

REPORT OF GENERAL MANAGER

NO. 01-01

DATE January 17, 2001

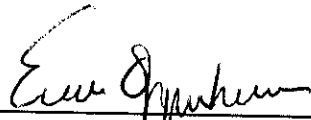
C.D. 14

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: EVERGREEN RECREATION CENTER - CHILDCARE CENTER (#1618D)
- CANCELLATION OF CONTRACT NO. 2849

G. Lum _____
K. Regan _____
S. Klippel _____
A. Corrales _____
J. Combs _____

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



General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

It is recommended that the Board:

1. Cancel Contract No. 2849 with D & M Construction, Inc., Contractor for the Evergreen Recreation Center - Childcare Center (#1618D) project; and,
2. Notify the bonding company, Intercargo Insurance Co., within five (5) days of the Board's action, to take over construction of the project.

SUMMARY:

On May 27, 1998, a contract in the amount of \$1,079,905.00 was awarded to D & M Construction, Inc. to construct a new childcare center at Evergreen Recreation Center (Board Report No. 240-98). Work began on August 3, 1998 with a construction period of 300 calendar days and a completion date of May 29, 1999.

On September 1, 1998, work stopped because it was determined that the building was located too close to a row of oak trees. The Department notified the Contractor that it was necessary to relocate the building in order to avoid damaging the trees. On December 28, 1998, revised prints of the construction drawings were available to the Contractor so that work on the project could resume.

On January 22, 1999, the Contractor wrote a letter to the Department indicating that the revised plans required major change orders and that no work would proceed until D & M Construction, Inc. had verification that it would be authorized to proceed with the additional change orders. Staff requested the Contractor to provide a list of the required changes.

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A meeting was held on February 4, 1999, to discuss digging the footings for the building, D & M Construction, Inc. stated again in their letter of February 9, 1999, that they would not restart construction until the change orders were approved.

On February 12, 1999, the Department sent a letter to D & M Construction, Inc. that referred to the meeting of February 4, 1999, and indicated that the Contractor had agreed at the meeting to restart construction on March 1, 1999. Section 48 (o) of the General Provisions of the Specifications states that the City may direct the Contractor to proceed with the work and that payment shall be as later determined by arbitration.

On February 22, 1999, D & M Construction, Inc. sent a letter to the Department indicating that they would start construction providing the Department released them from any responsibility for the oak trees.

On March 25, 1999, the Contractor sent the Department a list of changed items consisting of floor drains, light fixtures, access panels, vent pipes, etc. None of these items should have delayed construction. All could be dealt with as construction progressed.

On May 6, 1999, the Department wrote a letter to D & M Construction, Inc. and indicated that the construction was to be restarted on May 3, 1999, with the building layout to be in accordance with the revised plan issued on December 28, 1998. The Contractor did not resume construction. The Contractor asked by letter of May 12, 1999, for further instructions and revised, approved plans.

On July 14, 1999, D & M Construction, Inc. wrote to the Department indicating that they would not resume construction until all of their change order requests had been approved and a new notice to proceed issued.

On July 27, 1999, the Department sent a letter to D & M Construction, Inc. agreeing to review the change order requests and determine a new project completion date when construction was ready to resume.

On August 13, 1999, D & M Construction, Inc. sent a letter to the Department agreeing to restart construction on September 1, 1999 if the City agreed with their conditions.

On August 19, 1999, the Department confirmed, by letter, restart of construction on September 1, 1999. The Contractor did not restart construction.

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On August 23, 1999, the Department received a letter from the Contractor indicating that no construction would resume until all open change order requests and requests for information had been resolved.

On October 28, 1999, the Department sent a certified mail letter to D & M Construction, Inc. asking them to restart construction immediately.

On November 3, 1999, D & M Construction, Inc.'s attorney sent a letter to the City Attorney that indicated how much money the City owed the Contractor, indicating that the Contractor was ready to complete the project but suggesting that it may be in the best interest of all parties for the City to terminate the contract and rebid the project.

On November 23, 1999, D & M Construction, Inc. sent a letter to the Department memorializing a meeting which was held on November 17, 1999, between themselves and Department representatives. D & M Construction, Inc. listed several demands at this meeting which the Department agreed to, providing the Contractor restarted construction.

On March 16, 2000, the Department wrote to D & M Construction, Inc., directing them to restart construction by April 3, 2000, which is in accordance with Division I, General Provisions of the Specifications, Section 48 (o). The Contractor did not restart construction.

In addition to the fore referenced correspondence, from September 1, 1998, to date, the Department has met with the Contractor in the field and in the office to determine what is needed to restart construction. Most recently, staff met the Contractor on November 17, and December 2, 1999 to discuss restarting construction. Plans were given to Daniel Davidovicz, President of D & M Construction, Inc., he indicated that he was willing to restart construction, but he did not.

Even though D & M Construction, Inc. only worked on the project for only a short period of time, there was an illegal substitution of a subcontractor, J & J Concrete. This firm was not listed in the Contractor's bid.

The Contractor submitted thirteen (13) change order requests, which did not meet contract requirements. Nine (9) of the change order requests were duplicative and involved the same thing; additional labor, material and equipment. The remaining change order requests did not effect the critical path because they were approved by the Project Manager.

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The community and the Council Office have been very active in the development of the plans for the building and they have been deprived of this new facility for over a year. The Contractor has done some demolition on the site for the building, amounting to 6% of the total project. The site has been left in disrepair. The Department has fully paid the Contractor, for the two (2) payment requests submitted, \$64,715.00 on this \$1,079,905.00 contract. Staff believes that the City has acted in good faith and has been more than patient with the Contractor. Staff further believes that all that can be done to assist the Contractor in restarting the construction has been done. After repeated requests and promises by D & M Construction, Inc. to return to the project, they did not. Staff is of the opinion that the Contractor wants to be relieved of the obligation of completing the project. Therefore, staff is recommending cancellation of the contract in accordance with Section 51 (a). Additionally, Section 51 (a) states: If the City declares the contract canceled, written notice to that effect shall be served upon the surety. The surety shall, within five (5) days, assume control and perform the work as successor to the Contractor.

Report prepared by Richard N. Klink