

# **CITY OF HAYWARD**

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)



CITY OF  
**HAYWARD**  
HEART OF THE BAY

## **Agenda**

**Tuesday, July 23, 2019**

**3:00 PM**

**Conference Room 2A**

**City Council**

**SPECIAL CITY COUNCIL MEETING****CALL TO ORDER Pledge of Allegiance: Mayor Halliday****ROLL CALL****CLOSED SESSION ANNOUNCEMENT****PUBLIC COMMENTS (Limited to Items on the Agenda)****PUBLIC HEARING**

1. [PH 19-070](#) 21st Century Library and Community Learning Center and Heritage Plaza: Public Contract Code § 4107 Hearing Regarding Removal and Substitution of the Electrical Subcontractor, Collins Electrical Company, Inc (Report from Public Works Director Ameri and City Attorney Lawson) (Continued from July 16, 2019)

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Resolution](#)

**ACTION ITEMS**

2. [RPT 19-327](#) Community Services Commission, Library Commission, Personnel Commission and Planning Commission Interviews

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II List of Applicants](#)

**3. Selection of Members****ADJOURNMENT****NEXT SPECIAL MEETING, September 10, 2019, 7:00 PM****PUBLIC COMMENT RULES**

*Any member of the public desiring to address the Council shall limit her/his address to three (3) minutes unless less or further time has been granted by the Presiding Officer or in accordance with the section under Public Hearings. The Presiding Officer has the discretion to shorten or lengthen the maximum time members may speak. Speakers will be asked for their name before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.*

**PLEASE TAKE NOTICE**

*That if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.*

**PLEASE TAKE FURTHER NOTICE**

*That the City Council adopted Resolution No. 87-181 C.S., which imposes the 90-day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.*

*\*\*\*Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. \*\*\**

*Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.*

*Assistance will be provided to those requiring language assistance. To ensure that interpreters are available at the meeting, interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400.*



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**File #:** PH 19-070

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**DATE:** July 9, 2019

**TO:** Mayor and City Council

**FROM:** Director of Public Works  
City Attorney

## **SUBJECT**

21st Century Library and Community Learning Center and Heritage Plaza: Public Contract Code § 4107  
Hearing Regarding Removal and Substitution of the Electrical Subcontractor, Collins Electrical Company, Inc.

## **RECOMMENDATION**

That the Council, after conducting a hearing, considers and approves a resolution for the removal of Collins Electrical Company, Inc. as the electrical subcontractor on the 21<sup>st</sup> Century Library project and authorizes the City Manager to approve a substitute subcontractor to perform the electrical work pursuant to Public Contract Code § 4107.

## **SUMMARY**

On July 2, 2019, the City transmitted a letter to T. B. Penick & Sons, Inc. (TBP) requesting that they remove Collins Electrical Company, Inc., (Collins) from the project and identify a responsible electrical contractor for submittal as a substitute. The request is based on disruptive actions and project delays attributed to Collins. The City sent a notification to Collins regarding its request that TBP remove them as a subcontractor on this project.

The terms of the construction contract for the library project require the contractor to immediately remove a subcontractor who fails to satisfactorily prosecute the work, upon request by the City. The Public Contract Code requires a public hearing by the awarding authority whenever a subcontractor objects to being removed from a project and replaced with a substitute.

## **ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution



DATE: July 9, 2019

TO: Mayor and City Council

FROM: Director of Public Works  
City Attorney

SUBJECT: 21st Century Library and Community Learning Center and Heritage Plaza:  
Public Contract Code § 4107 Hearing Regarding Removal and Substitution of  
the Electrical Subcontractor, Collins Electrical Company, Inc.

#### RECOMMENDATION

That Council, after conducting a hearing, considers and approves a resolution for the removal of Collins Electrical Company, Inc. as the electrical subcontractor on the 21<sup>st</sup> Century Library project and authorizes the City Manager to approve a substitute subcontractor to perform the electrical work pursuant to Public Contract Code § 4107.

