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Title: Approve a substitution of listed subcontractor for the Headworks Building Odor Control Upgrade Project located at the Fresno/Clovis Regional Wastewater Reclamation Facility (Bid File 3464) (Council District No. 3)

Sponsors: Department of Public Utilities

Indexes:

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Attachments: 1. 2019-02-14 Attachment 1 - 48hr Notice to Perform.pdf, 2. 2019-02-14 Attachment 2 - Subcontractor Substitution Request.pdf, 3. 2019-02-14 Attachment 3- Letter from City to US Controls.pdf

Date	Ver.	Action By	Action	Result
2/14/2019	1	City Council	approved	

REPORT TO THE CITY COUNCIL

February 14, 2019

FROM: MICHAEL CARBAJAL, Director
Department of Public Utilities

THROUGH: DEJAN PAVIC, Supervising Professional Engineer
Department of Public Utilities - Utilities Planning and Engineering

BY: RAUL GONZALEZ, Professional Engineer
Department of Public Utilities - Utilities Planning and Engineering

SUBJECT

Approve a substitution of listed subcontractor for the Headworks Building Odor Control Upgrade Project located at the Fresno/Clovis Regional Wastewater Reclamation Facility (Bid File 3464) (Council District No. 3)

RECOMMENDATION

Staff recommends that City Council approve the request from Hal Hays Construction Inc., (Hal Hays), to substitute U.S. Controls, Inc., and utilize Industrial Electric Company to perform electrical work on the City of Fresno’s (City’s) Headworks Building Odor Control Upgrade Project (Project) at the Fresno/Clovis Regional Wastewater Reclamation Facility (RWRF).

EXECUTIVE SUMMARY

Hal Hays, the General Contractor on the Project, has requested to substitute U.S. Controls, Inc., who is listed in the bid documents as the subcontractor slated to perform all electrical and communications work on the Project. In accordance with the bid documents, Hal Hays listed U.S. Controls, Inc., as a subcontractor for the electrical and communications portion of the Project because that component of the work exceeds one-half of one percent (0.5%) of the total Project contract amount. During construction, Hal Hays notified the City that their listed subcontractor, U.S. Controls, Inc., failed or refused to complete their written contract. Electrical work performed by U.S. Controls, Inc., was found to be substandard and failed to pass inspection. U.S. Controls, Inc., repeatedly failed or refused to take corrective actions. Hal Hays is asking that they be allowed to substitute Industrial Electric Company in place of U.S. Controls, Inc. This action requires City Council approval because Public Contract Code (PCC) Section 4107 requires consent of the awarding authority to a request by a prime contractor for a substitution of a subcontractor.

BACKGROUND

On June 16, 2016, City Council awarded a construction contract in the amount of \$8,296,900 to Hal Hays for the Project located at the RWRP.

In the original bid, U.S. Controls, Inc., of Ontario, California, was listed as the subcontractor for the electrical and communications work associated with this Project. In July 2018, Hal Hays issued a "48-hour Notice to Perform" to U.S. Controls, Inc., to increase the pace of work on the Project and hired supplemental labor to assist with electrical work. On November 1, 2018, Hal Hays issued another "48-hour Notice to Perform" to U.S. Controls, Inc., after their work failed to meet contract specifications and inspections. U.S. Controls, Inc., was unresponsive. On November 29, 2018, Hal Hays provided the City a written request to substitute the listed subcontractor, since the listed subcontractor failed or refused to execute a written contract as provided under PCC Section 4107. Also on November 29, 2018, in compliance with PCC Section 4107, the City sent a letter to U.S. Controls, Inc., notifying them that Hal Hays had requested to substitute U.S. Controls, Inc., with Industrial Electric Company, due to failure to complete their contract with the City. In accordance with provisions of the PCC, the City has notified U.S. Controls, Inc., of the proposed substitution by certified mail dated November 29, 2018, and received by U.S. Controls, Inc., on December 3, 2018. In accordance with PCC Section 4107, the failure to file written objections within five working days ending at 5 pm on December 10, 2018, constitutes the listed Subcontractor's consent to the substitution. The letter gave U.S. Controls, Inc., five working days to submit objections to the substitution. U.S. Controls, Inc., was unresponsive to this notice, and the City has not received an objection in accordance with the PCC Section 4107. As a result of their unresponsiveness, Hal Hays is requesting substitution of U.S. Controls, Inc., with Industrial Electric Company.

In accordance with PCC Section 4107, a Prime Contractor may substitute a listed subcontractor, with the consent of the awarding authority, when the listed subcontractor fails or refuses to execute a subcontract of the Prime Contractor as set forth in PCC Section 4107. The Subletting and Subcontracting Fair Practices 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 subcontractor from bid shopping and bid peddling. (Southern California Acoustic Co., Inc. v. C.V. Holder, Inc. (1969), 71 Cal.2d 719,726)

The replacement of U.S. Controls, Inc., with Industrial Electric Company for the electrical and

communications portion of the contract will not increase the cost of the Project.

ENVIRONMENTAL FINDINGS

Substitution of a subcontractor is not a project for the purposes of the California Environmental Quality Act. This is an administrative action that will not result in direct or indirect changes to the Project.

LOCAL PREFERENCE

Local preference was not considered because this action does not include a bid or award of a City construction contract.

FISCAL IMPACT

There is no impact to the General Fund or the Project budget by this substitution.

Attachments:

48-hour Notice to Perform from Hal Hays to U.S. Controls, Inc. (Attachment 1)

Letter from Hal Hays to City of Fresno requesting substitution (Attachment 2)

Letter from City of Fresno to U.S. Controls, Inc., notifying of proposed substitution (Attachment 3)