



Office of the City Manager

REVISED AGENDA MATERIAL

Meeting Date: July 27, 2021

Item Number: 12

Item Description: Contract: OBS Engineering, Inc. for John Hinkel Park Amphitheater Area Improvements Project

Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront

On June 29, 2021, after the item was submitted into the Agenda Process, the City received a bid protest from Bay Construction Company (BCC), the apparent second lowest bidder. City staff, including staff from the City Attorney's office, carefully reviewed and investigated the protest and responses. City staff determined that OBS Engineering, Inc. remains the lowest responsive and responsible bidder and recommends the bid protest from BCC be rejected. The revised language in Recommendation, Background, and Resolution sections were updated to be consistent with the City's determination to reject a bid protest.



Office of the City Manager

CONSENT CALENDAR
July 27, 2021

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: OBS Engineering, Inc. for John Hinkel Park Amphitheater Area Improvements Project

RECOMMENDATION

Adopt a Resolution:

1. Approving the plans and specifications for the John Hinkel Park Amphitheater Area Improvements Project, Specification No. 21-11426-C;
2. Rejecting the bid protest of Bay Construction Company, the second lowest bidder; and
3. Accepting the bid of the lowest responsive and responsible bidder, OBS Engineering, Inc.; 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 OBS Engineering, Inc. for the John Hinkel Park Amphitheater Area Renovations Project at 41 San Diego Road, in an amount not to exceed \$1,119,580 which includes a contract amount of \$1,017,800 and a 10% contingency in the amount of \$101,780.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the Parks Tax Fund and Measure T1 Fund, and will be included in the First Amendment to the FY 2022 Annual Appropriations Ordinance. No other funding is required, and no other projects will be delayed due to this expenditure.

Construction

OBS Engineering, Inc.(lowest bid)	\$1,017,800
10% Contingency	\$101,780
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Total construction cost	\$1,119,580

Funding

Measure T1 Fund.....	\$400,000
(511-52-545-000-0000-000-461-663110-PRWPK19004)	
Parks Tax Fund.....	\$719,580
(138-52-545-000-0000-000-461-663110-PRWPK19004)	
<hr/>	
Total funding	\$1,119,580

CURRENT SITUATION AND ITS EFFECTS

The existing playground at John Hinkel Park at 41 San Diego Road, Berkeley, CA 94704 is in need of replacement. The project includes a new ages 5-12 play area, picnic area, and repairs and restoration of the existing masonry work and amphitheater and improvements to other site feature in conformance with current ADA standards. John Hinkel Park was designated as a historic landmark by the Landmarks Preservation Commission in April 2001 and work will be done in compliance with Structural Alteration Permit LMSAP2020-0002.

BACKGROUND

The project was advertised for bids on Monday, June 7, 2021, and bids were opened on June 22, 2021. The City received 5 bids, from a low base bid of \$1,007,100 to a high base bid of \$1,667,500, and from a low of \$1,017,800 to a high of \$1,700,800 for the base bid plus Additive Bid Alternate No. 2. With the exception of the lowest bid, all bids were above the amount budgeted for this project. The determination of the lowest responsive and responsible bidder was based on the price for base bid work, as indicated in the bid documents.

On June 29, 2021, the City received a bid protest from Bay Construction Company (BCC), the apparent second lowest bidder. A copy of the bid protest was sent to OBS Engineering, Inc. (OBS) to provide them an opportunity to respond to the protest issues. OBS's response was then forwarded to BCC 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 item of protest was regarding OBS's submitted experience as a prime contractor. The second item was regarding an omission of listing the playground equipment manufacturer on the list of subcontractors. The third item was regarding OBS's experience regarding Cultural Resource protection. The fourth item was regarding OBS's project experience listed in relation to a federal FBI US District Court case for debarment complaint.

Based on the City's review of the bid protest and responses, the City's findings are as follows:

1. Regarding OBS' listed projects, while OBS listed one project in the first part of Part C in Attachment A, they listed three projects in the follow-up section. While the failure to submit a complete Attachment A render's OBS's bid non-responsive, as explained below, the City finds that the failure to list three recently completed projects is an inconsequential defect that could not have affected the amount of OBS' base bid or given OBS an advantage or benefit not allowed to other bidders. (*Ghilotti Construction v. City of Richmond* (1996) 45 Cal.App.4th 897, 904).
2. Regarding OBS' failure to list the play equipment manufacturer, the City does not require that manufacturers or suppliers be listed at the time of bid, only

subcontractors performing construction related work per Document 00 4330, "Subcontractor List."

3. Regarding OBS' familiarity with historical preservation, the City did not exclusively request experience requirements for historical preservation and determines that the bid as submitted by OBS is in compliance with the project's historical preservation requirements.
4. Regarding OBS' involvement with case: 3:20-MJ-70705 JCS, there was no involvement of OBS or its employees in the case of United States of America vs. Balmore Hernandez. OBS' work as a subcontractor for Azul Works is unrelated to case: 3:20-MJ-70705 JCS.

