

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 JAN -8 PM 4:18

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: January 13, 2009

RE: **Supplemental Report To The Resolution Authorizing The City Administrator, Or The City Administrator's Designee, To Increase The Contract Amount For The Construction Manager At Risk (CMAR) Contract With Turner Construction Company For The East Oakland Sports Center Project (EOSC) From Eleven Million Nine Hundred Thousand Dollars (\$11,900,000.00) By: 1) Two Million Dollars (\$2,000,000.00) In Oakland Redevelopment Agency Funds; And 2) An Additional Five Million One Hundred Thousand Dollars (\$5,100,000.00) For A Total Contract Amount Not To Exceed Nineteen Million Dollars (\$19,000,000.00) Subject To The Availability Of Measure WW Regional Open Space, Wildlife, Shoreline And Park Bond Funding, And Authorizing Early Termination Of The Contract In The Event That Measure WW Funds Become Unavailable**

SUMMARY

This supplemental report provides information that was not available at the time of the writing of the January 13, 2009 agenda report and resolution to authorize an increase in the construction contract amount for the East Oakland Sports Center Project (EOSC). This report is intended to provide Council with information concerning funding issues and to provide options for possible direction by the Council to staff.

The issues are the following:

- Since the writing of the original report, the State of California froze \$2,400,000 in grant funding for the EOSC from State Proposition 40, 2002 Resources Bond Act. On December 23, 2008, the state requested that grantees not enter into any new agreements or contracts that commit to the expenditure of state bond funds and suspend all bond-funded projects unless the project can be continued with non-state funding sources. The notification indicated that the current state budget crisis is the reason for the decision to freeze grant payments. In addition, based on City staff's discussion with representatives of the State Office of Parks and Recreation Office of Grants and Local Services, there is concern about there being an unfavorable climate in which to sell State of California bonds.
- The issue relating to bond sales by the state has also raised concern over the two other funding sources for the EOSC which are also dependant on future bond sales. Future bonds sales for the project include \$6,000,000 in Measure WW Regional Open Space,

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Wildlife, Shoreline and Park Bond funding East Bay Regional Park District (EBRPD) and an estimated \$4,200,000 in Measure DD Series B bond funding.

- As was indicated in the original report, there is some uncertainty concerning Measure WW funding. The City has not executed an agreement with the EBRPD for \$6,000,000 in Measure WW funding and the EBRPD has not sold bonds for Measure WW funding as yet. EBRPD representatives have said that Measure WW bond sales are scheduled for late spring of 2009.
- The \$4,200,000 in Measure DD Series B bond funding for the EOSC is dependant upon bond sales which is tentatively scheduled by June 2009.
- The City is scheduled to execute a construction contract with Turner Construction Company for \$11,800,000 in January 2009 and, pending approval of this proposed resolution, to further amend the construction contract to add an additional \$7,100,000 to the construction contract for a total capacity of \$19,000,000.
- As indicated in the original report, the only feasible approach to completing the project on time and within budget is to start the full \$19,000,000 scope of the EOSC in January 2009. Phasing the project to coincide with funding availability is not possible without extensive redesign, and repackaging and re-bidding the construction contract.

FISCAL IMPACT

Of the \$19,000,000 identified for construction of the EOSC, \$12,600,000 is not currently available for the project. This includes \$2,400,000 in state grant funding which has been frozen for an indeterminate period of time, \$6,000,000 in Measure WW funding, which is not currently available and approximately \$4,200,000 in Measure DD Series B bond funding which is dependant upon future bond sales.

KEY ISSUES AND IMPACTS

As was indicated in the original report, the construction of the EOSC is scheduled to start in January 2009 in order to complete the project by March 2010, so that the City will qualify for reimbursement for the State Proposition 40, 2002 Resources Bond Act grant of \$2,400,000.

Since a major part of the funding for the EOSC is not currently available it is prudent to weigh the risks of executing a construction contract for the project at this time.

Delaying the execution of the construction contract for EOSC until the necessary funding is assured would insure that the City would not have to suspend or terminate the project during construction. If this delays completion of the project past the March 2010 state deadline, the City could risk the loss of this funding, but it could argue that the delays were the direct result of state action and could lobby local state legislators to introduce a measure to extend the grant

deadline based on the delay of funding availability. State Office of Grants and Local Services officials indicated the legislative option for delaying the deadline may be available for competitive grants, which includes the EOSC state grant funding.

A disadvantage of delaying the start of the EOSC contract is that the cost of the project may increase. The project has already been bid out and the contractor may not hold the present bid price past February 15, 2009. The proposed federal economic stimulus package may also make the bidding environment less competitive, which could increase prices. Another concern is that the state grant deadline may not be extended under any circumstances or the legislation to extend the deadline may fail, in which case the state grant funding may not be eligible for reimbursement to the City.

RECOMMENDATIONS

Staff recommends that Council delay execution of this construction contract until resolution of the state budget situation and until the status of the Measure DD Series B and Measure WW bond sales are confirmed with advance authority assigned to the City Administrator to make those determinations and to award the construction contract.

Respectfully submitted,



Dan Lindheim
Director
Community & Economic Development Agency

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APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE:



Office of the City Administrator

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