

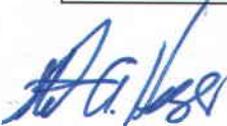
AGENDA ITEM NO. 1 G
COUNCIL MEETING 11/4/2010
APPROVED BY

November 4, 2010

DEPARTMENT DIRECTOR

CITY MANAGER

FROM: RENE A. RAMIREZ, Director 
Department of Public Utilities

BY: STEPHEN A. HOGG, Assistant Director 
Department of Public Utilities, Wastewater Management

SUBJECT: APPROVE THE SUBSTITUTION OF A LISTED SUBCONTRACTOR FOR THE CONSTRUCTION OF A DIGESTER DOME REHABILITATION AND GAS STORAGE SYSTEM AT THE FRESNO/CLOVIS REGIONAL WASTEWATER RECLAMATION FACILITY (COUNCIL DISTRICT NO 3) BID FILE 2933

RECOMMENDATION

Staff recommends the approval of the request from Western Water Constructors to substitute Titan Contracting and Leasing Co, Inc. for Siemens Water Technology Corporation, to provide and install a flexible membrane digester gas storage dome for the "Digester Dome Rehabilitation and Gas Storage System" Project at the Regional Wastewater Reclamation Facility (RWRF).

EXECUTIVE SUMMARY

The General Contractor, Western Water Constructors Inc., who was awarded the referenced project, has requested the substitution of Titan Contracting and Leasing Co, Inc. for Siemens Water Technology Corporation. Siemens is listed in the bid documents as a subcontractor slated to perform flexible membrane dome installation work on the project. In accordance with the bid documents, Western Water Constructors Inc. listed Siemens Water Technology Corporation for this work on the project, because the work exceeds one-half of one percent of the total contract amount. Subsequent to the contract award, Western Water Constructors Inc. notified the City that the listed subcontractor, after having a reasonable opportunity to do so, refused to execute a written contract. 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 10, 2010, the Council awarded a contract in the amount of \$4,478,000 to Western Water Constructors Inc. for the Digester Dome Rehabilitation and Gas Storage System Project at the Regional Wastewater Reclamation Facility. The Notice to Proceed was issued on July 19, 2010.

In the original proposal Siemens Water Technology Corporation of Waukesha, WI, was listed as a subcontractor for the Digester Dome Rehabilitation and Gas Storage System Project. On October 8, 2010, Western Water Constructors Inc. provided the City an email requesting the substitution of 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).

REPORT TO THE CITY COUNCIL

Digester Dome Rehabilitation and Gas Storage System-Subcontractor Substitution

November 4, 2010

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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 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 subcontractors from "bid shopping and bid peddling" - Southern California Acoustic (1969) 71 Ca1.2d719, 726 fn.7).

Western Water Constructors Inc. requested permission to use Titan Contracting and Leasing Co. Inc. in place of Siemens Water Technology Corporation on October 8, 2010. 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 Siemens Water Technology Corporation of the proposed substitution by certified mail dated October 13, 2010. As of October 25, 2010 Siemens Water Technology Corporation has not provided written objections to the substitution. In accordance with Section 4107 the failure to file these written objections within five working days ending at 5:00 p.m. on October 25, 2010, 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 Siemens Water Technology Corporation with Titan Contracting and Leasing Co. Inc., for providing and installing a flexible membrane digester gas storage dome portion of the contract will not increase the cost of the project or impact the warranty. This project does not contain a Disadvantaged Business (DBE) requirement and, therefore, the substitution will not affect the DBE status of the contract.

FISCAL IMPACT

There will be no impact to the City or project budget by this substitution.

Attachments:

- Letter notifying Siemens of Substitution Request
- Certified Mail Receipt Confirming Delivery of Letter



Department of Public Utilities

Wastewater Management Division
5607 West Jensen Avenue
Fresno, California 93706-9458
559-621-5100 - FAX 559-498-1700
www.fresno.gov



Providing Life's Essential Services

SENT VIA CERTIFIED U.S. MAIL

October 11, 2010

Siemens Water Technology corp.
ATTN: Linda Wossow and Jesse Bonazza
1901 South Prairie Avenue
Waukesha, WI 53189

**PROJECT: DIGESTER DOME REHABILITATION AND GAS STORAGE SYSTEM
PROJECT AT REGIONAL WASTEWATER RECLAMATION FACILITY
PROJECT, FRESNO, CALIFORNIA ID# TC00077**

SUBJECT: SUBSTITUTION OF SUBCONTRACTOR.

PLEASE BE ADVISED OF THE FOLLOWING:

This letter is to inform you that Western Water Constructors, Inc., the prime contractor for the above referenced project does not intend to use your firm to perform the work listed in the project Specifications:

- Section 13235 "FLEXIBLE MEMBRANE DIGESTER COVER SYSTEM"

Western Water Constructors., Inc. claims that Siemens will not agree to the indemnification language found in the contract documents. The prime contractor has requested permission to substitute Titan Contracting and Leasing Co., Inc. Located in Owensboro, KY, California License # 430934, for this work.

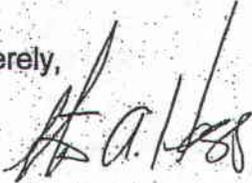
In accordance with Section 4107 of the Public Contract Code, as noted below:

Prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections constitutes the listed subcontractor's consent to the substitution. If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

You have five (5) working days from receipt of this letter to submit written objection to this office regarding the proposed substitution. Failure to file such written objection shall constitute your consent of the substitution.

Thank you in advance for your cooperation regarding this matter. If you have any questions, please contact me at (559) 621-5110.

Sincerely,



Stephen A. Hogg
Assistant Director of Public Utilities
Wastewater Management Division
559-621-5110-Phone
559-498-1700-Fax
Steve.hogg@fresno.gov

c: Paul Maragoni, Professional Engineer-Technical Services
Kevin Norgaard, Chief of Technical Services
Ron Allred, Allred Engineering
Western Water Constructors, Inc. 707 Aviation Blvd. Santa Rosa CA 95403



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

CITY OF FRESNO
WASTEWATER MANAGEMENT DIVISION
5607 W. JENSEN AVE
FRESNO, CA 93706-9458



Is your RETURN ADDRESS completed on the reverse side?

SENDER

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

3. Article addressed to:

SIEMENS TECHNOLOGY CORP.
ATTN: LINDA WOSSOU AND
VERSE BONAZZA
1901 SOUTH PRAIRIE AVENUE
WAUKESHA, WI 53189

5. Return to (Post Office)

6. Signature, Address or Agent

X

PS Form 3811, December 1994

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
 - 2. Restricted Delivery
- Consult postmaster for fee.

4a. Article Number

7099 3220 0001 571295

4b. Service Type

- Registered
- Express Mail
- Return Receipt for Merchandise
- Certified
- Insured
- COD

7. Date of Delivery

10-18-10

8. Addressee's Address (Only if requested and fee is paid)

1256598-8-0229

Domestic Return Receipt

Thank you for using Return Receipt Service.