

**APPROVED**  
**JUN 06 2012**

REPORT OF GENERAL MANAGER

NO. 12-180

DATE June 6, 2012

**BOARD OF RECREATION  
& PARK COMMISSIONERS**

C.D. 6

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: SOUTHEAST VALLEY ROLLER AND SKATEBOARD RINK – PHASE I (SKATEBOARD RINK/SKATEPARK) PROJECT (W.O. # E170125D) – HEARING ON BID PROTEST FILED BY SPOHN RANCH, INC., AGAINST THE LOWEST BIDDER, CALIFORNIA LANDSCAPE AND DESIGN, INC., DBA CALIFORNIA SKATEPARKS; ACTION BY BOARD REGARDING AWARD OF CONTRACT

R. Adams

K. Regan

H. Fujita

M. Shull

V. Israel

N. Williams

*MS*

*[Signature]*  
General Manager

Approved *as noted*

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATIONS:

*Approved*  
A.

That the Board conduct a hearing on the bid protest, and:

1. Reject the bid protest letter dated May 25, 2012, filed by Spohn Ranch, Inc. (second lowest bidder), against the bid submitted by California Landscape and Design, Inc., dba California Skateparks (lowest bidder) for the Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard Rink/Skatepark) (W.O. #E170125D) Project;
2. Find California Landscape & Design, Inc., dba California Skateparks, with a base bid of \$1,456,650, to be the lowest responsive and responsible bidder for the Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard Rink/Skatepark) (W.O. #E170125D) Project;
3. Award the contract to California Skateparks, for a total award amount of \$1,456,650, all according to the Task Order Solicitation and specifications;
4. Authorize the Department's Chief Accounting Employee to encumber \$1,456,650 from the following fund and account numbers under the awarding authority of this Board Report; and

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<u>Funding Source</u>	<u>Fund/Dept/Account</u>	<u>Encumbrance Amount</u>
Prop. K – Year 14	43K/10/10/10G289	\$1,456,650
Total:		\$1,456,650

Not Approved

B. If the Board sustains the bid protest:

1. Withdraw recommendations A.1 through 4 above;
2. Reject all bids received on October 25, 2011, for the Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard Rink/Skatepark) (W.O. #E170125D) Project, pursuant to Section 10.15 (c) of the Los Angeles Administrative Code and Paragraph 3, page 3A of the Instructions to Bidders; and
3. Direct that staff not use the Prequalified On-Call Skate Park/Skate Plaza Design-Build List for this project, and instead allow the project to be designed using the Bureau of Engineering's on-call design consultant list and then construct the through a separate public bid process.

Not Approved

C. If the Board determines that there is insufficient basis upon which to act on the bid protest and thus neither rejects nor sustains the bid protest:

1. Withdraw recommendations A.1 through 4 and B.1 through 3 above;
2. Reject all bids received on October 25, 2011, for the Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard Rink/Skatepark) (W.O. #E170125D) Project, pursuant to Section 10.15 (c) of the Los Angeles Administrative Code and Paragraph 3, page 3A of the Instructions to Bidders; and
3. Direct that staff not use the Prequalified On-Call Skate Park/Skate Plaza Design-Build List for this project, and instead allow the project to be designed using the Bureau of Engineering's on-call design consultant list and then construct the project through a separate public bid process.

SUMMARY:

The Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard Rink/Skate Park) (W.O. #E170125F) project, located at 12477-12511 Sheldon Street, Sun Valley, California 91352, is a specified Proposition K – L.A. for Kids Program project. The scope of work includes the design and construction of a new skate park, featuring plaza/streetscape style skating elements including hubbas, stairs, flat rails, manual pads, ledges, bumps, kickers, grass pads, tranny ramps, and hand rails. The skate plaza is proposed to have areas for beginner, intermediate, and advanced skaters. In

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addition to the plaza, other supplemental amenities includes the installation of an Americans with Disabilities Acts (ADA) compliant pre-fabricated restroom building with storage areas, new drinking fountain, parking lot, landscaping, and security lighting.

