CITY OF OAKLAND

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MARCH 8, 2005

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 REJECT ALL BIDS FOR THE MEMORIAL PARK PROJECT, TO REVISE THE SCOPE OF WORK, AND TO NEGOTIATE AND AWARD A CONSTRUCTION CONTRACT WITHOUT RETURN TO CITY COUNCIL FOR AN AMOUNT NOT TO EXCEED SIX HUNDRED AND THIRTY THOUSAND DOLLARS ($630,000)

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.

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 two (2) weeks for us to plan, perform and report on our analysis. Due to this time constraint, we did not verify data contained in the Proposed Resolution and Agenda Report.

Item # _____
Public Works Committee
March 8, 2005

SUMMARY

The Memorial Park Project consists of a concrete plaza area with landscaping near 14th Street and Mandela Parkway. The site commemorates the lives lost during the Loma Prieta earthquake and the rescue efforts of the surrounding community. The Proposed Resolution involves the construction phase of the Memorial Park Project.

FISCAL IMPACT

Funding and costs associated with the Memorial Park Project are as follows:

Funding	
State of California Department of Transportation (Caltrans)	$620,000
State of California Environmental Enhancement and Mitigation (EEM)	250,000
District 3 Council Discretionary Funds	41,000
	$911,000
Costs	
Construction budget	($681,232)
Staff costs, design costs, printing, etc.	(229,768)
	($911,000)

According to the Agenda Report, the City may be at risk of losing State of California EEM funding if the City does not submit reimbursement requests by April 30, 2005. Also according to the Agenda Report, the original reimbursement deadline was June 30, 2005, but was subsequently changed by the State of California to the earlier date of April 30, 2005.

CONTRACTOR SELECTION PROCESS

The construction contract was put out to bid in January 2005. All three bids submitted exceeded the engineer's estimate of $550,000. The bids submitted are summarized as follows:

Contractor Name	Bid Amount	Engineer's Estimate	Amount over Engineer's Estimate
Bay Construction	$689,000	$550,000	$139,000
Simco Construction	$760,540	$550,000	$210,540
Ray's Electric	$972,300	$550,000	$422,300

According to staff, additional funding could not be generated to meet the lowest bid amount of $689,000. Staff proposes to reject all three bids and enter into negotiations with a contractor for a revised scope of work that can be performed for an amount not to exceed $630,000. The contract would be awarded without return to Council.

Staff intends to negotiate first with the lowest bidder, Bay Construction, then the next lowest bidder, Simco Construction, and so forth.

The Agenda Report cites two reasons for not rebidding the contract:

1. "The process to re-bid and award the project will take three to four more months, well beyond the new date for grant reimbursement..." (page 3, referring to the April 30, 2005 reimbursement deadline for State of California EEM funds)

2. "...results of the first bid indicate that results of a re-bid would not be significantly different from the first bid process." (page 3)

We asked staff whether any project within the past five years had met all the following criteria that are in the Proposed Resolution:

1. The project was put out to competitive bid.
2. All the bids exceeded the engineer's estimate.
3. Additional funding could not be obtained to meet the lowest bid amount submitted.
4. Staff was authorized to reject all the bids.
5. Staff was authorized to revise the scope of work.
6. Staff was authorized to negotiate a contract (instead of rebidding – formally or informally).
7. Staff was authorized to award the contract without return to Council.

Staff did not provide us with any projects that met the above criteria.

CONCLUSION

Before approving the Proposed Resolution, the Council should consider there may be no precedent within the past five years of the Public Works Agency rejecting all bids, waiving the bidding requirement and then negotiating with a contractor for a project without return to Council. However, not accepting the terms of the Proposed Resolution could risk the loss of State of California EEM funds.

Prepared by:

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Issued by:

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Report completion date:
February 23, 2005