



CITY OF OAKLAND

AGENDA REPORT

TO: Jestin D. Johnson
City Administrator

FROM: G. Harold Duffey
Director, Oakland Public
Works

SUBJECT: Pacific State Environmental
Contractors, Inc. Contract Change
Order Increase

DATE: October 30, 2023

City Administrator Approval

Date: Nov 2, 2023

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Authorizing the City Administrator To:

- (1) Waive Advertising And Competitive Bidding To Increase The Existing Construction Contract With Pacific States Environmental Contractors, Inc., For The 73rd Avenue Soil Remediation Project By An Amount Not-To-Exceed Sixty-Six Thousand, Five Hundred Three Dollars and Fifty Cents (\$66,503.50), Bringing The Original Contract Amount of Two Hundred Twenty-Nine Thousand Nine Hundred Dollars (\$229,900.00) To A Total Contract Amount of Two Hundred Ninety-Six Thousand Four Hundred Three Dollars and Fifty Cents (\$296,403.50); And**
- (2) Adopt Appropriate California Environmental Quality Act (CEQA) Findings.**

EXECUTIVE SUMMARY

Approval of this proposed resolution will authorize the City Administrator to increase and execute a change order with Pacific States Environmental Contractors, Inc. (PSEC) for the 73rd Avenue Soil Remediation Project (Project Number 1000165) by an amount not-to-exceed \$66,503.50, bringing the total contract amount from \$229,900.00 to \$296,403.50. The soil remediation is necessary to meet regulatory requirements associated with the property owned by the City of Oakland (City). This requested contract increase is as a result of significant regulatory agency approval delays and additional mitigation requirements that increase the remediation scope, rendering the original bid insufficient.

The requested City Council action to authorize waiving further advertising and competitive bidding under Oakland Municipal Code (OMC) Section 2.04.050.I.5 is necessary to increase the construction contract amount to proceed with remediation and construction for the project.

BACKGROUND/LEGISLATIVE HISTORY

The project site at 710 73rd Avenue is a 0.52 acre site owned by the City and managed by the Economic Workforce and Development Department (EWDD). It is located near the Coliseum BART Station and the Oakland Alameda County Coliseum in Council District 6 as shown in **Attachment A: Project Location Map**. Funded by Coliseum Tax Allocation bonds, the project scope is to excavate and remove contaminated soils at the site prior to redevelopment.

In 2003, two of the original owners of the brownfield site at 710 73rd Avenue, Honeywell International Inc. and Purex Industries, Inc., entered into a 30-year agreement with the State of California's Department of Toxic Substance Control (DTSC) to cover costs associated with groundwater remediation, operations, maintenance, and reporting, including 5-year reviews. The City Council approved the purchase of this property on December 11, 2007, per Resolution No. [2007-0084 C.M.S.](#) to initially utilize this parcel to develop a multi-level parking facility for BART and the adjacent Oakland Coliseum Sports Complex. Although the original owners have been cleaning up volatile organic compounds (VOCs) at the property, under the terms of the voluntary agreement, the City was required to provide additional remediation work if there was further site contamination or if the cleanup by the owners proved unsatisfactory to DTSC.

In early 2015, the State of California Regional Water Quality Control Board (RWQCB) discovered that polychlorinated biphenyls (PCBs), a known carcinogen, were being discharged into Arroyo Viejo Creek from the adjacent property at 700 73rd Avenue owned by Union Pacific Railroad, and from the City's site at 710 73rd Avenue. As a result, the Environmental Protection Agency (EPA) and RWQCB requested the City to submit a site characterization plan to investigate PCB impacts on the property. In October 2017, the City submitted a Removal Action Workplan (RAW) for excavating soils contaminated with VOCs and PCBs at the site to DTSC. DTSC agreed to provide a timely review of the plan so that the City could remediate the site in 2018, prior to redevelopment construction activity commencing in March 2019.

Through a formal bidding process, PSEC was awarded a soil remediation contract in the amount of \$229,900.00 in November 2018. However, the key DTSC staff member assigned to review the City's RAW with the EPA retired without taking action on the RAW. City staff from the Environmental Services Division (ESD) and Project and Grant Management Division made numerous requests to DTSC to assign replacement staff. Due to systemic staffing issues at DTSC, little progress was made on the RAW review over the next several years. Because of these significant delays, the EPA eventually agreed to provide a review of the RAW and approved the work plan in the early part of 2022. During DTSC's review of the RAW in winter 2022, DTSC mandated additional mitigation measures that included a supplemental Land Use Covenant (LUC), which is a written agreement documenting terms of the remediation, a specialized dust control plan, and the use of special truck bed liners to haul away the contaminated soil. DTSC completed their review and approval of the LUC through an agreement between the regulatory agencies, the City Attorney's office, and ESD during the Spring of 2023. DTSC is currently finalizing their approval of the RAW, which is anticipated to be completed in December 2023.

ANALYSIS/POLICY ALTERNATIVES

PSEC was awarded the contract for soil remediation in 2018. As a result of significant regulatory agency approval delays and additional mitigation requirements that increase the remediation scope, PSEC’s original bid for \$229,900.00 is no longer valid. PSEC is capable and interested in performing the work and provided a new cost proposal in February 2023 in the amount of \$251,185.00, a net increase of \$21,285.00, which includes all costs associated with the original base bid work, cost escalation, and new remediation measures. To proceed with the remediation work and to address unforeseen field conditions, an additional \$45,218.50 in change order capacity authorization is recommended for a total increase of \$66,503.50 to the 2018 contract with PSEC, bringing the total contract amount from \$229,900.00 to \$296,403.50. Funding is available in the project budget for this increased contract amount.

