



AGENDA REPORT

Meeting Date: September 4, 2007
Item Number: F-6
To: Honorable Mayor & City Council
From: City Attorney
Subject: RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS
SETTING FORTH THE DECISION OF THE CITY COUNCIL
APPROVING THE SUBSTITUTION OF SUBCONTRACTOR
PURSUANT TO THE PUBLIC CONTRACT CODE IN CONNECTION
WITH THE PUBLIC WORKS VEHICLE SHOP PROJECT

Attachments: Resolution

RECOMMENDATION

It is recommended that the proposed resolution be adopted.

INTRODUCTION

The attached resolution sets forth the basis of the City Council's approval of the substitution of masonry subcontractor RSM on the masonry portion of the Public Works Vehicle Shop project ("Project").

DISCUSSION

At the City Council meeting of August 7, 2007, the City Council directed the City Attorney's office to draft a resolution setting forth the approval of the substitution of masonry subcontractor RSM for the masonry portion of the Project.

FISCAL IMPACT

Adoption of this resolution will have no fiscal impact on the City. The substitution of the subcontractor will have no impact on the contract price paid by the City.

Laurence S. Wiener, City Attorney

RESOLUTION NO. 07-

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS SETTING FORTH THE DECISION OF THE CITY COUNCIL APPROVING THE SUBSTITUTION OF SUBCONTRACTOR PURSUANT TO THE PUBLIC CONTRACT CODE IN CONNECTION WITH THE PUBLIC WORKS VEHICLE SHOP PROJECT

The City Council of the City of Beverly Hills does resolve as follows:

Section 1. Ron Shoffeitt Masonry (“RSM”) has submitted an objection to the request by Ford E.C. Inc. (“Ford”) to substitute RSM on the masonry portion of the Public Works Vehicle Shop project (“Project”).

Section 2. On August 7, 2007, the City Council held a hearing to consider the request by Ford to substitute the masonry subcontractor, RSM for the Project. Evidence, both written and oral, including the staff report and supporting documentation, was presented at said hearing. Ford and RSM presented conflicting evidence which the Council weighed in its deliberation. Based upon the evidence presented to it, the City Council approved the substitution of subcontractor pursuant to Public Contract Code section 4107. At the conclusion of the hearing, the Council directed staff to prepare a resolution setting forth its determination to approve the substitution of the subcontractor, RSM, for the Project.

Section 4. Based upon the evidence presented regarding the request for the substitution of the subcontractor for the Project, the City Council hereby finds:

4.1. On April 26, 2007, the City awarded Ford E.C. the construction contract for the City’s Public Works Vehicle Shop project (“Project”) and listed RSM as the masonry subcontractor for the Project in the amount of \$200,000. On May 25, 2007 Ford requested the substitution of the subcontractor RSM pursuant to Public Contract Code (“PCC”) section 4107(a), which provides that a prime contractor may substitute a subcontractor if 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, is presented to the subcontractor by the prime contractor.

4.2 On March 9, 2007, the date of the Project bid opening, RSM submitted a verbal bid to Ford in the amount of \$200,000 for the masonry portion of the Project. Based on that bid, Ford submitted its bid for the Project and listed RSM as the masonry subcontractor.

4.3 Ford presented a written contract in the amount of \$200,000 to RSM for the masonry portion of the Project for the scope of work specified in RSM's verbal bid, and at a price specified in such verbal bid. RSM, after being given a reasonable opportunity to do so, refused or failed to execute such written contract.

Section 5. Based on the foregoing, the City Council hereby finds that the evidence and testimony presented by Ford was more persuasive and credible than the evidence and testimony presented by RSM and approves the request by Ford to substitute the masonry subcontractor, RSM, for the Project.

Section 6. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Council of this City.

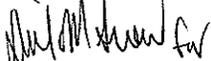
Adopted:

JIMMY DELSHAD
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:



DAVID D. GUSTAVSON
Director of Public Works and Transportation