

HAYWARD CITY COUNCIL

RESOLUTION NO. 22-\_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION APPROVING ADDENDUM NO. 1, REJECTING BID PROTEST AND AWARDING THE MUNICIPAL PARKING LOT NO. 1 IMPROVEMENT PROJECT, PROJECT NO. 05286, CONSTRUCTION CONTRACT TO BEAR CONSTRUCTION, INC., IN THE AMOUNT OF \$390,183.50, AND AUTHORIZING A CONSTRUCTION CONTINGENCY CHANGE ORDER BUDGET OF \$172,816.50

WHEREAS, by Resolution No. 22-032 on February 1, 2022, the City Council approved the plans and specifications for the Municipal Parking Lot No. 1 Improvement Project, Project No. 05286, and called for bids to be received on February 22, 2022;

WHEREAS, Addendum No. 1 to the Plans and Specifications was issued advertising a mandatory pre-bid conference to be held on Tuesday, February 15, 2022, at 2:00 p.m. via remote participation;

WHEREAS, on February 22, 2022, seven (7) bids were received ranging from \$390,183.50 to \$569,420; Bear Construction, Inc., (Bear) of Hayward, CA submitted the lowest bid in the amount of \$390,183.50, which is 6.6% lower than the Engineer's Estimate;

WHEREAS, on February 24, 2022 the second low bidder Cato's Paving General Engineering, Inc., (Cato) submitted a bid protest to the City Clerk alleging that Bear Construction's bid was not responsive to the bid specifications and should be rejected;

WHEREAS, Bear Construction provided a written response to the bid protest on February 25, 2022;

WHEREAS, Cato alleged that Bear's submission of a copy rather than the original bid bond was not responsive to the specifications. However, the specifications do not require submission of the original bond. Cato further alleged that Bear did not properly specify the amount of the bond. The specifications require that the bond be at least 10% of the bid. Bear's bond states that the face amount of the bond is "ten percent of bid amount." Additionally, staff independently verified the authenticity of the bond with the surety. The bond is properly executed and complies with the specifications in all respects;

WHEREAS, Cato also alleged that Bear did not list a sub-contractor for a specific portion of the work (painting of streetlights) and that Bear is not qualified to self-perform that work. Section 10-1.25 of the project specifications call for upgrade of existing streetlights, including painting. Section 10-1.25 also states that payment for that bid item

includes the painting work. Bear’s bid proposal clearly listed subcontractor Bear Electrical as performing “Electrical” work for \$57,840. The corresponding unit price on the bid sheet (line 14 Upgrade Existing Streetlight) shows the same amount \$57,840. Based on this, Bear clearly intends Bear Electrical to perform the streetlight work, which includes the painting of the streetlight.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hayward that the bid protest of Cato’s Paving General Engineering, Inc., is rejected.

BE IT FURTHER RESOLVED, that Bear Construction, Inc., is the lowest responsive bidder whose bid complies with the specifications and is hereby awarded the construction contract for the Municipal Parking Lot 1 Improvement Project in the amount of \$390,183.50, as specified in its bid. All other bids are hereby rejected.

BE IT FURTHER RESOLVED that a construction contingency change order budget of \$172,816.50 is hereby approved.

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that the Director of Public Works is authorized to expend up to \$600,000 for project design, construction, project administration, and contingency costs herein approved to complete the project.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the contract with Bear Construction, Inc., in the name of and for and on behalf of the City of Hayward, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2022

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward