

REPORT OF GENERAL MANAGER

NO. 01-148

DATE May 2, 2001

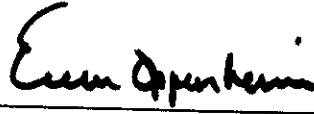
C.D. ALL

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: CONTRACTOR RESPONSIBILITY

J. Combs _____
A. Corrales _____
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Withdrawn _____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 any General Contractor who has not paid liquidated damages previously assessed by the Board be declared as a non-responsible bidder;
2. Find that any General Contractor who has had a construction contract previously cancelled by the Board be declared as a non-responsible bidder; and
3. Adopt the Department of Public Works Determination of Bidder Responsibility Policy as the Bidder Responsibility Policy of the Department of Recreation and Parks.

SUMMARY:

The Department awards approximately sixty (60) construction contracts per year to the General Contractor deemed to be both responsive and responsible. A Contractor can be declared non-responsive if they fail to meet basic requirements as outlined in the bid package. These include executing all required bid documents, submitting bid bonds and other like requirements.

Responsibility is a determination of the Contractor's quality, fitness and capacity to perform the work required under the contract, and is determined upon a review of records available to the Department, including past performance on previous City projects.

The Department believes that contract cancellation or assessment of liquidated damages merit an immediate finding of non-responsibility, as the Board has previously reviewed the record and found evidence that the Contractor's performance was inadequate.

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Through the adoption of the above recommendations, the Department will be able to provide a uniform framework for the evaluation and recommendation of future bidders on Recreation and Parks projects.

Prepared by Maureen Tamuri, Assistant General Manager.

BOARD OF PUBLIC WORKS
CITY OF LOS ANGELES

DETERMINATION OF BIDDER RESPONSIBILITY POLICY

A. Preface

1. This contract will only be awarded to a responsive, responsible bidder (the term bidder shall include proposer to personal services contracts). To be responsible, a bidder must have the quality, fitness and capacity to perform the work set forth in the contract.
2. Responsibility will be determined from reliable information concerning ownership, management, skill, judgement, integrity, financial resources, performance of other contracts, conduct, claims, labor practices, and compliance with relevant laws and regulations. Such information may be obtained from the bidder, State compliance and regulatory agencies and/or through independent investigation by the City.
3. All references to the Board or Board of Public Works shall mean the Board of Public Works, of the City of Los Angeles.
4. The determination of whether a matter is "significant" is a factual determination to be made by the Board of Public Works after considering all relevant facts.
5. All contractors are advised that the Board of Public Works recognizes that the prime contractor (or consultant) shall be completely responsible for the work of all subcontractors (or subconsultant).

B. Responsibility Criteria

The responsibility of the bidder will be determined by the Board of Public Works after examining the bidder's compliance with responsibility Criteria No. 1 through No. 4 and any competent evidence that the bidder engaged in any undesirable conduit as described in criteria No. 5 through No. 8 as set forth below:

Criteria No. 1:

Bidder must demonstrate that it has the ability to perform the contract in a timely, competent and acceptable manner, including, but not limited to, having available and committed to the performance of the contract:

- a. Adequate financial resources;
- b. Necessary licenses, organization, experience, accounting controls and operational controls;

- c. Sufficient personnel with the necessary expertise and technical skills;
- d. Necessary production, construction, and technical equipment and facilities; and
- e. Contracts or other binding arrangements with responsible subcontractors to do all work not to be performed by the prime bidder.

Criteria No. 2:

Bidder must demonstrate that it has a record of satisfactory performance on contracts for the life of the firm or the last five (5) years, whichever is less, and by their officers, directors and holders of 5% or more of their stock or equity, for the last five (5) years, including, but not limited to:

- a. No suspension or revocation of any relevant professional license, or significant fines or penalties, for failure to comply with substantive licensing requirements;
- b. No termination for default of any contract, nor significant failure to perform timely or in accordance with the proposal, plans and/or specifications;
- c. No significant failure to comply with labor laws and regulations, including, but not limited to, laws pertaining to timely payment of wages, payment of prevailing wages, sexual harassment, child labor and timely payment of all obligations to subcontractors, vendors, suppliers and truckers;
- d. No significant disregard for the personal safety of employees, other personnel on construction sites, or the public (repeated or multiple failures to comply with safety rules, regulations, or requirements can be considered as significant);
- e. No significant violation of Workers' Compensation laws;
- f. No significant failure to comply with laws and regulations prohibiting discrimination or promoting equal employment opportunity; and
- g. No significant violation of local, state or federal environmental protection laws, rules, regulations, or requirements including those related to the unauthorized or unpermitted discharge of pollutants, including wastewater.

