to the restoration of landscape and irrigation disturbed in the construction of the new facility. The progress of the work is at approximately 53%. The original contract value was \$2,575,000.00, and the amount expended to date is \$1,286,100.13. The Department is currently holding \$142,900.01 in retention.

BONDING

At the time of the contract award, Baltimore Construction submitted a Contractor's Bond and a Payment Bond for each project, in the full amount of the contract, issued through Amwest Surety Insurance Company. The bond number for the Ross Snyder Community Building is 102011571. The bond number for the Denker Community Building is 102011572.

On June 25, 2001, the Department received letters from Baltimore Construction on both the Denker and Ross Snyder Recreation Center projects stating that they had been informed through their bonding agent that bonding sureties would not supply future bonds to Baltimore Construction as a result of "poor recommendations" from the Department. As a result, Baltimore stated that it had to "cease bidding and bonding future projects". No impact to the Denker or Ross Snyder facilities was indicated in the letters nor in their attachments (letter dated June 18, 2001 from Gallagher Construction Services to Baltimore Construction, Inc.).

In a meeting held shortly after the receipt of the letter by the Department, Mr. Ghafouri, president of Baltimore Construction, informed the contract administrator that its surety, Amwest, had become insolvent and as a result, Baltimore was now dealing with Traveler's Insurance Company. There was no mention in this meeting that the bonds for these two (2) projects were in jeopardy.

On July 21, 2001, the Department received notification from Amwest that the company had been declared insolvent. The Department notified the Board Office, who contacted Baltimore Construction concerning their official bonding status.

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On October 31, 2001, the Department gave Baltimore Construction 24 hours written notice to forward the new bonds to the Department. In a letter dated November 1, 2001, Baltimore replied that they had sent the Department's letter to their bonding agent, Gallagher Construction Services and presented the Department with the following three options:

1. "Consider immediate payment of the change orders and send a satisfactory review to the bonding company reflecting our good and excellent workmanship to enable us to meet bonding requirements and comply with the terms of our contract;
2. Terminate the contract for convenience. Thereafter, parties to finalize the pending change orders; and,
3. Convert the contract to time and materials basis to avoid further losses on both sides. Thereafter, parties to finalize the pending change orders".

Due to Baltimore's failure to provide new bonds within the specified time, the Department ordered the project suspended on November 2, 2001, and directed that Baltimore to "maintain the job site in a safe condition and protect the work" and to cease construction activities until such time as Baltimore delivered replacement bonds satisfactory to the Department.

On November 6, 2001 Mr. Ghafouri met with the contract administrator to discuss project status. No additional new information on the bonds was provided by Baltimore.

In a letter dated November 8, 2001, the Department notified Baltimore that none of the options presented in their November 1, 2001 letter was acceptable. The letter established the final day to present bonds as November 13, 2001, in accordance with Section 56 of the General Provisions, "Should any bond become insufficient, the Contractor shall renew the bond within ten (10) days after receiving notice from the City." The start of the ten (10) day period commenced on October 31, 2001, the date that Baltimore was first notified by the Department.

In a letter dated November 26, 2001, the Department informed Baltimore Construction that bonds had not yet been received and that the perimeter fence construction fence at the Ross Snyder site had been compromised. Furthermore, Baltimore had failed to protect the work and maintain a presence at the sites during the period of suspension and was therefore excluded from both project sites. The letter was sent via facsimile and certified mail to Baltimore Construction. The fax copy was undeliverable. On November 27, 2001 Mr. Ghafouri was notified by telephone of the letter's content and the Department's inability to connect to his fax machine. Mr. Ghafouri stated that he was experiencing problems with his machine and that he could wait until letter was delivered by the US Postal Service. The certified letter sent by the Department was returned by the Postal Service,

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stamped "refused". As a result, the Department initiated action to secure the building sites and store on-site construction material inside the Ross Snyder facility.

In their current state of completion, both facilities are subject to damage resulting from inclement weather. At the Ross Snyder site, there is an urgent need to cover the plywood sheathing on the exterior walls to minimize damage from rain. The Department of General Services has expressed its readiness and ability to provide necessary labor and material as may be necessary to secure the premises, protect the work and provide security. Due to the inability to inform Baltimore of the City's intent to secure the job sites, the City Attorney has advised that the matter should be heard in a Board Meeting.

AUTHORITIES

The Board's authority to suspend the Denker Recreation Center and the Ross Snyder Contracts with Baltimore Construction, Inc. is defined under General Condition 51 SUSPENSION AND TERMINATION OF A CONTRACT (a) and (c);

" The Contract may be canceled or suspended in whole or in part by the Board without liability for damage, when in the Board's opinion the Contractor is not complying in good faith, has become insolvent, or has assigned or subcontracted any part of the Work without the Board's consent...."

"In determination of the question of whether there has been such noncompliance with the Contract as to warrant the suspension or termination thereof, the decision of the Board will be binding on all parties."

The Board's authority to take possession of the Work and undertake steps to protect the Work is defined under General Provision 29, METHODS AND APPLIANCES (c) which states:

"...If the Contractor fails to properly provide for public safety, traffic and protection of the Work during periods of suspension, the City may elect to do, and deduct the cost thereof from monies due to the Contractor...."

Prepared by Armando De La O, Contract Administrator.