



Office of the City Manager

CONSENT CALENDAR
October 15, 2019

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront
Subject: Contract: Redwood Engineering Construction for James Kenney Park, Picnic, and Play Area Renovation

RECOMMENDATION

Adopt a Resolution:

1. Approving the plans and specifications for the James Kenney Park, Picnic, and Play Area Renovation project, Specification No. 18-11216-C; and
2. Rejecting the lowest bid from Bay Construction Company as non-responsive; and
3. Accepting the bid of the lowest responsive and responsible bidder, Redwood Engineering Construction; and
4. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with Redwood Engineering Construction, for the James Kenney Park, Picnic, and Play Area Renovation project at 1720 Eighth Street, Berkeley, CA 94710, in an amount not to exceed \$1,191,342, which includes a contract amount of \$992,785 and a 20% contingency in the amount of \$198,557.

FISCAL IMPACTS OF RECOMMENDATION

Funding from Measure WW Parks Bond Fund (Fund 345), and the Parks Tax Fund (Fund 138) will be included in the first annual appropriation ordinance of FY20. No other funding is required, and no other projects will be delayed due to this expenditure.

Redwood Engineering Construction (lowest bid)	\$992,785
20% Contingency	\$198,557
<hr/> Total construction cost	<hr/> \$1,191,342

Measure WW Parks Bond Fund (345-52-545-000-0000-000-461-663110-PRWPK15002)	\$1,060,274
Parks Tax Fund (138-52-545-000-0000-000-461-663110-PRWPK15002)...	\$131,068
<hr/> Total construction cost	<hr/> \$1,191,342

CURRENT SITUATION AND ITS EFFECTS

The existing playgrounds and picnic area at James Kenney Park at 1720 Eighth Street, Berkeley, CA 94710 are in need of renovations. The project includes the renovation of

the picnic and playground area, replacement of the play equipment, and improvements to other site amenities in conformance with current ADA standards.

BACKGROUND

The project was advertised for bids on Monday, July 22, 2019, and bids were opened on August 20, 2019. The City received two bids, from a low base bid of \$983,000 to a high base bid of \$992,785.

On August 22, 2019, the City received a bid protest from the apparent second lowest bidder, Redwood Engineering Construction, alleging two issues from the apparent low bidder, Bay Construction Company. A copy of the bid protest was sent to Bay Construction Company to provide them an opportunity to respond to the protest issues. Bay Construction Company's response was then forwarded to Redwood Engineering Construction for their opportunity to respond to ensure that all parties had an opportunity to present all facts and arguments in support of their positions.

City staff, including staff from the City Attorney's office, carefully reviewed and investigated the protest and responses. The first issue was regarding one of the subcontractors listed for Bay Construction Company. The subcontractor stated that they "cannot agree" to the City's Community Workforce Agreement (CWA), and in their response stated that they would request an exemption to the CWA. CWA requirements were described in Document 001113 (Notice Inviting Bids), Document 00737 (Supplementary Conditions), Appendix A of the contract documents, a topic at the Pre-Bid Meeting, and included in Addendum No. 1. Upon review of the documents, Article 3.5.1 of the CWA indicates that if the Contractor or Subcontractor refuses to execute the Agreement, then they shall not be awarded a Construction Contract. In short, the requirement to comply with the CWA was straightforward and unambiguous.

Subsequently, the subcontractor indicated they would agree to comply with the CWA. However, while case law provides the City with discretion to waive inconsequential defects in a bid, the City cannot do so when the defect provides a bidder an advantage or benefit not provided to other bidders. (See Ghilotti Construction v. City of Richmond (1996) 45 CalApp.4th 897,904 ("... a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential".) Here, the bid documents expressly provided that the contractor and all subcontractors would be required to comply with the CWA. By including a sub-bid that explicitly stated it would not agree to comply with the CWA, Bay Construction preserved to itself the ability to withdraw its bid due to the inclusion of a non-CWA compliant subcontractor. The fact that the subcontractor subsequently agreed to comply with the CWA does not alter the fact that at the time that Bay Construction submitted its bid, the City was precluded from contracting with Bay Construction. Thus Bay Construction had options: withdraw its bid or request the City to waive the defect since its subcontractor ultimately decided they would comply with the CWA. This situation gives rise to an unfair advantage over other bidders and thus cannot be waived.

