

REPORT OF GENERAL MANAGER

NO. 04-25

DATE January 21, 2004

C.D. 01

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: DOWNEY CHILDCARE CENTER (#1633D) - CONTRACT NO. 2995 -
RECISSION OF APPROVAL OF TENDER AGREEMENT AND APPROVAL
OF AGREEMENT RELEASING THE SURETY

H. Fujita _____

F. Mok _____

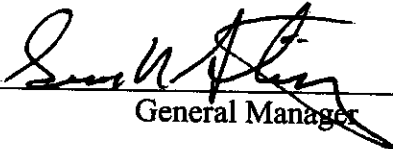
J. Kolb _____

K. Regan _____

*B. Lukehart ~~_____~~

G. Stigile _____

M. Mariscal _____


General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

It is recommended that the Board:

1. Rescind approval of the Tender Agreement approved by the Board on January 9, 2002 (Board Report No. 02-18);
2. Approve execution of the attached Release Agreement (Agreement) with the surety, Fidelity & Guaranty Insurance Company (Surety), in substantially the form attached hereto;
3. Direct the Board Secretary to forward this report and the proposed Agreement forthwith to the Mayor in accordance with Executive Directive 16 and concurrently to the City Attorney for review as to form;
4. Authorize the Board President and Secretary to execute the Agreement upon receipt of the necessary approvals; and
5. Upon receipt of surety's payment of \$432,731.36, authorize the Department's Chief Accounting Employee to deposit these funds in an account designated specifically for use for the design and construction of the subject project as part of the Prop K Program.

SUMMARY:

Downey Childcare Center is a 5,000 s.f. childcare center designed by The Luckman Partnership, Inc. The project was bid on May 25, 1999, and Contract No. 2898 was awarded to Gamma Constructor's, Inc. (Gamma) with a contract amount of \$1,000,000.00. Gamma began construction in July 1999. However, the contractor never completed any work beyond the excavation for the footings of the building (approximately 5% of the contract work). The

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construction contract was terminated by the Board on October 4, 2000 (Board Report No. 00-358). On January 9, 2002, the Board approved a Tender Agreement between the Department and surety (Board Report No. 02-18) to complete the project.

The tender agreement provided for a contractor hired by the surety to complete the contract work. Lengthy negotiations with Gamma's surety proceeded over the terms and conditions for completion of the contract work. Over the course of the negotiations, it became evident that the plans would require redesign to meet current Building and Safety codes. The surety's contractor would have required an additional renegotiated fee to cover the costs of the changes to the plans and specifications. The Department reviewed the plans and specifications with the Bureau of Engineering (BOE) who is the program lead for Prop K which is the primary funding source for the project. It was determined that a redesign of the entire project would be the most cost effective avenue to pursue and would be in the City's best interest to complete the project with a new design.

In order to treat the surety and their contractor fairly, it was determined that the Tender Agreement would be replaced with the attached Agreement which provides for the reimbursement to the project of \$432,731.36. Originally, there was approximately \$1.5 million allocated to the project in Prop A, Prop K, and CDBG funds. Of those funds, \$433,053.00 was expended for design, permits, construction costs, and related salaries as documented by an expense report prepared by BOE. The negotiated settlement of \$432,731.36 almost exactly covers the costs of the project to date. BOE has completed a budget for the project. There are sufficient funds to complete the project with a new design utilizing the funds supplied by the surety.

Staff recommends that the Board rescind the earlier approval of the Tender Agreement and approve the execution of the subject Agreement with the surety. The subject Agreement will allow the surety to pay the City \$432,731.36. The Department will use these funds to reimburse the expenses to date for this project and the remaining funds will be used by the Bureau of Engineering to complete the design and construction process for this Prop K project.

Report prepared by William Tseng, Contract Administrator.