#### SUMMARY

On July 2, 2019, the City transmitted a letter to T. B. Penick & Sons, Inc. (TBP) requesting that they remove Collins Electrical Company, Inc., (Collins) from the project and identify a responsible electrical contractor for submittal as a substitute. The request is based on disruptive actions and project delays attributed to Collins. The City sent a notification to Collins regarding its request that TBP remove them as a subcontractor on this project.

The terms of the construction contract for the library project require the contractor to immediately remove a subcontractor who fails to satisfactorily prosecute the work, upon request by the City. The Public Contract Code requires a public hearing by the awarding authority whenever a subcontractor objects to being removed from a project and replaced with a substitute.

#### BACKGROUND

On September 15, 2015, Council awarded the construction contract for the 21<sup>st</sup> Century Library and Community Learning Center and Heritage Plaza project to T. B. Penick & Sons, Inc. (TBP). TBP listed Collins Electric (Collins) as their electrical subcontractor to perform all electrical related work.

#### DISCUSSION

The project consists of two phases. Phase 1 includes work on the new main library and the adjacent parking garage. Phase 2 includes demolition of the old main library and construction of park amenities in the plaza. Phase 1 started on January 4, 2016. Initially, phase 1 was expected to have been completed during the Summer of 2017 per the allotted contract time. Unanticipated soil contamination and rain delays extended the completion date to December 5, 2017. Construction on the new main library is still not complete, for various reasons, among them is Collins' inability or unwillingness to complete critical tasks necessary to obtain occupancy of the library building and to complete the project. These tasks are necessary prerequisites prior to testing of life/safety systems that must be completed before the building can be occupied.

Two recent examples of Collins unwillingness to diligently pursue work required to begin the smoke and fire alarm tests are:

(1) Window actuators

On January 8, 2019, TBP asked if the low voltage window actuator wiring needed to be in conduit. Two days later, the City's Fire Department provided code language that confirmed the wiring was required to be enclosed in conduit. On January 22, 2019, based on a TBP request for formal direction, the City directed TBP to enclose all window actuator wiring in conduit. One week later, Spacetone began removing ceiling panels to provide access for the conduit installation. On February 4, 2019, Collins started the rework. On February 16, 2019, TBP provided notice that they formally disagreed with the City's position but would continue work under protest. On May 14, 2019, the conduit and wiring had been installed. Rework on the wiring continued through mid-June during the Commercial Controls (another subcontractor) pretest activities.

After TBP suspended work on the project between March 15 and March 22, 2019, Collins refused to return until TBP could assure them that all work areas related to all of Collins remaining activities were complete and available to Collins. Collins returned to work on April 15, 2019.

Collins has had limited staff on the project with only one or two and rarely three electricians on-site at any one time even though there were many areas available for work.

(2) Strobes and horns

On March 11, 2019, TBP asked for clarification of horn and strobe locations at the wood cloud ceiling locations on each floor of the library. On March 11, 2019, the City's architect provided plans with suggested alternate horn and strobe locations outside of the cloud ceiling envelope. These alternate locations were dependent upon feedback from Pyrocom, a Collins subcontractor, because the spacing and strobe design came from Pyrocom. A formal response to the Request for Information (RFI) was sent on March 20, 2019. On April 24, 2019, TBP submitted a Collins change order request for this work. On April 30, 2019, TBP submitted plans with the revised strobe locations to the City for Building permit approval. On May 9, 2019, the City rejected the change order request because this

conflict should have been identified and addressed during the contractor's early work with the Building Infrastructure Model. On May 16, 2019, the City confirmed its direction to TBP that this work proceed under protest if necessary. On May 23, 2019, TBP confirmed that the work would proceed under protest and began removing ceiling panels to start the work. On June 21, Collins completed installation of the last strobe. However, TBP had to replace the ceiling panels so the strobes were removed, and the ceiling panels replaced. To date, the strobes have not been reinstalled.

