



Office of the City Manager

CONSENT CALENDAR  
June 3, 2025

To: Honorable Mayor and Members of the City Council  
From: Paul Buddenhagen, City Manager  
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
Subject: Contract: E.F. Brett & Company, Inc. for MLK Jr. Youth Services Center/Y.A.P. Seismic Retrofit and Renovation Project

RECOMMENDATION

Adopt a Resolution:

1. Approving the plans and specifications for the MLK Jr. Youth Services Center/Y.A.P. Seismic Retrofit and Renovation project, Specification No. 25-11695-C;
2. Rejecting the bid protest of W.E. Lyons Construction Co., the second lowest bidder;
3. Accepting the bid of the lowest responsive and responsible bidder, E.F. Brett & Company, Inc.; and
4. Authorizing the City Manager or their designee to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with E.F. Brett & Company, Inc. for the MLK Jr. Youth Services Center/Y.A.P. Seismic Retrofit and Renovation Project at 1730 Oregon Street, in an amount not to exceed \$11,859,100 which includes a contract amount consisting of the base bid and bid alternates 1, 4 and 5 of \$10,781,000 and a 10% contingency in the amount of \$1,078,100.

FISCAL IMPACTS OF RECOMMENDATION

Funding in the amount of \$10,900,000 is available in the FY25 Parks Tax Fund (Fund 138) and Measure T1 Fund (Fund 511), and an additional Parks Tax amount of \$959,100 is subject to appropriation in the FY 2026 budget.

**Construction**

E.F. Brett & Company, Inc. (lowest bid)	\$10,781,000
10% Contingency	\$1,078,100
<b>Total construction cost</b>	<b>\$11,859,100</b>

**Funding**

Measure T1 Fund (Fund 511)	\$8,250,000
Parks Tax Fund (Fund 138)	\$3,609,100
<b>Total funding</b>	<b>\$11,859,100</b>

### CURRENT SITUATION AND ITS EFFECTS

The existing community center at Martin Luther King Jr. Youth Services Center/Young Adult Project (Y.A.P.), 1730 Oregon Street, Berkeley, CA 94704 needs renovation.

The center has been identified as a location to be used as a mass care site in the event of an earthquake or other emergencies per the City of Berkeley's Local Hazard Mitigation Plan. This project will provide seismic upgrades to the foundation, roofing, and wall systems to achieve an "Immediate Occupancy" structural rating to serve the community in the event of an earthquake or other disaster.

In addition, the building will undergo improvements to circulation, accessibility, utilities, and finishes to modernize the building to current energy efficiency and building code standards. New electrical, HVAC, and other infrastructure improvements will allow the building to act as a community resiliency center in times of need, for events such as smoke days, as a heating center, or as a cooling center.

Under normal operations, the MLK Jr. Youth Services Center serves the community with recreational programming and is home to the City's Young Adult Project (Y.A.P.) for our most at-risk young adults. Planned improvements will improve circulation, create new programming spaces, and modernize the facility for improved recreational and programming opportunities.

### BACKGROUND

The project was advertised for bids on Monday, March 17, 2025, and bids were opened on April 22, 2025. The City received two bids, from a low base bid of \$10,603,000 to a high base bid of \$10,629,126, and from a low of \$10,750,987 to a high of \$10,781,000 for the base bid plus Additive Bid Alternates No. 1,4, and 5. The determination of the lowest responsive and responsible bidder was based on the price for base bid work, as indicated in the bid documents.

On April 28, 2025, the City received a bid protest from W.E. Lyons Construction Co. (WEL), the second lowest bidder. A copy of the bid protest was sent to E.F. Brett & Company, Inc. (EFB) to provide them an opportunity to respond to the protest issues. EFB's response on April 30, 2025 was then forwarded to WEL for their opportunity to respond. On May 2, 2025, WEL provided a rebuttal to EFB and on May 5, 2025, EFB provided a response back to WEL, ensuring that both parties had an opportunity to present all facts and arguments in support of their positions.

City staff, including staff from the City Attorney's Office, carefully reviewed and investigated the protest and responses. Generally, the basis for the protest, among other things, was that EFB's bid was non-responsive because EFB (1) failed to submit a "clearly written" bid, (2) failed to correct contractors' license numbers and DIR numbers within 24 hours after bid opening, citing Public Contract Code 4104, and (3) was ambiguous about which subcontractor EFB intended to use for metal panels work.

Based on the City's review of the bid protest and responses, the City's findings are as follows:

To determine whether a protesting Bidder is responsive and responsible, City evaluates all information contained in the protesting Bidder's bid and conducts the same evaluation that the City is entitled to make regarding the Apparent Low Bidder. The City finds that WEL did not provide a valid cost for Bid Item No. 9, instead writing in an unknown abbreviation of "PPK" for that bid item. In doing so, WEL may have had a competitive advantage unavailable to other bidders in that they have annotated the bid item and could later define its meaning. Additionally, WEL did not provide a valid value for Deduct Alternate Item 1. As a result, the City finds WEL's bid non-responsive. Per Document 00 2113 (Instructions to Bidders), Article 4, only bidders who the City otherwise determines are responsive and responsible are eligible to protest a bid. Therefore WEL's bid protest is dismissed.

