

**Council Meeting: May 12, 2009****SUBJECT: Award of Bid No. F0803-58 for Intersection and Traffic Signal Reconstruction, North Sunnyvale Avenue at Arques Avenue****BACKGROUND**

This project is to provide for the reconstruction of the intersection of Sunnyvale Avenue at Arques Avenue to provide Americans with Disabilities (ADA) compliant access at all four corners of the intersection. The project will include the reconstruction of the traffic signals, adjustment of utility conflicts, adjustment to grades of roadway, and miscellaneous sidewalk and curb ramp work. The project will renew the life of the traffic signal at this intersection for another 35 years.

DISCUSSION

Bid specifications were prepared by Public Works and Purchasing staff. The Notice inviting bids was published in The Sun on April 1, 2009; and the bid package was distributed to Bay Area Builders Exchanges and broadcast to potential contractors through the Onvia Demandstar procurement network. Seven contractors requested bid documents

Sealed bids were publicly opened on April 22, 2009. Six responsive bids were received.

Bidders**Total Bid**

Engineer's Estimate	\$479,705
Pacific Electric Contracting, Inc., of San Jose	\$310,200
Beltramo Electric, Inc., of San Martin	\$319,700
W. Bradley Electric, Inc., of Novato	\$323,700
Tennyson Electric, Inc., of Livermore	\$334,265
San Jose Signal Electric Construction, Inc., of San Jose	\$336,837
Prism Engineering, Inc., of Santa Clara	\$346,601

Staff recommends the acceptance of the bid from Pacific Electric Contracting, Inc., the lowest responsive and responsible bidder.

The low bid is 35% below the Engineer's Estimate for this project.

A determination was made that this project will have no significant effect on the environment in accordance with CEQA guidelines for categorically exempt projects.

Bid protest letters were received from Beltramo Electric and San Jose Signal Electric relating to the lack of a subcontractor (Class "C-8" licensed for concrete) listed for the concrete and asphalt work in the low bid submitted by Pacific Electric Contracting, Inc. They claimed the work was extensive and required a subcontractor given the low bidder's specialty license (a "C-10" electrical license as required by the specifications). Pacific Electric responded that they would perform the work themselves and that the Business and Professions Code section 7059 permits holders of specialty contractors licenses, which include "C-10" licenses, to perform "incidental and supplemental work". The terms "incidental" and "supplemental" are defined in California Code of Regulations Title 16, Section 831 as "work that is essential to accomplish the work in which the specialty contractor is classified". The City determined that the project's concrete and asphalt work meets this definition of "incidental and supplemental", and therefore, Pacific Electric's bid was responsive.

FISCAL IMPACT

Project costs are as follows:

Construction	\$310,200
Contingency (10% of construction)	<u>\$ 31,020</u>
Total cost	\$341,220

Funds are available in Capital Project 826830 (Sunnyvale Ave. at Arques Ave. ADA Modifications).

As noted earlier, the bid price, not including contingency, is 35% below the Engineer's Estimate. When the contract is complete, savings from this project will be available to support additional **Sunnyvale Works!** capital projects.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

It is recommended that Council:

1. Award a contract, in substantially the same form as the attached draft and in the amount of \$310,200 to Pacific Electric Contracting, Inc. for Intersection and Traffic Signal Reconstruction at North Sunnyvale Avenue and Arques Avenue; and
2. Approve a project contingency in the amount of \$31,020.

Reviewed by:

Mary J. Bradley, Director of Finance
Prepared by: David Gakle, Principal Buyer

Reviewed by:

Marvin Rose
Director of Public Works

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Draft General Construction Contract
- B. Bid Protest Materials

Attachment A

DRAFT

GENERAL CONSTRUCTION CONTRACT

THIS CONTRACT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California ("Owner") and PACIFIC ELECTRIC CONTRACTING, INC., a California corporation ("Contractor").