Additionally, Collins has delayed or disrupted progress of the work by turning off power and data to receptacles and rooms. On various occasions, power has not been available for training activities or for vendor installation activities. This has impacted the installation of the owner furnished equipment, such as the book return units, the self-check-out machines, and the security stanchions and training on the wall in the large conference room.

The provisions of the contract between TBP and the City allow removal of a subcontractor under these circumstances. Section 5-1.13 of the 2010 CalTrans Standard Specifications regarding Subcontracting, which is incorporated into the contract by Section 1 and Section 2-1.07 of the Project Specifications, states that upon request, the contractor shall immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily. The City has made this request pursuant to the contract for the reasons stated above.

The City further requested TBP to propose a substitute subcontractor as required by the Public Contract Code. Public Contract Code § 4107 generally prohibits a general contractor from substituting a subcontractor listed in the original bid with another subcontractor unless consented to by the awarding authority. A subcontractor that is subject to a substitution request is entitled to submit written objections to the substitution request. If written objections are submitted, the awarding authority must conduct a hearing on the contractor's substitution request to determine if it should be allowed. As of the date of this report, Collins has indicated through legal counsel that it would prepare objections to removal/substitution. The parties have been invited to submit written evidence in advance of the hearing. Any written evidence received by the City prior to July 9 will be provided to the Council prior to hearing. The parties will be given an opportunity to present their positions and provide additional live testimony during the hearing. Based upon the evidence submitted, the City Council must determine if removal/substitution of Collins is appropriate or if other actions should be taken.

Following receipt of the notice from the City earlier this week, both TBP and Collins indicated a desire to keep Collins on the job and made some commitments to finalize required work for the temporary certificate of occupancy (TCO). If TBP and Collins have followed through on their commitments by early next week, staff indicated a willingness to request that Council continue this hearing to the July 16 City Council meeting and to potentially ask the Council to drop consideration of this request for removal/substitution if the TCO is accomplished prior to the July 16 meeting.

#### ECONOMIC IMPACT

There is no economic impact associated with this item.

## FISCAL IMPACT

The adopted Capital Improvement Program budget for the 21<sup>st</sup> Century Library project is \$66,078,512. This request for subcontractor removal and substitution will cause additional delays to the completion of the project and will likely result in additional administrative costs and delay claims.

## STRATEGIC INITIATIVES

This agenda item does not directly relate to the Council's Strategic Initiatives.

## SUSTAINABILITY FEATURES

The action taken for this report will not result in physical development, purchase, or service, or a new policy/legislation.

## PUBLIC CONTACT

No special public contact has occurred associated with this action other than standard publication of the agenda in compliance with the Brown Act.

## NEXT STEPS

If Council consents to the removal of Collins Electrical, TBP will be directed to contract with a responsible electrical contractor to complete the electrical work on Phase 1 and Phase 2 of the project. If Council does not consent to the substitution, Collins Electrical will remain on the project.

Prepared by: Kathy Garcia, Deputy Director of Public Works  
Michael Vigilia, Senior Assistant City Attorney

Recommended by: Alex Ameri, Director of Public Works  
Michael S. Lawson, City Attorney

Approved by:



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Kelly McAdoo, City Manager



HAYWARD CITY COUNCIL

RESOLUTION NO. 19-\_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD  
APPROVING REMOVAL AND SUBSTITUTION OF COLLINS  
ELECTRICAL COMPANY, INC., FROM THE 21<sup>ST</sup> CENTURY LIBRARY  
AND COMMUNITY CENTER AND HERITAGE PLAZA PROJECT

WHEREAS, on September 15, 2015, the Hayward City Council awarded the construction contract for the 21st Century Library and Community Learning Center and Heritage Plaza project to T. B. Penick & Sons, Inc. (TBP); and

WHEREAS, Collins Electrical Company, Inc. (Collins) was listed in TBP's bid as the electrical subcontractor to perform all electrical related work on the project; and

WHEREAS, Construction on the new main library is still not complete, for various reasons, among them is Collins' inability or unwillingness to complete critical tasks necessary to obtain occupancy of the library building and to complete the project, which tasks are necessary prerequisites prior to testing of life/safety systems that must be completed before the building can be occupied; and

