

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2009 NOV 18 PM 12:47

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: December 1, 2009

RE: **Resolution Waiving The Competitive Request For Proposal/Qualification Process And Authorizing Amendment No. 4 To Increase The Professional Services Agreement With ELS Architecture And Urban Design For Construction Support Services For The East Oakland Sports Center Project For An Amount Not To Exceed Two Hundred Seventy-Five Thousand Dollars (\$275,000.00), Bringing The Total Contract Amount To Two Million Six Hundred Ninety-Seven Thousand Nine Hundred Eighty-Nine Dollars (\$2,697,989.00)**

SUMMARY

A resolution has been prepared waiving the competitive Request for Proposal/Qualification process and authorizing Amendment No. 4 to increase the professional services agreement with ELS Architecture and Urban Design for the East Oakland Sports Center Project (EOSC) for an amount not to exceed two hundred seventy-five thousand dollars (\$275,000.00), bringing the total contract amount to two million six hundred ninety-seven thousand nine hundred eighty-nine dollars (\$2,697,989.00).

The additional services will be utilized to provide construction support services, building commissioning services, and for contingencies for any unforeseen conditions that may occur during the construction phase. This cost increase is due to the added design services to complete construction documents for the fitness center and dance studio, added services associated with securing a Major Conditional Use Permit, developing contingency plans in the event that funding was not secured for the entire Phase 1 project and design services required for major utility relocation. Staff proceeded with the added design work in conjunction with the identification of the funding necessary to fully implement the Phase 1 project and to maintain the project schedule.

In February 2001, ELS was chosen through the City's Request-for-Proposal process as the top-rated and most qualified firm to provide comprehensive professional services associated with the design and construction of the East Oakland Sports Center. While additional project funds were being sought, Council authorized ELS to perform pre-design/programming, concept design work, schematic design, design development design, and construction document design under three previous contract amendments. Sufficient funding for the EOSC Phase 1 project was secured in November 2008. The construction document design work for the EOSC was completed in December 2008 and construction began in June 2009.

Item: _____
Public Works Committee
December 1, 2009

FISCAL IMPACT

Approval of this resolution will authorize the increase of the professional services agreement with ELS Architecture and Urban Design for the EOSC in an amount not to exceed \$275,000.00, for a total contract amount not to exceed \$2,697,989.00. Sufficient funding in the amount of \$275,000 for Amendment No. 4 with ELS is available within the following source: Measure I bond fund, Fund 5010, Organization 92270, Project No. C83213.

BACKGROUND

The concept for the EOSC originated prior to 1996 with visions to create a recreation complex with aquatics, fitness centers, gymnasiums, and other sports facilities that would serve the local community and be used as a venue for the possible 2012 San Francisco Bay Area Olympic Games. In 2001, ELS Architecture and Urban Design was chosen through the City's Request for Proposal process as the top-rated and most qualified firm to provide comprehensive professional services associated with design and construction of the EOSC. ELS provided a comprehensive fee proposal to provide master plans, schematic plans, construction documents, specifications, cost estimates, construction support, and fund raising assistance associated with the design and construction of the project. The estimated cost for the entire project was approximately \$36,000,000, however, only \$3,167,000 in Measure I funding was available at the time. Therefore, it was decided to design and construct the project in phases as funding became available. While additional funds were being sought, the following City Council actions regarding ELS design services approvals were made:

- Pursuant to Resolution No. 76278 C.M.S. dated February 13, 2001, the City entered into an agreement with ELS to provide pre-design/programming and concept design work with the intent and direction to return to Council for subsequent approval of the schematic design, design development, and construction document portions of the project.
- After completion of the pre-design/programming and concept design, the City Council approved Resolution No. 77071 C.M.S. on April 23, 2002, authorizing Amendment No. 1 to the professional services agreement with ELS for the schematic design of the EOSC. In addition, Amendment No. 2 to the professional services agreement was executed in April 2004 to extend the duration of the contract.
- The City Council approved Resolution No. 77071 C.M.S. on July 3, 2007, authorizing Amendment No.3 to ELS's professional services agreement for the preparation of construction documents for the EOSC Phase 1 project. This action was motivated by the requirements of the State Proposition 40 grant which required completion of the project by March 2010.