The skate plaza is proposed to be completed by utilizing a pre-qualified design/build consultant-contractor selected from the Department of Recreation and Parks (RAP) approved On-Call Skate Park/Skate Plaza Design-Build List (Board Report No. 08-306).

On May 4, 2011, the Board approved the bid documents and call for bids for the project (Board Report No. 11-118). The City Engineer's Estimate for the work was \$1,100,000. Two bids were received for the project on June 21, 2011.

<u>Bidders</u>	<u>Base Bid</u>
California Skateparks	\$ 937,000
Spohn Ranch, Inc.	\$1,429,800

After receipt of the bids, it was determined that the project would be re-bid in order to modify the scope of work to increase the size of the skate plaza, install shade structures, and add a storage area.

On September 7, 2011, the Board rejected the two original bids, and approved the re-bid documents with the expanded scope and call for re-bids (Board Report No. 11-230). The City Engineer's estimate for the revised scope of work was \$1,500,000.

On October 25, 2011, the re-bid resulted with two bids received for the project. The re-bid amounts are as follows:

<u>Bidders</u>	<u>Base Bid</u>
California Landscape & Design, Inc. dba California Skateparks	\$1,456,650
Spohn Ranch, Inc.	\$2,192,875

During the review of the bids, legal counsel for Spohn Ranch, Inc., filed a complaint under the City's Contractor Responsibility Ordinance alleging that California Landscape & Design, Inc., dba California Skateparks (California Landscape) was not a responsible bidder for a variety of reasons. The initial recommendation from BCA in a communication dated December 16, 2011, was to find California Landscape non-responsive for failure to disclose in their Contractor Responsibility Ordinance Questionnaire (CROQ) that they had been a defendant in litigation. The communication from BCA indicates that the remaining allegations are outside of BCA's jurisdiction. Mr. Dermer, on behalf of Spohn Ranch, Inc., filed a related complaint with the City Controller's Office alleging that California Landscape is not being a responsible bidder.

At the Board meeting of February 15, 2012 (Board Report No. 12-051), staff recommended that the Board reject all bids and that the project be re-bid, pending the investigation of the complaint filed with the Controller's Office. The second lowest bidder's bid amount exceeded the available

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construction funding for the project. Re-bidding the project might have resulted in bids that were more in line with the City Engineer's estimate, and were within the available funding for construction. If the lowest bidder were to be found non-responsive or non-responsible, the contract could not be awarded to the second lowest bidder due to insufficient funds. Additionally, it would be difficult to justify awarding a contract to the second lowest bidder for an amount that is almost \$700,000 (46%) above the City Engineer's estimate.

The Board did not accept the recommendation to reject all bids and re-bid the project, and instead directed staff to proceed to schedule a responsibility hearing and inform the Controller's Office of the Board's desire to have input from the Controller's Office about the allegations in the complaint. At that time, there was also some concern about having to execute the construction contract prior to June 30, 2012, in order to obligate and preserve the Proposition K funding for the current fiscal year (2011-12). It has since been determined that the Proposition K funds were previously contractually obligated as part of the earlier transaction to acquire the property where this project will be developed (Board Report No. 10-330). Thus, the construction contract does not have to be awarded and executed prior to June 30, 2012 in order to obligate the funds.

In a follow-up communication, dated April 19, 2012, BCA retracted their initial recommendation to find California Skatepark non-responsive, based on recent case law regarding what constitutes responsiveness (*Great West Contractors, Inc., v. Irvine Unified School District, 187 Cal.App.4th 1425 (2010)*). The Controller's Office at that time had also confirmed that they had an open investigation in response to the complaint filed by Mr. Dermer on behalf of Spohn Ranch, Inc.

Given that the Controller's Office had not yet concluded their investigation, there was no basis upon which to proceed with a responsibility hearing within the procedural requirements of the Contractor Responsibility Ordinance. Also, it had been determined that the Proposition K funds had already been obligated as part of the acquisition of the site and thus the construction contract did not have to be executed by June 30, 2012, in order to obligate the Proposition K funds. Both bidders had previously extended their bids until May 22, 2012.