WHEREAS, Section 5-1.13 of the 2010 CalTrans Standard Specifications regarding Subcontracting, which is incorporated into the contract between the City and TBP by Section 1 and Section 2-1.07 of the Project Specifications, states that upon request, the contractor shall immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily; and

WHEREAS, pursuant to Public Contract Code section 4107, substitution of a listed subcontractor is permissible when the awarding authority determines that the work performed by the subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work; and

WHEREAS, on July 3, 2019 the City transmitted a letter to TBP requesting removal of Collins from the project based on Collins' failure to prosecute the work in a timely and satisfactory manner and requested TBP to provide a substitute subcontractor for approval by the City as required by the Public Contract Code; and

WHEREAS, on July 3, 2019 the City transmitted a letter to Collins advising that the City had made the above referenced request to TBP and that a hearing before the City Council was scheduled for July 9, 2019 on the matter, for which Collins was invited to provide written and oral evidence and testimony; and

WHEREAS, the City Council, having conducted the aforementioned public hearing and considered the evidence and testimony provided by the parties, makes the following findings:

(1) Collins failed to diligently prosecute tasks that are necessary prerequisites prior to testing of life/safety systems that must be completed before the building can be occupied, specifically:

- Window Actuators - On January 8, 2019, TBP asked if the low voltage window actuator wiring need to be in conduit. Two days later, the City's Fire Department provided code language that confirmed the wiring was required to be enclosed in conduit. On January 22, 2019, based on a TBP request for formal direction, the City directed TBP to enclose all window actuator wiring in conduit. One week later, Spacetone began removing ceiling panels to provide access for the conduit installation. On February 4, 2019, Collins started the rework. On February 16, 2019, TBP provided notice that they formally disagreed with City's position but would continue work under protest. On May 14, 2019, the conduit and wiring had been installed. Rework on the wiring continued through mid-June during the Commercial Controls pretest activities.

After TBP suspended work on the project between March 15 and March 22, 2019, Collins refused to return until TBP could assure them that all work areas related to all of Collins remaining activities were complete and available to Collins. Collins returned to work on April 15, 2019.

Collins has had limited staff on the project with only one or two and rarely three electricians on-site at any one time even though there were many areas available for work.

- Strobes and Horns - On March 11, 2019, TBP asked for clarification of horn and strobe locations at the wood cloud ceiling locations on each floor of the library. On March 11, 2019, the City's architect provided plans with suggested alternate horn and strobe locations outside of the cloud ceiling envelope. These alternate locations were dependent upon feedback from Pyrocom, a Collins subcontractor, feedback because the spacing and strobe design came from Pyrocom. A formal response to the Request for Information (RFI) was sent on March 20, 2019. On April 24, 2019, TBP submitted a Collins change order request for this work. On April 30, 2019, TBP submitted plans with the revised strobe locations to

the City for Building permit approval. On May 9, 2019, the City rejected the change order request because this conflict should have been identified and addressed during the contractor's early work with the Building Infrastructure Model. On May 16, 2019, the City confirmed its direction to TBP that this work proceed under protest if necessary. On May 23, 2019 TPB confirmed that the work would proceed under protest and began removing ceiling panels to start the work. On June 21, Collins completed installation of the last strobe. However, TBP had to replace the ceiling panels so the strobes were removed, and the ceiling panels replaced. To date, the strobes have not been reinstalled.

- (2) Collins delayed or disrupted progress of the work by turning off power and data to receptacles and rooms. On various occasions, power has not been available for training activities or for vendor installation activities. This has impacted the installation of the owner furnished equipment, such as the book return units, the self-check-out machines and the security stanchions and training on the wall in the large conference room.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Hayward that the removal of Collins Electrical Company, Inc. from the 21st Century Library and Community Learning Center and Heritage Plaza project is approved based on the reasons and findings stated herein.