The current total project funding for the EOSC is \$23,567,000. Initial funding was provided in 1997 with Measure I bonds in the amount of approximately \$3,167,000. In 2002, the Measure DD bond committed an additional \$10 million to the project, and in addition, staff was successful in securing a \$2.4 million State Proposition 40 Grant. In 2008, East Bay Regional Park District (EBRPD) Measure WW bonds provided an additional \$6 million to the project and \$2 million was added in Redevelopment Agency funds.

The construction phase of the EOSC project was on hold from December 2008 to June 2009 due to concerns about the availability of funding provided by future bond sales. The state Proposition 40 grant funding was frozen in December 2008 due to the state's budget issues. The hold on the grant funding was subsequently released in May 2009. Staff has requested an extension from state grant officials to the March 31, 2010, deadline for completing the EOSC project. Additionally, the sale of Measure DD Series B bonds was successfully completed in July 2009.

KEY ISSUES AND IMPACTS

Under the initial Request for Proposal/Qualifications process, ELS was deemed the most qualified firm to provide the professional design services for this project. Council has consistently supported the intent and direction to utilize ELS throughout the project and to incrementally approve segments of the design work. ELS is inherently familiar with the project, provides continuity, and can provide the necessary design services in an efficient and timely manner. Further, use of an additional Request for Proposal process to select another consultant or to utilize another consultant from the City's As-Needed consultant contracts would not allow the project to proceed in a timely fashion. ELS is the architect of record for the project and there are legal implications for changing architects at this stage of the project.

The City's Municipal Code, Title 2, Chapter 2.04.050 I (5) allows an exception to the advertised competitive bidding process when it has been determined that it is in the best interests of the City to waive the competitive Request for Proposals/Request for Qualifications selection requirement of Section 2.04.051 A of the Oakland Municipal Code.

This professional services cost increase is due to four major factors. These factors include an increase in the overall scope of the project over what was covered in the initial cost proposal, added design costs associated the Major Conditional Use Permit, development of contingency plans in the event that Measure WW was not approved, and the resolution of major utility relocation issues. Detailed descriptions of the circumstances of these cost increases are as follows:

- Construction document design fees for fitness center and dance studio
The construction document design phase project began as a \$16.5 million project and included potential bid alternate elements for the fitness center and dance studio. The full

design of these alternates for construction would depend on the availability of funding based on the construction cost estimate developed at the design development phase. If funding was available for the fitness center and dance studio the full design would be done at extra cost. The estimate at the design development phase indicated that there was insufficient funding to build the fitness center and dance studio. Rather than eliminate the fitness center and the dance studio from the design, it was decided to complete design at increased cost and that additional construction funding to build these elements would be secured in the future. This additional funding was provided from the Oakland Redevelopment Agency and Regional Measure WW which brought the total project cost to about \$23.5 million.

- Major Conditional Use Permit
Professional services associated with providing information for planning permits was excluded from the consultant's scope of work because the extent of the process had not yet been determined nor had the need for the permit been confirmed. The Major Conditional Use Permit required numerous graphic exhibits, calculations and quantification of site elements and design analysis of the project. Extensive services from the consultant were required in order to secure approval of the Major Conditional Use Permit.
- Contingency plans for reduced scope project
Additional design services were required to develop contingency plans to build a scaled down EOSC building in the event that Regional Measure WW was not approved by the voters in November 2008. The lack of funding would have required a \$6 million reduction in the construction budget. The driving force behind maintaining the schedule was the State Proposition 40 grant deadline which required the project to be completed by March 31, 2010.
- Utility relocation
During the design development phase, it was discovered that all the utilities for the Ira Jenkins Recreation Center were underground and passed through the foot print of the proposed EOSC building. These utilities needed to be relocated to allow construction of the new building. The design work, which was specifically excluded from the initial design proposal, involved extensive coordination with utility companies and coordination with the Oakland Fire Prevention Services for fire sprinkler service to the existing building.