Criteria No. 3:

Bidder must demonstrate that it has a satisfactory record of integrity and business ethics for the life of the firm or the last five (5) years, whichever is less, and by their officers, directors and holders of 5% or more of their stock or equity, for the last five (5) years, including, but not limited to:

- a. No conviction of a crime involving bidding upon or performance of a local, state or federal government contract;
- b. No conviction of a crime involving serious moral turpitude, a fundamental lack of integrity, or the knowing disregard of the law; and
- c. The absence of repeated failures to demonstrate the required good faith efforts to satisfy the City's subcontractor outreach program.

Criteria No. 4:

Bidder must demonstrate that it has a proven record of appropriate business ethics toward subcontractors, including, but not limited to, the following:

- a. Demonstrated knowledge of and compliance with federal, state and City of Los Angeles laws and regulations pertaining to utilization of subcontractors and business practices toward subcontractors;
- b. Demonstrated commitment to practices of good faith and fair dealing toward subcontractors; and
- c. Demonstrated record of satisfactory performance of contractual obligations owing to subcontractors, including timely payment.

Criteria No. 5:

Bidder must demonstrate that it has not, in the past five (5) years, failed to submit all required bonds and insurance documents upon notifications of award of the contract by the Board of Public Works and in the time frame designated in the bid documents.

Criteria No. 6:

Bidder must demonstrate that it has not, in the past five (5) years, failed to submit requested, additional information by the date and time specified by staff after receipt of bids or proposals but prior to the award of the contract. The requested additional information is that information requested by staff which is necessary, as determined by staff, for either staff or the Board of Public Works to render a recommendation or make a decision relative to the award of a Board of Public Works contract.

Criteria No. 7:

Bidder must demonstrate that it has not, now or in the past five (5) years, listed and/or utilized a subcontractor which has previously been declared to be non-responsible by the Board of Public Works or another governmental contract awarding authority. Whether the contract for the work was awarded by the Board of Public Works or not shall have no bearing on this criteria.

Criteria No. 8:

Bidder must demonstrate that it has not, now or in the past five (5) years, listed and/or utilized a subcontractor which has previously been replaced on a City of Los Angeles contract, where the substitution was approved by the Board of Public Works based on at least one of the following reasons:

- a. The subcontractor was found to be substantially unsatisfactory and not in substantial compliance with the plans and specifications of the contract; and/or

- b. The subcontractor was found to be substantially delaying or disrupting the progress of the contract work.

C. Declaration of Non-Responsible Bidder and Subcontractor

Before being declared non-responsible, a bidder or subcontractor shall be served with a summary of the reliable information reflecting adversely upon its responsibility. Within five (5) City working days of the service of that information, the bidder or subcontractor must submit a written request to the Secretary of the Board of Public Works for a hearing to determine responsibility if it disputes the adverse information. Failure to submit a written request for a hearing will be deemed to be a conclusive admission that the bidder or subcontractor is non-responsible for the purposes of this contract and future contracts and that the bidder consents to the award of the contract to another bidder and the subcontractor consents to its substitution on the contract. At a hearing to determine responsibility, the bidder will be allowed an opportunity to rebut adverse information and to present evidence that it has the necessary quality, fitness and capacity to perform the contract according to the criteria set forth herein. The determination by the Board of Public Works that a bidder or subcontractor is non-responsible shall be final and constitute exhaustion of the bidder's or subcontractor's administrative remedies.

A list of individuals and contractors which have been declared to be non-responsible by the Board of Public Works is maintained by the General Services Division of Bureau of Contract Administration. Included on this list are those subcontractors who have been previously substituted for and declared to be non-responsible by the Board of Public Works. A copy of this list can be obtained from the Chief, General Services Division, Bureau of Contract Administration, at (213) 580-5060. After two (2) years, the individual, subcontractor or contractor can request removal from the list by the Board of Public Works. If the individual, subcontractor or contractor can satisfy the Board of Public Works that they have the necessary quality, fitness and capacity to perform work on a Board of Public Works project, their name shall be removed from the list. Unless otherwise removed under the direction of the Board of Public Works, names shall remain on the list for a period of five (5) years from the date of being declared non-responsible.

AT:kb(bidderre.wpd)