Description	Amount
Original PSEC bid in 2018	\$229,900.00
PSEC proposed an increase in 2023	\$21,285.00
Additional Change Order Capacity	\$45,218.50
Total Contract Amount	\$296,403.50

Approval of this proposed resolution will waive further advertising and the competitive bidding requirement upon a finding and determination by the City Council that it is in the City’s best interest in accordance with OMC Section 2.04.050.1.5. Approval of the resolution will authorize the City Administrator to increase the construction contract amount PSEC to \$296,403.50 within the limitations of the Standard Specifications and will enable the work to proceed in the most expeditious time frame. Without approval of this proposed resolution, the project would need to be formally re-advertised for new construction bids, further delaying the remediation work by another four to six months. Given the continuing robust construction climate and recent record construction cost increases, it is not certain that rebidding the project would result in a lower overall construction cost to the City.

The City Administrator has the authority to execute supplies and services contracts up to \$250,000.00 in any single transaction without previous specific action by the City Council per Oakland Municipal Code (OMC) Section 2.04.020. A.1. As a result, the \$250,000.00 contracting authority leaves a change order capacity for the project at approximately 8% of the original contract amount, or \$20,100.00. Up to a 23% increase to the contract amount is necessary to cover the new cost of \$251,185.00 and address and negotiate any unforeseen field or contract issues with the contractor without incurring significant delays to the project with the available funds from EWDD. Unforeseen field and contract issues can often be attributed to additional quantities of materials needed, underground site conditions not specified in plans and specifications, and minor design changes to cater to field conditions. OMC Section 2.04.050.1.5 provides an exception to the advertising and competitive bidding requirement 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.

For the reasons stated above, staff is requesting the City Council to authorize the City Administrator to increase the construction contract amount with PSEC up to \$296,403.50 within the limitations of the Standard Specifications.

The completion of this project and approval of this resolution will advance Citywide priorities of vibrant, sustainable infrastructure by removing hazardous materials from the City property, improving the water quality at Arroyo Viejo Creek and generating future tax revenue for the City.

PUBLIC OUTREACH/INTEREST

In 2017, the City and DTSC developed a public participation plan, which included community stakeholder lists and communication outreach plans for input from the public. In 2018, the City and DTSC prepared a community profile for the project to inform the public and gather community input regarding the site, technical investigations, and cleanup activities. Notifications were sent to the surrounding community and posted at the nearby Martin Luther King, Jr. Public Library at 6833 International Boulevard. The input that was received contributed to the development of the RAW.

COORDINATION

The approved RAW and LUC were developed in collaboration with EPA, DTSC, EWDD, ESD, and the City Attorney's office. The work contracted by PSEC was coordinated with EWDD, ESD, the City Attorney's Office along, the Department of Workplace & Employee Standards (DWES) and appropriate divisions within Oakland Public Works.

This report and the resolution have been reviewed for form and legality by the Office of the City Attorney, the Budget Bureau, and DWES.

FISCAL IMPACT

Project funds for the award of the construction contract are available through the following sources:

Funding Source	Amount
Coliseum Tax Allocation Fund Series 2006B-T (5656) 73 rd Avenue Soil Remediation Project (1000165); Project Management Organization (92270); Structures and Improvements Account (57311); and Coliseum Program (SC12)	\$296,403.50

SUSTAINABLE OPPORTUNITIES

Economic: The soil remediation project will remove harmful toxins from the site that will allow for future site development, providing an economic benefit to the community through subsequent design and construction employment opportunities. Future development of the site will generate increased property tax revenue for the City. Additionally, site remediation is needed to obtain clearance from regulatory agencies for future site development, thereby saving significant resources for costly studies and remedial activities.

Environmental: The soil remediation will remove hazardous substances that affect the City property and will also improve the water quality at Arroyo Viejo Creek and the overall health of the public within the general work area.

Race & Equity: The City continues to improve the overall health and environment for its citizens. The soil remediation at the City property will benefit a population of approximately 12,000 people who live near the site, where the two largest demographics consist of a Hispanic population of 55% and an African American population of 32% with a median household income of \$40,000.00 annually.

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

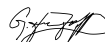
The action being undertaken to implement the project are exempt from the California Environmental Quality Act (CEQA) under the following CEQA Guidelines Sections: Section 15162 and 15163 (no further environmental review required); Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment); Section 15061(b)(3) (no significant effect on the environment); Section 15183 (projects consistent with a community plan, general plan, or zoning), Section 15301 (existing facilities), Section 15302 (replacement or reconstruction), and Section 15309 (inspections), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt The Resolution Authorizing The City Administrator Waive Advertising And Competitive Bidding To Increase The Existing Construction Contract With Pacific States Environmental Contractors, Inc., In Accordance With The Plans And Specifications For The 73rd Avenue Soil Remediation Project (Project Number 1000165), From Two Hundred Twenty-Nine Thousand Nine Hundred Dollars (\$229,900.00) Up To Two Hundred Ninety-Six Thousand Four Hundred Three Dollars And Fifty Cents (\$296,403.50).

For questions regarding this report, please contact Alan Chan, P.E., Capital Improvement Project (CIP) Coordinator, at (510) 238-6604.

Respectfully submitted,



G. Harold Duffey
Director, Oakland Public Works

Jestin Johnson, City Administrator

Subject: Pacific States Environmental Contractors, Inc. Contract Increase Approval

Date: October 30, 2023

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Reviewed by:

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Project & Grant Management Division

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Attachments (2):

A: Project Location Map

B. Contract Compliance Memo