

APPROVED
MAR 18 2009

REPORT OF GENERAL MANAGER

NO. 09-066

DATE March 18, 2009

BOARD OF RECREATION
and PARK COMMISSIONERS

C.D. All

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: APPOINTMENT OF THE INSPECTOR OF PUBLIC WORKS AS THE "DULY AUTHORIZED OFFICER" OF THE BOARD OF RECREATION AND PARK COMMISSIONERS FOR THE ADMINISTRATION OF SECTION 10.14 OF THE LOS ANGELES ADMINISTRATIVE CODE ON DEPARTMENT OF RECREATION AND PARKS CONSTRUCTION PROJECTS

R. Adams	_____	J. Kolb	_____
V. Israel	_____	F. Mok	_____
H. Fujita	_____	K. Regan	_____
S. Huntley	_____	*M. Shull	<i>M. Shull</i>

[Signature]
General Manager

Approved _____ Disapproved _____ Withdrawn _____

RECOMMENDATIONS:

That the Board:

1. Adopt the attached Resolution appointing the Inspector of Public Works as the Duly Authorized Officer of the Board of Recreation and Park Commissioners (Board) for administration of the provisions of Section 10.14 of the Los Angeles Administrative Code for Department of Recreation and Parks (RAP) construction projects; and,
2. Request the Inspector of Public Works (Inspector) to report quarterly to the Board on the Inspector's findings and recommendations during the course of the Board's administrative oversight of RAP construction projects.

SUMMARY:

A firm which bids on a construction project usually does not intend to do all of the work with its own forces; indeed, it may not have the licenses required for all of the specialty work involved. Thus, some of the specialty work is subcontracted out to other contractors. Therefore, in order to determine the amount to be submitted as a bid, the bidder must first determine what the cost will be for such subcontracts. "Bid shopping" occurs when a general contractor, after submitting a bid on a project, attempts to find a subcontractor who will do the work for a lower price than any subcontractor had quoted prior to the submission of the bid.

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Both the State of California and the City of Los Angeles have adopted policies against bid shopping, which are embodied respectively in the California Public Contract Code (§4100-4114) and the Los Angeles Administrative Code (§10.14) (collectively "the Codes"). The Codes require that a bidder list in the bid the subcontractor for each significant portion of the work that will be subcontracted out, and forbid the subcontracting out of any significant portion of the work for which a bidder is not listed. (A portion of the work is significant if the dollar amount is more than \$10,000.00 or ½ of 1% of the bid, whichever is greater.) However, there are situations when not allowing the substitution of a contractor listed in the bid with another is impractical and against the public interest. Thus, the Codes give a procedure whereby a request from a prime contractor for the substitution of a listed subcontractor is to be processed and either approved or denied.

This process includes verification that the reason for the request is among those expressly permitted by the Codes, and determining whether the subcontractor who is to be substituted out has an objection. If there is no objection, the matter is then put before the awarding authority for approval. If there is an objection, a hearing is held by the awarding authority.

For some years, the Bureau of Contract Administration (BCA) has been assisting the Department of Recreation and Parks in processing these requests. However, there has been no written agreement on this matter, nor has BCA been given any legal authority to handle these matters. This has resulted in unnecessary delays, confusion as to the respective responsibilities of the two Departments, duplication of processing requests or in their not being processed, and potential legal problems.

The Codes allow the awarding authority to appoint an official to handle the routine matters in this process on its behalf. Appointing the Director of BCA, who is the Inspector of Public Works, as this Board's duly authorized officer would allow for a quicker, clear-cut, and more efficient processing of these requests. BCA is fully competent to perform these duties, having done such for the Department of Public Works for a number of years. In addition to what the Codes require, BCA verifies that the subcontractor has the qualifications the City requires of all proposed subcontractors.

In granting to a duly authorized officer the authority that the Codes allow, no real room for the exercise of discretion is given. This officer is to approve a request for substitution if and only if the reason for the substitution is among those listed in the Codes, the subcontractor involved does not object, and the contractor to be substituted in meets the requirements that all City subcontractors must meet. If there is an objection to the substitution, a hearing must be held by the awarding authority (this Board), not by its duly authorized officer. Also, if there is a violation of the Codes, the penalty is to be determined by the Board, not by its duly authorized officer.

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FISCAL IMPACT STATEMENT:

This appointment will have no impact on the Department's General Fund.

This report was prepared by Michael A. Shull, Superintendent of Planning and Construction.

RESOLUTION NO. _____

WHEREAS, the Inspector of Public Works, Director of the Bureau of Contract Administration (BCA), has provided inspection services for construction projects awarded by the Department of Recreation and Parks (RAP) for many years, and in recent years, since the passage of Proposition K, many design and construction management services have been combined between the Public Works Bureau of Engineering and the Bureau of Contract Administration in order to ensure that construction projects are delivered in as short a timeframe as possible; and,

WHEREAS, the duplication of tasks is detrimental to swift project delivery, and division and sharing of roles and responsibilities among multiple points of contact produces discontinuity in the process, negatively affecting the schedule of a construction project; and,

WHEREAS, the California Public Contract Code (Chapter 4, §4107(a)) allows the awarding authority to grant to a duly authorized officer the authority to undertake actions regarding the fitness of subcontractors on public works projects and the Los Angeles Administrative Code §10.14 also provides for this; and,

WHEREAS, the centralization of administrative services during the management of construction allows the awarding authority to rely upon the consistency of one centralized resource for the information and diligence required to provide the awarding authority with the correct information needed for timely determinations and rulings; and,

WHEREAS, BCA has specific expertise and extensive experience in dealing with matters involving enforcement regulations regarding subcontracting on public projects; and,

WHEREAS, the Board of Public Works has for decades designated the Inspector of Public Works as its "duly authorized officer" in these matters; and,

WHEREAS, authorizing BCA to perform all of these functions will aid RAP in its project delivery efforts; and,

WHEREAS, pursuant to §591 of the Charter of the City of Los Angeles, the Board of Commissioners of the Department of Recreation and Parks (Board) is an awarding authority for public works construction projects;

NOW, THEREFORE, BE IT RESOLVED that the Inspector of Public Works is hereby appointed as the Duly Authorized Officer of the Board of Recreation and Park Commissioners for administration of the provisions of Section 10.14 of the Los Angeles Administrative Code on the Department of Recreation and Parks' construction projects, and is requested to report quarterly to the Board on the Inspector's findings and recommendations during the course of the Board's administrative oversight of RAP's construction projects.

I HEREBY CERTIFY, that the foregoing is a full, true and correct copy of a Resolution adopted by the Board of Recreation and Park Commissioners of the City of Los Angeles at its meeting held on _____ (Board Report No. 09-_____).

MARY E. ALVAREZ, BOARD SECRETARY

RESOLUTION NO. _____