



City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION WAIVING FURTHER ADVERTISING, COMPETITIVE BIDDING, AND THE CITY'S SMALL-VERY SMALL LOCAL BUSINESS ENTERPRISE PARTICIPATION REQUIREMENT AND AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND AWARD CONSTRUCTION CONTRACTS TO 1) GALLAGHER & BURK 2) MCGUIRE & HESTER AND 3) O.C. JONES & SONS PROVIDED THAT ALL MEET THE CONTRACTOR'S BID SCHEDULE OF THE LOWEST RESPONSIBLE BID OF GALLAGHER & BURK, FOR AS-NEEDED PAVEMENT REHABILITATION SERVICES (PROJECT NUMBER 1006103) IN ACCORDANCE WITH THE PROJECT PLANS AND SPECIFICATIONS AND THE LOWEST RESPONSIBLE BIDDER IN ACCORDANCE WITH CONTRACTOR'S BID IN AN AMOUNT NOT TO EXCEED THIRTEEN MILLION, SIX HUNDRED FIFTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$13,657,500.00) EACH, WITHOUT RETURN TO COUNCIL, AND 4) ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS.

WHEREAS, on September 30, 2021, the City Clerk received three bids for the 2021 As-Needed Pavement Rehabilitation Services Project: and

WHEREAS, the bids were as follows: \$13,657,500 from Gallagher & Burk; \$13,802,960 from McGuire & Hester; and \$15,058,775 from O.C. Jones & Sons, and

WHEREAS, all bids were deemed non-responsive due to not achieving 25% small or very small local business enterprise (S/VSLBE) participation; and

WHEREAS, Gallagher & Burk is otherwise deemed the lowest responsible bidder and is recommended that the City Council authorize the City Administrator to negotiate with the lowest responsible bidder, and if negotiations are successful, award the contract to Gallagher and Burk; and

WHEREAS, the City wishes to additionally negotiate with McGuire & Hester and O.C. Jones & Sons, the second and third lowest responsible bidders, respectively, and to recommend for additional contract award with the stipulation that they meet the bid schedule of the lowest bid of Gallagher & Burk; and

WHEREAS, Oakland Municipal Code (OMC) section 2.04.050 requires advertising and competitive bidding for contracts for the purchase of services, supplies or combination required by the City in any one transaction which exceeds \$50,000, and the award to the lowest responsible, responsive bidder if award is made; and

WHEREAS, OMC Section 2.04.050.1.5 provides an exception to the advertising and competitive bidding requirements of the OMC upon a finding and determination by the City Council that it is in the best interest of the City to do so; and

WHEREAS, having multiple contractors will ensure contractor availability to complete the 2019 3-Year Paving Plan and to implement the 2022 5-Year Paving Plan; and

WHEREAS, awarding these contracts will freeze unit prices at the 2021 competitively-bid contract amounts, representing a cost advantage for the City versus new unit prices on the open market; and

WHEREAS, the Project is exempt from CEQA pursuant to Public Resources Code Section 711.4 and pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a Community Plan, General Plan or Zoning), 15301(c) (Existing Facilities, Highways and Streets), 15302 (Replacement or Reconstruction), 15303 (Small Structures), 15304(h) (minor alterations to land), and/or 15061(b)(3) (No Significant Effect on the Environment); each of the aforementioned provides a separate and independent basis for CEQA compliance; and

WHEREAS, the City Council finds and determines that the performance of these contracts are in the public interest because of economy or better performance; and

WHEREAS, funding for this project will be available in the following project account as part of the current and anticipated FY 2021-22 CIP Budget: in Fund 5335 Measure KK, Organization 92246 Engineer Design Streets and Structures, Account 57411 Street Construction, and Project No. 1005420.

WHEREAS, the City Council finds and determines based on the representations set forth in the City Administrator's report accompanying this Resolution that the construction contract approved hereunder is temporary in nature; and

WHEREAS, the City lacks the equipment and qualified personnel to perform the necessary work, that the performance of this contract is in the public interest because of economy or better performance and that this contract is of a professional, scientific or technical nature; and

WHEREAS, Gallagher & Burk, McGuire & Hester, O.C. Jones & Sons comply with all other local business enterprise and local trucking requirements; and

WHEREAS, the City Council finds and determines that the performance of these contracts shall not result in the loss of employment or salary by any person having permanent status in the competitive service now, therefore, be it

RESOLVED: That the City Council hereby waives the 25% S/VSLBE requirement and finds and determines that it is in the best interests of the City to waive further advertising and competitive bidding per OMC Section 2.04.050.1.5, and authorizes the City Administrator to negotiate and, if such negotiations are successful, award a construction contract to Gallagher & Burk in accordance with project plans and specifications for 2021 As-Need Pavement Rehabilitation Services and the contractor's bid schedule in the amount not to exceed Thirteen Million, Six Hundred Fifty-Seven Thousand, Five Hundred Dollars (\$13,657,500.00); dated September 30, 2021, without return to Council; and be it

FURTHER RESOLVED: The City Council finds and determines that it is in the best interest of the City to waive further advertising and competitive bidding and waive the 25% S/VSLBE requirement and authorizes the City Administrator to negotiate and if such negotiations are successful, award contracts to the second and third lowest bidders, McGuire & Hester and O.C. Jones & Sons, per OMC Section 2.04.050.1.5, to ensure contractor availability, additional work constructed at lowest bid unit prices, and the reasons set forth in the staff Report that accompanies this Resolution; and be it

FURTHER RESOLVED: That the City Administrator is authorized to negotiate and if such negotiations are successful, award construction contracts to McGuire & Hester and O.C. Jones & Sons in accordance with project plans and specifications for As-Needed Citywide Pavement Rehabilitation Services provided they meet the September 30, 2021 bid schedule of Gallagher & Burk, the lowest bidder on the project, in the amount not to exceed Thirteen Million, Six Hundred Fifty-Seven Thousand, Five Hundred Dollars (\$13,657,500.00) each, without return to Council; and be it

FURTHER RESOLVED: That the amount of each bond for faithful performance, (\$13,657,500.00); and the bonds to guarantee payment of all claims for labor and materials furnished and for the amount under the Unemployment Insurance Act, (\$13,657,500.00); with respect to such work are hereby approved for each contract to be awarded as described herein; and be it

FURTHER RESOLVED: That the City Administrator, or designee, is hereby authorized to negotiate and enter into separate contracts as set forth in the Resolution with 1) Gallagher & Burk, 2) McGuire & Hester, and 3) O.C. Jones & Sons, on behalf of the City of Oakland and to execute any amendments or modifications of the contracts within the limitations of the project specifications; and be it

FURTHER RESOLVED: That the plans and specifications prepared for this project, including any subsequent changes during construction, that will be reviewed and adopted by the Director of Transportation, or designee, are hereby approved; and be it

FURTHER RESOLVED: That the Council hereby finds and determines that the Project is exempt from CEQA pursuant to Public Resources Code Section 711.4 and pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a Community Plan, General Plan or Zoning), 15301(c) (Existing Facilities, Highways and Streets), 15302 (Replacement or Reconstruction), 15303 (Small Structures), 15304(h) (minor alterations to land), and/or 15061(b)(3) (No Significant Effect on the Environment); each of the aforementioned provides a separate and independent basis for CEQA compliance: and be it

FURTHER RESOLVED: That the City Administrator or his designee shall file a Notice of Determination/Notice of Exemption with the Clerk of the County of Alameda for this project that is named in this resolution; and be it

FURTHER RESOLVED: That the contracts shall be reviewed and approved by the City Attorney for form and legality prior to execution and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

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