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Title: Approve the Substitution of a listed Subcontractor, Taylor Drilling, for the traffic signal installation at the intersection of Blackstone and Fedora, Project ID PW00680 (Council District 7)

Sponsors: Public Works Department

Indexes:

Code sections:

Attachments: 1. 16-1003 Request for Substitution

Date	Ver.	Action By	Action	Result
9/15/2016	1	City Council	approved	Pass

REPORT TO THE CITY COUNCIL

September 15, 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, Taylor Drilling, for the traffic signal installation at the intersection of Blackstone and Fedora, Project ID PW00680 (Council District 7)

RECOMMENDATION

It is recommended that the City Council approve the request from American Construction Engineers (ACE) to substitute Taylor Drilling and utilize VT Electric on the horizontal boring work for the Traffic Signal Installation at the intersection of Blackstone and Fedora.

EXECUTIVE SUMMARY

ACE, the General Contractor who was awarded the referenced project, has requested to substitute

Taylor Drilling, who is listed in the bid documents as the horizontal boring subcontractor. In accordance with the bid documents, ACE listed Taylor Drilling for the horizontal boring portion of the project because the work exceeds one-half of one percent of the total contract amount. ACE notified the City by letter dated June 29, 2016, that their horizontal boring contractor, Taylor Drilling was no longer performing this type of work using the rigid conduit required by their contract and would not execute a contract. ACE is requesting to be allowed VT Electric to perform the horizontal boring portion of the project. This action requires City Council approval because Public Contract Code Section 4107 requires consent of the awarding authority to be requested by a prime contractor for a substitution of a subcontractor.

BACKGROUND

On February 25, 2016, a contract was awarded by City Council, in the amount of \$303,567 to ACE for construction of the Traffic Signal Installation at the Intersection of Blackstone and Fedora Avenue. The Notice to Proceed was issued on June 30, 2016. In the original proposal Taylor Drilling of Bakersfield, CA was listed as the subcontractor for the horizontal boring. On June 29, 2016, ACE provided the City a written request to substitute the listed Subcontractor since the listed Subcontractor would not execute a contract under Public Contract Code 4107 (a) (1).

In accordance with Section 4107 of the Public Contracts Code, a Prime Contractor may substitute a listed Subcontractor, with the consent of the awarding authority, when the listed subcontractor has refused to execute a written contract.

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)

ACE has requested that they be allowed to utilize VT Electric to perform the horizontal boring work in place of Taylor Drilling, by letter dated June 29, 2016. Section 4107 of the Public Contract Code allows the prime contractor to substitute listed Subcontractor with prior consent from the awarding authority.

In accordance with provisions of the Public Contract Code, the City has notified Taylor Drilling of the proposed substitution by certified mail delivered July 21, 2016. Taylor Drilling did not timely provide written objections within five working days of receipt of the notification ending a 5:00 P.M. on July 27, 2016, which constitutes the listed Subcontractor's consent to the substitution. The City has not received a timely 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 horizontal boring portion of the contract will not increase the cost of the project.

This project does contain a Disadvantaged Business Enterprise (DBE) goal of 7% of which Taylor Drilling was a participant. This substitution will not affect the ultimate DBE status of the contract as VT Electric is also a registered DBE.

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