



City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 88380 C.M.S.

Introduced by Councilmember _____

RESOLUTION WAIVING THE CITY'S ADVERTISING AND COMPETITIVE BIDDING REQUIREMENTS AND WAIVING THE REQUEST FOR PROPOSALS/QUALIFICATIONS (RFP/Q) PROCESS REQUIREMENTS FOR THE PURCHASE OF CERTIFIED AND ACCREDITED FORENSIC ANALYTICAL SUPPLIES, EQUIPMENT, INSTRUMENTATION, SOFTWARE, AND RELATED SERVICES ON AN AS-NEEDED BASIS WHEN LABORATORY FORENSIC SCIENCE SUBJECT MATTER EXPERTS DETERMINE SUCH SUPPLIES AND / OR SERVICES ARE REQUIRED BASED ON CASEWORK CONDITIONS, THE LABORATORY'S VALIDATION METHODS OR ITS QUALITY ASSURANCE PROGRAM, WHEN NEEDED FOR THE TIMELY ANALYSIS OF EVIDENCE, OR WHEN THE MATERIALS OR SERVICES ARE AVAILABLE FROM ONLY ONE SOURCE, IN THE AMOUNT OF UP TO SIX HUNDRED THOUSAND DOLLARS (\$600,000) PER FISCAL YEAR THROUGH JUNE 30, 2025, FOR A TOTAL COST NOT TO EXCEED THREE MILLION DOLLARS (\$3,000,000)

WHEREAS, the Oakland Police Department's Criminalistics Laboratory (Crime Lab) brought to Council on July 28 a resolution for the terms listed above which was modified to a shorter time period set to expire Dec 31, 2020; and

WHEREAS, a list of technologies was introduced by the Crime Lab to the Privacy Advisory Commission (PAC) in August where both a Surveillance Impact Report and a Biometric Technology Use Policy for DNA Instrumentation and Analysis Software were provided to and recommended by the PAC in October in accordance with Resolution 88262 as amended and passed by Council on July 28, 2020; and

WHEREAS, Oakland's Surveillance Ordinance No.13489 C.M.S., adopted by the City Council on May 15, 2018 added Chapter 9.64 to the Oakland Municipal Code (OMC), and covers policy areas related to surveillance technology; and

WHEREAS, OMC 9.64.030.1.C requires City Council approval for new and existing surveillance technology; additionally, OMC Section 9.64.020.1 requires that, "[p]rior to seeking City Council approval for existing city surveillance technology under Section 9.64.030, city

staff shall submit a Surveillance Impact report and Surveillance Use Policy to the Privacy Advisory Commission (PAC) for its review at a regularly noticed meeting; the surveillance impact report and surveillance use policy must address the specific subject matter specified for such reports as defined under 9.64.010"; and

WHEREAS, OPD Crime Lab staff presented its DNA Instrumentation and Analysis and Software Surveillance Impact Report (SIR, *Attachment A*) and DNA Instrumentation and Analysis Software Biometric Technology Surveillance Use Policy (SUP, *Attachment B*) at the October 1, 2020 PAC meeting; and

WHEREAS, the SIR (*Attachment A*) covers the following areas as required by the Surveillance Ordinance:

- Information describing the system and how it works;
- Purpose of the technology;
- Locations where, and Situations in which the technology may be used;
- Privacy Impact of the technology;
- Mitigations to prevent privacy impacts;
- Data Types and Sources;
- Data Security;
- Costs;
- Third Party Dependence;
- Alternatives Considered; and
- Track Record of Other Entities; and

WHEREAS, the SUP (*Attachment B*) covers relevant areas required by OMC 9.64.030, including the following areas:

- Technology Description;
- Authorized Use;
- Use Restrictions;
- Data Access, Data Collection and Retention, and Security;
- Monitoring and Reporting; and
- System Training; and

WHEREAS, the Crime Laboratory is a full-service forensic science laboratory accredited to ISO/IEC 17025:2017 (ISO) by the American National Standards Institute National Accreditation Board (ANAB); and

WHEREAS, the Crime Laboratory must adhere to all applicable accreditation standards and requirements to successfully maintain and renew accreditation every four years; and

WHEREAS, ANAB is the largest and most established accrediting body in the United States engaging in the accreditation of forensic science testing laboratories; and

WHEREAS, accreditation is a requirement for eligibility for receipt and use of state and federal grant funds and for access to the state and national databases; and

WHEREAS, the use of validation methods and proficiency testing by ISO 17043 approved providers are requirements of accreditation; and

WHEREAS, the Crime Laboratory has implemented validation methods across all its forensic disciplines; and

WHEREAS, those validated methods specify supplies, instrumentation, and other analytical conditions necessary to produce reliable results; and

WHEREAS, the Crime Laboratory's Forensic Biology Unit is required to adhere to the Federal Bureau of Investigation (FBI) DNA Quality Assurance Standards (QAS) in order to maintain access to the Combined DNA Index System (CODIS); and