Staff proceeded with the added design work in conjunction with Council's identification of the Measure WW and Redevelopment Agency funding (\$8 million) that was necessary to fully implement Phase 1 of the EOSC project. Also, the City was obligated to expedite the EOSC project and complete the work as soon as possible to comply with the Proposition 40 grant requirements.

Under Amendment No. 4, ELS will provide the remaining construction support and building commissioning necessary to complete the EOSC. The work includes reviewing and approving submittals and shop drawings, evaluating site and design changes, providing clarifications, coordinating the Leadership in Energy and Environmental Design (LEED) certification, and preparing final punch-lists for the project. The \$275,000 funding increase identified for Amendment No.4 will include a \$25,000 contingency for any further unforeseen, additional services required to complete the EOSC project.

ELS has met the Local/Small Local Business Enterprise requirements with an overall participation level of 21.41%. The design team includes the local firms of Telemon Engineering, Sandis Civil Engineering, SOHA Structural Engineering, H&M Mechanical, F.W. Associates, Cumming Corporation, Applied Materials and Keller Mitchell, Inc. The LBE/SLBE information has been verified by the Contract Compliance Division of the City Administrator's Office and is shown on *Attachment A*.

EVALUATION OF PAST PERFORMANCE

No Contractor Performance Evaluations are on file with the City for ELS Architecture and Urban Design at this time. ELS has not completed any City contracts which require such evaluation. The work to date performed by ELS on the EOSC has been satisfactory.

PROJECT DESCRIPTION

The EOSC will be constructed at 9175 Edes Avenue between Jones Avenue and Phelps Street at Bill Patterson Park (formerly named Brookfield Park). The project will include a total of 22,500 square feet of building floor space; 6,000 square feet on the upper level and 16,500 square feet at ground level. The building includes a 9,000 square foot indoor swimming pool building (natatorium) with a 3,500 square foot indoor recreational swimming pool, changing/locker rooms and rest rooms, a reception area with meeting rooms and offices, an aerobics/dance room, a multi-purpose room/learning center and a fitness center. An 85-space parking lot is also included.

SUSTAINABLE OPPORTUNITIES

Economic: The project will generate business tax, sales tax, and other revenues for the City by those firms who work on the project.

Environmental: Environmental factors and opportunities are being incorporated to the extent feasible. The consultants and contractor are required to achieve a LEED silver rating in the design and construction of the facility by maximizing recycled content materials in the products, waste reduction, energy conservation, and integrating other environmental opportunities. The

water for the recreational swimming pool will be heated by solar thermal panels mounted on the roof of the natatorium.

Social Equity: The EOSC will provide new social opportunities and services to the community with much needed aquatic and recreational facilities for all ages and abilities and will provide a venue for building community cohesiveness and community pride.

DISABILITY AND SENIOR CITIZEN ACCESS

The EOSC will be in full compliance with the physical access requirements of the Americans with Disabilities Act ("ADA") by providing equal access to the facility.

RECOMMENDATION AND RATIONALE

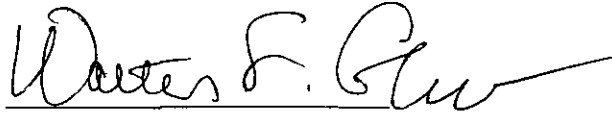
It is recommended that the City Council waive the competitive Request for Proposal/Qualifications process for professional services and authorize Amendment No. 4 to the professional services agreement with ELS Architecture and Urban Design, for the EOSC in an amount not to exceed \$275,000.00, for a total contract amount of \$2,697,989.00.

