

**CITY OF OAKLAND**  
**AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2004 JUL -1 PM 8:18

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Public Works Agency  
DATE: July 13, 2004

RE: **RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ALLOCATE AN ADDITIONAL \$70,000 FROM THE CITY'S PUBLIC ARTS MUNICIPAL IMPROVEMENT CAPITAL FUND (FUND 5505) FOR THE BROADWAY AT I-880 PUBLIC ART PROJECT, TO REJECT ALL BIDS, TO NEGOTIATE A CONTRACT, AND TO AWARD A CONSTRUCTION CONTRACT IN AN AMOUNT NOT TO EXCEED \$385,000, WITHOUT RETURNING TO COUNCIL**

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**SUMMARY**

A resolution has been prepared authorizing the City Administrator, or her designee, to appropriate an additional \$70,000 to the current construction budget of \$315,000, to reject all bids, to negotiate a contract, and to award a construction contract in an amount not to exceed \$395,000 for the Broadway at I-880 Public Art Project (Project No. P130130). The negotiated contract will require the Contractor to meet, at a minimum, the City's 20% Local/Small Local Business Enterprise program requirements.

On March 15, 2004, the City Clerk received three bids for the project. The base bid prices are as follows:

- |                             |           |
|-----------------------------|-----------|
| 1. Ray's Electric           | \$274,000 |
| 2. M.A. Lindquist Co., Inc. | \$288,596 |
| 3. Bay Construction         | \$345,000 |

The Public Art Advisory Committee received the bid results on March 16, 2004 and passed a motion rejecting all bids at its April 5, 2004 monthly meeting. This motion was made because the bids were substantially above the original construction budget of \$250,000. A resolution to reject all bids was prepared and brought to the Public Works Committee at its May 25, 2004 meeting. The Public Works Committee directed staff to locate additional funds in order to award the project. At the June 8, 2004 Public Works Committee meeting, staff reported that additional funds were identified, increasing the construction budget to \$315,000. Staff requested the resolution to reject bids be withdrawn and staff would seek authorization to award the project to the lowest responsible bidder at the next Public Works Committee meeting. The Committee also directed staff to provide additional information on the allocation of all Public Art funding (see Attachment 1). Because of the time delay in seeking the Public Art Advisory Committee recommendation and in identifying and confirming additional funds, the lowest bidder for the project has informed the Public Works Agency that he cannot honor his bid prices because of the sharp increases in steel prices, and some subcontractors are no longer available. In accordance with the contract Special Provisions Section 2-1.9 "Award of Contract", bidders have a right to withdraw their bids after 60 days from the bid opening if the contract is not awarded. For this reason, staff recommends rejections of all bids, and negotiation with the lowest bidder.

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If the City Council authorizes the City Administrator to negotiate a contract with the lowest bidder, it is anticipated that additional funds will be needed to successfully complete the negotiation. Based on preliminary discussions with the contractors, it is anticipated that an additional \$70,000 is needed for the construction budget. With the total construction budget of \$385,000, including a \$35,000 construction contingency, staff should be able to successfully negotiate with the contractor.

The project will enhance the passage way along Broadway beneath the I-880 freeway overpass. The base bid work includes a guardrail sculpture at the back of sidewalk on both sides of Broadway, rising from the sidewalk surface to the underside of the freeway overpass; painted freeway columns supporting the overpass, and new area lighting.

The project is located in Council Districts 2 and 3. This project's objectives align with the Mayor's and Council's Goal "7.C. Inspire Creativity and Civic Engagement; Foster artistic expression".

## **FISCAL IMPACT**

This resolution will authorize a construction contract in an amount not to exceed \$385,000. Funding is provided by Oakland Redevelopment Agency through the Public Art Resolution allocating 1.5% of capital improvement costs for the commissioning of public artwork. Funds currently allocated to the Broadway at I-880 Public Art Project total \$340,000. These funds are available in the Public Arts Municipal Improvement Capital Fund (5505) Public Art Organization (62511), non-project, in the amount of \$129,385 and ORA Funds, I-880 Broadway Underpass Project (P130130) (held by CEDA, \$210,615). Additional funding of \$70,000 is available in the Public Art Project Maintenance Fund (A158630). These funds serve as ready capital for cost over-runs and for maintenance of public art projects.

There will be a small yearly maintenance cost allocated to maintenance of the site; funds are available in the Cultural Arts and Marketing Department's maintenance budget. The exact cost and provider of maintenance services are to be determined by the Cultural Arts and Marketing Department.

## **BACKGROUND**

The designer for the project was the "Team of 5" group of architects. This designer was selected from a competition among local artists organized by the Craft and Cultural Arts Department. The Team of 5 produced drawings and specifications for the project.