RECITALS:

The parties to this Contract have mutually covenanted and agreed, as follows:

1. **The Contract Documents.** The complete Contract consists of the following documents: Notice Inviting Bids; Instructions to Bidders; Performance Bond and Payment Bond; Guaranty; City of Sunnyvale Standard Specifications for Public Works Construction, 2006 Edition; City of Sunnyvale Standard Details for Public Works Construction, 2006 Edition; Plans and Specifications, "Traffic Signal Reconstruction North Sunnyvale Avenue at Arques Avenue, Project No. TR-08/04-09, Invitation for Bids No. F0803-58", including; OSHA, and other standards and codes as outlined in the Specifications. These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the Contract Documents.

Any and all obligations of the Owner and the Contractor are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2. **The Work.** Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner, the work of installing traffic signal and street lighting at North Sunnyvale Avenue and East Arques Avenue as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared by Kimley-Horn and adopted by the Owner. These Plans and Specifications are entitled respectively, Traffic Signal Reconstruction North Sunnyvale Avenue at Arques Avenue, Project No. TR-08/04-09.

It is understood and agreed that tools, equipment, apparatus, facilities, labor, transportation, and material shall be furnished and work performed and completed as required in the Plans and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the Owner, or its representatives. The Owner hereby designates as its representative for the purpose of this contract the Senior Civil Engineer for Construction or an employee of the Owner who will be designated in writing by the Director of Public Works.

3. Contract Price. The Owner agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the lump sum of Three Hundred Ten Thousand Two Hundred and No/100 Dollars (\$310,200.00) subject to additions and deductions as provided in the Contract Documents and in accordance with Contract Documents.

4. Permits; Compliance with Law. Contractor shall, at its expense, obtain all necessary permits and licenses, easements, etc., for the construction of the project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health and safety.

5. Inspection by Owner. Contractor shall at all times maintain proper facilities and provide safe access for inspection by the Owner to all parts of the work, and to the shops wherein the work is in preparation. Where the Specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the Owner of its readiness for inspection and without the approval thereof or consent thereto by the latter. Should any such work be covered up without such notice, approval, or consent, it must, if required by Owner, be uncovered for examination at the Contractor's expense.

6. Extra or Additional Work and Changes. Should Owner at any time during the progress of the work request any alterations, deviations, additions or omissions from the Specifications or Plans or other Contract Documents it shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the contract price, as the case may be, by a fair and reasonable valuation, agreed to in writing between the parties hereto. No extra work shall be performed or change be made unless in pursuance of a written order from the Director of Public Works or authorized representative, stating that the extra work or change is authorized and no claim for an addition to the contract sum shall be valid unless so ordered.

7. Time for Completion. All work under this contract shall be completed before the expiration One Hundred Eighty (180) calendar days from the date specified in the Notice to Proceed.

If Contractor shall be delayed in the work by the acts or neglect of Owner, or its employees or those under it by contract or otherwise, or by changes ordered in the work, or by strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Owner, or by any cause which the Owner shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Owner may decide.

This provision does not exclude the recovery of damages for delay by either party under other provisions.

8. Inspection and Testing of Materials. Contractor shall notify Owner a sufficient time in advance of the manufacture or production of materials, to be supplied under this contract, in order that the Owner may arrange for mill or factory inspection and testing of same, if Owner requests such notice from Contractor.

9. Termination for Breach, etc. If Contractor should file a bankruptcy petition and/or adjudged to be bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Contractor or any subcontractors should violate any of the provisions of the Contract, Owner may serve written notice upon Contractor and its surety of Owner's intention to terminate the Contract. The notice shall contain the reasons for such intention to terminate the Contract, and, unless within ten days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten days, the Contract shall cease and terminate. In the event of any such termination, Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided, however that, if the surety within fifteen days after the serving upon it of notice of termination does not give Owner written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty days from the date of the serving of such notice, Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to Owner for any excess cost occasioned Owner thereby, and in such event Owner may without liability for so doing take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Contractor as may be on the site of the work and necessary therefor.