ELS was deemed the most qualified firm to provide the professional design services for this project under the initial Request for Proposal process and Council's intent and direction has been to utilize ELS throughout the entire project. ELS is inherently familiar with the project, provides continuity, and can provide the necessary design services in an efficient and timely manner.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council approve the resolution.

Respectfully submitted,

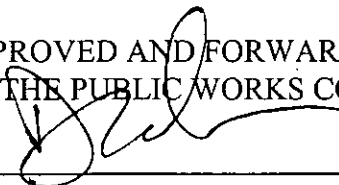


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Michael Neary, P.E., Deputy Director
Department of Engineering and Construction

Prepared by:
Lyle Oehler, CIP Coordinator
Project Delivery Division

APPROVED AND FORWARDED
TO THE PUBLIC WORKS COMMITTEE:



Office of the City Administrator

Attachment A: Contract Compliance Memo and Evaluation



Memo

Department of Contracting and Purchasing Social Equity Division

To: Lyle Oehler, Project Manager
 From: Sophany Hang, Acting Contract Compliance Officer
 Through: Deborah Barnes, Director, DC&P
 Shelley Darensburg, Sr. Contract Compliance Officer *S. Darensburg*
 CC: Gwen McCormick, Contract Administration Supervisor
 Date: November 6, 2009
 Re: RFP- East Oakland Sports Center-Amendment No. 4

The Department of Contracting and Purchasing (DCP), Division of Social Equity, reviewed one (1) proposal in response to the above referenced project. Below is the outcome of the compliance evaluation for the minimum 20% Local and Small Local Business Enterprise (L/SLBE)

Responsive		Proposed Participation					Earned Credits and Discounts		Banked Credits Eligibility	EBO Compliant? Y/N
Company Name	Proposed Amount	Total LBE/SLBE	LBE	SLBE	Trucking	Total Credited participation	Earned Bid Discounts	Adjusted Bid Amount		
ELS Architecture and Urban Design	\$2,697,989	21.41%	10.03%	11.38%	NA	21.41%	NA	NA	NA	Y

Comments: As noted above, ELS Architecture and Urban Design met and/or exceeded the minimum 20% L/SLBE requirement. The firm is EBO compliant.

Non-Responsive		Proposed Participation				Earned Credits and Discounts			Banked Credits Eligibility	EBO Compliant? Y/N
Company Name	Original Bid Amount	Total LBE/SLBE	LBE	SLBE	Trucking	Total Credited participation	Earned Bid Discounts	Adjusted Bid Amount		
NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Comments: NA

Should you have any questions you may contact Sophany Hang at (510) 238-3970.

DEPARTMENT OF CONTRACTING AND PURCHASING



Social Equity Division

PROJECT COMPLIANCE EVALUATION FOR :

Project No. NA

RE:

RFP--East Oakland Sport Center, Amendment No. 4

CONSULTANT/CONTRACTOR: ELS Architecture and Urban Design

Engineer's Estimate:

NA

Contractors' Bid Amount

NA

Over/Under

Engineer's

NA

Bid discounted amount:

N/A

Discount/Preference Points:

0

1. Did the 20% local/small local requirement apply: YES
2. Did the contractor meet the 20% requirement YES
 - a) % of LBE participation 10.03%
 - b) % of SLBE participation 11.38%
3. Did the contractor receive bid discount/preference points? NA
(If yes, list the points received) 0 points

5. Additional Comments.

[Empty box for additional comments]

6. Date evaluation completed and returned to Contract Admin./Initiating Dept.

11/6/2009

Date

Reviewing
Officer:

Date:

Approved By:

Shelley Qarensbug

Date:

11/6/09

LBE/SLBE Participation ELS Architecture and Urban Design.

