

**RESOLUTION NO. 20-\_\_\_\_\_**

**Resolution Of The City Council Of The City Of Emeryville Denying Bid Protest Submitted By FBD Vanguard Construction, Inc. And Waiving Variance In Bid Submitted By Burch Construction Company, Authorizing The City Manager To Enter Into A Contract With Burch Construction Company In An Amount Not To Exceed \$155,375.00; And Authorizing The City Manager To Approve Payments Of Possible Additional Costs As Contingency Expenditures Up To \$20,000, All For The Construction Of The San Pablo Avenue Midblock Crosswalk Project, Project No. EPW-19103 (CIP No. 18221006)**

**WHEREAS**, on March 3, 2020, the City Council of the City of Emeryville approved the project scope of work, found the project to be exempt under California Environmental Quality Act Guideline 15301(c) because the project involves repairs to existing facilities, and authorized Public Bidding the project once the plans and specifications were approved by the City Engineer; and

**WHEREAS**, the Project was bid on July 28, 2020, in compliance with California Public Contract Code section 20162; and

**WHEREAS**, on August 25, 2020, the following bid proposals for the project were received:

1. Burch Construction Company	\$ 155,375.00
2. FBD Vanguard Construction, Inc.	\$ 167,935.00
3. Sposeto Engineering, Inc.	\$ 181,625.00
4. Kerex Engineering	\$ 187,490.00
5. ERA Construction, Inc.	\$ 187,983.40
6. HM Construction, Inc.	\$ 229,000.00
7. Ray's Electric	\$ 279,455.00
8. Bay Construction Company	\$ 335,175.00; and

**WHEREAS**, the lowest responsible bid for the Project was submitted by Burch Construction Company of San Francisco, California for \$155,375.00; and

**WHEREAS**, on August 27, 2020, the Public Works Director received a timely bid protest from FBD Vanguard Construction, Inc. alleging that the bid submitted by Burch Construction Company is non-responsive because it does not correctly list the percentage of work that each subcontractor will perform for each item as required by Section 6 of the Notice to Bids; and

**WHEREAS**, the bid submitted by Burch Construction Company lists each subcontractor, and each bid item on which the subcontractor will perform work, but lists the total amount of work to be performed by the subcontractor, instead of identifying the percentage of work performed for each item; and

**WHEREAS**, in compliance with California Public Contract Code section 20162, the City Council must award a public works contract in excess of \$5,000 to the lowest responsible bidder; and

**WHEREAS**, the City may waive a variance in an otherwise responsive bid so long as the variance does not affect the bid amount or otherwise give the bidder an advantage or benefit not allowed the other bidders; and

**WHEREAS**, it is prudent to allocate a contingency amount for work that cannot be defined in the design phase; and

**WHEREAS**, the contractor will be given 35 working days to complete the project; and

**WHEREAS**, there is adequate funding already allocated in the PB-14 San Pablo Avenue Midblock Crosswalk Project (CIP Project No. 182221006); now, therefore be it

**RESOLVED**, that the City Council of the City of Emeryville finds that the defect in Burch Construction Company's bid is waived because it does not change the amount of the overall bid and it is clear that the bid still complies with the requirement that the contractor perform at least 40% of the value of the original bid, and therefore, the bid protest submitted by FBD Vanguard Construction, Inc. is without merit; and

**RESOLVED**, that the City Council of the City of Emeryville determines that Burch Construction Company is the lowest responsible bidder and the City Manager is hereby authorized to enter into the attached contract with Burch Construction Company of San Francisco, California in an amount of \$155,375.00 for the San Pablo Avenue Midblock Crosswalk Project, Project No. EPW 19-103, CIP No. 18221006; and be it further

**RESOLVED**, that the City Manager is authorized to augment the contract amount by a contingency amount not to exceed \$20,000 as warranted from new and/or unforeseen matters related to Project completion.

**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held Tuesday, October 6, 2020, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

APPROVED AS TO FORM:



\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
CITY ATTORNEY