



## Legislation Details (With Text)

**File #:** ID16-1398    **Version:** 1    **Name:**  
**Type:** Action Item    **Status:** Passed  
**File created:** 11/18/2016    **In control:** City Council  
**On agenda:** 12/1/2016    **Final action:** 12/1/2016  
**Title:** Approve a substitution of listed subcontractor for the Kings River Pipeline Project - Bid File 3433  
**Sponsors:** Department of Public Utilities  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
12/1/2016	1	City Council	approved	Pass

## REPORT TO THE CITY COUNCIL

**December 1, 2016**

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

**THROUGH:** MICHAEL CARBAJAL, Planning Manager  
Department of Public Utilities - Water Division

**BY:** MARTIN WENDELS, Project Manager  
Department of Public Utilities

## SUBJECT

Approve a substitution of listed subcontractor for the Kings River Pipeline Project - BID File 3433

## RECOMMENDATIONS

Staff recommends that City Council approve the request from Garney Construction, to substitute Pacific Structures, Inc., and utilize Agee Construction Corporation to perform concrete work at the Kings River Pipeline Diversion Structure.

## EXECUTIVE SUMMARY

Garney Construction, the General Contractor who was awarded the referenced project has requested to substitute Pacific Structures who is listed in the bid documents as the subcontractor for specified

concrete work at the Diversion Structure. In accordance with the bid documents, Garney Construction listed Pacific Structures for the Diversion Structure concrete portion of the project because the work exceeds one-half of one percent of the total contract amount. Garney Construction notified the City by a letter dated August 8, 2016, that their Diversion Structure Subcontractor, Pacific Structures, after having reasonable opportunity to do so, has failed or refused to execute a written subcontract. Garney Construction is asking that they be allowed to use Agee Construction to perform the Diversion Structure 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 April 28, 2016 Council awarded a construction contract in the amount of \$45,583,750.00 to Garney Pacific Inc. for the City of Fresno Kings River Pipeline Project; the Notice to Proceed has been issued with a start date of June 27, 2016.

In the original proposal Pacific Structures of San Francisco, California, was listed as the subcontractor for the Diversion Structure portion of the contract. On August 8, 2016, Garney Construction 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 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)

Garney Construction has requested that they be allowed to substitute Agee Construction to perform the Diversion Structure subcontract work in place of Pacific Structures by letter dated August 8, 2016. Section 4107 of the Public Contract Code allows 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 Pacific Structures of the proposed substitution by certified mail delivered on November 22, 2016. Pacific Structures 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 5 pm on November 30, 2016, constitutes the listed Subcontractor's consent to the substitution. The City has not received an objection in accordance with the Public Contract Code 4107. The City Attorney's Office finds proposed substitution of subcontractor to be legal and proper if Council consents to the substitution.

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

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

## **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 will be no impact to the General Fund or the project budget by this substitution.