On May 2, 2012, staff provided a status report on the project and requested direction from the Board (Board Report No. 12-135). Staff presented the Board with the following options:

- 1) The Board's action in awarding a construction contract could be placed on hold until such time as the Controller's Office concludes its investigation;
- 2) The Board could proceed to treat the situation like a bid protest and conduct a bid protest hearing wherein both bidders may make a presentation to the Board, if they so choose;
- 3) After the bid protest hearing, the Board could decide whether to award to the lowest bidder or to wait for the results of the Controller's Office investigation; or
- 4) The Board could re-consider the original recommendation to reject all bids and re-bid the project either to firms on the pre-qualified design-build list, or re-bid outside of the pre-

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qualified list thereby soliciting bids from design-build firms at-large who have not been pre-qualified for skatepark projects or not use a design-build approach and instead have an architectural firm design the project and prepare construction documents and then bid out the construction work only.

The Board decided to schedule a bid protest hearing for June 6, 2012. In the course of preparing for the hearing, Spohn Ranch filed a bid protest letter dated May 25, 2012, alleging that the bid submitted by California Landscape on October 25, 2011, contained material errors and omissions and was thus non-responsive. A series of briefs were subsequently filed and exchanged by legal counsel on behalf of both bidders. Copies of said bid protest letter, opening briefs and reply briefs by both bidders were previously transmitted to the Board upon receipt.

Further communication with the City Controller’s Office during the week of May 28, 2012, confirmed that there is still an ongoing investigation, that the Controller’s Office cannot comment on the investigation, and that the investigation may take another 3 to 6 months to complete. Both bidders have extended their bids again until July 21, 2012.

In the meantime, staff was able to investigate the contents of the bid protest letter dated May 25, 2012, as it pertains to matters of bidder responsiveness. The bid protest letter claims that California Skateparks should be found non-responsive based on a list of purported errors and omissions in the bid documents. The claims and staff findings are summarized in the following table:

<u>Item No.</u>	<u>Spohn Ranch Bid Protest Claim of Error or Omission</u>	<u>Staff Findings</u>
1	Page 5 of the bid proposal – Corporate Seal does not appear to be present.	Corporate Seal is present in the original bid document; corporate seal may not have been visible in photocopies of bid provided to Spohn Ranch.
2	Page 6 of the bid proposal – Corporate Seal does not appear to be present.	Corporate Seal is present in the original bid document; corporate seal may not have been visible in photocopies of bid provided to Spohn Ranch.
3	Page 7 of the bid proposal – Corporate Seal does not appear to be present.	Corporate Seal is present in the original bid document; corporate seal may not have been visible in photocopies of bid provided to Spohn Ranch.
4	Page 13A – The contractor did not fill out the form or post “No Employees at this time.”	Contractor typed in “No employees at this time” on the original form; upper left corner.
5	Page 16 – Schedule A is incomplete.	“Dollar value of base bid to be performed by prime bidder” line is blank. This value can be

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<u>Item No.</u>	<u>Spohn Ranch Bid Protest Claim of Error or Omission</u>	<u>Staff Findings</u>
		calculated by subtracting the sum total of sub-contractor/supplier values from the base bid amount. Staff calls this calculation Method 2. For California Skateparks bid, the value of prime bidder's work is calculated to be \$902,602 (61.96% of the work). Leaving the line blank does not change the value of the bid. Further, the prime is still performing over 50% of the work as shown in the Method 2 calculation. Bid is not rendered non-responsive.
6	Page 22 – Schedule D. Two schedule D's were submitted, both are incorrect.	Two schedule Ds were submitted. The signature page on the first schedule D was crossed out. The signature page on the second schedule D is filled out sufficiently to determine which party is completing the Affidavit and the signature is notarized.
7	Page 22 – Schedule D Corporate Seal is missing	Corporate Seal is not required on Schedule D; it is the Notary's seal that is required. The Jurat attached to the signature page contains the Notary's seal.
8	Subcontractor listing on Page 16A – Dunn's Fencing is listed as a subcontractor but has no current licenses.	Dunns Fence was listed on Schedule A as a subcontractor to supply and install perimeter fencing. Dunns Fence has an expired license according to the California State Licensing Board website. Calls were made to the numbers listed on page 16A for Dunn's Fencing. Once the project is awarded, the prime contractor will be required to submit a list of all subcontractors to Bureau of Contract Administration (BCA) for approval. If at that time a previously listed subcontractor is not licensed, the prime contractor may either request a substitution of subcontractor or may self-perform, with approval of BCA.
9	California Skateparks (California Landscape) owns 50% share in P&A Wrought Iron Fencing. California Skateparks intends to substitute Dunns Fencing with P&A.	Spohn Ranch's claim is speculative. Staff cannot corroborate or refute. If the prime contractor requests a substitution of subcontractor, that substitute subcontractor could be P&A Wrought Iron Fencing, with approval of BCA. The contract price would not change merely due to

