

SUPPLEMENTAL #2

COUNCIL AGENDA: 02-08-05  
ITEM: 5.4

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT:** CAMBRIAN BRANCH  
LIBRARY

**DATE:** 02-07-05

Approved

Date

2.8.05

Council District: 9

**REASON FOR SUPPLEMENTAL MEMO**

To provide a copy of the protest letter, the low bidder's response and a location map.

KATY ALLEN  
Director, Public Works Department

KT:RR:do  
2\_8\_05#5r2.doc



250 Bel Marin Keys Blvd.  
Building A  
Novato, CA 94949  
Phone: (415) 456-8972  
Fax: (415) 459-0665  
General Contractor  
License Number 626859

January 28, 2005

City of San Jose  
Attn: Domenic Onorato  
675 N. First Street, Suite 300  
San Jose, CA 95112

Re: Bogard Construction Bid for Cambrian Branch Library

Dear Domenic,

In reviewing Bogard Construction's sub-listings, they have failed to list a subcontractor for the terrazzo work and the elevator work. Pursuant to Public Contract Code 4104 and your Instruction to Bidders, all prime bidders must designate any subcontractor performing work on the job who's bid price is greater than  $\frac{1}{2}$  of 1% of the prime bid. Both of these trades are greater than  $\frac{1}{2}$  of 1% of Bogard's submitted bid. Pursuant to Public Contract Code 4106, if the prime contractor fails to list a subcontractor for any portion of work greater than  $\frac{1}{2}$  of 1%, then they are required to self-perform the work and the contractor agrees that they are fully qualified to perform the work. Pursuant to Section 09400 - Monolithic Terrazzo, Section 1.3, paragraph C, Installer Qualifications:

**"Installer's Experience: Furnish a list of completed projects using either specified material of equivalent that they have installed during the last 5-years. Information shall include: project name, square footage, Owner, contact name with Owner's address and phone number."**

Bogard Construction is not licensed to do this work and if they are going to attempt to do it themselves, they must be able to satisfy the required experience outlined above.

Pursuant to Section 144242 - Hydraulic Passenger Elevators, Section 2.1 Manufacturers stated the contractor must provide one of the following elevators:

- a. Otis Elevator Company
- b. Kone Elevator
- c. Schindler Elevator Corp.
- d. ThyssenKrupp Elevator

Bogard Construction does not have the requisite elevator subcontractor license to perform this work nor are they pre-qualified to install an elevator. The specification also states that the elevator contractor is responsible to provide full maintenance by skilled, competent employees of the elevator installer for a period of 12 months following the date of Notice of Completion. Obviously Bogard Construction cannot self-perform this work.

The City of San Jose must deem Bogard Construction's bid as being non-responsive. They have failed to list these two key sub-trades and they are not licensed to perform this work nor do they possess the requisite experience required by the contract documents. Any attempt from Bogard Construction to inform the City of San Jose that they will be "self-performing" this work, would be an obvious circumvention of the subcontractor listing laws and fair business practices.

Sincerely,

Paul Thompson  
President  
West Bay Builders, Inc.

1 page via fax - (408) 277-3157



February 1, 2005

City of San Jose  
Attn: Domenic Onorato  
675 N. First St., Suite 300  
San Jose, Ca. 95112

Re: Cambrian Library

Dear Mr. Onorato,

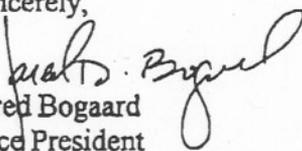
We are in receipt of the letter from West Bay Builders dated 1/28/05 with regard to the Cambrian Library Bid.

The terrazzo scope of work is included in the Tile contractor's portion of work noted as Vassallo Tile on the List of Subcontractors provided to the City of San Jose on the Bid Form.

The elevator scope of work is included in the Electrician's portion of work noted as Niles Electric on the List of Subcontractors provided to the City of San Jose on the Bid Form.