10. Owner's Right to Withhold Certain Amounts and Make Application Thereof. In addition to the amount which Owner may retain under Paragraph 21 until the final completion and acceptance of all work covered by the Contract, Owner may withhold from payment to Contractor such amount or amounts as in its judgment may be necessary to pay just claims against Contractor or any subcontractors for labor and services rendered and materials furnished in and about the work. Owner may apply such withheld amount or amounts to the payment of such claims in its discretion. In so doing Owner shall be deemed the agent of Contractor and any payment so made by Owner shall be considered as a payment made under the Contract by Owner to the Contractor and Owner shall not be liable to Contractor for any such payment made in good faith. Such payment may be made without prior judicial determination of the claim or claims.

11. Notice and Service Thereof. All notices required pursuant to this Contract shall be communicated in writing, and shall be delivered in person, by commercial courier or by first class or priority mail delivered by the United States Postal Service. Transmission of notice by facsimile or by telephone may be deemed sufficient if the requirement for written notice is waived, in writing, by the receiving party. Notices

delivered in person shall be deemed communicated as of actual receipt. Notices sent by mail or courier service shall be deemed communicated as of three days after mailing or dispatch, unless that date is a date on which there is no mail or delivery service, in which case communication shall be deemed to occur the next mail service or delivery day. The burden of proof of compliance with this requirement for written notice shall be on the sending party. All notices sent pursuant to this Contract shall be addressed as follows:

Owner: City of Sunnyvale
Department of Public Works
Construction Contract Administrator
P. O. Box 3707
Sunnyvale, CA 94088-3707

Contractor: Pacific Electric Contracting, Inc.
Attn: Frank Camacho, JR.
330 Phelan Avenue
San Jose, CA 95112

12. Assignment of Contract. Neither the Contract, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Contractor without the prior written approval of Owner.

13. Compliance with Specifications of Materials. Whenever in the Specifications, any material or process is indicated or specified by patent or proprietary name, or by name of manufacturer, such Specifications must be met by Contractor, unless Owner agrees in writing to some other material, process or article offered by Contractor which is equal in all respects to the one specified.

14. Contract Security. Contractor shall furnish a surety bond in an amount at least equal to 100 per cent of the contract price as security for the faithful performance of this Contract. Contractor shall also furnish a separate surety bond in an amount at least equal to 100 percent of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond.

15. Insurance. Contractor shall not commence work under this Contract until all insurance required under this paragraph has been obtained and such insurance has been approved by the Owner, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish the Owner with satisfactory proof of the carriage of insurance required, and there shall be a specific

contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract and particularly paragraph 16 hereof. Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to the Owner of any pending change in the limits of liability or of any cancellation or modification of the policy. Insurance carrier shall be California-admitted.

(a) Compensation Insurance and Employer's Liability Insurance. Contractor shall take out and maintain during the life of this Contract Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor.

In signing this Contract, Contractor makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(b) General Liability Insurance. Contractor, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the period covered by the Contract in the amount of One Million Dollars (\$1,000,000.00) per occurrence. Such coverage shall include, but shall not be limited to, protection against claims arising therefrom, and damage to property resulting from activities contemplated under this Contract. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the Owner and shall provide that notice must be given to Owner at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement. Broad form property damage endorsement must be attached. Owner is to be named as an additional insured on any contracts of insurance under this paragraph (b). Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by Owner.

(c) Automobile Liability. Contractor, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million Dollars (\$1,000,000.00) combined single limit coverage.

16. Hold Harmless. Contractor agrees to defend, save, indemnify and hold harmless Owner and all its officers, employees, and agents, against any and all liability, claims, judgments, or demands, including demands arising from injuries or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation arising through the active negligence or willful misconduct of Owner, or of Owner's officials, agents, employees, servants, or independent contractors who are directly responsible to Owner. Contractor shall make good and reimburse Owner for any expenditures, including reasonable attorneys' fees, Owner may make by reason of such claim or litigation, and, if requested by Owner, Contractor shall defend any such suits at the sole cost and expense of Contractor.

