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Title: Approve a substitution of a listed Subcontractor De Anda Company, for Fresno Fire Station No. 18 (Council District 1)

Sponsors: Public Works Department

Indexes:

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Attachments: 1. 20-00239 Substitution Letter

Date	Ver.	Action By	Action	Result
2/27/2020	1	City Council	approved	

REPORT TO THE CITY COUNCIL

February 27, 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: TERRY BULLER, Chief Engineering Inspector
Public Works Department, Construction Management Division

SUBJECT

Approve a substitution of a listed Subcontractor De Anda Company, 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 De Anda Company (De Anda) and utilize Reddig General Engineering Inc. (Reddig), for the grading and earthwork portion of this project.

EXECUTIVE SUMMARY

Klassen, the General Contractor who was awarded the referenced project, has requested to substitute De Anda, who is listed in the bid documents as performing the grading and earthwork

portion of the project. In accordance with the bid documents, Klassen listed De Anda for grading and earthwork portion of the project because the work exceeds one-half of one percent of the total contract amount. The Contractor is requesting to utilize Reddig for the grading and earthwork. 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.

Klassen notified the City by letter dated February 3, 2020, that their Subcontractor, De Anda, after having a reasonable opportunity to do so, has failed or refused to execute a written subcontract. Klassen also forwarded correspondence from De Anda where De Anda stated they would not be signing a subcontract with Klassen. The substitution will have no impact to the City on the cost of the project.

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. In the original proposal, De Anda was listed as the subcontractor for the grading and earthwork portion of the contract. On February 3, 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 Reddig to perform the grading and earthwork portion of the contract in place of De Anda by letter dated February 3, 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 attempted to notify De Anda, at its last known address, of the proposed substitution by certified mail on February 7 and 13, 2020, and both times signature was refused by stating "an authorized recipient is not available." The City also emailed and sent the notification by regular mail to De Anda on February 10, 2020. De Anda has not provided 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 February 17, 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 grading and earthwork 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 a factor in the prior award as the apparent second low bid was over 5% higher than the apparent low bid. 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