Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

DATE: June 12, 2017

SUBJECT: Actions Related to the Request for Proposal of the Innovative LED Streetlight Replacement

RECOMMENDATION

1. Consider the appeal from Philips Lighting of North America.
2. If Council rejects all bids, follow staff recommendation outlined in June 12, 2017 Supplemental Memorandum.
3. If an award is ultimately approved by the Council, discuss and consider imposing several minimally acceptable terms in a pilot program that will further the City’s interests in fiscal sustainability, system reliability, interoperability, and technological benefit to the public, as suggested by the Discussion, below. Council shall delegate authority to the City Manager such that:
   a. City Manager shall have authority to enter a pilot for up to 1 year duration; but
   b. Any commitment beyond that duration will require a vote of the Council in public session, and the City and prevailing vendor (Vendor) shall negotiate the terms of that commitment within 90 days.
   c. If the prevailing bidder indicates a lack of willingness to submit to the minimally acceptable terms within 30 days the City Manager may terminate negotiations and follow the direction reflected in the Staff recommendations in the June 12, 2017 Supplemental Memorandum, including a revised RFP.
4. Proposals relating to the City’s authorization of signage to generate revenues shall be referred to the sign code update process—including the pending consideration of a Downtown Sign District—for the Council to consider in context of a coherent approach to sign regulation that could include a future procurement process.

BACKGROUND

I appreciate enormously the sincere efforts of our participating bidders to provide a technological solution to our proposal, and to City staff to ensure a fair, objective means for assessing and comparing bid packages. The complexity of this procurement is unprecedented in recent memory, and that complexity—combined with the nascency of much of this technology-- has resulted in bid protests, numerous delays, and reconsideration of prior recommendations.
Nonetheless, the Council faces the task of considering an appeal, and if that appeal is denied, then to consider these competing bids. It simplifies the task somewhat to begin by recognizing that each of the bids failed to satisfy the basic purpose of the RFP: the financing of LED streetlights in a manner that would protect City taxpayers from cost and fiscal risk. In light of that fact, and given the considerable opportunity costs of committing to any vendor at a time of high demand from others, staff’s recommendation to simply “reject all bids” seems reasonable enough. After hearing all of the information at the hearing, the Council may well choose that option.

Nonetheless, the extensive investment of time and energy to get us here—and the considerable delays that we’d encounter before moving forward with any already-delayed implementation—should give us reason to probe further.

Should we deny the appeal, I propose that we establish a brief, 30-day duration to determine whether City staff’s original recommendation—for a pilot that could, if successful, lead to a broader deployment—is a viable one. That would require discussion between City staff and the prevailing vendor, during which Staff could ascertain whether necessary (or “minimally acceptable”) conditions could be satisfied in any contract between the parties. If it becomes apparent to Staff that there cannot be a meeting of the minds within 30 days, then the City Manager is empowered to cut bait and move on. If a contract can be negotiated, it may be preceded by a pilot to ensure the technology and revenue model suffices to meet the City’s demands.

Based on my conversations with knowledgeable staff at the City Manager’s Office and in my office, it appears that the following elements—many of which were not offered by competing bidders—must be present for a bid to be minimally acceptable to the City:

**A) Minimally Acceptable Terms**

1) **Pilot Period**
   a. Duration: 1 year Deployment: 300-1,000 poles in a pre-agreed upon area.
   b. City retains all rights to the data generated by devices on the streetpoles.
   c. City determines when and where to turn on any devices or sensors.
   d. No cameras will be deployed on any street pole that capture video of anything other than vehicular traffic until a privacy policy has been vetted publicly and agreed to by Council.
   e. Vendor must identify the mechanisms for accessing the data generated by devices, in advance of the pilot period, and the data must be hosted in a mutually agreeable environment.
   f. Vendor must demonstrate a robust cloud-analytics platform with agreed-upon use cases beyond lighting with user-friendly interfaces (e.g., parking, public safety applications, traffic counting, connected vehicles), with the ability to integrate existing City-controlled sensors into that platform.
   g. Vendor must provide security at the physical, network, data, and application layers.
   h. Vendor must provide Staff with pricing estimates for on-going data analytics support.
i. Vendor bears all costs of the pilot, including hardware, installation, and electricity costs. City achieves full cost recovery for all City expenses, including the cost of City staff time for installation, repair, and project management.

j. Provision of free wi-fi to the public in areas where the devices are installed, with City staff agreement as to the means by which the service access is controlled.

k. Vendor’s controller technology must be FCC-certified within the pilot period prior to signing a longer-term contract.

l. If vendor’s controller device does not meet City’s expectations (as determined by the contract), then Vendor pays for removal of the devices.

m. Proposal must demonstrate value through financial or productivity savings for City.

n. Vendor must demonstrate accurate metering, and billing satisfying PG&E’s metering standards.

2) Minimally Acceptable Terms in a Longer-Term Contract

1. Rights to data
   a. The city will own the sensor data by default. City can grant usage rights to Vendor or third parties, but City shall retain rights to approve of any sale or use of the data by those parties to others.
   b. Privacy, retention, and data security terms should be clearly addressed in the design of the deployment.

2. Financial terms
   a. City shall share in percentage of revenues—not merely net revenues or profits—at a share more favorable than previously proposed.
   b. Usage fees must substantially exceed $12/pole, with a sufficient escalator to ensure that the City does not incur any years of negative cash flow.
   c. Usage fees are triggered at time of installation.
   d. Vendor must have certification by a sufficient number of telecom carriers within the pilot period, and secure commitments with those carriers for a sufficient number of poles, or else accept all financial risk for failing to do so.
   e. Vendor shall provide a detailed multi-year total cost of ownership for hardware, software, services and maintenance/support.
   f. Where any fiber is required, vendor shall share costs with City to upgrade infrastructure and shall do so following agreed upon standards.
   g. Vendor to provide security (bond, escrow, etc.) to cover the expected cost of the production and installation of the nodes on poles.
   h. Vendor shall maintain sufficient number of controllers/ nodes in inventory for replacement.
   i. Vendor shall replace nodes when a new model is available, at a frequency of not less than 4 years.
   j. Vendor shall provide 10-year warranty on all devices.
   k. Vendor shall allow for multiple telecom carriers on nodes.
1. San Jose will achieve “Best Pricing” - if another City get better rates than San Jose, then San Jose shall be entitled to that rate as well.

3. **Lease term**
   a. The lease term shall not exceed 10 years, with the option of City extending in 2 year increments up to the 24-year period.

4. **Digital inclusion**
   a. Contract shall include provisions for free Wi-Fi for public use.
   b. Vendor and City shall agree to means by which they can ensure equitable distribution or otherwise ensure service to low-income areas of the city are built out and offer services at reasonable cost or free.

5. **Acquisition or Insolvency of Vendor**
   a. In the event of acquisition, City will have the right to consent to the assignment of the contract to the acquiring party for the remainder of the term, or to renegotiate with the acquirer.
   b. In the event of insolvency, all nodes, software on the devices (including access to the source code and APIs), the management systems and software (including software and APIs) become the property of the City, at no cost to City, if the City so chooses.
   c. In the event of insolvency, City shall have primacy of rights over any revenues generated by devices, ahead of any other creditors.