City of Palo Alto

City Council Staff Report

Report Type: Consent Calendar       Meeting Date: 4/13/2020

Summary Title: Finding Public Safety Building Substantially Complex

Title: PUBLIC HEARING: Approval of a Finding that the Public Safety Building Project (CIP PE-15001) is "Substantially Complex" Under Public Contract Code Section 7201 and Direction to Increase the Retention Schedule From Five Percent to Ten Percent

From: City Manager

Lead Department: Public Works

Recommendation
Staff recommends that Council:

1. Approve a finding that the proposed Public Safety Building Project is “substantially complex” under Public Contract Code Section 7201 based on the reasons set forth in the staff report; and
2. Direct this project to be advertised for bid with a retention amount of ten percent (10%).

Executive Summary
State law limits the City to five percent (5%) retention on public works projects unless City Council approves a finding that the project is “substantially complex.” This finding must be made before the project is advertised for bid. Staff is preparing to issue the formal Invitation for Bids (IFB) for the Public Safety Building Project. The IFB is expected to be released in spring 2020.

Background
Public Contract Code Section 7201 requires public agencies to limit contract retention on public works projects to 5% unless the project is found to be “substantially complex” and therefore requires a higher retention amount.

Retention is a contractual withholding of money from payments to the contractor by the City to cover any unexpected expenses, such as stop payment notices or poor workmanship, that may occur before the project is completed and accepted. The standard procedure is to return the retention once the following occurs: work is completed, the contractor provides the
maintenance bond, the City accepts the project, and the stop payment notice period expires.

Public Contract Code Section 7201(b)(1) generally caps the retention amount that may be withheld at five percent (5%) of the contract price. However, Section 7201(b)(4) permits an awarding agency to withhold in excess of 5% on specific projects where the governing body approves a finding, during a properly noticed and normally scheduled public hearing and prior to bidding, that the project is substantially complex and therefore requires a higher retention amount. Section 7201(5) requires such a finding to “include a description of the specific project and why it is a unique project that is not regularly, customarily, or routinely performed by the agency or licensed contractors.”

The awarding entity must include in the bid documents details explaining the basis for the finding and the actual retention amount. Staff will include this information in the bid documents.

Discussion
The Public Safety Building (PSB) Project is part of the 2014 Council Infrastructure Plan. The new Public Safety Building will be built at 250 Sherman Avenue, adjacent to the new California Avenue Parking Garage at 350 Sherman Avenue. The existing Public Safety Building at 275 Forest Avenue opened in 1970. Due to the growth of public safety services and changes in regulations, the existing building no longer meets current seismic, accessibility, or regulatory code requirements that are required to meet the Essential Services Buildings Seismic Safety Act (ESBSSA). Including the external support spaces in the basement and operational yard, the new PSB is approximately 56,000 square feet and will house the Police Department, 911 Emergency Dispatch Center, the Emergency Operations Center, the Office of Emergency Services, and the administration needs of the Fire Department. The PSB construction will include three levels above grade, two levels below grade, and a one-story operational accessory structure. Construction will include a cut-off wall to limit groundwater impact, cast-in-place structural concrete frame, specialty communication systems, and communications tower.

The construction contractor will be required to subcontract for numerous specialties including shoring engineering, structural concrete, fire sprinklers, backup power, communication systems, and ventilation systems. The project will require the coordination of multiple construction disciplines while maintaining right-of-way access within a heavily used business district.

City staff has determined and recommends that Council find that the Public Safety Building Project is “substantially complex” and therefore requires a higher retention amount of 10%, based on the large amount of work required, the multi-faceted nature of the project, complex communication systems, and the numerous specialized disciplines and trades involved in the construction. The City Clerk has published the required notice of this hearing in the newspaper starting on April 3, 2020.
The retention will be released as described in the City of Palo Alto’s standard contract General Conditions Section 9.8.1 which states, “Upon receipt of notice from Contractor that the Work is ready for final inspection, City will make such inspection. The City will file a Notice of Completion (NOC) with the County Clerk within ten (10) days after Acceptance by the City. Thirty-five (35) Days after filing the NOC, the City may release the final retention provided the requirements in this paragraph are met.”

**Timeline**
Staff plans to issue an IFB for the Public Safety Building project in spring 2020. Construction of the Public Safety Building is expected to begin in October 2020 with completion anticipated in spring 2023.

**Resource Impact**
There are no resource impacts associated with finding the project “substantially complex”.

**Policy Implications**
The proposed action is consistent with City policy.

**Stakeholder Engagement**
Stakeholder engagement is not applicable to this staff report.

**Environmental Review**
Under the California Environmental Quality Act (CEQA), the Public Safety Building (PSB) and California Avenue Parking Garage are considered as a single project because the public parking garage will mitigate for the loss of approximately 310 existing public surface parking spaces on both sites. The City of Palo Alto published the Draft Environmental Impact Report (EIR) for public review and comments on January 8, 2018; the public comment period closed February 22, 2018. During the public review period, both the Architectural Review Board and Planning and Transportation Commission held public meetings, on January 18th and January 31st, respectively, to take public testimony on the Draft EIR. Substantive public comments received at these meetings and in writing have been responded to in the Final EIR, provided to the Council in hard copy and published on May 11, 2018, on the Public Works webpage for the project. The Final EIR was also distributed via email to members of the public and agencies who commented on the Draft EIR.

On June 11, 2018, Council certified the Environmental Impact Report (EIR) and approved of the California Avenue Parking Gararge project. The Notice of Determination (NOD) reflecting the approval of the EIR was filed with the County of Santa Clara on June 14, 2018.