Project Name: RFP--East Oakland Sport Center, Amendment No. 4

Project No.:		Engineer's Estimate				Under/Over Engineers Estimate:			Engineer's Estimate:			
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	Total	Total	LBE/SLBE	Total	For Tracking Only		
						LBE/SLBE %	Percentages	Dollars	Dollars	Ethn	MBE	WBE
PRIME	ELS Architecture and Urban Design	Berkeley	UB				62.43%		-2066867	C		
Water Proofing	Applied Materials	Oakland	CB	1.24%		1.24%	1.24%	20,000	20,000	AP	1.24%	
Economic Analysis	The Sport mgmt Group	Berkeley	UB				2.29%		38,500	C		
Surveyor	Sandis	Oakland	CB	0.29%		0.29%	0.29%	4,800	4,800	O		
Civil Engineering	Telamon	Oakland	CB	2.14%		2.14%	2.14%	36,000	36,000	O		
Structural Engineering	SOHA	Oakland	CB	6.06%		6.06%	6.06%	102,000	102,000	AP	6.06%	
Mechanical Engineering	H & M Mechanical Group	Oakland	CB		5.35%	5.35%	5.35%	90,000	90,000	AP	5.35%	
Electrical Engineering	F.W. Associates	Oakland	CB		3.74%	3.74%	3.74%	63,000	63,000	AP	3.74%	
Landscape Architecture	Keller Mitchell	Oakland	CB		1.99%	1.99%	1.99%	33,500	33,500	C		
Aquatics Consulting	ADG	Carlsbad	UB				3.80%	64,000	64,000	H	3.80%	
Code and Life Safety	The Preview Group	Berkeley	UB				0.82%	13,800	13,800	C		
Cost Estimator	Cumming Corporation	Oakland	UB				1.20%	20,230	20,230	C		
Specifications	Top Flight Specification	San Francisco	UB				2.16%	36,300	36,300	C		
LEED Documentation	Michael Heacock	San Francisco	UB				2.38%	40,000	40,000	C		
LEED Commissioning	Rick Unvasky	San Francisco	UB				2.15%		36,104	C		
LEED Cdaylighting	Timmons	San Francisco	UB				0.77%		13,000	C		
LEED Energy Modeling	Farber Energy	Walnut Creek	UB				0.42%		7,000	C		
LEED Site Review	Telamon	Oakland	CB	0.30%		0.30%	0.30%	5,000	5,000	O		
LEED Cost Analysis	Cumming Corporation	Oakland	UB				0.17%		2,888	C		

LBE/SLBE Participation ELS Architecture and Urban Design

Project Name: RFP--East Oakland Sport Center, Amendment No. 4

Project No.:		Engineer's Estimate				Under/Over Engineers Estimate: eers Estimate: eers Estimate:							
Discipline	Prime & Subs	Location	Cert. Status	LBE	SLBE	Total	Total	LBE/SLBE	Total	For Tracking Only			
						LBE/SLBE %	Percentages	Dollars	Dollars	Ethn	MBE	WBE	
LEED Energy Modeling	H & M Mechanical Group	Oakland	CB		0.30%	0.30%	0.30%	5,000	5,000	AP	0.30%		
Project Totals				10.03%	11.38%	21.41%	100.00%	\$533,630	\$2,697,989		20.49%	0%	
Requirements: The 20% requirements is a combination of 10% LBE and 10% SLBE participation. An SLBE firm can be counted 100% towards achieving 20% requirements.				LBE 10%	SLBE 10%	TOTAL LBE/SLBE 20%	TOTAL	TOTAL	TOTAL	Ethnicity AA = African American A = Asian C = Caucasian H = Hispanic NA = Native American O = Other NL = Not Listed			
Legend LBE = Local Business Enterprise SLBE = Small Local Business Enterprise Total LBE/SLBE = All Certified Local and Small Local Businesses NPLBE = NonProfit Local Business Enterprise NPSLBE = NonProfit Small Local Business Enterprise				UB = Uncertified Business CB = Certified Business MBE = Minority Business Enterprise WBE = Women Business Enterprise									

Approval as to Form and Legality FILED
2009
OAKLAND
Oakland City Attorney's Office
PM 12:4

