



Legislation Details (With Text)

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Title: Approve the Substitution of a listed Subcontractor, Steven's Electrical Contracting, to install the Interactive Lighting on the Cultural Arts District Park Project - Council District 3
Sponsors: Public Works Department
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Date	Ver.	Action By	Action	Result
7/14/2016	1	City Council	approved	Pass

REPORT TO THE CITY COUNCIL

July 14, 2016

FROM: SCOTT L. MOZIER, PE, Director
Public Works Department

THROUGH: ROBERT N. ANDERSEN, PE, Assistant Director
Public Works Department, Construction Management Division

BY: BILL HERR, Construction Manager
Public Works Department, Construction Management Division

SUBJECT

Approve the Substitution of a listed Subcontractor, Steven's Electrical Contracting, to install the Interactive Lighting on the Cultural Arts District Park Project - Council District 3

RECOMMENDATION

It is recommended that the City Council approve the request from Davis Moreno Construction Inc., to substitute Steven's Electrical Contracting and utilize Digital Ambiance to install the Interactive Lighting on the Cultural Arts District Park project located in District 3.

EXECUTIVE SUMMARY

Davis Moreno Construction, Inc., the General Contractor who was awarded the referenced project,

has requested to substitute Steven's Electrical Contracting who is listed in the bid documents as the Interactive Lighting subcontractor. In accordance with the bid documents, Davis Moreno Construction listed Steven's Electrical Contracting for the Interactive Lighting portion of the project because the work exceeds one-half of one percent of the total contract amount. Davis Moreno Construction, Inc. notified the City by a letter dated April 21, 2016, that their Interactive Lighting Subcontractor, Steven's Electrical Contracting after having a reasonable opportunity to do so, has failed or refused to execute a written subcontract. Davis Moreno Construction is asking that they be allowed to use Digital Ambiance to perform the Interactive Lighting 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 March 17, 2016, a contract was awarded in the amount of \$1,163,974 to Davis Moreno Construction Inc., for the Cultural Arts District Park project; the Notice to Proceed has been issued with a start date of May 23, 2016.

In the original proposal, Steven's Electrical Contracting of Madera, California, was listed as the subcontractor for the Interactive Lighting portion of the contract. On April 21, 2016, Davis Moreno Construction provided the City a written request to substitute the listed Subcontractor, because 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.

Davis Moreno has requested that they be allowed to substitute Digital Ambiance to perform the Interactive Lighting subcontract work in place of Steven's Electrical Contracting by letter dated April 21, 2016. 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 Steven's Electrical Contracting of the proposed substitution by certified mail delivered on May 2, 2016. Steven's Electrical Contracting did not provide written objections 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 9, 2016, constitutes the listed Subcontractor's consent to the substitution. 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 Council consents to the substitution.

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

This substitution does not affect the Underutilized Disadvantaged Business Enterprise (UDBE) goal because there is no goal listed in the Contract Documents.

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.

Attachment:
Request for Substitution Letter