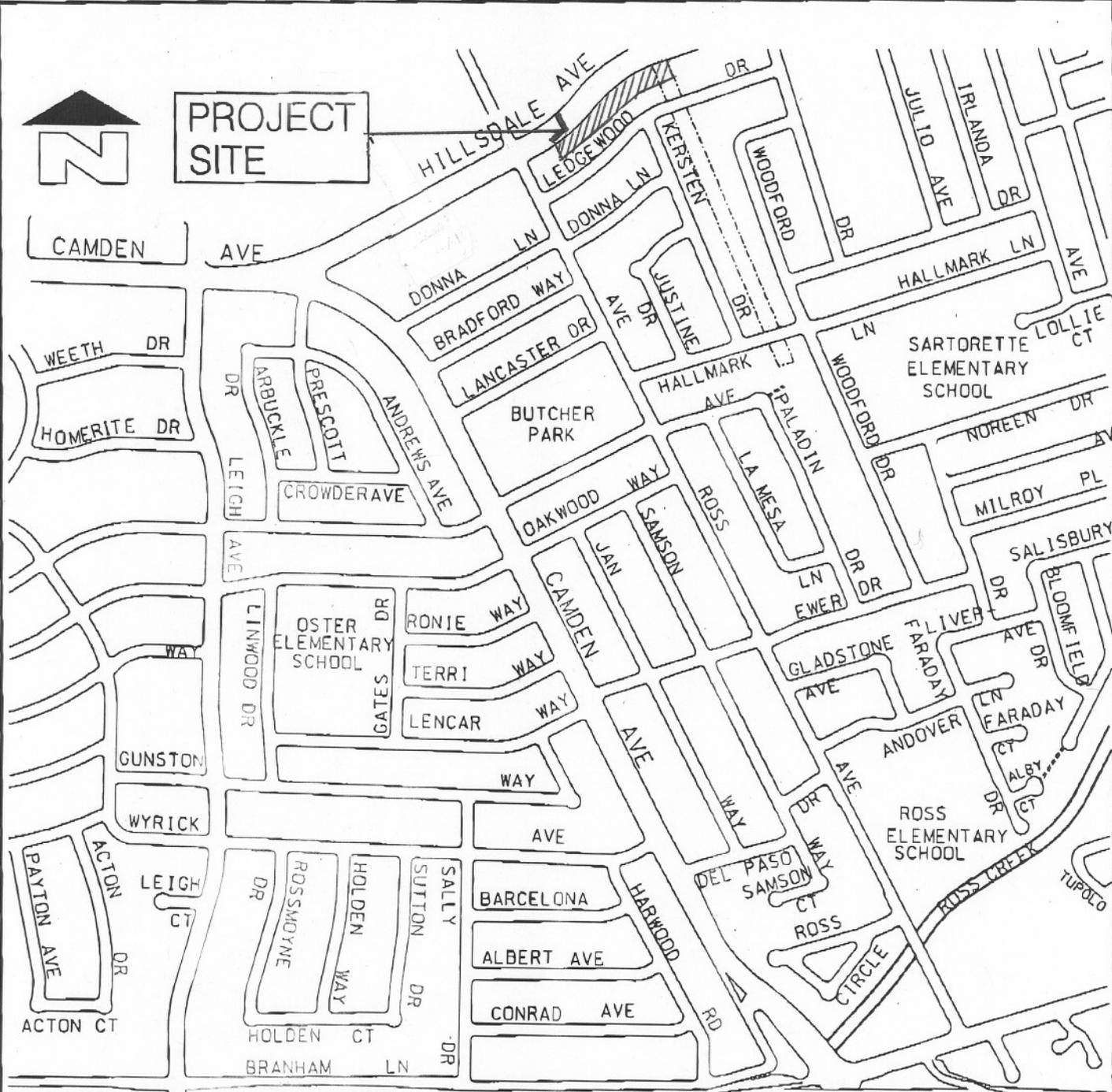
This should satisfy any concerns with regard to our Bid Form. Should you have any questions or comments, please feel free to contact me.

Sincerely,

  
Jared Bogaard  
Vice President  
Bogard Construction, Inc.



PROJECT SITE



# CAMBRIAN BRANCH LIBRARY

## LOCATION MAP

NO SCALE