



City Attorney's Office

2023 JAN 33 AM 9: 53

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

RESOLUTION NO. 89475 C.M.S.

RESOLUTION REJECTING ALL BIDS, WAIVING FURTHER ADVERTISING AND COMPETITIVE BIDDING, AND AUTHORIZING THE CITY ADMINISTRATOR, OR DESIGNEE, TO NEGOTIATE IN THE OPEN MARKET FOR 2021 AS-NEEDED PAVEMENT REHABILITATION SERVICES (PROJECT 1006104); AND AUTHORIZING THE CITY ADMINISTRATOR TO AWARD A CONSTRUCTION CONTRACT FOR 2021 AS-NEEDED PAVEMENT REHABILITATION SERVICES (PROJECT 1006104) TO GALLAGHER & BURK, THE LOWEST RESPONSIVE, RESPONSIBLE BIDDER IN ACCORDANCE WITH THE PROJECT PLANS AND SPECIFICATIONS AND CONTRACTOR'S BID IN AN AMOUNT NOT TO EXCEED FIFTEEN MILLION, TWENTY-THREE THOUSAND, TWO HUNDRED AND FIFTY DOLLARS (\$15,023,250.00), CONTINGENT UPON AVAILABILITY OF FUNDS, AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS.

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, on September 30, 2021, after a competitive bidding process, the City Clerk received three bids for the 2021 As-Needed Pavement Rehabilitation Services Project (1006104); and

WHEREAS, the bids for the project 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, prior analysis performed by the Department of Workplace and Employment Standards (DWES) in November 2021 had identified that all the three bids failed to meet the Small/Local Business Enterprises (S/LBE) Program requirements, and

WHEREAS, on January 18, 2022, City Council directed staff to return to Council with a resolution rejecting all bids and authorized staff to negotiate with the bidders to achieve bids compliant with the S/LBE program requirements, and

WHEREAS, following negotiations, Gallagher & Burk is deemed the lowest responsive, responsible bidder and is recommended for the award; and

WHEREAS, OMC Section 2.04.050.I.5 provides an exception to the need for further advertising and competitive bidding requirements of OMC section 2.04.050 upon a finding and determination by the City Council that it is in the best interest of the City to do so; and

WHEREAS, staff recommends that pursuant to OMC section 2.04.050 I. 5, that it is in the best interest of the City to waive the advertising and bidding requirements of OMC section 2.04.050 because awarding this contract will freeze unit prices, 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 this contract is 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 complies with all other local business enterprise and local trucking requirements; 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 service now, therefore, be it

RESOLVED: That pursuant to OMC section 2.04.050 I. 5, that the Council finds and determines that it is in the best interest of the City to waive the advertising and bidding requirements of OMC section 2.04.050 because awarding this contract 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 thus so waives these requirements; and

FURTHER RESOLVED: That the City Administrator is authorized to 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 Fifteen Million, Twenty-Three Thousand, Two Hundred and Fifty Dollars (\$15,023,250.00) dated August 1, 2022; and be it

FURTHER RESOLVED: That the amount of the bond for faithful performance, (\$15,023,250.00); and the bonds to guarantee payment of all claims for labor and materials furnished and for the amount under the Unemployment Insurance Act, (\$15,023,250.00); with respect to such work are hereby approved; and be it

FURTHER RESOLVED: That the City Administrator is hereby authorized to enter into a contract with Gallagher & Burk on behalf of the City of Oakland and to execute any amendments or modifications of the contract 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, 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 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 contract 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,

NOV 01 2022

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT FORTUNATO BAS — 8

NOES — 0

ABSENT — 0

ABSTENTION — 0

ATTEST:



CASHA REED

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