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Title: Approve a substitution of a listed Subcontractor Omni Underground, Inc., for N. Gates and W. San Jose Avenue Traffic Signal Installation (Council District 2)

Sponsors: Public Works Department

Indexes:

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Attachments: 1. 20-001311 Request for Substitution of Subcontractor

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

October 15, 2020

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

THROUGH: WILLIAM C. HERR, Assistant Director
Public Works Department, Facilities and Construction Management Divisions

BY: KARL LENHOF, Chief Engineering Inspector
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SUBJECT

Approve a substitution of a listed Subcontractor Omni Underground, Inc., for N. Gates and W. San Jose Avenue Traffic Signal Installation (Council District 2)

RECOMMENDATION

It is recommended that the City Council approve the request from AC Electric Company (AC Electric), to substitute Omni Underground, Inc., (Omni Underground) and utilize Jerry’s Trenching Service (Jerry’s Trenching), for the directional boring portion of this project.

EXECUTIVE SUMMARY

AC Electric, the General Contractor who was awarded the referenced project, has requested to

substitute Omni Underground, who is listed in the bid documents as performing the directional boring portion of the project. In accordance with the bid documents, AC Electric listed Omni Underground for the directional boring portion of the project because the work exceeds one-half of one percent of the total contract amount.

AC Electric notified the City by letter received on August 13, 2020, that their Subcontractor, Omni Underground informed AC Electric via email that they would not be able to perform the directional boring portion of work due to scheduling conflicts. AC Electric also forwarded an email they received from Omni Underground on August 7, 2020, where Omni Underground advises they unfortunately will not be able to meet AC Electric's schedule to perform the directional boring on August 24, 2020, due to Omni Underground being fully booked until the end of September.

AC Electric is asking that they be allowed to use Jerry's Trenching, to perform the directional boring 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 December 12, 2019, a contract was awarded in the amount of \$532,550 to AC Electric, for the N. Gates and W. San Jose Avenue Traffic Signal Installation Project; the Notice to Proceed was issued with a start date of August 17, 2020.

In the original proposal, Omni Underground was listed as the subcontractor for the directional boring portion of the contract. On August 13, 2020, AC Electric provided the City a written request to substitute the listed Subcontractor, since the listed Subcontractor has fails or effuses 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)

AC Electric has requested that they be allowed to substitute Jerry's Trenching to perform the directional boring portion of the contract in place of Omni Underground by letter received on August 13, 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 Omni Underground, at its last known address, of the proposed substitution by OnTrac Shipment on August 14, 2020, which was delivered to and received by John L., an agent for Omni Underground on August 19, 2020. An electronic signature was utilized by the OnTrac delivery agent due to COVID 19 restrictions.

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 August 26, 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 directional boring portion of the contract will not increase the cost of the project.

There is a Disadvantaged Business Enterprise goal in this project, but Omni Underground is not listed on Form 15-G as a Disadvantage Businesses to be utilized on the 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 is not applicable on this project as it is federally funded. The current 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