



REPORT

DATE ISSUED: January 6, 2006

ITEM 100

REPORT NO: HCR06-08
For the Agenda of February 10, 2006

SUBJECT: Award of Contract for Replacement of Fencing at Three Public Housing Sites (Council Districts 3 & 8)

SUMMARY

Issue: Should the Housing Commission award a construction contract to the lowest responsive bidder, Lightning Fence Co. in the amount of \$107,600 with a ten percent contingency (\$10,760), for the removal and installation of fencing at three public housing sites located at 2628 & 2630 44th Street, 2716 & 2718 44th Street and 178-190 Calle Primera?

Recommendation: That the Housing Commission approve the award of a contract to Lightning Fence Co. for \$107,000 and authorize the President & Chief Executive Officer to execute the contract (Attachment 1) and expend the contingency, if necessary, for items not anticipated in the original scope of work.

Fiscal Impact: Funding for this contract is contained in the Capital Fund Program CA16-P063-501-05 budget. No local funds are required.

Certificate No. 06-084
Amount: \$107,000
Revenue Source: Capital Fund Program
Division: Housing Programs
Line Item: 1450 Site Improvements

Equal Opportunity Statement: Lightning Fence Co. is not certified as a Disadvantaged, Women Owned or Disabled Veteran Business Enterprise. A Certificate of Compliance and a Workforce Analysis has been provided and shows that this vendor is in compliance with the San Diego Housing Commission Equal Opportunity Program.



Environmental Review: On or about September 30, 2005 the Housing Commission received written approval of the Request for the Release of Capital Funds for FY 05 from HUD and acknowledging compliance with the applicable provisions of NEPA including, but not limited to, 24 CFR Part 58. Further the Housing Commission was expressly, in writing, authorized to incur costs for the Capital Fund Program. The expenditure referenced herein is part of the Capital Fund Program that was reviewed under NEPA and for which expenditure of funds was approved by HUD. The proposed activity is categorically excluded from NEPA as determined by the Responsible Agency, the City of San Diego, on or before August 15, 2005.

BACKGROUND

HUD established the Capital Fund program to provide financial assistance to housing authorities to improve the physical condition and upgrade the management and operation of existing family public housing projects to assure that such projects continue to be available as affordable housing for eligible residents.

DISCUSSION

The proposed work under this contract provides for the removal of existing wood and wrought iron fencing and the installation of new wrought iron fencing at the public housing developments located at 2628 & 2630 44th Street (8 Units), 2716 & 2718 44th Street (4 Units) and 178-190 Calle Primera (70 Units) in the City Heights and San Ysidro areas of San Diego respectively.

On November 16, 2005, an Invitation to Bid was issued for this work. Bid advertisements were placed in the *San Diego Union*, the *San Diego Daily Transcript*, *La Prensa* and the *Voice and Viewpoint*. In addition, fifteen (15) invitations were sent as outreach to fencing contractors.

On December 6, 2005, a pre-bid conference was conducted with three (3) firms in attendance. During the bid period a total of eleven (11) bid packages were provided to interested contractors and plan rooms.

At bid closing on December 19, 2005, two (2) bids were received. Information on the submitted bids is outlined below:

Bidder	Amount	Responsive Bidder	DBE
Lightning Fence Co.	\$107,600	Yes	No
Quality Fence Co.	\$140,000	Yes	No

Staff analysis indicates that Lightning Fence Co. has submitted the lowest responsive bid and is capable of performing the work.

Respectfully submitted,

Approved by,

**Signature on File
With Original Document**

Steve Snyder
Director of Facilities

Elizabeth C. Morris
President & Chief Executive Officer

M. Gresham, 578-7485

Attachment: 1- Contract

Attachment 1

CONTRACT

THIS AGREEMENT made this ____ day of February, in the year 2006, by and between LIGHTNING FENCE CO., hereinafter called the "Contractor," and the SAN DIEGO HOUSING COMMISSION, hereinafter called the "Commission" and/or "Owner."

WITNESSETH, that the Contractor and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish all labor, material, equipment and services, and perform and complete all work required for REPLACEMENT OF FENCING AT THREE PUBLIC HOUSING SITES (501-05-2), in strict accordance with the Specifications dated November 16, 2005. Specifications and Drawings are incorporated herein by reference and made a part hereof.

