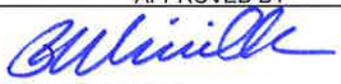


AGENDA ITEM NO.	1 G
COUNCIL MEETING	3/31/2011
APPROVED BY	
	
DEPARTMENT DIRECTOR	
CITY MANAGER	

March 31, 2011

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 SEWER REHABILITATION IN FRUIT, GETTYSBURG, VAGEDES, SANTA ANA, MARKS, WISHON AVENUES, FRESNO AND FIRST STREETS PROJECT RC00109 (LOCATED IN COUNCIL DISTRICTS 1, 3, 6 AND 7)

RECOMMENDATIONS

That the City Council approve the request from Insituform Technologies, Inc. to substitute Armored Coating, Inc. and utilize National Coatings, Inc. to perform the sewer manhole rehabilitation portion of the work on the Sewer Rehabilitation in Fruit, Gettysburg, Vagedes, Santa Ana, Marks, Wishon Avenues, Fresno and First Streets project located in Districts 1, 3, 6 and 7.

EXECUTIVE SUMMARY

Insituform Technologies Incorporated, the General Contractor who was awarded the referenced project, has requested to substitute Armored Coating Incorporated, who is listed in the bid documents as the Sewer Manhole Rehabilitation Subcontractor. In accordance with the bid documents, Insituform Technologies Incorporated listed Armored Coating Incorporated for the manhole rehabilitation of project because the work exceeds one-half of one percent of the total contract amount. Subsequent to the contract award, Insituform Technologies Incorporated notified the City that their listed manhole rehabilitation subcontractor, after having a reasonable opportunity to do so, failed or refused to execute a written contract. Insituform Technologies Incorporated is asking that they be allowed to substitute National Coatings Incorporated 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 May 6, 2010, the Council awarded a contract in the amount of \$1,556,490.00 to Insituform Technologies Incorporated for Sewer Rehabilitation in Fruit, Gettysburg, Vagedes, Santa Ana,

Report to the City Council
Request to Substitute Subcontractor Armored Coatings Incorporated
Sewer Rehabilitation in Fruit, Gettysburg, Vagedes, Santa Ana, Marks, Wishon Avenues,
Fresno and First Streets
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Marks, Wishon Avenues, Fresno and First Streets; the Notice to Proceed was issued on September 20, 2010.

In the original proposal Armored Coatings Incorporated of Petaluma, California, was listed as the subcontractor for all manhole rehabilitation work associated with the contract. On February 2, 2011, Insituform Technologies Incorporated provided the City a written request to substitute the listed manhole rehabilitation 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).

Insituform Technologies Incorporated has requested that they be allowed to utilize National Coating Incorporated for the manhole rehabilitation work in place of Armored Coatings Incorporated, by letter dated February 2, 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 Armored Coatings Incorporated, of the proposed substitution by certified mail dated February 15, 2011. Armored Coatings Incorporated 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 24, 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 manhole rehabilitation 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.