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Title: Approve a substitution of listed Subcontractor Ace Pipelining, Inc., for Sewer Rehabilitation in North Abby Street and East Hammond Avenue Project ID RC00164 (Council District 7)

Sponsors: Public Works Department

Indexes:

Code sections:

Attachments: 1. 17-1630 COF - Substitution Letter.pdf

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

January 11, 2018

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

BY: ROBERT N. ANDERSEN, PE, Assistant Director
Public Works Department

BILL HERR, Construction Manager
Public Works Department, Construction Management Division

SUBJECT

Approve a substitution of listed Subcontractor Ace Pipelining, Inc., for Sewer Rehabilitation in North Abby Street and East Hammond Avenue Project ID RC00164 (Council District 7)

RECOMMENDATION

It is recommended that the City Council approve the request by Nuline Technologies, LLC., (Nuline), to substitute Ace Pipelining Inc. of Diamond Bar, California (Ace) and utilize Calstate Pipeline, Inc., (Calstate), for the sewer cleaning and disposal portion of this project.

EXECUTIVE SUMMARY

Nuline, the General Contractor who was awarded the referenced project, has requested to substitute Ace who is listed in the bid documents as performing the sewer cleaning and disposal work portion.

In accordance with the bid documents, Nuline listed Ace for the sewer cleaning and disposal work portion of the project because the work exceeds one-half of one percent of the total contract amount. Nuline notified the City by a letter dated October 12, 2017, that their Subcontractor, Ace refuses to perform his or her subcontract. Nuline is asking that they be allowed to use Calstate to perform the sewer cleaning and disposal work 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 22, 2017, a contract was awarded in the amount of \$702,673 to Nuline for the Sewer Rehabilitation in North Abby Street and East Hammond Avenue project. On September 3, 2017, Nuline's insurance had expired. To meet the insurance requirements in the contract, an excess policy was needed to cover up to the \$2 million/4 million general liability insurance limits. On December 5, 2017, after a few iterations, the excess policy was sent to the City's Risk Management Division for review. Since the Contractor had not successfully provided the required insurance language and an approved schedule, the Notice to Proceed start date has not yet been issued. Their intent per the submitted project schedule is to begin work in January 2018 and complete the project within the allotted number of working days.

In the original proposal Ace was listed as the subcontractor for the sewer cleaning and disposal work portion of the contract. On October 12, 2017, Nuline 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) (3).

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)

Nuline has requested that they be allowed to substitute Calstate to perform the sewer cleaning and disposal work portion of the contract in place of Ace by a letter dated October 12, 2017. 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 Ace of the proposed substitution by certified mail delivered on November 6, 2017. Ace did not provide written objections to the substitution. 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 November 13, 2017, 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 sewer cleaning and disposal portion of the contract will not increase the cost of the project.

This substitution does not affect the Disadvantaged Business Enterprise goal because Ace is not a certified DBE.

ENVIRONMENTAL FINDINGS

This is not a project for the purposes of 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:

Contractor's Request for Substitution Letter