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Item No.	Spohn Ranch Bid Protest Claim of Error or Omission	Staff Findings
		substitution of a subcontractor or the prime self-performing.
10	Omega Fence was not listed on California Skatepark's bid.	The GFE compliance package contained the quote submitted by Dunns Fence, which listed Omega Fence as the product/supply to be provided.
11	USA Shade Structures -- Task order requested that bidders use the Omega Fencing System. California Skateparks listed Creative Recreations.	The Task Order specifies Omega fencing manufactured by USA Shade or an approved equal. California Landscape's bid presumed use of Omega fencing, however another product could be proposed for the City to determine if it is an "approved equal." The bidder takes on risk by making an assumption that the City will approve another manufacturer's product. The burden is on the contractor to prove the equal product. The bid is not considered non-responsive if the contractor chooses to make an assumption that another product will be approved by the City as an "equal. The contract price would remain the same regardless of whether an approved equal was approved or Omega fencing was ultimately required.

Staff did not find any basis for recommending sustaining Spohn Ranch's bid protest letter dated May 25, 2012.

In briefs filed by Mr. Dermer, on behalf of Spohn Ranch, further allegations were made that the bid was a "sham" bid, and based on the bid price of California Landscape, that their bid was too low to be a "real" bid. Staff finds no validity in the assertion of a "sham" or "too low" bid. The City Engineer's estimate for the project is \$1,500,000. California Landscape's bid of \$1,456,650 is approximately 97% of the City Engineer's estimate. Given the current bidding climate on similar projects, this is well within the expected range of bids for a project of this scope and size.

Mr. Dermer, on behalf of Spohn Ranch, further indicates that based on his calculation of the proposed square foot price of California Landscape's bid versus other "similar" projects, the bid is a "sham" bid. Conducting a comparison of bids for skateparks or skate plazas based solely on square footage price across various different projects is not a good comparison because of the varying differences in project size, design features, and also because design-build situations inherently have more variances in pricing per component. Thus, there is no evidence that the bid is a "sham". As further discussed below, California Skate Parks has completed a number of

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projects for the City and all of the projects were completed on budget and within schedule, with no quality concerns. The only project that resulted in significant change order was the Stoner Park Skatepark. In that project, the change orders were the result of the request of the Council District to significantly expand the skate park. Quimby funds were available and allocated by the Board for this additional work scope.

Staff has also reviewed the sub-contractor outreach effort made by California Landscape, and based on the documents submitted, has determined that a “good faith” effort has been made. California Landscape, achieved 100 of the 100 points possible as outlined by the Board’s Outreach Program, which requires a score of at least 75 points out of 100 to achieve a “good faith” effort. The Outreach Document Package is on file in the Board Office and a synopsis of said package is attached to this Report.

The City Attorney has reviewed the bid submitted by California Skateparks, and found it to be in order and responsive.