On March 15, 2004, three bids were received by the City Clerk for the Broadway at I-880 Public Art Project. Ray's Electric (Oakland), M. A. Lindquist (Oakland), and Bay Construction (Oakland) submitted bids of \$274,000, \$288,596, and \$345,000, respectively. All three firms met the City's SLBE requirements.

Ray's Electric bid is 23% above the engineer's estimate of \$223,000, M.A. Lindquist's bid is 29% above the engineer's estimate, and Bay Construction's bid is 55% above the engineer's estimate.

Prior to bidding, it was anticipated that the estimate prepared by the designer was too low for the project's scope of work. As a result, PWA staff reviewed the project with the designers and staff from the Cultural Arts and Marketing Department for value engineering possibilities, and whenever possible, changes were made to minimize the costs of construction.

Furthermore, the project was broken into a base bid (i.e., work that was essential to the project), and three add-alternate bid items (i.e., work that was originally in the project scope of work but were deemed discretionary if construction costs exceeded the budgeted amount).

The base bid includes: metal guard rail sculptures rising up from the back of both sidewalks along Broadway to the underside of Freeway 880 above, removal of existing street lights and replacement with new street lights mounted on the freeway columns and guard rail sculptures, removal and replacement of a chain link fence enclosing the parking lots adjacent to the project site and painting the existing freeway columns.

The three alternate bid items were:

Add Alternate 1: Including a rubberized surface treatment to the existing sidewalks, and replacement of the curb ramps at all four curb returns within the project boundaries

Add Alternate 2: Including removal of the existing sidewalk on both sides of Broadway beneath the Freeway I-880 underpass and replacement with meandering, undulating sidewalks with a surface treatment of rubberized tiles;

Add Alternate 3: Including a light sculpture mounted in the recess between freeway structures overhead of Broadway, including a sensor on Freeway I-880 and an electronic controller to transform signals received from traffic above to light motion in the light sculpture.

The Public Art Advisory Committee at their June 7, 2004 meeting passed a motion to award only the base bid of the project.

### **KEY ISSUES AND IMPACTS**

Staff requests authorization to allocate an additional \$70,000 to the construction contract budget, to reject all bids, negotiate with the lowest bidder, and award a construction contract that meets or exceeds the 20% and the construction budget of \$385,000. Should negotiations with the lowest bidder be unsuccessful, staff will negotiate in succession with each subsequent low bidder until a contract that meets the budget and L/SLBE requirements can be achieved.

This request is being made in an effort to complete the installation of the artwork at the site at the earliest possible date, and to minimize costs of completing the project. The alternative course of action is to reject all bids and re-bid the project.

This would delay the project at least six months during the bid and award phase, and additional costs estimated at \$10,000 would be incurred for the bid process, including postage, duplicating, and staff charges for administering the bid process.

### **SUSTAINABLE OPPORTUNITIES**

Economic: The project will generate business tax, sales tax, and other revenues for the City as a result of expenditures on the project.

Environmental: No impact as a result of the recommended action.

Social Equity: The public will enjoy the artistic expression presented by the project while traveling through the project site.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

No impact as a result of the recommended action.

### **RECOMMENDATION**

Staff recommends that Council approve the resolution authorizing the City Administrator to allocate an additional \$70,000 to the project budget from the City's Public Art Project Maintenance Fund, to reject all bids, and negotiate a contract not to exceed \$385,000 for the Broadway at I-880 Public Art Project.

Staff recommends that the City Council approve this resolution.

Respectfully Submitted,



**DENNIS M. POWER**  
Director, Cultural Arts and Marketing

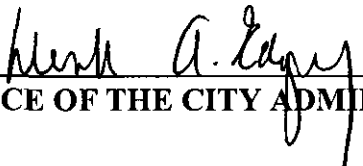


**RAUL GODINEZ, II, P.E.**  
Director, Public Works Agency

Reviewed by:  
David Lau  
Principal Civil Engineer  
Project Delivery Division

Prepared by:  
Ronald Ward  
Supervising Civil Engineer  
Project Delivery Division

APPROVED AND FORWARDED TO THE  
PUBLIC WORKS COMMITTEE:



