City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO. 1 J
COUNCIL MEETING 2/25/2010
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER

February 25, 2010

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

THROUGH: EFREN BAÑUELOS, Assistant Director EB
Public Works Department, Capital Management Division

BY: JAMES SULLIVAN, Construction Manager JRS
Public Works Department, Construction Management Division

SUBJECT: APPROVE A SUBSTITUTION OF A LISTED SUBCONTRACTOR FOR REGIONAL POLICE TRAINING FACILITY BID PACKAGE 7 CVC (BID FILE 2854) (COUNCIL DISTRICT 3)

RECOMMENDATION

That the City Council approve the request from CVC Construction Corp. to replace C & L Coatings and utilize Heritage Bomanite to perform the concrete coating portion of Regional Police Training Facility Bid Package 7.

EXECUTIVE SUMMARY

CVC Construction Corp. the Prime Contractor who was awarded the referenced project, has requested to replace C & L Coatings, who is listed in the bid documents as the concrete coating subcontractor. In accordance with the bid documents, CVC Construction Corp. listed C & L Coatings for the concrete coating portion of the project because the work exceeds one-half of one percent of the total contract amount. Subsequent to the contract award, CVC Construction Corp. notified the City that their listed concrete coating subcontractor, after having a reasonable opportunity to do so, failed or refused to execute a written contract. CVC Construction Corp. is asking that they be allowed to replace C & L Coatings and substitute Heritage Bomanite to perform the work. 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 30, 2009, the Council awarded a contract in the amount of $1,128,000.00 to CVC Construction Corp. for site concrete at the regional police training facility; the Notice to Proceed was issued on May 11, 2009.

In the bid proposal C & L Coatings of Fresno, California, was listed as the subcontractor for all concrete coating work associated with the contract. On December 16, 2009, CVC Construction

Corp. provided the City a written request to replace the listed concrete coating subcontractor, since the listed subcontractor failed or refused to execute a written contract as provided under Public Contract Code Section 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 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 Cal.2d719, 726 fn.7).

CVC Construction Corp. has requested that they be allowed to substitute Heritage Bomanite to perform the concrete coating work in place of C & L Coatings, by letter dated December 16, 2009. 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 C & L Coatings, of the proposed substitution by certified mail dated January 6, 2010. As of January 20, 2010, C & L Coatings has not provided 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 January 16, 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 the subcontractor for the concrete coating portion of the contract will not increase the cost of the project. 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 General fund or the project budget by this substitution.

PNW/EB/JS/PT/eam
Apprv Substitu Subcon Reg Police Trng Facil Bid Pkg CVC 2-25-2010

Attachments: Copy of letter sent to C & L Coatings dated January 6, 2010
Copy of letter sent to CVC Construction Corp. dated January 6, 2010

City of
FRESNO
Public Works Department
Construction Management Division
1721 Van Ness Avenue • Fresno, California 93721

559-621-5600
www.fresno.gov

COPY

SENT VIA CERTIFIED U.S. MAIL
7005 1160 0004 9443 8787

January 6, 2010

C&L Coatings
1150 Black Gold Road
Bakersfield, CA 93308

PROJECT: FRESNO POLICE DEPARTMENT REGIONAL TRAINING FACILITY DC00002

SUBJECT: SUBSTITUTION OF SUBCONTRACTOR.

PLEASE BE ADVISED OF THE FOLLOWING:

This letter is to inform you that CVC Construction Corp. (CVC), the prime contractor for the above referenced project does not intend to use your firm to perform the concrete coating portion of this contract, CVC claims you have failed to sign a subcontract for this work with them. The prime contractor has requested permission to substitute Heritage Bomanite 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 621-5614.

Sincerely,

Bill Herr
Chief Inspector

c: James Sullivan, Construction Manager
Phil Tarvin, Assistant Construction Manager
Travis Saether, Project Inspector
CVC Construction Corp, 11093 Sun Center Drive, Suite A Rancho Cordova, CA 95670
Harris Construction, 5285 E Home Avenue, Fresno, CA 93727-2103
CM File

RKG K:\ProjectFiles-DC\DC00002 RPTF\BP-7, CVC\Contractor's request to substitute Sub.doc

City of
FRESNO
Public Works Department

Construction Management Division
1721 Van Ness Avenue • Fresno, California 93721

559-621-5600
www.fresno.gov

Copy

SENT VIA FAX & U.S. MAIL

January 6, 2010

Mr. Keith Peloquin
CVC Construction Corp.
11093 Sun Center Drive, Suite A
Rancho Cordova, CA 95670

PROJECT: FRESNO POLICE DEPARTMENT REGIONAL TRAINING FACILITY DC00002

SUBJECT: REQUEST TO SUBSTITUTE SUBCONTRACTOR.

Mr. Peloquin,

The City of Fresno Construction Management Division (CMD) has received your correspondence requesting the substitution of your listed subcontractor, C&L Coatings, Inc., per Public Contract Code section 4107(a) 1:

> (1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

Per this section the City of Fresno as the awarding authority is required to notify the listed subcontractor 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

Any approvals forthcoming for this substitution can only be confirmed by the Fresno City Council.

If you have any questions, please call the undersigned at 621-5614.

Sincerely,

Bill Herr
Chief Inspector

c: James Sullivan, Construction Manager
Phil Tarvin, Assistant Construction Manager
Travis Sather, Project Inspector
Harris Construction
CM File

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