



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 09-10-07

Approved

Date

9/20/07

COUNCIL DISTRICTS: 9 and 10

SUBJECT: RELOCATED FIRE STATION NOS. 12 & 17 - HEARING ON REQUEST FOR SUBSTITUTION OF SUBCONTRACTOR

RECOMMENDATION

Administrative hearing on the request of D.L. Falk Construction Company (DLF), the general contractor on the new Fire Station Nos. 12 and 17, to substitute Value Engineering for Wright Environmental Services, Inc and on staff's recommendation to grant this request. (WES), the listed subcontractor for the above ground fuel storage tank system work and staff's recommendation to grant the request by D.L. Falk Construction Company.

OUTCOME

The City Council will conduct an administrative hearing to address DLF's request for substitution of subcontractor in conformance with Section 2-1.15B.1 of the City of San José Standard Specifications. At this point, Public Works is recommending that the City Council grant the request for substitution.

BACKGROUND

On April 10, 2007, the City Council awarded a \$6,795,729 contract to DLF for the construction of New Fire Stations Nos. 12 and 17. The projects are funded by the Neighborhood Security Bond Act, which was approved by San José voters in March 2002. New Fire Station No. 12 will be located on a portion of a parcel located at 5912 Cahalan Avenue adjacent to the Santa Teresa Catholic Church (map attached). Fire Station No. 17 will be located at 5170 Coniston Way at the northeast corner of Blossom Hill Road and Coniston Way (map attached).

In its bid, DLF listed Wright Environmental Services (WES) as the subcontractor that would perform the above-ground fuel storage tank system work. Section 2-1.15B of the City of San

José Standard Specifications prohibits DLF from substituting another subcontractor for WES unless the City first consents to such substitution for one of the reasons specified in Section 2-1.15B.1.

On July 25, 2007, DLF requested permission from the City, via certified letter, to substitute Value Engineering for WES. DLF based its request on Section 2-1.15B.1.(a) of the City of San José Specifications, asserting that WES refused to execute the standard-form written contract presented to it by DLF. As required by Section 2-1.15B.1 of the City Of San Jose Specifications, the City sent notice to WES of DLF's request. On August 3, 2007, the City received a letter from WES stating that it did not consent to be substituted and disputing DLF's stated reasons for requesting the substitution.

ANALYSIS

When the listed subcontractor submits written objections, as WES has done here, Section 2-1.15B.1 of the Standard Specifications requires the City to conduct a hearing on the matter. Section 14.04.520 of the San José Municipal Code requires that the City Council conduct the hearing.

Based upon Section 2-1.15B, to consent to DLF's request for substitution, the City must find as follows: (1) that DLF presented WES with a written contract based upon the general terms, conditions, plans and specifications for the Fire Stations project or the terms of the subcontractor's written bid, and (2) that WES failed and/or refused to execute the written agreement after being given a reasonable opportunity to do so. Public Works is in the process of gathering and reviewing information from both parties regarding their respective positions on these issues.

Our review so far suggests that DLF has presented WES with a written contract based upon the general terms, conditions, plans and specifications for the Fire Stations project and that WES has failed to execute the agreement after having had a reasonable opportunity to do so. The primary issue at this point appears to be that WES believes the work should be performed differently than is set forth in the project plans and specifications, and that WES has not signed the subcontract because the subcontract requires the work to be performed as set forth in the plans and specifications rather than as WES believes the work should be done.

WES should not be able to impose in its proposal to DLF conditions on the sub-contract that contradict or otherwise supplant the plans and specifications for the project. Any questions or requests for changes to the contract documents need to be addressed through the General Contractor via standard Requests for Information (RFI) and contract change orders where appropriate. DLF has met its obligation of providing WES with a written contract based upon the general terms, conditions, plans and specifications for the Fire Stations project. WES's failure to sign the sub-contract with DLF until all of its proposed changes are made is inappropriate and provides a basis for approving DLF's request for substitution.

Importantly, staff continues to work with all of the involved parties to seek an amicable solution and allow each party to submit additional information. WES, through its attorney, has indicated an intent to file an additional written statement setting forth its arguments. Once staff has had the opportunity to meet with the parties and to review all of the documents submitted by the parties, it will submit, on or about September 17, 2007, a supplemental memorandum containing a final recommendation and analysis, along with supporting relevant documents.

The administrative hearing will provide both DLF and WES an opportunity to briefly address Council directly on their respective positions and to answer any questions. Council will then vote on whether to approve the substitution request and then adopt a resolution setting forth the decision of the City Council.

EVALUATION AND FOLLOW UP

A supplemental memorandum containing a complete analysis supporting the final recommendation of Public Works will be provided on or about September 17, 2007.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)**
- Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)**
- Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this item does not meet any of the criteria above, this memorandum will be posted on the City's Internet website for the October 2, 2007 Council agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, City Manager's Budget Office and the Fire Department

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy to continue with capital investments that spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

1. COST OF RECOMMENDATION/PROJECT: *

Project Delivery	\$ 2,915,271
Construction	6,795,729
Contingency	340,000
TOTAL PROJECT COSTS	\$ 10,051,000
Prior Year Expenditures	9,150,618 **
REMAINING PROJECT COSTS	\$ 900,382

* Combined total for both projects

** A total of \$9,150,618 was expended and encumbered from 2002-2003 thru 2006-2007 for project costs for Fire Station Nos. 12 and 17 combined.

2. SOURCE OF FUNDING: 475 – Neighborhood Security Bond Fund

3. OPERATING COSTS: The relocated Fire Stations 12 and 17 will have a combined annual operating and maintenance impact of \$38,400 starting in 2008-2009. Augmentations to annual budgets will be submitted through the budget process in that year, subject to approval by the City Council.

BUDGET REFERENCE

Fund No.	Appn. No.	Appn. Name	RC No.	Total Appn.	Amt. For Contracts	Proposed Budget Page	Last Budget Action (Date, Ord. No.)
<u>Remaining Project Costs</u>				\$ 900,382			
<u>Current Funding Available</u>							
475	4545	Fire Station 12-Relocation (Calero)	122865	\$450,000		V-655	06/19/2007 Ord No 28071
475	4807	Fire Station 17 – Relocation (Cambrian)	128965	\$ 605,000		V-656	06/19/2007 Ord No 28071
Total Current Funding Available				\$ 1,055,000			

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Subject: Relocated Fire Station Nos. 12 & 17 Substitution of Subcontractor

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CEQA

CEQA: Fire Station No. 12 Mitigated Negative Declaration, PP05-071

Fire Station No. 17 Exempt, PP05-275



KATY ALLEN

Director, Public Works Department

For questions please contact DAVID SYKES, ASSISTANT DIRECTOR, at (408) 535-8300.

Attachment

RR:dp:

