



Legislation Details (With Text)

**File #:** ID18-0260    **Version:** 1    **Name:**

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

**File created:** 2/9/2018    **In control:** City Council

**On agenda:** 3/1/2018    **Final action:** 3/1/2018

**Title:** Approve a substitution of a listed Subcontractor Tennyson Electric, Inc., for the Fairview Trail Rehabilitation Project ID PW00759 (Council District 3)

**Sponsors:** Public Works Department

**Indexes:**

**Code sections:**

**Attachments:** 1. 18-0260 Contractor's Request for Substitution Letter.pdf, 2. 18-0260 Administrative Hearing Officer's Recommendation.pdf

Date	Ver.	Action By	Action	Result
3/1/2018	1	City Council	approved	

**REPORT TO THE CITY COUNCIL**

**March 1, 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 a listed Subcontractor Tennyson Electric, Inc., for the Fairview Trail Rehabilitation Project ID PW00759 (Council District 3)

**RECOMMENDATION**

It is recommended that the City Council approve the request from Frank Loduca Construction Inc., and the recommendation from City of Fresno Administrative Hearing Office Michael Flores, to substitute Tennyson Electric Inc., of Livermore, California, and utilize Underground Specialties Central Coast, Inc., of Templeton, California for the electrical portion of this project.

**EXECUTIVE SUMMARY**

Frank Loduca Construction Inc., (Loduca), the General Contractor who was awarded the referenced

project, has requested to substitute Tennyson Electric Inc., of Livermore, California (Tennyson) who is listed in the bid documents as performing the electrical work for the project. In accordance with the bid documents, Loduca listed Tennyson because the work exceeds one-half of one percent of the total contract amount. Loduca notified the City by a letter dated November 20, 2017, that their Subcontractor, Tennyson, after having a reasonable opportunity to do so, has failed or refused to execute a written subcontract. Loduca is asking that they be allowed to use Underground Specialties Central Coast Inc., of Templeton, California (USCC), to perform the electrical work 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 June 22, 2017, a contract was awarded in the amount of \$484,010 to Loduca for the Fairview Trail Rehabilitation Project; the Notice to Proceed has been issued with a start date of December 18, 2017.

In the original proposal Tennyson was listed as the subcontractor for the pathway lighting, pull-boxes and service contract portion of the contract. On November 20, 2017, Loduca 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.

Loduca has requested that they be allowed to substitute USCC to perform the electrical subcontract work in place of Tennyson, 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 Tennyson of the proposed substitution by certified mail delivered on December 11, 2017. On December 12, 2017, Tennyson provided written objections to the substitution request. In accordance with Section 4107 the filing of these written objections within five working days of receipt of that notification requires the City to conduct an Administrative Hearing and review the matter.

On January 8, 2018, a hearing was held in front of Michael Flores, Independent Hearing Officer for the City of Fresno who recommends granting the request of Loduca, to substitute USCC pursuant to Public Contract Code section 4107.

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

This substitution does not affect the Disadvantaged Business Enterprise goal because Tennyson is

not a certified DBE.

The City Attorney's Office finds the proposed substitution of subcontractor to be legal and proper if Council consents to the substitution.

### **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.

#### Attachments:

- Contractor's Request for Substitution Letter
- Administrative Hearing Officer's Recommendation