Regarding WEL's protest claim that the EFB's bid form is not "clearly written", and they listed incorrect license and/or California Department of Industrial Relations (DIR) numbers for the listed subcontractors, the City finds this is an inconsequential defect that did not affect the amount of EFB's bid or given EFB an advantage or benefit that was not allowed to the other bidder, WEL. California Public Contract Code PCC section §4104 indicates that an inadvertent error in listing the California license number or DIR registration number shall not be grounds for filing a bid protest or grounds for considering a bid non-responsive if corrected and submitted within 24 hours after bid opening, provided that the corrected contractor's license number corresponds to the submitted name and location for that subcontractor. In this case, the City finds that EFB's bid provided sufficient information regarding the subcontractor names, location, trade, license, and DIR numbers such that the City was able to determine which subcontractor EFB intended to use.

While caselaw provides the City with discretion to waive inconsequential defects in a bid, the City cannot do so when the defect may affect the amount of the bid. (See Ghilotti Construction v. City of Richmond (1996) 45 Cal.App.4th 897, 904 ("... a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential"). Here, the variances are inconsequential, did not provide either bidder with an advantage, and could be waived. However, the waiver is not necessary as WEL's bid was non-responsive, and therefore WEL's protest was dismissed.

City staff determined that E.F. Brett & Company, Inc. was the lowest responsive and responsible bidder. Therefore, it is recommended that City Council reject the bid protest by WEL and award the contract to E.F. Brett & Company, Inc. Staff conducted references checks for EFB and received satisfactory feedback. Staff recommends that a contract for this project be awarded to E.F. Brett & Company, Inc.

The Living Wage Ordinance does not apply to this project since construction contracts are, pursuant to City policy, subject to State prevailing wage laws. The contractor will

need to submit a Certification of Compliance for the Equal Benefits Ordinance. The contract will be subject to the Community Workforce Agreement.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The construction contract includes requirements to comply with the City's Environmentally Preferable Purchasing Policy. The project is a renovation of a developed urban site and therefore will not negatively affect natural habitat. The project includes a complete upgrade of the HVAC system to an all-electric system. This will increase the resiliency of the building as well as prepare the building for solar power.

#### RATIONALE FOR RECOMMENDATION

The City's Local Hazard Mitigation Plan identified the MLK Jr. Youth Services Center as a Care and Shelter Facility for the community and a seismic upgrade to the "Immediate Occupancy" level will reduce the chance of building collapse in the event of a moderate or major earthquake. Various upgrades to the building are overdue, including accessibility upgrades to meet to current building code, and modernization to improve recreational programming at the site.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, 981-6700

Evelyn Chan, Supervising Civil Engineer, Parks Recreation & Waterfront, 981-6430

Attachments:

1: Resolution

2: Bid Results

RESOLUTION NO. ##,###-N.S.

CONTRACT: E.F. BRETT & COMPANY, INC. FOR THE  
MARTIN LUTHER KING JR. YOUTH SERVICES CENTER/Y.A.P.  
SEISMIC RETROFIT AND RENOVATION PROJECT

WHEREAS, the Martin Luther King Jr. Youth Services Center is in need of renovation;  
and

WHEREAS, the City has neither the in-house labor nor the equipment necessary to  
undertake this project; and

WHEREAS, an invitation for bids was duly advertised on March 17, 2025, bids were  
opened on April 22, 2025, and the City received 2 bids; and

WHEREAS, E.F. Brett & Company, Inc. was determined to be the lowest responsive  
and responsible bidder, and references for E.F. Brett & Company, Inc. were provided  
and checked out satisfactorily; and

WHEREAS, funding in the amount of \$10,900,000 is available in the FY25 Parks Tax Fund  
(Fund 138) and Measure T1 Fund (Fund 511), and an additional Parks Tax amount of  
\$959,100 is available, subject to appropriation in the FY 2026 budget.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the  
Plans and Specifications for Specification No. 25-11695-C for the Martin Luther King Jr.  
Youth Services Center/Y.A.P. Seismic Retrofit and Renovation Project are approved;  
and

BE IT FURTHER RESOLVED that the bid protest by W.E. Lyons Construction  
Company is rejected; and

BE IT FURTHER RESOLVED that the construction contract is awarded to E.F. Brett &  
Company, Inc. as the lowest responsive and responsible bidder for a total contract  
amount of \$11,859,100, which includes the base bid plus bid alternate numbers 1, 4,  
and 5; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the  
City Manager or their designee to execute a contract and any amendments, extensions,  
or change orders until completion of the project in accordance with the approved plans  
and specifications with E.F. Brett & Company, Inc. for the Martin Luther King Jr. Youth  
Services Center/Y.A.P Seismic Retrofit and Renovation Project in an amount not to  
exceed \$11,859,100, which includes a contract amount of \$10,781,100 and a 10%  
contingency in the amount of \$1,078,100 for unforeseen circumstances. A record  
signature copy of the agreement and any amendments to be on file in the Office of the  
City Clerk.

Attachment 2: Bid Result

Attachment 2: Bid Results



City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

FOR: MLK Jr. Youth Services Center/Y.A.P. Seismic Retrofit and Renovation  
Spec. # 25-11695-C Bid Date: 4/22/2025

required w/ bid

	Bidders	Base Bid	(Add) Alt. #1	(Add) Alt. #2	Bid Bond	Addenda 1 & 2	Bidder Registration & Experience Form	Subcontractor List	Non-Collusion Affidavit	Bidder Certifications	Envelope B
1	E.F. Brett and Company	\$10,603,000.00	X	X	X	X	X	X	X	X	X
2	W.E. Lyons	\$10,629,126.00	X	X	X	X	X	X	X	X	X
3											
4											
5											
6											
7											
8											
9											
10											

Bid Recorder:	Tanisha Gainer		Date	04/22/2025
Bid Opener:	Talia Stewart		Date	04/22/2025
Project Manager:	Canhui Li		Date	04/22/2025