WHEREAS, the FBI QAS requires the Forensic Biology Unit to use rigorously validated DNA typing methods that use specific quality-controlled reagents and instruments from specific vendors; and

WHEREAS, ANAB requires the Crime Laboratory to use only suitable external providers of specific supplies, instruments, equipment, instrument service, equipment service, proficiency testing, and evidence collection kits to perform its casework using its validated methods; and

WHEREAS, the Crime Laboratory employs forensic subject matter experts who possess the requisite scientific knowledge to determine which supplies, instruments, and services are most suited to the Laboratory's needs or which are required to successfully analyze evidence in particular cases; and

WHEREAS, subject matter experts may determine that such supplies, instrumentation, instrument services, and related software are specifically required by forensic casework conditions, the laboratory's validated methods, or its quality assurance program, or that the materials are needed for the timely analysis of evidence, or that the materials or services are available from only one source, or that such materials or services cannot be substituted by products from another supplier; and

WHEREAS, subject matter experts anticipate entering into agreements with vendors such as, but not limited to the following: Adorama, Agilent Technologies, Airgas, American Society for Quality, ANSI National Accreditation Board LLC, Artic White LLC, Arrowhead Forensics, Aurora Biomed, Autodesk, Brownells, Cabella's, Cayman Chemicals, Cerilliant Corporation, Cheaper Than Dirt?, Coherent Inc., Collaborative Testing Services Inc., Covanta Inc., CSI Forensic Supply, Environmental Science Research, EVIDENT, Fisher Scientific, Foray Technologies, Forensic Comparison Software Company, Foster + Freeman Ltd, Full Spectrum, Grainger, Leeds Forensic Systems Inc., Leeds Precision Instruments Inc., Leica Geosystems, Life Technologies, Manthei Mess Systeme, Mettler-Toledo Rainin LLC, Midway USA, Perkin-Elmer, Promega Corporation, Qiagen, Niche Vision Forensic LLC, The REMI

Group Inc., Rice Lake Weighing Systems Division, Ron Smith and Associates, Safariland, San Diego Police Equipment Co Inc., Security Envelope Company, Serological Research Institute, Sigma Aldrich, Sirchie, Steraloids Inc., Thermo-Fisher, Thomas Scientific, Tri-Tech Inc., Uline, Unity Lab Services, USA Scientific, and VWR; and

WHEREAS, OMC Section 2.04.010 defines formal and informal bidding to include competitive processes (advertising and bidding or solicitation) and for informal bidding to require a minimum of three quotes or responses; and

WHEREAS, OMC Section 2.04.040 D 2 requires the City Administrator to institute informal contracting procedures for the purchase of supplies, services or combination; and

WHEREAS, OMC Section 2.04.050.1.5 allows the City Council to waive the advertising and competitive bidding requirements after a finding and determination that it is in the best interests of the City to do so; and

WHEREAS, OMC Section 2.04.051.A allows the City Council to waive the request for proposals/qualifications (RFP/Q) process requirements upon a finding and determination that it is in the best interest of the City to do so; and

WHEREAS, OMC Section 2.04.060 stipulates that in addition to price, a number of other considerations shall be made to determine the lowest responsible bidder including: the quality and performance of the supplies, the ability of the bidder to provide the supplies in a timely manner, the reputation and experience of the bidder and the quality of the bidder's performance on previous purchases; and

WHEREAS, City staff recommends waiving the advertising and competitive bidding requirements, and request for proposals/qualifications requirements because: 1) specific validated laboratory methods often require specific chemicals and reagents from specific providers, 2) casework situations require the rapid acquisition of specific supplies and materials which may be available from only one source, and 3) it is not possible to anticipate when such casework situations will arise and thus would be very difficult for the Crime Laboratory to seek "sole source" purchasing authority each time such situations occur; and

WHEREAS, the City Administrator has determined that a professional services agreement authorized by this resolution would be of a professional and temporary nature and shall not result in the loss of employment or salary by any person having permanent status in the competitive civil service; and

WHEREAS, the City Council previously authorized acceptance of similar grant funds by Resolution No. 87996 C.M.S., dated January 21, 2020, Resolution No. 87429 C.M.S., dated November 27, 2018, Resolution No. 87428 C.M.S., dated November 27, 2018, Resolution No. 86982 C.M.S., dated November 28, 2017, Resolution No. 86532 C.M.S., dated December 13,

