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DECEMBER 20, 2005

IGNACIO DE LA FUENTE, PRESIDENT
CITY COUNCIL
OAKLAND, CALIFORNIA

PRESIDENT DE LA FUENTE AND MEMBERS OF THE CITY COUNCIL

SUBJECT: RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO AWARD A CONSTRUCTION CONTRACT TO RAY'S ELECTRIC FOR THE GRAND AVENUE PEDESTRIAN AND TRANSIT PROJECT BETWEEN PERKINS STREET AND EL EMBARCADERO AND ON HARRISON STREET AT 21ST STREET (CITY PROJECT NO. 266610, FEDERAL PROJECT NO. CML-5012(058)) FOR AN AMOUNT OF THREE HUNDRED NINETY-SEVEN THOUSAND SEVEN HUNDRED TWENTY-EIGHTY DOLLARS AND FIFTY CENTS (\$397,728.50)

PURPOSE AND SCOPE

In accordance with the Measure H Charter Amendment, which was passed by the voters at the General election of November 5, 1996, we have made an impartial financial analysis of the accompanying Proposed Resolution and Agenda Report. In making our analysis, we also asked for additional information and clarification from City staff. We did not speak to any of the firms submitting bid proposals.

The City Auditor is elected by the citizens of Oakland to serve as an officer in charge of an independent department auditing City government activities. The independence of the City Auditor is established by the City Charter.

Since the Measure H Charter Amendment specifies that our impartial financial analysis is for informational purposes only, we did not apply Generally Accepted Government Auditing Standards as issued by the Comptroller General of the United States. Moreover, the scope of our

analysis was impaired by Administrative Instruction Number 137, effective May 21, 1997, which provides only two (2) weeks for us to plan, perform and report on our analysis. Due to this time constraint, we did not verify data contained in the Proposed Resolutions and Agenda Report.

BACKGROUND

The Proposed Resolution authorizes a contract award for the construction of sidewalk improvements to benefit pedestrian movement. Construction will occur at two locations:

1. intersection of Grand Avenue and Perkins Street
2. intersection of Harrison Street and 21st Street

Both of these locations are near the Lake Merritt walking/jogging paths.

The scope of work essentially involves the installation of corner bulb-outs. A corner bulb-out is an extension of where the sidewalk meets the intersection. The extension will be built into the street in a rounded fashion. A wider portion of the corner will be devoted to the curb ramp compared to standard intersections. Also, some crosswalk striping will be redone.

FISCAL IMPACT

The funding sources and expenditures are summarized as follows:

Funding Type	Source	Amount
Congestion Mitigation and Air Quality Fund	Federal	\$323,000
Metropolitan Transportation Commission/ Transportation Development Act Article 3 Funds	Federal	245,847
Measure B funds	County/City	22,000
Miscellaneous Grants	County	42,000
Total Funds Available for Project		\$632,847

Expenditure	Amount
Project Management & Design Services	\$235,119
Construction Services	397,728
Total Project Cost	\$632,847

CONTRACTOR SELECTION PROCESS

Three firms submitted timely proposals in response to the notices inviting bids issued by staff. The bid amounts are as follows:

- 1. Mosto Construction \$376,919.15
- 2. Ray's Electric \$397,728.50
- 3. Sposeto Engineering, Inc. \$455,541.00

Disadvantaged Business Enterprise program

Ray's Electric was awarded the contract although they did not have the lowest bid amount. The other two firms did not meet Disadvantaged Business Enterprise (DBE) requirements. The Disadvantaged Business Enterprise program is a federal program which encourages local governments to increase participation of businesses owned by individuals certified to be economically and socially disadvantaged in bidding on federally-funded transportation projects.

The Agenda Report states, "DBE participation is required as a condition of the federal grant." (Page 2) Furthermore, the participation rate is eight percent per the text of the Proposed Resolution.

Bidding firms can be Disadvantaged Business Enterprises to meet the requirements. Non-DBEs can also partner with one or several Disadvantaged Business Enterprises to meet the participation percentage. Lacking all these elements, non-DBEs have to document their proactive efforts showing attempts at meeting the percentage in their bid proposals. Firms that do not meet these requirements can be deemed nonresponsive, which also can lead to disqualification.

Based on copies of the three bid proposals provided to us, we concur with the Contract Compliance & Employment Services Division's analysis that the portion of the bid proposal concerning Disadvantaged Business Enterprise documentation from the other two firms was not sufficient. The DBE documents were either:

- not filled out in pertinent areas requesting information on what attempts to partner with DBEs were made or
- the DBE forms were not included with the bid proposal

Examples of information requests on the forms are requests to list any publications the firm advertised in to solicit DBE partnerships, provide names of DBEs solicited directly, and disclose the work components the Disadvantaged Business Enterprise(s) would perform for the project.

The possibility exists contractors may not know the importance of documenting positive DBE efforts in their bid proposals such that not doing so renders their bids nonresponsive.

Staff did clearly indicate in the project advertisement placed in the *Oakland Tribune* that the Disadvantaged Business Enterprise goal was eight percent.

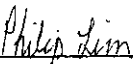
CONCLUSION

The contract award to the winning firm appears to be reasonable on the basis this firm submitted a valid, responsible and responsive proposal to a competitive call for bid submissions.


The bid process was competitive and open. However, the awarded firm won in some part due to the disqualification of the other firms. The Council should consider having staff provide more emphasis (such as in pre-bid conferences and proposal instructions) to prospective firms on the importance of partnering with Disadvantaged Business Enterprises or documenting their efforts to do so when DBE participation is required under federally-funded contracts. The extra emphasis to all prospective firms would occur before their proposals are submitted so that disqualification on this basis can be prevented.

Prepared by:

Issued by:



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Report completion date:
December 15, 2005