BE IT FURTHER RESOLVED, that the City Manager is authorized to provide consent on behalf of the City Council to any proposed subcontractor identified by T.B. Penick & Sons, Inc. to replace Collins on the Project.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward



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**File #:** RPT 19-327

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**DATE:** July 23, 2019

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT**

Community Services Commission, Library Commission, Personnel Commission and Planning Commission Interviews

**RECOMMENDATION**

That the City Council interviews applicants for service on the Community Services Commission, Library Commission, Personnel Commission, and Planning Commission.

**SUMMARY**

The annual recruitment for Commissions and the Keep Hayward Clean and Green Task Force was conducted from April 5, 2019 through July 5, 2019. One-hundred seventeen applications were received by the application submission deadline and eighty-two applicants qualified to be considered for appointment. On July 10, 2019, the Keep Hayward Clean and Green Task Force (KHCG TF) Subcommittee interviewed twenty-one applicants who had indicated the KHCG TF as their first and only preferences for service. Eleven applicants were selected by the Subcommittee and recommended to the City Council. The City Council had the opportunity to review all applications for other Boards and Commissions and individually communicate their selections to the City Clerk. There were thirty-one applicants who received at least three points and were invited to interview with the City Council on July 23, 2019. Four current members were also invited to meet with the City Council to discuss their candidacy and attendance record.

Attachment II contains the final list of applicants by preference for service.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	List of Applicants

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**File #:** RPT 19-327

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DATE: July 23, 2019

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Community Services Commission, Library Commission, Personnel Commission, and Planning Commission Interviews

#### RECOMMENDATION

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Attachment II contains the final list of applicants by preference for service.

#### FISCAL IMPACT

There is no fiscal impact associated with this report.

#### STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

## PUBLIC CONTACT

The agenda was posted in accordance with the Brown Act and selected applicants were invited to interview with the City Council.

## NEXT STEPS

Applicants selected to fill the current vacancies will be officially appointed and sworn-in on September 10, 2019.

Prepared and Recommended by:                      Miriam Lens, City Clerk

Approved by:

A handwritten signature in black ink, appearing to read 'K McAadoo', written over a horizontal line.

Kelly McAadoo, City Manager



## FINAL LIST OF APPLICANTS

#	Binder No.	APPLICANT NAME
<b>PERSONNEL COMMISSION (Three Vacancies)</b>		
1	B61	Denise C Thompson
2	B82	Phyllis R Hamilton
3	B14	Randy J Wright (CTF)
4	B87	Robert L Gaumer
<b>LIBRARY COMMISSION (Four Vacancies)</b>		
5	B91	Andrea Wong
6	B41	Anika Patterson (KHCG TF)
7	B63	Beth Marshburn
8	B30	Blesilda C De La Rosa
9	B90	Ivon Esther Martinez
10	B12	Karima Sharifi
11	N/A	Luis Prada
12	B5	Nicanor Ballesteros
13	B24	Oscar M Quiambao
14	B86	Patty (Patricia) C Shadden
15	N/A	Pedro Reynoso
16	B25	Peggy Guernsey (CAC/CSC)
17	B31	Priscilla J Banks (CAC/CSC)
18	B32	Suresh Sangiah
19	B8	Surina Piyadasa
<b>PLANNING COMMISSION (One Vacancy)</b>		
20	B68	Arzo Mehdavi (CSC)
21	N/A	Daniel Goldstein
22	B73	Jose M Lara Cruz (HYC/CSC)
23	B39	Julie Roche (CSC)
24	N/A	Julius Willis Jr.
25	B80	Robert C Stevens
26	B29	Timothy Kim
27	B71	Zachariah J Oquenda (CSC/CTF/HPD)
<b>COMMUNITY SERVICES COMMISSION (Two Vacancies)</b>		
28	B58	Artavia Berry
29	B6	Diane Joyce Fagalde (CSC)
30	B19	Emily Chow
31	B85	Isabel Pimentel
32	B47	Jennifer L Alsanady
33	B92	Jessica M Stanley
34	B2	Varsha Chauhan