Furthermore, in Taylor Bus. Service v. San Diego Board of Education (1987) 195 Cal.App.3d 1331; Pacific Bell v. California (1991) 225 Cal.App 3d 107; Domar Electric v. City of Los Angeles (1995) 41 Cal.App.4th 810; and M & B Construction v. Yuba County (1999) 68 Cal.App.4th 1353; the responsiveness of the bids were determined at the time of bid opening. Were this not the case, bidders in the foregoing cases – as Bay Construction is seeking to do here – could have taken steps to remedy their non-responsiveness. But such is not the law and the courts in those cases found the respective bids non-responsive. Likewise, Bay Construction’s bid at bid opening included a non-CWA compliant subcontractor and therefore City staff concluded that the bid should be deemed non-responsive.

As a result, Redwood Engineering construction became the lowest responsive and responsible bidder. References for Redwood Engineering Construction were provided and checked out satisfactorily. Staff recommends that a contract for this project be awarded to Redwood Engineering Construction.

The Living Wage Ordinance does not apply to this project since construction contracts are, pursuant to City policy, subject to State prevailing wage laws. The contractor will need to submit a Certification of Compliance for the Equal Benefits Ordinance. The contract will be subject to the Community Workforce Agreement.

ENVIRONMENTAL SUSTAINABILITY

The construction contract includes requirements to comply with the City’s Environmentally Preferable Purchasing Policy. The project is a renovation of a developed urban site and therefore will not negatively affect natural habitat. In addition, the City of Berkeley will work with the contractor to salvage useable components from the existing play structures and recover sand to be used at other sites.

RATIONALE FOR RECOMMENDATION

The playgrounds and picnic area at James Kenney Park are overdue for renovation, and safety and accessibility improvements. The City does not have the in-house labor or equipment resources to complete this park renovation project. This work supports the City of Berkeley’s strategic plan goal #1: to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700
Evelyn Chan, Supervising Civil Engineer, Parks Recreation & Waterfront, 981-6430
Taylor Lancelot, Associate Civil Engineer, Parks Recreation & Waterfront, 981-6421

Attachments:

- 1: Resolution
- 2: Bid Results

RESOLUTION NO. ##,###-N.S.

CONTRACT: REDWOOD ENGINEERING CONSTRUCTION FOR JAMES KENNEY
PARK, PICNIC, AND PLAY AREA RENOVATION

WHEREAS, the playgrounds and picnic area at James Kenney Park are in need of renovation; and

WHEREAS, the City has neither the labor nor the equipment necessary to undertake this project; and

WHEREAS, an invitation for bids was duly advertised on July 22, 2019, bids were opened on August 20, 2019, and the City received two bids from a low of \$983,000 to a high of \$992,785; and

WHEREAS, upon receipt of a bid protest, review of the submitted bids, and careful consideration, the bid from the apparent low bidder, Bay Construction Company, was deemed non-responsive; and

WHEREAS, Redwood Engineering Construction was determined to be the lowest responsive and responsible bidder, and references for Redwood Engineering Construction were provided and checked out satisfactorily; and

WHEREAS, funding is available in the FY 2020 budget the Measure WW Fund (Fund 345) and Parks Tax Fund (Fund 138).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 18-11216-C for the James Kenney Park, Picnic, and Play Area Renovation project are approved.

BE IT FURTHER RESOLVED that the bid from Bay Construction Company, is deemed non-responsive and is rejected; and that the construction contract is awarded to Redwood Engineering Construction as the lowest responsive and responsible bidder for a total contract amount of \$992,785.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions, or change orders until completion of the project in accordance with the approved plans and specifications with Redwood Engineering Construction for the James Kenney Park Picnic and Play Area Renovation project in an amount not to exceed \$1,191,342, which includes a contract amount of \$992,785 and a 20% contingency in the amount of \$198,557 for unforeseen circumstances. A record signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.

ATTACHMENT 2 - BID RESULTS



City of Berkeley
Abstract of Bids Worksheet

Finance Department
General Service Division

For: JAMES KENNEDY PARK, PICNIC, AND PLAY AREA RENOVATION

Specification#: 18-11216-C

Engineer's Estimate:

Bid Date: 8/20/2019

	Bidders	Base Bid	Nuc Free	Work Force Comp	Opp. States	Living Wage	EBO	Bid Bond	Addenda
1	Bay Construction Co	983,000.00						✓	✓
2	REDWOOD ENGINEERING CONST.	992,485.00						✓	✓
3									
4									
5									
6									
7									
8									
9									
10									

Bid Recorder: FILIPPO DE LUCA *[Signature]* 8/20/2019
 Bid Opener: SHERI DEGNAN *[Signature]* 8/20/2019
 Project Manager: Taylor Loncebt *[Signature]* 8/20/2019

