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Title: Approve a substitution of a listed Subcontractor Valhalla Construction Co., for Fresno Fire Station No. 18 (Council District 1)

Sponsors: Public Works Department

Indexes:

Code sections:

Attachments: 1. 20-00771 Rough Framing Substitution Letter

Date	Ver.	Action By	Action	Result
6/25/2020	1	City Council	approved	

REPORT TO THE CITY COUNCIL

June 25, 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
Public Works Department, Construction Management Division

SUBJECT

Approve a substitution of a listed Subcontractor Valhalla Construction Co., for Fresno Fire Station No. 18 (Council District 1)

RECOMMENDATION

It is recommended that the City Council approve the request from Klassen Corporation (Klassen), to substitute Valhalla Construction Co., (Valhalla) and utilize Meyers Constructors (Meyers), for the rough framing portion of the Fire Station No. 18 project.

EXECUTIVE SUMMARY

Klassen, the General Contractor who was awarded the referenced project, has requested to substitute Valhalla, who is listed in the bid documents as performing the rough carpentry portion of

the project. In accordance with the bid documents, Klassen listed Valhalla for rough carpentry portion of the project because the work exceeds one-half of one percent of the total contract amount.

Klassen notified the City by letter dated April 16, 2020, that their Subcontractor, Valhalla, after having a reasonable opportunity to do so, has failed or refused to execute a written subcontract. Klassen also forwarded an email they received from Valhalla on March 4, 2020, where Valhalla advises they are not in agreement with some of the terms of subcontract with Klassen. Klassen is asking that they be allowed to use Meyers, to perform the rough framing 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 November 14, 2019, a contract was awarded in the amount of \$6,260,000 to Klassen, for the Fresno Fire Station No. 18 Project; the Notice to Proceed was issued with a start date of February 18, 2020.

In the original proposal, Valhalla was listed as the subcontractor for the rough carpentry portion of the contract. On April 16, 2020, Klassen 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)

Klassen has requested that they be allowed to substitute Meyers to perform the rough framing portion of the contract in place of Valhalla by letter dated April 16, 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 Valhalla, at its last known address, of the proposed substitution by certified mail on April 17, 2020, which was delivered to and signed for by an agent for Valhalla on May 7, 2020. On May 12, 2020, a phone call was received from Robbie Walser of Valhalla advising that Valhalla will be accepting the proposed substitution request.

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 May 14, 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 rough carpentry 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