As stated previously, there is no basis for a responsibility hearing given that the Controller’s Office has not completed its investigation. Counsel for Spohn Ranch cited examples of defects of skate parks constructed by California Skateparks in other municipalities. Staff has not conducted an independent inquiry into the projects listed by Spohn Ranch. However, California Skateparks has recently completed a number of skate park projects for the Department. California Skate Parks has recently completed Jackie Tatum/Harvard Skatepark, Venice Skatepark, Stoner Skatepark, Garvanza Skatepark, and Pedlow Skatepark Expansion and all of these projects were constructed to the satisfaction of the Department. These projects were also inspected to the satisfaction of the City’s Department of Public Works Bureau of Contract Administration. Moreover, with the exception of Stoner Skatepark, all the projects have been completed within budget and on schedule. Note that Stoner Skatepark resulted in a doubling in the size of the project with a correspondingly large change order value due to the Council Office request to double the size of the park.

Therefore, based on the available evidence of projects that staff can review, there is nothing that justifies the rejection of California Skateparks’ bid due to claims of contractor irresponsibility. However, Staff is not able to investigate and comment on the other claims made by Spohn Ranch that California Landscape is not a responsible bidder, including claims regarding bid rigging and any litigation that California Landscape may or may not have been involved in. Staff also cannot determine the relevance cited in Spohn Ranch’s briefs regarding California Landscape’s relationship to Rob Dyrdek , SITE Design, and race horses, to the Southeast Valley Roller and Skateboard Rink – Phase I project.

Based on the information that Staff has investigated, Staff recommends that the Board find California Landscape and Design, Inc., dba California Skateparks to be the lowest responsive and responsible bidder, and to award the design-build contract for the total amount of \$1,456,650.

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Should the Board sustains the bid protest, then staff recommends that the Board reject all bids, received on October 25, 2011, for the Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard Rink/Skatepark) project, pursuant to Section 10.15 (c) of the Los Angeles Administrative Code and Paragraph 3, page 3A of the Instructions to Bidders, direct that staff not use the Prequalified On-Call Skate Park/Skate Plaza Design-Build List for this project, and instead allow the project to be designed using the Bureau of Engineering’s on-call design consultant list and then construct the project through a separate public bid process. The firm or any of its sub-consultants that provide design services for the project will not be eligible to bid and construct the project due to conflict of interest considerations.

If the If the Board determines that there is insufficient basis upon which to act on the bid protest and thus neither rejects nor sustains the bid protest, staff recommends that the Board reject all bids, received on October 25, 2011, direct that staff not use the Prequalified On-Call Skate Park/Skate Plaza Design-Build List for this project, and instead allow the project to be designed using the Bureau of Engineering’s on-call design consultant list and then construct the project through a separate public bid process. The firm or any of its sub-consultants that provide design services for the project will not be eligible to bid and construct the project due to conflict of interest considerations.

In compliance with the California Environmental Quality Act (CEQA), on February 15, 2012, the Board adopted the Initial Study (IS) and Mitigated Negative Declaration (MND) and associated Mitigation Monitoring and Reporting Plan for the Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard Rink/Skatepark) project (Board Report No. 12-051). The Notice of Determination for the adopted IS/MND was filed with the Los Angeles City Clerk and the Los Angeles County Clerk on February 23, 2012.

### FISCAL IMPACT STATEMENT:

The Department will request \$31,000 for yearly maintenance of this facility. This amount would include one part-time employee, materials, and supplies. This would provide adequate maintenance seven days a week, year round. If the funding is not granted, this facility will be included in the existing Valley Region routes, resulting in reduction of core functions on the existing routed facilities. This may also impact the hours of operation of these facilities.

This report was prepared by Gary Lam, Project Manager, Recreational and Cultural Facilities Program, Department of Public Works, Bureau of Engineering (BOE). Reviewed by Neil Drucker, Program Manager, Recreational and Cultural Facilities Program, BOE; Deborah Weintraub, Chief Deputy City Engineer, BOE, and Michael A. Shull, Superintendent, Planning, Construction and Maintenance Division, Department of Recreation and Parks.

*Incorporation of documents submitted relating to the subject of this Report:* Copies of communications regarding the complaint from legal counsel for Spohn Ranch under the City's Contractor Responsibility Ordinance, legal counsel for California Landscape, and the City's Department of Public Works, Bureau of Contract Administration (BCA), which administers the City's Contractor Responsibility Ordinance were previously transmitted to the Board and were included as part of Board Report No. 12-135 for the Board meeting of May 2, 2012, and are incorporated herein by reference. Copies of the Bid Protest Letter dated May 25, 2012, and the opening briefs and reply briefs submitted by legal counsel for both bidders in relation to this Report were previously transmitted to the Board and are incorporated herein by reference.

