



Legislation Details (With Text)

**File #:** ID16-989      **Version:** 1      **Name:**

**Type:** Action Item      **Status:** Passed

**File created:** 8/17/2016      **In control:** City Council

**On agenda:** 9/1/2016      **Final action:** 9/1/2016

**Title:** Approve the Substitution of a listed Subcontractor, Ross Recreation Equipment, to install the Playground Surfacing on the Cultural Arts District Park project (Council District 3)

**Sponsors:** Public Works Department

**Indexes:**

**Code sections:**

**Attachments:** 1. 16-989 Request for Substitution PC00114

Date	Ver.	Action By	Action	Result
9/1/2016	1	City Council	approved	Pass

**REPORT TO THE CITY COUNCIL**

**September 1, 2016**

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

**THROUGH:** ROBERT N. ANDERSEN, PE, Assistant Director  
Public Works Department, Construction Management Division

**BY:** BILL HERR, Construction Manager  
Public Works Department, Construction Management Division

**SUBJECT**

Approve the Substitution of a listed Subcontractor, Ross Recreation Equipment, to install the Playground Surfacing on the Cultural Arts District Park project (Council District 3)

**RECOMMENDATION**

It is recommended that the City Council approve the request from Davis Moreno Construction Inc., to substitute Ross Recreation Equipment and utilize SpectraTurf to install the Playground Surfacing on the Cultural Arts District Park project located in District 3.

**EXECUTIVE SUMMARY**

Davis Moreno Construction, Inc., the General Contractor who was awarded the referenced project,

has requested to substitute Ross Recreation Equipment who is listed in the bid documents as the Playground Surfacing installer. In accordance with the bid documents, Davis Moreno Construction listed Ross Recreation Equipment for the Playground Surfacing portion of the project because the work exceeds one-half of one percent of the total contract amount. Davis Moreno Construction, Inc. notified the City by a letter dated June 8, 2016, that their Playground Surfacing Subcontractor, Ross Recreation Equipment after having a reasonable opportunity to do so, has failed or refused to execute a written subcontract. Davis Moreno Construction is asking that they be allowed to use SpectraTurf to perform the Playground Surfacing installation portion of the project. 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 March 17, 2016, a contract was awarded in the amount of \$1,163,974 to Davis Moreno Construction Inc., for the Cultural Arts District Park project; the Notice to Proceed has been issued with a start date of May 23, 2016.

In the original proposal, Ross Recreation Equipment of Santa Rosa, California, was listed as the subcontractor for the Playground Surfacing portion of the contract. On June 8, 2016, Davis Moreno Construction 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

Davis Moreno has requested that they be allowed to substitute SpectraTurf to perform the Playground Surfacing subcontract work in place of Ross Recreation Equipment by letter dated June 8, 2016. 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 has notified Ross Recreation Equipment of the proposed substitution by certified mail delivered on June 15, 2016. Ross Recreation Equipment did not provide written objections 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 pm on June 22, 2016, constitutes the listed Subcontractor's consent to the substitution. The City has not received an objection in accordance with Public Contract Code 4107. The City Attorney's Office finds the proposed substitution of subcontractor to be legal and proper if Council consents to the substitution.

The replacement of the Subcontractor for the Playground Surfacing portion of the contract will not increase the cost of the project.

This substitution does not affect the Disadvantaged Business Enterprise goal because there is no goal listed in the Contract Documents.

### **ENVIRONMENTAL FINDINGS**

This is not a project for the purposes of California Environmental Quality Act (CEQA) pursuant to CEQA guidelines section 15378(b)(5), as it is an administrative action that will not result in direct or indirect changes to the environment.

### **LOCAL PREFERENCE**

Local Preference was not considered because this action does not include a bid or an award of a City construction contract.

### **FISCAL IMPACT**

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

Attachment:  
Request for Substitution