17. Hours of Work. Eight hours of labor during any one calendar day and forty hours of labor during any one calendar week shall constitute the maximum hours of service upon all work done hereunder, and it is expressly stipulated that no laborer, worker, or mechanic employed at any time by the Contractor or by any subcontractor or subcontractors under this Contract, upon the work or upon any part of the work contemplated by this Contract, shall be required or permitted to work thereon more than eight hours during any one calendar day and forty hours during any one calendar week, except, as provided by Section 1815 of the Labor Code of the State of California, work performed by employees of contractors in excess of eight hours per day and forty hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein, Contractor shall forfeit, as a penalty to Owner, fifty dollars (\$50.00) for each laborer, worker, or mechanic employed in the execution of this Contract by Contractor, or by any subcontractor under this Contract, for each calendar day during which the laborer, worker, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of the Sections of the Labor Code.

Contractor, and each subcontractor, shall, in accordance with California Labor Code Section 1776 or as the same may be later amended, keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with work under this agreement. Each payroll record shall contain or be verified by a written declaration under penalty of perjury, in accordance with Labor Code Section 1776(a). Such payroll records shall be made available at all reasonable times at the

Contractor's principal office to the persons authorized to inspect such records pursuant to Labor Code Section 1776. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, as well as to the Owner's representative. In the event the Contractor or a Subcontractor fails to comply in a timely manner within ten days to a written notice requesting the records, such contractor or subcontractor shall forfeit twenty-five dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, in accordance with Labor Code Section 1776(g).

18. Wage Rates. Pursuant to the Labor Code of the State of California, or any applicable local law, Owner has ascertained the general prevailing rate per diem wages and rates for holidays, and overtime work in the city, for each craft, classification or type of laborer, worker, or mechanic needed to execute this Contract. Owner has adopted, by reference, the general prevailing rate of wages applicable to the work to be done under the Contract, as adopted and published by the Division of Labor Standards Enforcement and Labor Statistics and Research of the State of California, Department of Industrial Relations, to which reference is hereby made for a full and detailed description. A copy of the prevailing wage rates may be reviewed in the office of the Director of Public Works, City of Sunnyvale, 456 West Olive Avenue, Sunnyvale, California. Wage rates can also be obtained through the City's Website at <http://sunnyvale.ca.gov/Departments/Finance/Purchasing/prevailingwage.htm>. Neither the notice inviting bids nor this Contract shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against Owner.

It shall be mandatory upon Contractor and upon any subcontractor to pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the Contract. It is further expressly stipulated that Contractor shall, as a penalty to Owner, forfeit fifty dollars (\$50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic paid less than the stipulated prevailing rates for any work done under this Contract by Contractor or by any subcontractor; and Contractor agrees to comply with all provisions of Section 1775 of the Labor Code.

In case it becomes necessary for Contractor or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, Contractor shall immediately notify Owner who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

19. Accident Prevention. Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

20. Contractor's Guarantee. Owner shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to the building, work, or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. Contractor unqualifiedly guarantees the first-class quality of all workmanship and of all materials, apparatus, and equipment used or installed by Contractor or by any subcontractor or supplier in the project which is the subject of this Contract, unless a lesser quality is expressly authorized in the Plans and Specifications, in which event Contractor unqualifiedly guarantees such lesser quality; and that the work as performed by Contractor will conform with the Plans and Specifications or any written authorized deviations therefrom. In case of any defect in work, materials, apparatus or equipment, whether latent or patent, revealed to Owner within one year of the date of acceptance of completion of this Contract by Owner, Contractor will forthwith remedy such defect or defects without cost to Owner.

21. Liquidated Damages. Time shall be the essence of this Contract. If Contractor fails to complete, within the time fixed for such completion, the entire work mentioned and described and contracted to be done and performed, Contractor shall become liable to Owner for liquidated damages in the sum of five hundred dollars (\$500.00), for each and every calendar day during which work shall remain uncompleted beyond such time fixed for completion or any lawful extension thereof. The amount specified as liquidated damages is presumed to be the amount of damage sustained by Owner since it would be impracticable or extremely difficult to fix the actual damage; and the amount of liquidated damages may be deducted by Owner from moneys due Contractor hereunder, or its assigns and successors at the time of completion, and Contractor, or its assigns and successors at the time of completion, and its sureties shall be liable to Owner for any excess.

22. Additional Provisions.

None.

IN WITNESS WHEREOF, two identical counterparts of this contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties.

CITY OF SUNNYVALE
a Municipal Corporation, Owner

Pacific Electric Contracting, Inc.
Contractor

License No. 337416

By _____
City Manager

By _____

Title

Attest:
City Clerk

By _____

Title

By _____
City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

(Notice: The signatures of the Contractor's officers on this contract must be acknowledged before a notary.)

ACKNOWLEDGMENT

State of California)
County of)

On _____ before me, _____
personally appeared _____

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(SEAL)

**ATTACHMENT B
BID PROTEST MATERIALS**



San Jose Signal Electric Construction, Inc.

April 27, 2009

City of Sunnyvale
Department of Public Works
650 West Olive Avenue
Sunnyvale California 94088-3707

Attn: David Gakle
Buyer

Re: Traffic Signal Reconstruction North Sunnyvale Avenue
At Arques Avenue. Project TR-08/04-09.

Bid Date: 4-22-09

Subject: Pacific Electric Contracting Inc.

Dear Mr. Gakle,

Pursuant to Section 11 "Instruction To Bidders" of the Special provisions we are hereby notifying the City of Sunnyvale in writing to protest the award of the above mentioned project to Pacific Electric Contracting Inc. the apparent low bidder.

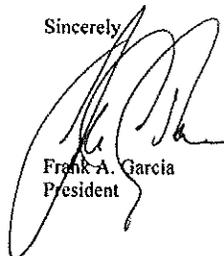
The basis for our protest is that Pacific Electric Contracting Inc. listed only a Striping Contractor (Riley's Striping) for items for Striping & Removal only and did not list a subcontractor for the Concrete & Asphalt work shown on the project plans.

In order to perform these items, Pacific Electric Contracting Inc. should hold a Class A License and according to the California State License Board they do not hold any other license than a C-10.

Please forward this letter to the appropriate department. A response to this letter would be greatly appreciated.

Any additional information you may require, I can be reached at 408-929-4900 ext. 24.

Sincerely



Frank A. Garcia
President



May 4, 2009

San Jose Signal Electric Construction, Inc.
Mr. Frank A. Garcia
P.O. Box 611525
San Jose, CA 95161

Re: Traffic Signal Reconstruction Project TR 08/04-09

Dear Mr. Garcia:

Thank you for your letter dated April 27, 2009, regarding your protest to the above referenced project. The appropriate City staff has reviewed the issue and concluded that Pacific Electric Contracting, Inc. is a responsive bidder pursuant to Invitation for Bids No. F0803-58 as well as the applicable state laws pertaining to contracting and licensing.

Your bid protest letter states that Pacific Electric Contracting did not list a subcontractor for the concrete and asphalt work as shown in the project plans. You further claimed that the contractor must hold a Class A license in order to perform this work and that they do not hold any other license than a C-10 (i.e., an electrical license).

The City's bid specs allow for either a Class A or Class C-10 license, which Pacific Electric possesses. Pacific Electric has responded that they would perform the concrete and asphalt work themselves. Furthermore, Public Contract Code section 4106 states that, when a prime contractor does not specify subcontractors in a bid, the prime contractor "agrees that he or she is fully qualified to perform that portion himself or herself..." The City has no countervailing reason to believe otherwise.

Moreover, Business & Professions Code section 7059 permits holders of specialty licenses (which includes a C-10 license) to perform "incidental and supplemental work". The terms "incidental and supplemental" are defined in California Code of Regulations Title 16 section 831 as "work that is essential to accomplish the work in which the specialty contractor is classified." Therefore, the City has determined that the project's concrete and asphalt work meets this definition of "incidental and supplemental" and Pacific Electric's bid is responsive.

Although we cannot agree with your position relative to this particular bid, we appreciate your input and encourage your submission of future bids.

Best regards,

A handwritten signature in black ink, appearing to read "David Gakle", is positioned above the typed name.

David Gakle
Principal Buyer, Purchasing Division

Cc: Pete Gonda, Acting Purchasing Officer
Chuck Neumayer, Senior Engineer
Rob Boco, Assistant City Attorney
Pacific Electric Contracting, Inc.

**ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707
TDD (408) 730-7501**



PACIFIC ELECTRIC COMPANY
ELECTRICAL CONTRACTING

April 27, 2009

David Gakle- Senior Buyer
City of Sunnyvale - Purchasing
P.O.B. 3707
Sunnyvale, CA. 94088-3707

RE: Traffic Signal Reconstruction at North Sunnyvale Ave.at Arques Ave
Response to Bid Protest

Mr. Gakle:

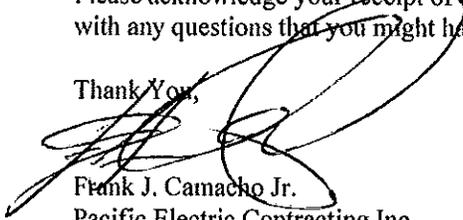
This is a response to the apparent Bid Protest (s) for this project concerning the concrete work for this project.

1. Pacific Electric Contracting Inc. (PEC) forces will perform all concrete work for this project. There is no need to list subcontractors on the proposal for this portion of work.
2. PEC, a C-10 Contractor, is allowed to bid as a prime contractor for this project per the Notice Inviting Bids (see attached Exhibit "A").
3. The concrete work for this project is incidental and supplemental to the overall nature of this contract. (Traffic Signal Reconstruction). Please refer to Exhibit "B" for the Contractors State License Board's (CSLB) guidance allowing PEC to act as the contractor for this work.
4. PEC may use his own employees to perform this incidental and supplemental work. See Exhibit "C" (CSLB)
5. The City of Sunnyvale may award this contract since a C-10 is authorized to bid this project, the concrete is not the main focus of the project (i.e.. incidental and supplemental), and the concrete is a minor percentage of the overall project (6.5 %). See Exhibit "D" (CSLB)

In addition, per the City of Sunnyvale's Bid protest procedures in the Instructions to Bidders (Item 27, paragraph d), any protests received to date are invalid since we, an interested party, have not been concurrently transmitted to.

Please acknowledge your receipt of this letter. If you have any questions, please feel free to contact me with any questions that you might have.

Thank You,


Frank J. Camacho Jr.
Pacific Electric Contracting Inc.

April 24, 2009

City of Sunnyvale
Purchasing Division
City Hall Annex
650 West Olive Ave.
Sunnyvale, CA 94086

Attn: David Gakle

Re: Traffic Signal Reconstruction North Sunnyvale Avenue at Arques Avenue

Dear Mr. Gakle,

According to "Instructions to bidders", of the contract documents #27 page 11, let it be known that Beltramo Electric, Inc. goes on record to formerly protest the proposed award of the above named contract to Pacific Electric Contracting, Inc, the apparent low bidder. Pacific Electric Contracting Inc., hereinafter known as Pacific Electric, listed no sub-contractor for the concrete and asphalt work. Pacific Electric holds only a C-10 license, which allows for incidental paving and concrete work, but does not apply to major contract work as described in the special provisions or on the plans. California Contractors code, as well as the California Contractors State License Board, is specific in licensing for various types of work within the State. The proposed work i.e. wheel chair ramps and grading and paving fall well short of incidental work for the project. In order for Pacific Electric to be able to perform this work, they would be required to hold applicable licenses, or an A license; they hold neither. Please forward our protest to the appropriate parties for their review and inform us of your decision.

