

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT:** ROUNDTABLE DR PEDESTRIAN  
LIGHTING IMPROVEMENTS  
PROJECT

**DATE:** 09-02-08

Approved

Date

9/4/08

**COUNCIL DISTRICT:** 2

**SNI:** Edenvale/Great Oaks

## **RECOMMENDATION**

Report on bids and award of contract for the Roundtable Drive Pedestrian Lighting Improvements Project to the low bidder, San Jose Signal Electric Construction, Inc., in the amount of \$180,752, and approval of a contingency in the amount of \$18,000.

## **OUTCOME**

Approval of this construction contract will enable the construction of 26 new High Pressure Sodium (HPS) pedestrian lights on Roundtable Drive between Roeder Road and Bendorf Drive. Approval of a ten percent contingency will provide funding for any unanticipated work necessary for the proper completion or construction of the project.

## **BACKGROUND**

The Roundtable Drive Pedestrian Street Lighting Improvements Project addresses one of the Edenvale/Great Oaks Strong Neighborhood Initiative's priorities for improved pedestrian access and beautification of Roundtable Drive (map attached). These improvements are part of a comprehensive effort designed to focus on small multi-family dwelling units within SNI neighborhoods.

The scope of work for this project involves installing new pedestrian lights, painting, replacing, rewiring existing electroliers, upgrading luminaires, tree trimming, installing conduits, conductors, aerial power cables, and pull boxes.

Construction will begin in December 2008 with completion in March 2008.

**ANALYSIS**

Bids were opened on July 10, 2008 with the following results:

<u>Contractor</u>	<u>Bid Amount</u>	<u>Variance Amount</u>	<u>Over Percent</u>
Republic ITS, Inc. (Novato)	\$384,150.00	\$147,250.00	62
F. Connolly Co. (San Bruno)	311,790.00	74,890.00	32
Tennyson Electric, Inc. (Livermore)	267,572.00	30,672.00	13
Lewis & Tibbitts, Inc. (San José)	242,160.84	5,260.84	2
<b>Engineer's Estimate</b>	<b>236,900.00</b>	---	---
Beltramo Electric, Inc. (San Martin)	225,950.00	(10,950.00)	(5)
Smith Denison Construction Co. (Livermore)	221,540.00	(15,360.00)	(6)
Pacific Electric Co. (San José)	201,580.00	(35,320.00)	(15)
San Jose Signal Electric Construction, Inc. (San José)	180,752.00	(56,148.00)	(24)

The low bid submitted by San Jose Signal Electric Construction, Inc. ("San Jose Signal") is 24 percent below the Engineer's Estimate. Staff has reviewed all bids and considers the low bid submitted for this project to represent the current construction market and acceptable for the work involved in the project.

The second low bidder – Pacific Electric Co. – submitted a written protest of San Jose Signal's bid. The protest is attached to this Council Memorandum. Pacific Electric Co. makes the following arguments:

- The subcontractor listed by San Jose Signal to perform horizontal drilling work – Advanced Cutting and Paving - does not have the proper contractor's license;
- San Jose Signal is not capable of performing the horizontal drilling work themselves; and
- Advanced Cutting and Paving is "related by marriage or blood to Pro-Line Excavation, an unlicensed subcontractor."

The protest is without merit. With regard to the first argument, the general contractor is responsible for ensuring that a subcontractor is properly licensed before the subcontractor performs any work. Accordingly, Public Works staff defers to San Jose Signal on the appropriateness of Advanced Cutting and Paving's license. In any event, Public Works staff does not believe that Advanced Cutting and Paving's license is inappropriate to perform the specified work.

With regard to the second argument, San Jose Signal could perform the work under its license even if Advanced Cutting and Paving's license was improper. Pacific Electric Co. has a C-10 license and apparently would have performed the horizontal boring work itself given that it did not list a subcontractor for the work. San Jose Signal also has a C-10 license and thus – just like Pacific Electric Co. - could perform the work under its license.

Finally, Advanced Cutting and Paving's relationship by "blood or marriage" to another contractor is irrelevant to determining the appropriateness of awarding the construction project to San Jose Signal.