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION WAIVING THE COMPETITIVE REQUEST FOR PROPOSAL/QUALIFICATION PROCESS AND AUTHORIZING AMENDMENT NO. 4 TO INCREASE THE PROFESSIONAL SERVICES AGREEMENT WITH ELS ARCHITECTURE AND URBAN DESIGN FOR CONSTRUCTION SUPPORT SERVICES FOR THE EAST OAKLAND SPORTS CENTER PROJECT FOR AN AMOUNT NOT TO EXCEED TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$275,000.00), BRINGING THE TOTAL CONTRACT AMOUNT TO TWO MILLION SIX HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED EIGHTY-NINE DOLLARS (\$2,697,989.00)

WHEREAS, ELS Architecture and Urban Design was chosen through the City's Request-for-Proposal process as the top-rated and most qualified firm to provide comprehensive professional services associated with design and construction of the East Oakland Sports Center at Bill Patterson Park (formerly named Brookfield Park); and

WHEREAS, on February 13, 2001, the City Council approved Resolution No. 76278 C.M.S. awarding a professional services contract to ELS to provide pre-programming/planning and concept design of the East Oakland Sports Center for an amount not to exceed \$236,997.00; and

WHEREAS, on April 23, 2002, the City Council approved Resolution No. 77071 C.M.S. to execute Amendment No. 1 of the professional services contract with ELS to provide schematic design of the East Oakland Sports Center for an amount not to exceed \$585,992.00; and

WHEREAS, on April 1, 2004, Amendment No. 2 to the professional services contract with ELS was issued to extend the time of performance; and

WHEREAS, on July 3, 2007, the City Council approved Resolution No. 77071 C.M.S. to execute Amendment No. 3 to the professional services contract with ELS for the preparation of construction documents for an amount not to exceed \$1,600,000.00; and

WHEREAS, the City Council has expressed its intent and direction to utilize ELS for the full design services throughout the entire project; and

WHEREAS, ELS is inherently familiar with the project, provides continuity, and can provide the necessary design services in an efficient and timely manner; and

WHEREAS, funding of \$275,000 for Amendment No. 4 with ELS is available from Measure I, Fund 5010, Organization 92270, Project No. C83213; and

WHEREAS, additional construction services from ELS are required so that the construction of the East Oakland Sports Center project may be completed in a timely fashion; and

WHEREAS, this professional services cost increase is due to an increase in the overall scope of the project over what was covered in the initial cost proposal, added design costs associated the Major Conditional Use Permit, development of contingency plans in the event that Regional Bond Measure WW was not approved and the resolution of major utility relocation issues; and

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

WHEREAS, the City Council finds that this contract is for services of a professional, scientific or technical nature and 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 services; now, therefore, be it

RESOLVED: That pursuant to Section 2.04.051B of the Oakland Municipal Code, the City Council finds that it is in the best interest of the City to waive the competitive Request for Proposals/Qualifications selection requirement of Section 2.04.051A of the Oakland Municipal Code in order to expedite the construction support services of the East Oakland Sports Center Project, and so waives the requirement; and, be it

FURTHER RESOLVED: That the City Administrator, or the City Administrator's designee, is hereby authorized to waive the competitive Request for Proposals process for professional services and to execute Amendment No. 4 to the professional services agreement with ELS Architecture and Urban Design, to provide construction support services for the East Oakland Sports Center project at Bill Patterson Park in an amount not to exceed \$275,000.00, bringing the total contract amount to \$2,697,989.00; and, be it

FURTHER RESOLVED: That the City Administrator or the City Administrator's designee, is hereby authorized to approve any subsequent amendments to or extensions of said agreement with the exception of those related to an increase in the total dollar amount of the agreement, provided that such amendments or extensions shall be filed with the City Clerk's Office; and, be it

FURTHER RESOLVED: That a copy of the agreement will be on file in the City Clerk's Office and will be reviewed and approved for form and legality by the Office of the City Attorney.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND
PRESIDENT BRUNNER

NOES -

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California