2016, Resolution No. 85899 C.M.S., dated November 17, 2015, Resolution No. 85223 C.M.S., dated October 21, 2014, Resolution No. 84686 C.M.S., dated November 5, 2013, Resolution No. 84041 C.M.S., dated October 2, 2012; Resolution No. 83672 C.M.S., dated December 20, 2011; Resolution No. 83030 C.M.S., dated October 19, 2010; Resolution No. 82291 C.M.S., dated September 22, 2009; Resolution No. 81624 C.M.S., dated October 21, 2008; Resolution No. 80869 C.M.S., dated October 2, 2007; Resolution No. 80129 C.M.S., dated September 19, 2006; Resolution No. 79534 C.M.S., dated October 18, 2005 and Resolution No. 78909 C.M.S., dated November 16, 2004; and

WHEREAS, on July 28, 2020 the Oakland City Council adopted resolution no. 88262 C.M.S. which modified staff's request to waive city's advertising and competitive bidding requirements and RFP/Q process requirements for the purchase of crime lab supplies, equipment, instrumentation, software, and related services for \$600,000 per year for five years (through 2025) to instead allow only a total of \$300,000 for six months through December 31, 2020 along with the requirement to bring forth a list of all technology used by the Crime Lab to the PAC by September 2020 to develop an appropriate Impact Statement (*Attachment A*) and Use Policies (*Attachment B*) for these items in order to allow the PAC to make a recommendation to the City Council before the end of the calendar year; and

WHEREAS, as limited waiver from the City's bidding requirements and RFP/Q process requirements in no way waives the requirements of the City's Surveillance Technology Ordinance OMC 9.64; and

WHEREAS, the Crime Laboratory anticipates the annual need to replenish supplies, instruments, and related services from the listed vendors or required from other sources based on casework needs as determined by forensic subject matter experts at a cost not to exceed \$600,000 per fiscal year; and

WHEREAS, the Crime Laboratory anticipates that not extending this bid waiver beyond December 2020 will bring analysis of evidence that requires supplies, reagents, standards to an immediate halt; therefore, be it

RESOLVED: That the City Council finds and determines that pursuant to OMC Sections 2.04.050.1.5 and 2.04.051.B, and based upon the reasons stated above and in the report accompanying this resolution, that it is in the best interests of the City to waive the City's advertising and competitive bidding requirements for purchase of certified and accredited forensic laboratory analytical supplies, equipment, instrumentation, instrument services and software on an as-needed basis when crime laboratory subject matter experts determine such supplies and related services are required by forensic casework conditions, the laboratory's validated methods or its quality assurance program, when needed for the timely analysis of evidence, or when the materials or services are available from only one source at a cost not to exceed \$600,000 per fiscal year through June 30, 2025, for a total cost not to exceed three million dollars (\$3,000,000); and be it

FURTHER RESOLVED: That the City Council finds and determines that pursuant to OMC Section 2.04.050.1.5 and based upon the reasons stated above and in the City Administrator's report accompanying this resolution, that it is in the best interests of the City to waive the advertising and competitive bidding requirements for the following vendors: Adorama, Agilent Technologies, Airgas, American Society for Quality, ANSI National Accreditation Board LLC, Artic White LLC, Arrowhead Forensics, Aurora Biomed, Autodesk, Brownells, Cabella's, Cayman Chemicals, Cerilliant Corporation, Cheaper Than Dirt?, Coherent Inc., Collaborative Testing Services Inc., Covanta Inc., CSI Forensic Supply, Environmental Science Research, EVIDENT, Fisher Scientific, Foray Technologies, Forensic Comparison Software Company, Foster + Freeman Ltd, Full Spectrum, Grainger, Leeds Forensic Systems Inc., Leeds Precision Instruments Inc., Leica Geosystems, Life Technologies, Manthei Mess Systeme, Mettler-Toledo Rainin LLC, Midway USA, Perkin-Elmer, Promega Corporation, Qiagen, Niche Vision Forensic LLC, The REMI Group Inc., Rice Lake Weighing Systems Division, Ron Smith and Associates, Safariland, San Diego Police Equipment Co Inc., Security Envelope Company, Serological Research Institute, Sigma Aldrich, Sirchie, Steraloids Inc., Thermo-Fisher, Thomas Scientific, Tri-Tech Inc., Uline, Unity Lab Services, USA Scientific, and VWR; and be it

FURTHER RESOLVED: That any agreement authorized by this resolution shall be reviewed and approved by the Office of the City Attorney for form and legality prior to execution, and a copy shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 10 2020

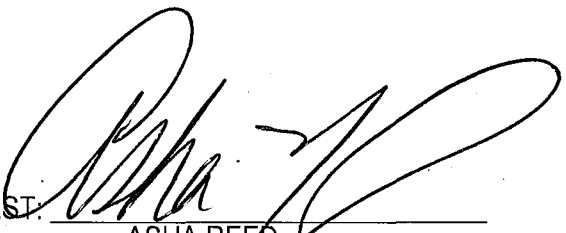
PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO-BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO, and PRESIDENT KAPLAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST: 
ASHA REED
Acting City Clerk and Acting Clerk of the Council
of the City of Oakland, California