



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** October 6, 2020

**TO:** Christine Daniel, City Manager

**FROM:** Mary Grace Houlihan, Public Works Director

**SUBJECT:** **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)**

### RECOMMENDATION

Staff recommends that the City Council of the City of Emeryville adopt the above-entitled resolution.

### BACKGROUND

On March 3, 2020, City Council approved the project scope for the San Pablo Avenue Midblock Crosswalk Project. The project was originally identified by the Public Works and Bicycle and Pedestrian Advisory Committees and then added into the Capital Improvement Program.

The work will include the new construction of accessible pedestrian ramps, a pedestrian refuge area in the median, and high-visibility pedestrian/vehicular traffic control devices on San Pablo Avenue midway between Adeline and 40<sup>th</sup> Streets. The senior housing complex located at 3850 San Pablo Avenue located in near proximity to the proposed crossing generates many pedestrian trips to the shopping center across the street. This pedestrian mobility improvement project will benefit those users by providing a safer and convenient San Pablo Avenue crossing.

This project has been determined to be exempt under categorical exemption Class 1 Existing Facilities, State CEQA Guidelines Section 15301(c) regarding operation, repair, maintenance of existing highways and streets.

### DISCUSSION

The Project was advertised on July 28, 2020 and the bids opened on August 25, 2020. The Project received a total of eight (8) bids.

Construction Bids:

On August 25, 2020, the following responsive 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

On August 27, 2020, the Public Works Director received a timely bid protest from FBD Vanguard Construction, Inc (see attachment). FBD Vanguard Construction contended that the bid from Burch Construction Company was non-responsive because it failed to correctly list the percentage of work that each sub-contractor will perform for each item. Section 6 of the Notice to Bid requires the Contractor to list the subcontractor for each bid item, and the amount of work to be performed for that bid item. This allows the City to determine whether the Contractor will be performing at least 40% of the value of the original total bid as required by Section 5-1.13 of Part A of the Bid Specifications. Burch Construction Company listed each subcontractor, but then listed the total amount of work performed by each subcontractor for the entire contract, not by each bid item. Nonetheless, from its response to Section 6 of the Notice to Bid, staff can determine that Burch Construction Company proposes to perform 40% of the original bid value work, in conformance with Section 5-1.13.

In general, a bid must conform to the specifications to be considered responsive. However, if there is a bid that substantially conforms to the specifications, but is not strictly responsive, the City Council may still award the contract if it finds that the variance did not affect the amount of the bid or give the bidder an advantage or benefit not allowed the other bidders.<sup>1</sup> As it relates to the bid from Burch Construction Company, staff believes that evidence in the record supports the findings that the Burch Construction's variance did not affect the overall amount of the bid. Burch Construction's bid shows a different calculation, but not an incorrect calculation. In addition, Burch Construction's bid shows that that it still conforms with the requirement that at least 40% of the original bid value work be performed by the contractor. Accordingly, the City Council could award the contract to Burch Construction, the lowest bidder for the Project. Staff recommends that the City Council waive the variance with Burch Construction Company's bid, and authorize the City Manager to enter into a Construction Contract with Burch Construction Company of San Francisco, CA, who submitted the lowest responsive bid in the amount of \$155,375.00. The amount of the proposed contract is 34% less than the Engineer's Estimate of \$236,000.

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<sup>1</sup> *Bay Cities Paving & Grading, Inc. v. City of San Leandro* (2014) 223 Cal.App.4th 1181, 1188 [citing to *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 368, 378.].

It is reasonable to also consider contingencies to address matters that cannot be known until construction is underway. Staff also recommends that the City Council grant the City Manager a Contingency Amount for possible additional costs up to \$20,000.

The contractor will be given 35 working days to complete the project.

### **FISCAL IMPACT**

The Capital Improvement Program identifies \$296,000 as appropriated to the budget in the PB-14 San Pablo Avenue Midblock Crosswalk Project (CIP Project No. 182221006) which is sufficient to fund this project.

The following estimated project costs have been identified:

#### **Estimated Costs:**

Design (Coastland Engineering)	\$ 30,000
Construction Contract (Burch Construction)	\$ 155,375
Contingency	\$ 20,000
Inspection and Construction Management	\$ 30,000
Material Testing	\$ 5,000
<b>Estimated Total Cost</b>	<b>\$ 240,375</b>

Anticipated Annual Maintenance Cost:	\$ 3,000
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### **STAFF COMMUNICATION WITH THE PUBLIC**

Staff has communicated to Burch Construction the receipt of a bid protest.

### **CONCLUSION**

Staff concludes that it is in the public's interest for City Council to adopt the above-entitled resolution.

**PREPARED BY:** Michael Roberts, Senior Civil Engineer, Public Works

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Christine Daniel, City Manager

## **ATTACHMENTS**

- Draft Resolution
- Exhibit A (Project Area Map)
- Construction Contract – Burch Construction Company
- Bid Protest Letter Dated August 27, 2020