

March 31, 2011

AGENDA ITEM NO.	1 F
COUNCIL MEETING	3/31/2011
APPROVED BY	
	
DEPARTMENT DIRECTOR	
CITY MANAGER	

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

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

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

SUBJECT: APPROVE A SUBSTITUTION OF A LISTED SUBCONTRACTOR FOR THE
MANHOLE REHABILITATION ON THE GRANTLAND TRUNK SEWER,
PROJECT RC00080 (LOCATED IN COUNCIL DISTRICTS 1, 2 AND 3)

RECOMMENDATIONS

That the City Council approve the request from Floyd Johnston Construction Co. to substitute Enviro Tech Coating Inc. and utilize Pipenology Inc. to perform the Neopoxy 5300 coating portion of the work on the Manhole Rehabilitation on the Grantland Trunk Sewer project located in Council Districts 1, 2 and 3.

EXECUTIVE SUMMARY

Floyd Johnston Construction Co., the General Contractor who was awarded the referenced project, has requested to substitute Enviro Tech Coating Inc., who is listed in the bid documents as the Neopoxy 5300 Coating Application Subcontractor. In accordance with the bid documents, Floyd Johnston Construction Co. listed Enviro Tech Coating Inc. for the epoxy coating portion of the rehabilitation project because the work exceeds one-half of one percent of the total contract amount. Subsequent to the contract award, Floyd Johnston Construction Co. notified the City that their listed epoxy coating subcontractor, after having a reasonable opportunity to do so, failed or refused to execute a written contract. Floyd Johnston Construction Co. is asking that they be allowed to substitute Pipenology Inc. 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 January 5, 2011, an informal contract was awarded in the amount of \$65,600.00 to Floyd Johnston Construction Co. for the Manhole Rehabilitation on the Grantland Trunk Sewer; the Notice to Proceed was issued on January 18, 2011.

In the original proposal Enviro Tech Coatings Inc. of Lincoln, California, was listed as the subcontractor for all Neopoxy 5300 Coating Application work associated with the contract. On February 8, 2011, Floyd Johnston Construction Co. provided the City a written request to substitute the listed epoxy 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).

Floyd Johnston Construction Co. has requested that they be allowed to utilize Pipenology for the Neopoxy 5300 coating application work in place of Enviro Tech Coatings Inc., by letter dated February 8, 2011. 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 Enviro Tech Coatings Inc., of the proposed substitution by certified mail dated February 9, 2011. Enviro Tech Coatings Inc. did not timely 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 February 22, 2011, 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 Neopoxy 5300 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.