



DATE: July 9, 2019

TO: Mayor and City Council

FROM: Director of Public Works
City Attorney

SUBJECT: 21st Century Library and Community Learning Center and Heritage Plaza:
Public Contract Code § 4107 Hearing Regarding Removal and Substitution of
the Electrical Subcontractor, Collins Electrical Company, Inc.

RECOMMENDATION

That Council, after conducting a hearing, considers and approves a resolution for the removal of Collins Electrical Company, Inc. as the electrical subcontractor on the 21st Century Library project and authorizes the City Manager to approve a substitute subcontractor to perform the electrical work pursuant to Public Contract Code § 4107.

SUMMARY

On July 2, 2019, the City transmitted a letter to T. B. Penick & Sons, Inc. (TBP) requesting that they remove Collins Electrical Company, Inc., (Collins) from the project and identify a responsible electrical contractor for submittal as a substitute. The request is based on disruptive actions and project delays attributed to Collins. The City sent a notification to Collins regarding its request that TBP remove them as a subcontractor on this project.

The terms of the construction contract for the library project require the contractor to immediately remove a subcontractor who fails to satisfactorily prosecute the work, upon request by the City. The Public Contract Code requires a public hearing by the awarding authority whenever a subcontractor objects to being removed from a project and replaced with a substitute.

BACKGROUND

On September 15, 2015, Council awarded the construction contract for the 21st Century Library and Community Learning Center and Heritage Plaza project to T. B. Penick & Sons, Inc. (TBP). TBP listed Collins Electric (Collins) as their electrical subcontractor to perform all electrical related work.

DISCUSSION

The project consists of two phases. Phase 1 includes work on the new main library and the adjacent parking garage. Phase 2 includes demolition of the old main library and construction of park amenities in the plaza. Phase 1 started on January 4, 2016. Initially, phase 1 was expected to have been completed during the Summer of 2017 per the allotted contract time. Unanticipated soil contamination and rain delays extended the completion date to December 5, 2017. Construction on the new main library is still not complete, for various reasons, among them is Collins' inability or unwillingness to complete critical tasks necessary to obtain occupancy of the library building and to complete the project. These tasks are necessary prerequisites prior to testing of life/safety systems that must be completed before the building can be occupied.

Two recent examples of Collins unwillingness to diligently pursue work required to begin the smoke and fire alarm tests are:

(1) Window actuators

On January 8, 2019, TBP asked if the low voltage window actuator wiring needed to be in conduit. Two days later, the City's Fire Department provided code language that confirmed the wiring was required to be enclosed in conduit. On January 22, 2019, based on a TBP request for formal direction, the City directed TBP to enclose all window actuator wiring in conduit. One week later, Spacetone began removing ceiling panels to provide access for the conduit installation. On February 4, 2019, Collins started the rework. On February 16, 2019, TBP provided notice that they formally disagreed with the City's position but would continue work under protest. On May 14, 2019, the conduit and wiring had been installed. Rework on the wiring continued through mid-June during the Commercial Controls (another subcontractor) pretest activities.

After TBP suspended work on the project between March 15 and March 22, 2019, Collins refused to return until TBP could assure them that all work areas related to all of Collins remaining activities were complete and available to Collins. Collins returned to work on April 15, 2019.

Collins has had limited staff on the project with only one or two and rarely three electricians on-site at any one time even though there were many areas available for work.

(2) Strobes and horns

On March 11, 2019, TBP asked for clarification of horn and strobe locations at the wood cloud ceiling locations on each floor of the library. On March 11, 2019, the City's architect provided plans with suggested alternate horn and strobe locations outside of the cloud ceiling envelope. These alternate locations were dependent upon feedback from Pyrocom, a Collins subcontractor, because the spacing and strobe design came from Pyrocom. A formal response to the Request for Information (RFI) was sent on March 20, 2019. On April 24, 2019, TBP submitted a Collins change order request for this work. On April 30, 2019, TBP submitted plans with the revised strobe locations to the City for Building permit approval. On May 9, 2019, the City rejected the change order request because this

conflict should have been identified and addressed during the contractor's early work with the Building Infrastructure Model. On May 16, 2019, the City confirmed its direction to TBP that this work proceed under protest if necessary. On May 23, 2019, TBP confirmed that the work would proceed under protest and began removing ceiling panels to start the work. On June 21, Collins completed installation of the last strobe. However, TBP had to replace the ceiling panels so the strobes were removed, and the ceiling panels replaced. To date, the strobes have not been reinstalled.

Additionally, Collins has delayed or disrupted progress of the work by turning off power and data to receptacles and rooms. On various occasions, power has not been available for training activities or for vendor installation activities. This has impacted the installation of the owner furnished equipment, such as the book return units, the self-check-out machines, and the security stanchions and training on the wall in the large conference room.

The provisions of the contract between TBP and the City allow removal of a subcontractor under these circumstances. Section 5-1.13 of the 2010 CalTrans Standard Specifications regarding Subcontracting, which is incorporated into the contract by Section 1 and Section 2-1.07 of the Project Specifications, states that upon request, the contractor shall immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily. The City has made this request pursuant to the contract for the reasons stated above.

The City further requested TBP to propose a substitute subcontractor as required by the Public Contract Code. Public Contract Code § 4107 generally prohibits a general contractor from substituting a subcontractor listed in the original bid with another subcontractor unless consented to by the awarding authority. A subcontractor that is subject to a substitution request is entitled to submit written objections to the substitution request. If written objections are submitted, the awarding authority must conduct a hearing on the contractor's substitution request to determine if it should be allowed. As of the date of this report, Collins has indicated through legal counsel that it would prepare objections to removal/substitution. The parties have been invited to submit written evidence in advance of the hearing. Any written evidence received by the City prior to July 9 will be provided to the Council prior to hearing. The parties will be given an opportunity to present their positions and provide additional live testimony during the hearing. Based upon the evidence submitted, the City Council must determine if removal/substitution of Collins is appropriate or if other actions should be taken.

Following receipt of the notice from the City earlier this week, both TBP and Collins indicated a desire to keep Collins on the job and made some commitments to finalize required work for the temporary certificate of occupancy (TCO). If TBP and Collins have followed through on their commitments by early next week, staff indicated a willingness to request that Council continue this hearing to the July 16 City Council meeting and to potentially ask the Council to drop consideration of this request for removal/substitution if the TCO is accomplished prior to the July 16 meeting.

ECONOMIC IMPACT

There is no economic impact associated with this item.

FISCAL IMPACT

The adopted Capital Improvement Program budget for the 21st Century Library project is \$66,078,512. This request for subcontractor removal and substitution will cause additional delays to the completion of the project and will likely result in additional administrative costs and delay claims.

STRATEGIC INITIATIVES

This agenda item does not directly relate to the Council's Strategic Initiatives.

SUSTAINABILITY FEATURES

The action taken for this report will not result in physical development, purchase, or service, or a new policy/legislation.

PUBLIC CONTACT

No special public contact has occurred associated with this action other than standard publication of the agenda in compliance with the Brown Act.

NEXT STEPS

If Council consents to the removal of Collins Electrical, TBP will be directed to contract with a responsible electrical contractor to complete the electrical work on Phase 1 and Phase 2 of the project. If Council does not consent to the substitution, Collins Electrical will remain on the project.

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Michael S. Lawson, City Attorney

Approved by:



Kelly McAdoo, City Manager