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1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Auditor
Roland E. Smith, CPA
City Auditor

(510) 238-3378
FAX (510) 238-7640
TDD (510) 839-6451
www.oaklandauditor.com

JULY 13, 2004

IGNACIO DE LA FUENTE, PRESIDENT
CITY COUNCIL
OAKLAND, CALIFORNIA

PRESIDENT DE LA FUENTE AND MEMBERS OF THE CITY COUNCIL

SUBJECT: RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO AMEND THE PROFESSIONAL SERVICES CONTRACT FOR CONSTRUCTION MANAGER AT-RISK SERVICES WITH SWINERTON BUILDERS BY \$8,000,000 TO INCLUDE THE CONSTRUCTION PHASE OF THE POLICE ADMINISTRATION BUILDING WEAK STORY SEISMIC RETROFIT PROJECT FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$8,500,000 CONTINGENT UPON APPROVAL OF THE FEMA GRANT EXTENSION; ALTERNATIVELY, IF THE FEMA GRANT EXTENSION IS NOT APPROVED, THEN THE CONTRACT WILL BE AMENDED BY \$5,500,000 FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$6,000,000 USING MEASURE I FUNDING.

PURPOSE AND SCOPE

In accordance with the Measure H Charter Amendment, which was passed by the voters at the General election of November 5, 1996, we have made an impartial financial analysis of the accompanying Proposed Resolution and Agenda Report. In making our analysis, we also asked for additional information and clarification from City staff and obtained selected documents from the City Clerk's office.

The City Auditor is elected by the citizens of Oakland to serve as an officer in charge of an independent department auditing City government activities. The independence of the City Auditor is established by the City Charter.

Since the Measure H Charter Amendment specifies that our impartial financial analysis is for informational purposes only, we did not apply Generally Accepted Government Auditing Standards as issued by the Comptroller General of the United States. Moreover, the scope of our

analysis was impaired by Administrative Instruction Number 137, effective May 21, 1997, which provides only one (1) week for us to plan, perform and report on our analysis.

SUMMARY

The Police Administration Building (PAB) is a multistory building located at 455 Seventh Street. Studies concluded the PAB did not meet the requirements of existing building codes and other criteria necessary to withstand seismic disturbances. A seismic retrofit of the PAB was the corrective action selected. Accordingly, the City Council approved Resolution 77891 C.M.S. on June 17, 2003 to negotiate and award a professional services agreement with Swinerton Builders (General Contractor) in an amount not to exceed \$500,000 for pre-construction services such as scheduling and value engineering. The Proposed Resolution awaiting approval would authorize the City Administrator to enter into a contract with Swinerton Builders for the actual construction work involving seismic retrofit of the 'weak stories' between the basement and the third floor.

CONTRACT AWARD PROCESS

Resolution 77891 C.M.S. authorized the City Manager to negotiate and award a professional services agreement with the General Contractor for pre-construction, general contractor, and project close-out services. Resolution 77891 C.M.S. also included provisions for the General Contractor to conduct the competitive bid process for subcontractors. Resolution 77891 C.M.S. states in part:

“WHEREAS, upon completion of the subcontractor bidding/negotiation process, the fixed price for subcontractor costs, as well as the fixed price for the entire project, will be established; and

WHEREAS, once the fixed price for the entire project has been established, the CM/GC's commitment to deliver the project in accordance with the full construction price will be brought to Council for project budget approval and approval of an amendment to the CM/GC's agreement to increase said agreement to include the full costs of the project;”

Resolution 77891 C.M.S.

We interpret the above provisions as referring to the General Contractor completing the competitive bid process with subcontractors and thereby establishing a fixed price for subcontractor costs and the entire project as well. After the fixed price is established, approval of the overall construction price of the project would be brought before the Council for approval.

There is currently no fixed price from the General Contractor because the competitive bid process with subcontractors is not complete as of our report's completion date. According to staff, the General Contractor will have the fixed price estimate within the next few months.

Although there is currently no fixed price from the General Contractor, staff is presenting the Proposed Resolution due to the urgency of correcting the seismically unsafe status of the PAB.

Staff told us the provisions from Resolution 77891 C.M.S. cited previously in our report do not preclude the Proposed Resolution from obtaining approval.

FISCAL IMPACT

The amount of the contract is unknown. It is estimated to be either up to \$8.5 million if Federal Emergency Management Agency (FEMA) funds are available, or up to \$6 million if they are not.

| FEMA Grant Approved | Contract Amount Limit | Funding Source |
|---------------------|-----------------------|------------------------------|
| Yes | \$8.5 million | FEMA Grant & Measure I funds |
| No | \$6 million | Measure I funds only |

Funds available in the FEMA grant were not used by the December 30, 2003 deadline. Staff has applied for an extension to use the funds for the seismic retrofit. The outcome of the extension request is pending as of our report’s completion date.

Potential Outcomes

There will be different outcomes for the execution of a contract depending on approval of the FEMA grant request and the fixed price presented by Swinerton Builders. Some of the outcomes assuming the Proposed Resolution is approved are presented as follows:

1. If the FEMA grant request is denied, then a contract with Swinerton Builders using Measure I funds can be executed with a contract amount not greater than \$6 million. The \$6 million includes \$500,000 already authorized in Resolution 77891 C.M.S.
2. If the fixed price from Swinerton Builders causes the overall construction price to exceed \$6 million and the FEMA grant request is denied, then a contract cannot be entered into based on the Proposed Resolution.
3. If the FEMA grant request is approved, then a contract with Swinerton Builders can be executed in an amount up to \$8.5 million. The \$8.5 million includes \$500,000 already authorized in Resolution 77891 C.M.S.
4. If the FEMA grant request is approved, but the fixed price from Swinerton Builders causes the overall construction price to exceed \$8.5 million, then a contract cannot be entered into based on the Proposed Resolution.
5. If the FEMA grant request is still pending, then staff intends to enter into a contract with Swinerton Builders if Swinerton Builders’ fixed price does not cause the overall construction price to exceed \$6 million.
6. If Swinerton Builders’ fixed price causes the overall construction price to be greater than the not to exceed amount of \$8.5 million or \$6 million depending on the FEMA grant request, then staff will either not enter into a contract with Swinerton Builders or return to

the Council to obtain additional funding. According to staff, the sources of additional funding have not been identified. Alternatively, according to staff, the scope of the construction work involving seismic retrofit may be modified to make the fixed price lower.

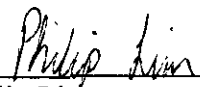
CONCLUSION

Before approving the Proposed Resolution, the Council should obtain additional information that is not available as follows:

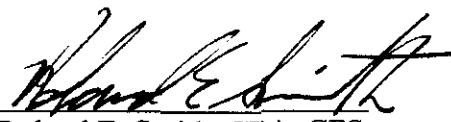
1. the fixed price from Swinerton Builders, which was not available as of our report's completion date; and
2. the outcome of the FEMA grant extension, which was also not available as of our report's completion date.

Prepared by:

Issued by:



Philip Linn
Deputy City Auditor



Roland E. Smith, CPA, CFS
City Auditor

Report completion date:
July 7, 2004