



## Legislation Text

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File #: 20-1536, Version: 1

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**Dept./ Agency:** Water and Sewer Utilities

**Action:** ( ) Ratifying (X) Authorizing ( ) Amending

**Type of Service:** Bid Contract

**Purpose:** Phase-10(A) Lead Service Line Replacement - Contract 38-WS2025

**Entity Name:** Pacific Construction, LLC

**Entity Address:** 531 US Highway 22E, #240, Whitehouse Station, New Jersey 08889

**Total Contract Amount:** Not to exceed \$10,825,580.00

**Funding Source:** 2018 Capital Budget/Department of Water and Sewer Utilities/NW041-18W-18W00-94710

**Contract Period:** 210 calendar days to final completion from the date of the written Notice to Proceed

**Contract Basis:** (X) Bid ( ) State Vendor ( ) Prof. Ser. ( ) EUS

(X) Fair & Open ( ) No Reportable Contributions ( ) RFP ( ) RFQ

( ) Private Sale ( ) Grant ( ) Sub-recipient ( ) N/A

**Additional Information:**

Bid Packages Distributed: Nineteen (19)

Bids Received: Five (5)

**WHEREAS**, the City of Newark (the "City") advertised Contract 39-WS2025 Phase-10(B) Lead Service Line Replacement located at various locations in the City of Newark, on August 19, 2020; and

**WHEREAS**, the Department of Water and Sewer Utilities, distributed nineteen (19) bid packages to prospective vendors following the date of bid advertisement; and

**WHEREAS**, on September 17, 2020, five (5) bids were received for the said project in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.; and

**WHEREAS**, the Department of Water and Sewer Utilities, reviewed the bids, and recommended that the lowest bidder namely, Pacific Construction LLC's bid be rejected due to an incurable bid deficiency with regards to Ownership Disclosure Statement pursuant to N.J.S.A. 40A:11-23c, and the second lowest bidder namely Roman E&G Corporation's bid was recommended to be rejected due to deficiencies with regards to meeting the City of Newark's affirmative action program goals for utilization of minorities and women, and further found the third lowest bidder namely Underground Utilities Corporation as the lowest responsible bidder who was responsive to the bid specifications and recommended that the contract should be awarded to Underground Utilities Corporation; and

**WHEREAS**, on October 19, 2020, Pacific Construction, L.L.C., filed a Verified Complaint and Order to Show Cause under Docket #ESX-L-6992-20 seeking to restrain and overturn the City of

Newark's rejection of Pacific Construction, L.L.C.'s bid on Contract 38-WS2025, Phase-10(A) Lead Service Line Replacement; and

**WHEREAS**, the City had deemed Pacific Construction, L.L.C.'s bid defective and had determined to award the contract to Underground Utilities Corporation as the lowest responsible and responsive bidder; and

**WHEREAS**, following full briefing and oral argument, on November 6, 2020, the New Jersey Superior Court ruled that the City of Newark's rejection of Pacific Construction, L.L.C.'s bid was arbitrary and capricious, and that should the City of Newark choose to award the contract, the City was required to award Contract 38-WS2025 Phase-10(A) Lead Service Line Replacement, to Pacific Construction, L.L.C., as the lowest responsible and responsive bidder; and

**WHEREAS**, as per Court Order, Pacific Construction LLC, 531 US Highway 22E, #240, Whitehouse Station, New Jersey 08889, submitted the lowest bid, in the total amount of \$10,728,430.00 for the base bid, and in the total amount of \$97,150.00 for the supplemental bid, with a combined base bid and supplemental bid total amount of \$10,825,580.00; and

**WHEREAS**, the City of Newark, as per the November 6, 2020 Court Order, wishes to accept the lowest bid submitted by Pacific Construction LLC, on September 17, 2020, and execute Contract 38-WS2025 Phase-10(A) Lead Service Line Replacement, with Pacific Construction, LLC, 531 US Highway 22E, #240, Whitehouse Station, New Jersey 08889, for the combined base bid and supplemental bid total amount not to exceed \$10,825,580.00; and

**WHEREAS**, the Municipal Council adopted the Contractor Pay-to-Play Reform Ordinance, R.O. 2:4-22C, which forbids the award of a contract of a Business Entity, as defined therein, which has made or solicited political contributions to Newark Municipal Candidates, office holders having ultimate responsibility for the award of a contract; candidate committees of the aforementioned candidates, and political or political party committees of the City of Newark or County of Essex; and continuing political committees or political action committees regularly engaged in the support of the City of Newark Municipal or County of Essex elections; and certain other political party or candidate committees, in excess of certain thresholds; and

**WHEREAS**, this contract is for an amount over \$17,500.00 and is being awarded as a Fair and Open Contract pursuant to N.J.S.A. 19:44A-20.5.

**NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

1. The Municipal Council hereby authorizes the Mayor and/or his designee, the Director of the Department of Water and Sewer Utilities, as per the November 6, 2020 Court Order, to accept the lowest bid submitted by Pacific Construction LLC, on September 17, 2020, and execute Contract 38-WS2025 Phase-10(A) Lead Service Line Replacement, with Pacific Construction, LLC, 531 US Highway 22E, #240, Whitehouse Station, New Jersey 08889, for the combined base bid and supplemental bid total amount not to exceed \$10,825,580.00.
2. Attached hereto is a Certification of Funds from the Chief Financial Officer, which states that funds in the amount of \$10,825,580.00 are available in the Department of Water and Sewer

Utilities 2018 Capital Budget under Business Unit NW041, Department ID 18W, Project 18W00, Account 94710, and which shall be filed along with the original resolution in the Office of the City Clerk.

3. There shall be no amendment or change to the contract without approval by the Municipal Council.
3. There shall be no advance payment on this contract in accordance with N.J.S.A. 40A:5-16.
3. A fully executed copy of the contract shall be filed in the Office of the City Clerk, by the Department of Water and Sewer Utilities.
3. This contract was solicited and awarded pursuant to the provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and is in compliance with the City's Contractor Pay-to-Play Reform Ordinance, R.O. 2:4-22C.
3. If required by State Law, the City Clerk shall provide the appropriate notice of the award of this contract to the State Comptroller no later than twenty (20) business days following such award, in accordance with N.J.S.A. 52:15C-10 and the Notice of the Office of the State Comptroller dated May 7, 2008.

### **STATEMENT**

This resolution authorizes the Mayor and/or his designee, the Director of the Department of Water and Sewer Utilities, as per the November 6, 2020 Court Order, to accept the lowest bid submitted by Pacific Construction LLC, on September 17, 2020, and execute Contract 38-WS2025 Phase-10(A) Lead Service Line Replacement, located at various locations in the City of Newark, with Pacific Construction, LLC, 531 US Highway 22E, #240, Whitehouse Station, New Jersey 08889, for the combined base bid and supplemental bid total amount not to exceed \$10,825,580.00.