



City Attorney

# OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**RESOLUTION REJECTING ALL BIDS, WAIVING FURTHER ADVERTISING AND COMPETITIVE BIDDING, AUTHORIZING THE CITY ADMINISTRATOR, OR DESIGNEE, TO NEGOTIATE, AWARD, AND EXECUTE A CONSTRUCTION CONTRACT WITHOUT RETURN TO COUNCIL FOR AN AMOUNT NOT TO EXCEED ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000) IN THE OPEN MARKET FOR THE CONSTRUCTION OF THE OAKLAND ANIMAL SERVICES HEATING VENTILATION AND COOLING AND ENERGY MANAGEMENT SYSTEMS REPLACEMENT PROJECT (PROJECT NUMBER 1003449), IN ACCORDANCE WITH PROJECT PLANS AND SPECIFICATIONS AND CONTRACTOR'S BID**

**WHEREAS**, On August 1, 2017, the Measure KK, Series 2017A-1 General Obligation Bond (the "Bond") was funded in the amount of \$62.735 million, of which \$1,650,000.00 was allocated to the Oakland Animal Services HVAC and EMS Replacement Project.; and

**WHEREAS**, the Oakland Animal Services HVAC and EMS Replacement Project was identified as a priority project in the Fiscal Year (FY) 17-19 Capital Budget and funded by the first series of Measure KK – Affordable Housing and Infrastructure Bond in Fall 2017 in the amount of \$1,650,000;

**WHEREAS**, on October 25, 2019 the City advertised the Oakland Animal Services (OAS) Heating, Ventilation, and Cooling (HVAC) System and Energy Management System (EMS) Replacement project No. 1003449 for bid and 2 bids were received by the City Clerk on November 14, 2019; and

**WHEREAS**, both bids were significantly over the current construction budget and non-compliance with the Local/Small Local Business Enterprise (L/SLBE) participation requirements; and

**WHEREAS**, an Availability Analysis conducted by the City Administrator's Contract Compliance Unit was completed on January 30, 2020 and as a result L/SLBE requirements were waived; and

**WHEREAS**, the project was rebid on February 7, 2020, with three bids received by the City Clerk on February 27, 2020; and

**WHEREAS**, all three bids were well over the engineer's estimate and available construction budget and were therefore deemed non-responsive; and

**WHEREAS**, the project has been publicly advertised and competitively bid twice, and further advertising and competitive re-bidding will delay the construction project, increase construction

costs due to escalation, and may not result in bids responsive to the project construction budget; and

**WHEREAS**, value engineering and negotiating with a contractor will be required to determine reasonable scope modifications to complete projects within the available budget; and

**WHEREAS**, OMC Section 2.04.050.I.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 interests of the City to do so and Section 2.04.050.J states that if no valid bids are received after advertising as required, the City Administrator may proceed to hire or have the services performed or purchase the supplies in the open market; and

**WHEREAS**, project funds are appropriated and allocated from Measure KK - Affordable Housing and Infrastructure Bond Fund (Award 23253); and

**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

**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 services; now, therefore, be it

**RESOLVED**, That all bids are hereby rejected; and be it

**FURTHER RESOLVED**, That the City Council finds and determines that it is in the best interest of the City to waive further advertising and competitive bidding per OMC section 2.04.050.I.5 because the project has been bid advertised and bid twice, and further advertising and competitive re-bidding will delay the construction project, increase construction costs due to escalation, and may not result in bids responsive to the project construction budget and OMC section 2.04.050.J authorizes the City Administrator to proceed to hire or have the services performed or purchase the supplies in the open market when no valid bids are received after advertising as required; and be it

**FURTHER RESOLVED:** That staff will negotiate the scope of work in order to secure a contract to complete projects within the available budget; and be it

**FURTHER RESOLVED:** That the City Administrator or Designee, is authorized to negotiate and execute a construction contract without return to Council for the construction of the Oakland Animal Services HVAC and EMS Replacement Project No. 1003449 for an amount not to exceed One Million Four Hundred Thousand Dollars (\$1,400,000) in accordance with the final negotiated project plans and specifications; and be it

**FURTHER RESOLVED,** That the City Council hereby approves the plans and specifications, including any subsequent changes during construction, that will be reviewed and adopted by the Assistant Director of the Oakland Public Works Department for this project; and be it

**FURTHER RESOLVED:** That the City Administrator, or Designee, is authorized to execute any amendments or modifications of the contract within the limitations of the project specifications; and be it

**FURTHER RESOLVED:** That the successful contractor shall comply with all City contracting and compliance program requirements that apply to this contract, and be verified by the Contracts and Compliance Department; and be it

**FURTHER RESOLVED:** That the successful contractor shall provide faithful performance bond and a bond to guarantee payment of all claims for labor and materials furnished for the amount of 100% of the contract price and due under the Unemployment Insurance Act prior to execution of the contract; 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,

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California