Respectfully,

Tim Edes
Beltramo Electric, Inc.
P.O. Box 416
San Martin, Ca 95046
(408) 778-0076 phone
(408) 778-2499 fax
tim.bei@charter.net



May 4, 2009

Beltramo Electric, Inc.
Mr. Tim Edes
P.O. Box 416
San Martin, CA 95046

Re: Traffic Signal Reconstruction Project TR 08/04-09

Dear Mr. Edes:

Thank you for your letter dated April 24, 2009, regarding your protest to the above referenced project. The appropriate City staff has reviewed the issue and concluded that Pacific Electric Contracting, Inc. is a responsive bidder pursuant to Invitation for Bids No. F0803-58 as well as the applicable state laws pertaining to contracting and licensing.

Your bid protest letter states that Pacific Electric Contracting did not list a subcontractor for the concrete and asphalt work as shown in the project plans. You further claimed that the contractor must hold applicable licenses or a Class A license in order to perform this work.

The City's bid specs allow for either a Class A or Class C-10 license, which Pacific Electric possesses. Pacific Electric has responded that they would perform the concrete and asphalt work themselves. Furthermore, Public Contract Code section 4106 states that, when a prime contractor does not specify subcontractors in a bid, the prime contractor "agrees that he or she is fully qualified to perform that portion himself or herself...." The City has no countervailing reason to believe otherwise.

Moreover, Business & Professions Code section 7059 permits holders of specialty licenses (which includes a C-10 license) to perform "incidental and supplemental work". The terms "incidental and supplemental" are defined in California Code of Regulations Title 16 section 831 as "work that is essential to accomplish the work in which the specialty contractor is classified." Therefore, the City has determined that the project's concrete and asphalt work meets this definition of "incidental and supplemental" and Pacific Electric's bid is responsive.

Although we cannot agree with your position relative to this particular bid, we appreciate your input and encourage your submission of future bids.

Best regards,

A handwritten signature in black ink, appearing to read "David Gakle", is written over the "Best regards," text.

David Gakle
Principal Buyer, Purchasing Division

Cc: Pete Gonda, Acting Purchasing Officer
Chuck Neumayer, Senior Engineer
Rob Boco, Assistant City Attorney
Pacific Electric Contracting, Inc.

**ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707
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BELTRAMO

ELECTRIC
INC

May 6, 2009

City of Sunnyvale
Purchasing Division
City Hall Annex
650 West Olive Ave.
Sunnyvale, CA 94086

Attn: David Gakle

Re: Traffic Signal Reconstruction North Sunnyvale Avenue at Arques Avenue

Dear Mr. Gakle,

I received your response to our protest letter dated April 24, 2009. Frankly, I am quite surprised at your response. According to the city's position, virtually any work remotely connected to the specialty contractor is "incidental and supplemental work". The case could be made that items such as relocating fire hydrants, drain inlets, striping removal and re-installation, grinding and repaving (even the entire intersection for loop replacement), are "work that is essential to accomplish the work in which the specialty contractor is classified". This position could be construed as to never have a need for any license other than the specialty license. This diminishes the intent of the different classifications of licenses that the California Contractors State License Board has tried to establish. The whole point of different classifications is to ensure that the work will be completed by trained and knowledgeable contractors. The statement that the prime contractor "agrees that he or she is fully qualified to perform that portion himself or herself..." is ridiculous. It is exactly for this type of statement that the California Contractors State License Board was forced to develop different classifications of licenses; to ensure that the public doesn't have to rely on the word of the contractor. In the end, the intent of these rules and regulations are for the public's protection. They should not be taken lightly. The city's position is very dis-heartening to those of us who have pursued the proper classifications and certifications as mandated by the state, and are committed to abiding by the law.

Respectfully,

Tim Edes
Beltramo Electric, Inc.

Cc: John Beltramo

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beltramo@charter.net

LOCATION: 4087782499

RX TIME 05/06 '09 07:46