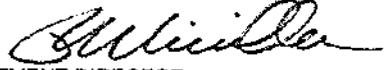


AGENDA ITEM NO.	16
COUNCIL MEETING	01/09/14
APPROVED BY	
	
DEPARTMENT DIRECTOR	
CITY MANAGER 	

January 9, 2014

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

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

BY: PHILLIP TARVIN, Construction Manager 
Public Works Department, Construction Management Division

SUBJECT: Approve a substitution of a listed subcontractor pertaining to Fluid Resource Management for the sewer replacement and rehabilitation in Ashlan Avenue - Bid File No. 3145 (Council Districts 1 and 7)

RECOMMENDATION

It is recommended that the City Council approve the request from Mountain Cascade, Inc. to substitute Fluid Resource Management and utilize Hansen Painting and Decorating on Sewer Replacement and Rehabilitation in Ashlan Avenue located in Council Districts 1 and 7.

EXECUTIVE SUMMARY

Mountain Cascade, Inc., the General Contractor who was awarded the referenced project, has requested to substitute Fluid Resource Management who is listed in the bid documents as the sewer manhole rehabilitation Subcontractor. In accordance with the bid documents, Mountain Cascade, Inc. listed Fluid Resource Management for the manhole rehabilitation portion of the project because the work exceeds one-half of one percent of the total contract amount. Mountain Cascade, Inc. notified the City by letter dated September 10, 2013 that their manhole rehabilitation subcontractor, Fluid Resource Management, has refused to perform his or her subcontract. Mountain Cascade, Inc. is asking that they be allowed to use Hansen Painting and Decorating to perform the manhole rehabilitation 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 June 13, 2013, a contract was issued in the amount of \$5,373,730 to Mountain Cascade, Inc. for the Sewer Replacement and Rehabilitation in Ashlan Avenue; the Notice to Proceed was issued on September 3, 2013.

REPORT TO THE CITY COUNCIL

Request to Substitute Subcontractor Fluid Resource Management

January 9, 2014

In the original proposal Fluid Resource Management of Grover Beach, California, was listed as the subcontractor for all manhole rehabilitation associated with the contract. On September 10, 2013 Mountain Cascade, Inc. 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)(3).

In accordance with Sections 4107(a)(3) of the Public Contracts Code, a Prime Contractor may substitute a 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 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).

Mountain Cascade, Inc. has requested that they be allowed to utilize Hansen Painting and Decorating for the manhole rehabilitation subcontract work in place of Fluid Resource Management, by letter dated September 3, 2013. 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 Fluid Resource Management, of the proposed substitution by certified mail delivered September 20, 2013. Fluid Resource Management 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 September 26, 2013 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.

This project does not contain a Disadvantaged Business Enterprise (DBE) requirement and therefore 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.

The replacement of the Subcontractor for the manhole rehabilitation portion of the contract will not increase the cost of the project.