Attachment:

GFE Evaluation

## GOOD FAITH EFFORT CHECKLIST

Bidder: California Landscape & Design Inc. dba California Skateparks Bid Date: October 25, 2011

PROJECT: Southeast Valley Roller & Skateboard Rink Phase I (Skateboard Rink/Skatepark) Rebid (E170125F)

Indicator	Required Documentation	Description of Submitted or Missing Documentation	Points	
1	The bidder's or proposer's efforts to obtain participation by MBEs, WBEs and other business enterprises could reasonably be expected by the Board of Recreation and Park Commissioners (the "Board") to produce a level of participation by interested sub-contractors, including 15% MBE and 2% WBE.		0	0
2 Pre-Bid Meeting	a) Attend pre-bid meeting and be listed on the attendance sheet; or b) Submit a letter prior to the pre-bid meeting either by fax to (213) 847-0703, or by mail to the Bureau of Engineering, Project Award and Control Division, 1149 S. Broadway, 1 <sup>st</sup> Floor, Los Angeles, Ca. 90015.		10	10
3 Work Areas	Proof of this must be demonstrated in either Indicator 4 or 5.		13	13
4 Ad	A copy of the advertisement or a proof of publication statement or other verification which confirms the date the advertisement was published. The advertisement must be specific to the project, not generic, and may not be a placeholder advertisement provided by the publication. It should include the City of Los Angeles project name, name of bidder, areas of work available for subcontracting, and a contact person's name and telephone number, information on the availability of plans and specifications and the bidder's policy concerning assistance to subcontractors in obtaining bonds, lines of credit and/or insurance. Consideration will be given to the wording of the advertisement to ensure that it did not exclude or seriously limit the number of potential respondents.		9	9
5 Letters to Potential Subs	A copy of each letter sent to available MBEs, WBEs and OBEs for each item of work to be performed. If there is only one master notification, then a copy of the letter along with a listing of all recipients will suffice. Faxed copies must include the fax transmittal confirmation slip showing the date and time of transmission. Mailed letters must include copies of the metered envelope or certified mail receipts. Letters must contain areas of work to be subcontracted, City of Los Angeles project name, name of the bidder, and contact person's name, address, and telephone number.		10	10
6 Follow-up to Letters	A copy of telephone logs. These logs must include the name of the company called, telephone number, contact person, who did the calling, time, date, and the result of the conversation. Bidder must follow-up with all subcontractors to whom they sent letters.		10	10
7 Plans	Include in Indicator 4 or 5, information detailing how, where and when the bidder will make the required information available to interested subcontractors.		5	5
8 Outreach Letters	A copy of each letter sent to outreach agencies requesting assistance in recruiting MBEs, WBEs and OBEs. Faxed copies must include the fax transmittal confirmation slip showing the date and time of transmission. Mailed letters must include copies of the metered envelopes or certified mail receipts. Letters must contain areas of work to be subcontracted, City of Los Angeles project name, name of the bidder, and contact person's name, address, and telephone number.		10	10
9 Negotiate in Good Faith	a) Copies of all MBE/WBE/OBE bids or quotes received; and b) Summary sheet organized by work area, listing bids received and the subcontractor selected for that work area. If the bidder elects to perform a listed work area with its own forces, they must include a bid that shows their own costs for the work.		26	26
10 Bonds	Include in Indicator 4 or 5, information about the bidder's efforts to assist with bonds, lines of credit and insurance.		7	7
<b>TOTAL POINTS ACHIEVED</b>			<b>100</b>	
<b>MBE/WBE % ACHIEVED:</b>			<b>9.4%/5.7%</b>	

MBE = 9.4%      WBE = 5.7%      OBE = 22.9%      PRIME = 62%

**RESPONSIVE**