Approved as to Form and Legality

City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 MAY 12 PM 3:20

OAKLAND CITY COUNCIL

RESOLUTION NO. 86162 C.M.S.

Introduced by Councilmember _____

A RESOLUTION (A) WAIVING ADVERTISING, COMPETITIVE BIDDING, AND REQUEST FOR PROPOSALS/QUALIFICATION ("RFP/Q") COMPETITIVE SELECTION REQUIREMENTS AND (B) AUTHORIZING THE CITY ADMINISTRATOR OR HER DESIGNEE TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH ENVIRONMENTAL SCIENCE ASSOCIATES NOT TO EXCEED $ 120,000 FOR THE ANALYSIS OF POTENTIAL HEALTH AND/OR SAFETY EFFECTS OF CERTAIN COMMODITIES PROPOSED AT THE OAKLAND BULK AND OVERSIZED TERMINAL AT THE OAKLAND ARMY BASE WEST GATEWAY SITE WITHOUT RETURNING TO CITY COUNCIL FROM UNDESIGNATED GENERAL PURPOSE FUND BALANCE

WHEREAS, the Oakland Army Base Gateway Redevelopment Project West Gateway Parcel is approved for construction of a bulk and oversized commodity terminal that may include the shipment, transloading, transportation and handling and export of a variety of materials; and

WHEREAS, the approval of the Oakland Army Base Gateway Redevelopment Project included the approval of a Development Agreement, which vested the rights to develop, among other projects, the bulk and oversized commodity terminal on the West Gateway Parcel, subject, in part, to an exception for certain later-enacted health and/or safety regulations; and

WHEREAS, the Development Agreement authorizes the City Council to adopt regulations that would bind the bulk and oversized commodity terminal if the regulations are related to health and/or safety, if the regulation is permissible by state and/or federal law and if the City Council determines, based upon substantial evidence and after a public hearing that a failure to adopt the regulations would place existing or future occupants or uses of the project, adjacent neighbors or any portions thereof, in a condition substantially dangerous to their health and/or safety; and

WHEREAS, the proposed initial list of bulk commodity materials submitted by the developer of bulk and oversized commodity terminal to the City of Oakland in September, 2015 includes bituminous coal, fuel oils and gasoline, along with borax, muriate of potash, soda ash, sodium sulfate and bicarbonate of soda; and

WHEREAS, in June 17, 2014, the City Council adopted Resolution No. 850454 C.M.S., Opposing the Transportation of Hazardous Fossil Fuel Materials, Including Crude Oil, Coal, and Petroleum Coke, Through the City of Oakland; and

WHEREAS, substantial public concern has been raised by community stakeholders about the transport, handling and management of certain identified bulk commodity items, specifically coal, crude oil, and petroleum coke at the Oakland Army Base West Gateway Parcel and the City Council took action to hold an informational public hearing on September 21, 2015 to receive oral and written testimony to help inform future potential Council actions related to health and/or safety regulations, in part, under the Development Agreement; and

WHEREAS, as a follow up to the September 21, 2015 informational public hearing, the City Council requested staff to complete an evaluation of all the submitted information and public testimony and further directed that staff develop and evaluate potential actions that the City could employ to address the health and/or safety impacts of the transloading, transportation and handling and export of coal at the proposed bulk and oversized commodity terminal; and

WHEREAS, on February 16, 2016, the City Council reviewed the initial scope of work for the evaluation of health and/or safety impacts and requested that the scope be revised and refined to address public comments and concerns; and

WHEREAS, the Oakland Municipal Code ("OMC") Section 2.04.050 requires advertising and competitive bidding for contracts for the purchase of supplies, equipment, products and services and the award to the lowest responsible, responsive bidder if the award is made; and

WHEREAS, 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 interests of the City to do so; and

WHEREAS, OMC Section 2.04.051 requires a competitive request for proposals or request for qualification selection process for award of contracts that exceed$ 25,000 for professional services contracts and which are exempt from bidding under Section 2.04.0501.1; and

WHEREAS, OMC Sections 2.02.050.1 and 2.04.051 B permits the City Council to waive the advertising, competitive bidding and the RFP/RFQ solicitation processes upon a finding and determination that it is in the best interests of the City to do so; and

WHEREAS, staff recommends that it is in the best interests of the City to waive the advertising competitive bidding and the RFP/RFQ competitive selection requirements because of the specialized expertise that is required to complete the evaluation of written and oral public testimony and other information as well as to assess, analyze and recommend potential actions to the City Council to address any identified health and/or safety impacts; and

WHEREAS, Environmental Science Associates (ESA) has been identified as a firm that can provide this specialized and additional expertise and has the capacity to perform a broad array of qualitative and quantitative analyses that call for a multi-discipline approach to address the issues that have been identified and further, ESA has submitted a draft statement of work for the assessment, an estimated budget in the amount of $120,000 and schedule, the qualifications of the experts who would perform the work and an overall public process; and

WHEREAS, the proposed draft statement of work includes but is not limited to a characterization and evaluation of the commodities that have been identified, an assessment of the thresholds and measures that should be used to evaluate the potential health given the specialized nature of the analysis that is required to determine potential health and/or safety impacts and the broad, multi-disciplined expertise that is required; and

WHEREAS, the $ 120,000 expenditure that is required for this work was not previously authorized in the FY 2015-2017 budget and staff recommends that the costs be drawn from undesignated General Funds; now therefore be it

RESOLVED: that the City Administrator is authorized to execute a Professional Services Agreement with Environmental Science Associates in the amount of $120,000 from undesignated General Purpose Fund balance for the analysis of potential health and safety effects of certain commodities proposed at the Oakland Army Base West Gateway site bulk and oversized terminal without returning to City Council; and

FURTHER RESOLVED: that the City Council finds and determines, under OMC Section 2.04.050 1.5 and 2.04.051. B, that it is in the best interests of the City of Oakland to waive the competitive bidding, advertising and the RFP/RFQ requirements for the reasons set forth above and in the staff report accompanying this item, because of the specialized expertise that is required for this work and the broad interdisciplinary approach that ESA has demonstrated to perform the work proposed.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 03 2016

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND PRESIDENT GIBSON MCELHANEY – 8

NOES - Ø

ABSENT - Ø

ABSTENTION - Ø

ATTEST: LaTonda Simmons

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