OFFICE OF THE CITY ADMINISTRATOR

**PUBLIC ART PROJECTS AMOUNT AVAILABLE**

<b>Committed Funds - Cy 03-04 Plan Budgets</b>	<b>City % for Art (Fund 5505)</b>	<b>ORA Funds</b>	<b>Source Other</b>	<b>Total</b>
Mandela Gateway (BRIDGE/OHA)	50,000			50,000
Rockridge Greenbelt	6,750			6,750
Bella Vista Park	19,500			19,500
Coliseum Intercity Rail	63,000			63,000
Oakland Zoo	100,000			100,000
Fruitvale Pedestrian Plaza	72,000			72,000
Carmen Flores Rec Center	27,285			27,285
Greenman Field	24,000			24,000
W. Oak. Multi use Center	3,400			3,400
Woodminister Amphitheater	2,100			2,100
Fruitvale Gateway	48,000			48,000
Latham Square (Broadway/Telegraph Streetscape)		149,743		149,743
BART entrance (Broadway/Telegraph Streetscape)		69,612		69,612
Downtown Broadway Public Art (Telegraph Streetscape)		90,000		90,000
Pardee Oakland Artist (Broadway/Telegraph Streetscape)		74,767		74,767
I-880 Underpass	129,385	210,615		340,000
Peralta Hacienda Park	13,200			13,200
San Antonio Park	8,000			8,000
Broadway/McArthur Redev. Plan		8,000		8,000
Police Administration	90,000			90,000
Public Art Maintenance	112,462	64,615		177,077
Arts Partnership Murals Project			25,960	25,960
Open Proposals	74,500			74,500
To be allocated to Public Art Projects or Maintenance	203,418			203,418
<b>TOTAL:</b>	<b>1,047,000</b>	<b>667,352</b>	<b>25,960</b>	<b>1,740,312</b>
<b>FY 04-05 Measure DD</b>			<b>1,000,185</b>	<b>1,000,185</b>

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

FILED  
OFFICE OF THE CITY CLERK  
2004 JUL 14 PM 8:18

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

Requires the two-thirds vote of the Council

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ALLOCATE AN ADDITIONAL \$70,000 FROM THE CITY'S PUBLIC ARTS MUNICIPAL IMPROVEMENT CAPITAL FUND (FUND 5505) FOR THE BROADWAY AT I-880 PUBLIC ART PROJECT, TO REJECT ALL BIDS, TO NEGOTIATE A CONTRACT, AND TO AWARD A CONSTRUCTION CONTRACT IN AN AMOUNT NOT TO EXCEED \$385,000, WITHOUT RETURN TO COUNCIL**

**WHEREAS**, on March 15, 2004, bids were received by the Office of the City Clerk for the Broadway at I-880 Public Art Project (Project No. P130130) from Ray's Electric, M.A. Lindquist Co., and Bay Construction; and

**WHEREAS**, all three bids should be rejected because the bids were substantially higher than the original construction budget; and

**WHEREAS**, an additional \$70,000 is needed to successfully complete negotiations under current market conditions, specifically the rising price of steel and the low availability of contractors; and

**WHEREAS**, in an effort to accelerate the project schedule, staff proposes rejecting all three bids and negotiating a construction contract within budget starting with the lowest bidder within three weeks of approval of this resolution; and

**WHEREAS**, there are sufficient funds of \$385,000 within the Cultural Arts and Marketing Department budget; and

**WHEREAS**, the City's Municipal Code, Title 2, Section 2.04.050 I(5) allows an exception to the competitive bidding process when it is determined that it is not in the best interest of the City to formally bid the work; and

**WHEREAS**, the formal bid process takes three to four months; and

**WHEREAS**, the negotiated contract will require the contractor to meet the requirements of the City's L/SLBE and Local Employment Programs; and

**WHEREAS**, the City lacks the equipment and qualified personnel to perform the necessary work; and

**WHEREAS**, the City Council finds and determines that the performance of this contract is in the public interest because of economy; and

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**WHEREAS**, the City Council finds that services under this contract will be temporary; and

**WHEREAS**, the City Council finds and determines that the performance of this contract shall not result in the loss of employment or salary by any person having permanent status in the competitive service; now, therefore, be it

**RESOLVED:** That pursuant to O.M.C., Title 2, Section 2.04.050 I (5), the City Council finds and determines that it is in the best interest of the City to waive formal bid requirements; and be it

**FURTHER RESOLVED:** That the City Administrator, or her designee, is hereby authorized to allocate an additional \$70,000 from the City's Public Art Municipal Improvement Capital Fund (Fund 5505) for the Broadway at I-880 Public Art Project, to reject all bids, to negotiate a contract, and to award a construction contract within budget in an amount not to exceed \$385,000 for the Broadway at I-880 Public Art Project, without returning to council; and be it

**FURTHER RESOLVED:** That the City Manager, or her designee, is hereby authorized to execute any amendments or modifications of said contract within the limitations of the project specifications; and be it

**FURTHER RESOLVED:** That the contract shall be reviewed and approved by the City Attorney and placed on file in the Office of the City Clerk; and be it

**FURTHER RESOLVED:** That the approval of this Resolution requires a two-thirds vote of the Council members.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2004

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
CEDA FLOYD  
City Clerk and Clerk of the Council

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