As a result of this analysis, City staff has determined that the apparent low bidder has complied with all bid proposal requirements and that Pacific Electric's bid protests are without merit.

### **EVALUATION AND FOLLOW UP**

The project is currently within budget however, the bid protest process will delay the start and completion of project construction by three months. No additional follow up action with Council is expected at this time.

### **PUBLIC OUTREACH**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The San Jose Redevelopment Agency has coordinated this project's public outreach which includes attending community meetings and meeting with residents. Although this project does not meet any of the above criteria, this memorandum will be posted on the City's website for the September 23, 2008 Council agenda. Additionally, to solicit contractors, this project was listed on the City's Internet Bid Line and advertised in the *San Jose Post Record*. Bid packages for all

Department of Public Works construction projects are provided to various contractor organizations and builder's exchanges.

**COORDINATION**

This project and memorandum have been coordinated with the San Jose Redevelopment Agency, Departments of Planning, Building and Code Enforcement and Transportation, the City Attorney's Office, the City Manager's Budget Office, and the Edenvale/Great Oaks Strong Neighborhood Initiative.

**FISCAL/POLICY ALIGNMENT**

This project is consistent with the Council-Approved Budget Strategy Economic Recovery Section in that it will spur construction spending in our local economy.

**COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Project Delivery	\$105,043
Construction	180,752
Contingency	<u>18,000 *</u>
<b>Total Project Costs</b>	<b>\$303,795</b>

\* Contingency includes an estimated cost of \$5,000 for PG&E Service Connection Fees.

2. COST ELEMENTS OF THE AGREEMENT/CONTRACT:

Site Preparation	\$ 3,513
Concrete Work	4,439
Street Light System	168,297
Miscellaneous Items of Work	<u>4,503</u>
<b>TOTAL CONTRACT AMOUNT</b>	<b>\$180,752</b>

3. SOURCE OF FUNDING: 450 – Services for Redevelopment Capital Project Fund

4. OPERATING COSTS: The 2009-2013 Adopted Traffic Capital Improvement Program includes the following annual operating and maintenance impacts as follows:

<u>FY 08-09</u>	<u>FY 09-10</u>	<u>FY 10-11</u>	<u>FY 11-12</u>	<u>FY 12-13</u>
\$650	\$2,730	\$2,867	\$3,010	\$3,160

**BUDGET REFERENCE**

The table below identifies the fund and appropriation proposed to fund the contract recommended as part of this memo and project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	RC #	Appn. Name	Total Appn.	Amt. for Contract	2008-2009 Proposed Capital Budget Page	Last Budget Action (Date, Ord. No.)
450	6195	149975	Roundtable Pedestrian Light	\$322,095	\$180,752	N/A	08/12/08 Ord. No. 28364
<b>Total Current Funding Available</b>				\$322,095	\$180,752		

**CEQA**

CEQA: Exempt, PPO6-105.



KATY ALLEN  
Director, Public Works Department

For questions please contact TIMM BORDEN, DEPUTY DIRECTOR, at (408) 535-8300.



**PACIFIC ELECTRIC COMPANY**  
ELECTRICAL CONTRACTING

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July 17, 2008

City of San Jose  
Attn: Marlon de Leon - Dept. of Public Works  
200 E. Santa Clara St.  
San Jose, CA. 95113  
(408) 535-8300

REF: Roundtable Dr. Pedestrian Lighting Improvements  
Bid Protest

Marlon:

Pacific Electric Company is protesting the proposed bid award of this project to San Jose Signal Electric Construction Inc. This protest is per Section 3-1.01C "Protest of Bid Award". The information and grounds for protest are furnished below.

San Jose Signal Electric Construction Inc. (hereinafter referred to as Low Bidder) on July 10, 2008 submitted a bid to the City of San Jose for this project. The low bidder listed as a subcontractor, Advanced Cutting & Paving, Morgan Hill, License Number #776977 (hereinafter referred to as subcontractor) to perform "Horizontal Drilling" work. This subcontractor does have a valid contractors license.