ARTICLE 2. The Contract Price: The Commission shall pay the Contractor for all performance of the Contract, in current funds, subject to additions and deductions as provided in the Specifications, the sum of ONE HUNDRED SEVEN THOUSAND SIX HUNDRED AND NO/100 Dollars (\$107,600.00).

ARTICLE 3. Indemnity: Subject to only the limitations of the applicable statutes of limitations as contained within applicable State and Federal law, Contractor agrees to save, indemnify and keep harmless City of San Diego, The San Diego Housing Commission and the Housing Authority of the City of San Diego, and each of them (hereinafter collectively referred to as Indemnatee), against any and all liability, claims, fines, penalties, judgments, complaints, causes of action, actions, or demands, including demands arising from injuries to or death of persons (Contractor's employees and subcontractors included) and damage to property, or any other loss, damage or expense, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor including those in part due to the negligence of Indemnatee save and except liability, claims, judgments or demands arising through the sole negligence or sole willful misconduct of Indemnatee or resulting from defects in design furnished by Indemnatee and Contractor will, if requested by Indemnatee, defend any such suits against the Commission, the City/and or the Housing Authority of the City of San Diego, at the sole cost and expense of Contractor, with counsel of Indemnatee's choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation concerning this Contract to receive attorneys' fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Contract.

ARTICLE 4. Governing Law: This Contract and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 5. Entire Agreement: This Contract contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect.

ARTICLE 6. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 7. Severability: If any provision of this Contract or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

ARTICLE 8. Terminology: All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limit nor amplify the provisions of the Contract itself, and all references herein to paragraphs thereof are to this Contract unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 9. Binding Agreement: Subject to any restrictions on the assignment of this Contract or rights thereto, this Contract shall inure to the benefit of and be binding upon Commission and Contractor and their respective successors, assigns or transferees.

ARTICLE 10. Procedure for Resolving Disputes: In the event of a dispute concerning this Agreement, the same shall be resolved in San Diego Superior Court, Downtown Branch.

ARTICLE 11. Time is of the Essence: Time is of the essence in this Contract, as per the schedule submitted by contractor and agreed upon by owner.

ARTICLE 12. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the San Diego Housing Commission monies in accordance with Clause 33 of General Conditions as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the San Diego Housing Commission.

ARTICLE 13. Contract Documents:

This contract shall consist of the following component parts:

- a. This Instrument
- b. General Conditions
- c. Special Conditions
- d. Prevailing Wage Scales
- e. Technical Specifications
- f. Drawings

This instrument, together with the other documents enumerated in Article 13, form the Contract and are as fully a part of the Contract as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

ARTICLE 14. Drug-Free Workplace: Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

A. Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

B. Establish a drug-free awareness program to inform employees about all of the following:

- 1) The dangers of drug abuse in the workplace.
- 2) The Contractor's policy of maintaining a drug-free workplace.
- 3) Any available drug counseling, rehabilitation and employee assistance programs.
- 4) The penalties that may be imposed upon employees for drug abuse violations.

C. Post the statement required by subdivision 1 in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

ARTICLE 15. Equal Opportunity Programs: During the performance of this Contract, the Contractor agrees as follows:

A. Contractor shall comply with all applicable Equal Opportunity Programs as described in the applicable State and Federal law. Contractor shall submit such forms and

information as shall be requested by the Commission from time to time to verify the Contractor's compliance with applicable law.

B. Certificate of Compliance (attached) with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state law and regulations hereinafter enacted.

C. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin.

D. If any underrepresentation is found after submission of contractor workforce, the Commission may request an equal employment opportunity plan (EEO). An acceptable plan to correct the identified underrepresented categories must be submitted within 30 days. Once the EEO has been approved by the Commission, the Contractor must adhere to said plan. In case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEO updates as required.

E. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, the Contractor may, at the election of the Commission, be barred from participating in a Commission project for not less than one (1) year.

ARTICLE 16. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Agreement, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or modification of a Federal contract, grant, loan or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and,

D. Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 USC 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.

LIGHTNING FENCE CO.

By _____
(Signature)
Title _____

_____ 757458
(License Number)

Business Address:

13950 Olive Crest Way
Poway, CA 92064

SAN DIEGO HOUSING COMMISSION

By: _____
Carrol Vaughan

Title: _____ Executive Vice President & CEO

Business Address:

9550 Ridgehaven Court
San Diego, California 92123

APPROVED AS TO FORM
CHRISTENSEN SCHWERDTFEGER & SPATH LLP

By _____
Charles B. Christensen
General Counsel
San Diego Housing Commission

Date: _____