While caselaw provides the City with discretion to waive inconsequential defects in a bid, we cannot do so when the defect may affect the amount of the bid. (See Ghilotti Construction v. City of Richmond (1996) 45 Cal.App.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, although OBS failed to list three projects in the first section of Part C that were completed within the past two years of similar size and scope, they listed three projects in the follow up section. Project Manual Document 00 4513, Statement of Qualifications for Construction Projects, 1.01 Minimum Bidder Qualifications, provides "Bidders must demonstrate successful experience with type of work of this Project, to include, within the past two years, completed three (3) projects of a similar nature and complexity with a contract dollar amount of (i.) at least 75% of the amount of Bidder's Bid or (ii.) 125% of such amount in the aggregate." Read in its entirety, OBS Attachment A lists three projects that meet the criteria thus rendering its defect in failing to list three projects in the first section inconsequential. The concern regarding the lack of listing did not affect OBS' base bid. OBS' defect was inconsequential and did not provide it with an advantage so, as explained above, is waivable.

City staff determined that OBS Engineering, Inc. was the lowest responsive and responsible bidder. Therefore, it is recommended that City Council reject the bid protest by BCC and award the contract to OBS. Staff conducted references checks for OBS and received satisfactory feedback. Staff recommends that a contract for this project be awarded to OBS Engineering, Inc.

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 AND CLIMATE IMPACTS

The construction contract includes requirements to comply with the City's Environmentally Preferable Purchasing Policy and Construction and Demolition Waste

Diversion program of at least 50%. The project is a renovation of an existing playground area and will not negatively affect natural habitat.

RATIONALE FOR RECOMMENDATION

The new ages 5-12 playground and picnic area are needed as part of the City's ongoing program to repair, renovate and improve accessibility at non-compliant or aging Parks facilities. The City does not have in-house labor or equipment resources to complete this renovation project.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700

Evelyn Chan, Supervising Civil Engineer, Parks Recreation & Waterfront, 981-6430

Attachments:

1: Resolution

2: Bid Results

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

CONTRACT: OBS ENGINEERING, INC. FOR THE JOHN HINKEL PARK
AMPHITHEATER AREA IMPROVEMENTS PROJECT

WHEREAS, the playground at John Hinkel Park is in need of renovation; and

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

WHEREAS, an invitation for bids was duly advertised on June 7, 2021, bids were opened on June 22, 2021, and the City received 5 bids; and

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

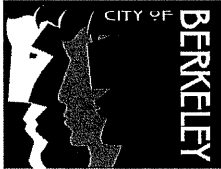
WHEREAS, funding is available in the Parks Tax Fund (Fund 138) and Measure T1 (Fund 511).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specifications for Specification No. 21-11426-C for the John Hinkel Park Amphitheater Area Improvements Project are approved; and

BE IT FURTHER RESOLVED that the bid protest by Bay Construction Company is rejected; and

BE IT FURTHER RESOLVED that the construction contract is awarded to OBS Engineering, Inc. as the lowest responsive and responsible bidder for a total contract amount of \$1,017,800, which includes the base bid plus bid alternate number 2; and

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 OBS Engineering, Inc. for the John Hinkel Park Amphitheater Area Improvements Project in an amount not to exceed \$1,119,580, which includes a contract amount of \$1,017,800 and a 10% contingency in the amount of \$101,780 for unforeseen circumstances. A record signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.



**City of Berkeley
Abstract of Bid Worksheet**

Finance Department
General Services Division

FOR: John Hinkel Park Amphitheater

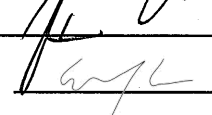
Spec. #
21-11426-C

Bid Date: 6/22/2021

	Bidders	Base Bid	Alternate 1	Alternate 2	required w/ bid					
					Bid Bond	Addenda (1)	Reg/Exp	Sub-List	Non-Coll	Certs
1	Angotti & Reilly, Inc.	\$ 1,435,266.00	\$ 20,000.00	\$ 19,000.00	x	x	x	x	x	x
2	CF Contracting	\$ 1,667,500.00	\$ 34,700.00	\$ 33,300.00	x	x	x	x	x	x
3	Kerex Engineering	\$ 1,275,000.00	\$ 50,000.00	\$ 30,000.00	x	x	x	x	x	x
4	Bay Construction Co.	\$ 1,135,400.00	\$ 90,000.00	\$ 20,000.00	x	x	x	x	x	x
5	OBS Engineering	\$ 1,007,100.00	\$ 68,700.00	\$ 10,700.00	x	x	x	x	x	x
6										
7										
8										
9										
10										

Bid Recorder:  Darryl Sweet

Bid Opener:  Josh Roben

Project Manager:  2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7320 TDD: 510.981.6903 Fax: 510.981.7390

E-mail: finance@ci.berkeley.ca.us