It appears that the subcontractor, by performing this work under contract, would not be performing work within its issued classification. The subcontractor holds a C-12 "Earthwork and Paving" license classification. The CSLB clearly defines the type of work that this subcontractor can perform and any "tunneling" is incidental and not the main focus of the work. By entering into a Subcontract with the low bidder, the subcontractor would be subjecting itself to disciplinary action per CSLB.

*§ 7117.6. Acting as contractor in unauthorized classification  
Acting in the capacity of a contractor in a classification other than that currently held by the licensee constitutes a cause for disciplinary action.  
Added Stats 1983 ch 891 § 28.*

Moreover, it appears that the low bidder is not capable of performing the work themselves, hence the subcontract. Per the Proposal requirements of this project, all bidders are

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required to list all subcontractors the bidder intends to use on the project under the specific requirements of CSJ Section 2-1.15A. The low bidder did not comply with CSJ Section 2-1.15A 1. which requires the bidder to state the name and location of the place of business and list "a subcontractor licensed by the State of California". Though the low bidder listed a licensed subcontractor for this work, the listed subcontractor is not licensed properly to perform this type of work and therefore not allowed by CSLB to perform. The bidder should be considered "non-responsible".

The listed subcontractor could perform work legally if its work was limited to trenching and backfilling. The nature of this project is such that new conduit is to be installed along the west side of Roundtable Dr. The east side of the project consists of modifying conduits with minimal trenching or horizontal boring. The listed subcontractor can "rockwheel" the trench, backfill with concrete, and patch the asphalt within its classification. However, the low bidder indicated that the subcontractor would be horizontal drilling. It is also unclear if the subcontractor actually owns any directional boring equipment or intended to merely subcontract it further. It is our understanding that the subcontractor is related by marriage or blood to Pro-Line Excavation, an unlicensed subcontractor. Pro-Line Excavation is the unlicensed subcontractor who also has operated with the same license class C-12 for directional boring work exclusively. Pro-Line Excavation is the subject of Pacific Electric Company's protest for the award of "Traffic Signal Installation at Kingman Ave. and Leigh" filed April 22, 2008 with the City of San Jose.

The listing of a licensed subcontractor, while fulfilling the proposal requirements does not provide qualified personnel for the work. It would be no different as if the low bidder were to list a C-54 Tile Contractor for Roofing work.

A recent legal decision and a legal opinion seem to obligate the awarding agency to question the bid and have reinforced the ability for the agency to reject a bid as not responsible based on subcontractor information so long as the awarding agency followed specific procedure.

In *D.H. Williams v. Clovis Unified*, the District Court found it entirely proper for the awarding agency to investigate and render, at its sole discretion, a bid not responsible. The above case reaffirmed the process and the requirement of the agency to follow a procedure.

The legal opinion of the Office of Attorney General No. 02-1012, June 3, 2003 indicated that the AG agreed that any violation of Public Contract Code Section 4100-4114 (commonly referred to as the "Subletting and Subcontracting Fair Practices Act" allows the awarding authority in accordance with Section 4110 to cancel the contract or assess penalty at its own discretion.



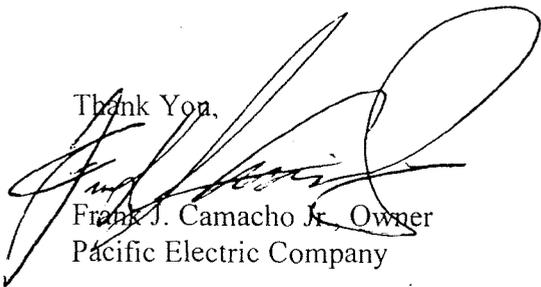
**PACIFIC ELECTRIC COMPANY**  
ELECTRICAL CONTRACTING

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The AG also stated the permissive authority to cancel the contract also included the authority to reject the bid in the first instance. This motion would assume the inability for the low bidder to perform the work themselves.

Please feel free to contact me with any questions that you may have and we look forward to your response.

Thank You,



Frank J. Camacho Jr. Owner  
Pacific Electric Company

DEPARTMENT OF PUBLIC WORKS

ROUNDTABLE DR PEDESTRIAN  
LIGHTING IMPROVEMENTS  
LOCATION MAP

PROJECT  
LOCATION

