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Title: Approve a substitution of a listed Subcontractor S.A. Camp Pump and Drilling Company, for Lift Stations 1, 13, and 14 Improvements (Council Districts 2 & 3)

Sponsors: Public Works Department

Indexes:

Code sections:

Attachments: 1. 20-001559 Contractors Request for Substitution Letter

Date	Ver.	Action By	Action	Result
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REPORT TO THE CITY COUNCIL

December 3, 2020

FROM: SCOTT L. MOZIER, PE TE, Director
Public Works Department

THROUGH: WILLIAM C. HERR, Assistant Director
Public Works Department

BY: KARL LENHOF, Chief Engineering Inspector
Public Works Department

SUBJECT

Approve a substitution of a listed Subcontractor S.A. Camp Pump and Drilling Company, for Lift Stations 1, 13, and 14 Improvements (Council Districts 2 & 3)

RECOMMENDATION

It is recommended that the City Council approve the request from HPS Mechanical, Inc. (HPS), to substitute S.A. Camp Pump and Drilling Company, (S.A. Pump) and self-perform the Sewage Well Abandonment portion of this project.

EXECUTIVE SUMMARY

HPS, the General Contractor who was awarded the referenced project, has requested to substitute S.A. Pump, who is listed in the bid documents as performing the sewage well abandonment portion

of the project. In accordance with the bid documents, HPS listed S.A. Pump for the sewage well abandonment portion of the project because the work exceeds one-half of one percent of the total contract amount.

HPS notified the City by letter dated September 9, 2020, that their Subcontractor, S.A. Pump, after having a reasonable opportunity to do so, has failed or refused to execute a written subcontract. HPS also forwarded a letter they received from S.A. Pump (date unknown), where S.A. Pump advises they will be unable to perform the work necessary to complete the sewage well abandonment.

HPS is asking that they be allowed to self-perform the sewage well abandonment portion. This action requires Council approval because Public Contract Code section 4107 requires consent of the awarding authority to a request by a prime contractor for a substitution of a subcontractor.

BACKGROUND

On June 25, 2020, a contract was awarded in the amount of \$1,317,392 to HPS, for the Lift Stations 1, 13, and 14 Improvements Project; the Notice to Proceed has not yet been issued.

In the original proposal, S.A. Pump was listed as the subcontractor for the sewage well abandonment portion of the contract. On September 9, 2020, HPS provided the City a written request to substitute the listed Subcontractor, since the listed Subcontractor has refused to perform his or her subcontract under Public Contract Code section 4107(a)(1).

In accordance with section 4107 of the Public Contract Code, a Prime Contractor may substitute a listed Subcontractor, with the consent of the awarding authority, when the listed subcontractor has refused to perform his or her subcontract as set forth in section 4107.

The Subletting and Subcontracting Fair Practice Act requires the Prime Contractor to secure the permission of the awarding agency before substituting a non-listed subcontractor for a listed subcontractor in order to protect the public and subcontractors from bid shopping and bid peddling. (*Southern California Acoustics Co., Inc. v. C.V. Holder, Inc.* (1969), 71 Cal.2d 719,726)

HPS has requested that they be allowed to self-perform the sewage well abandonment portion of the contract in place of S.A. Pump by letter dated September 9, 2020. Section 4107 of the Public Contract Code allows the Prime Contractor to substitute listed Subcontractors with prior consent from the awarding authority.

In accordance with provisions of the Public Contract Code, the City notified S.A. Pump, at its last known address, of the proposed substitution by OnTrac delivery on September 11, 2020, which was delivered to and signed for by an agent for S.A. Pump on September 14, 2020.

The City Attorney's Office finds the proposed substitution of subcontractor to be legal and proper if Council consents to the substitution. In accordance with section 4107 the failure to file these written objections within five working days of receipt of that notification ending at 5 p.m. on September 21, 2020, constitutes the listed Subcontractor's consent to the substitution. The City has not received an objection in accordance with Public Contract Code 4107.

The replacement of the Subcontractor for the sewage well abandonment portion of the contract will not increase the cost of the project.

There is not a Disadvantaged Business Enterprise goal in this project.

ENVIRONMENTAL FINDINGS

This project was previously found to be categorically exempt based on Class 32 Section 15332 of the CEQA Guidelines. No substantial changes to the project are being made as this is a substitution of a contractor to perform work already included in the project's scope and contemplated in the categorical exemption.

LOCAL PREFERENCE

Local preference was not implemented. This substitution does not change the amount of the cost of the project.

FISCAL IMPACT

There will be no impact to the General Fund or the project budget by this substitution.

Attachment:
Contractor's Request for Substitution Letter