



Legislation Details (With Text)

File #: ID#15-360 **Version:** 1 **Name:**
Type: Action Item **Status:** Passed
File created: 4/24/2015 **In control:** City Council
On agenda: 5/14/2015 **Final action:** 5/14/2015
Title: Approve the substitution of a listed subcontractor for the Tertiary Treatment and Disinfection Facility Project located at the Fresno/Clovis Regional Wastewater Treatment Facility (Council District 3)
Sponsors: Department of Public Utilities
Indexes:
Code sections:
Attachments: 1. Letter KNK.pdf, 2. Letter WML.pdf, 3. Phone Log.pdf, 4. Letter City of Fresno.pdf

| Date | Ver. | Action By | Action | Result |
|-----------|------|--------------|----------|--------|
| 5/14/2015 | 1 | City Council | approved | Pass |

REPORT TO THE CITY COUNCIL

May 14, 2015

FROM: THOMAS C. ESQUEDA, Director
Department of Public Utilities

THROUGH: STEPHEN A. HOGG, Assistant Director
Department of Public Utilities - Wastewater Management Division

BY: KEVIN L. NORGAARD, PE, Supervising Professional Engineer
Department of Public Utilities - Wastewater Management Division

SUBJECT

Approve the substitution of a listed subcontractor for the Tertiary Treatment and Disinfection Facility Project located at the Fresno/Clovis Regional Wastewater Treatment Facility (Council District 3)

RECOMMENDATION

Staff recommends that City Council approve the request from W. M. Lyles Company (WML) to substitute Social Pacific Construction Corporation doing business as National Coating & Lining Company, in place of KNK Painting and Coating Inc., (a listed subcontractor) to perform painting and industrial coating work on the subject project.

EXECUTIVE SUMMARY

WML, the General Contractor awarded the referenced project, has requested to substitute Socal Pacific Construction Corporation doing business as National Coating and Lining Company, in place of KNK Painting and Coating Inc., who is listed in the bid documents as the subcontractor slated to perform painting and industrial coatings work on the project. In accordance with the bid documents, WML listed KNK Painting and Coating Inc., for the painting and industrial coatings portion of the project because the work exceeds one-half of one percent of the total contract amount. Subsequent to the contract award, WML notified the City that their listed subcontractor, KNK Painting and Coating Inc., failed or refused to execute a written contract. WML is asking that they be allowed to substitute Socal Pacific Construction Corporation dba National Coating & Lining Company, in place of KNK Painting and Coating Inc. 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 26, 2014, the Council awarded a contract in the amount of \$28,674,500 to W. M. Lyles Company, for the Tertiary Treatment and Disinfection Facility Project located at the Fresno/Clovis Regional Wastewater Reclamation Facility.

In the original bid, KNK Painting and Coating Inc. of Temecula, California, was listed as the subcontractor for the painting and industrial coatings work associated with this project. On March 4, 2015, WML 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 Public Contract Code Section 4107 (a) (1).

After losing its key project personnel to prolonged illness and in evaluating the impact on the remaining workforce because of the distance to the jobsite from the company location, KNK Painting and Coating Inc., determined that it could not provide qualified supervisory personnel nor adequately staff the work with the remaining workforce. As a result of their inability to perform the work, KNK Painting and Coating refused to sign a construction subcontract with WML and initiated the request for substitution.

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 fails or refuses to execute a subcontract of the Prime contractor as set forth in 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 (1969) 71 Cal.2d 719, 726 fn.7).

W. M. Lyles has requested the substitution of Socal Pacific Construction Corporation dba National Coating and Lining Company, in place of KNK Painting and Coating Inc. by letter dated March 4, 2015. WML attached a separate letter from KNK Painting and Coating dated March 4, 2015 stating their inability to perform the subcontract work and refusal to enter into a subcontract agreement.

In accordance with the provisions of the Public Contract Code, the City Construction Manager contacted KNK Painting and Coating Inc., to confirm both the refusal to enter into a subcontract agreement and the request to waive the five-day period to file objections. The request to substitute a

subcontractor was initiated by KNK Painting and Coating Inc., and not by WML. The validity of the initial request by KNK Painting and Coating for substitution was confirmed by the City's Construction Manager in a telephone call on March 10, 2015. A written notification to the subcontractor informing them about the substitution request was sent by certified mail to allow KNK Painting and Coating five days to confirm their inability to perform the subcontract work. The City has not received an objection in accordance with Public Contract Code 4107. The City Attorney's office finds the proposed substitution of subcontractor to be legal and proper if Counsel consents to the substitution.

LOCAL PREFERENCE

Local preference was not implemented because this item is a substitution of a named contractor.

FISCAL IMPACT

There will be no fiscal impact to the General Fund or the project budget because of this substitution.

Attachments:

- Letter from KNK Painting and Coating to City of Fresno requesting substitution
- Letter from WML to City of Fresno requesting substitution
- Phone log of conversation between Construction Manager and KNK Painting and Coating
- Letter from City of Fresno to KNK informing of request to substitute subcontractor