



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.
8

Meeting Date: **JANUARY 10, 2013**

Subject:

Make a Finding of "Necessity" Pursuant to Public Contract Code Section 4109 and Authorize Anton's Service, Inc., to Perform Demolition Work as a Subcontractor to Solpac Construction, Inc., d.b.a. Soltek Pacific Construction Company

Recommendation:

Adopt Resolution No. 2013-0007, making a finding of "necessity" under Public Contract Code Section 4109 and authorizing Anton's Service, Inc., to perform demolition work as a Subcontractor to Solpac Construction, Inc., d.b.a. Soltek Pacific Construction Company on Project No. 104056, Expand Terminal 2 East Facilities.

Background/Justification:

On November 3, 2011, the San Diego County Regional Airport Authority Board ("Board") awarded a public works contract ("Contract") to Solpac Construction, Inc., d.b.a. Soltek Pacific Construction Company ("Soltek") in the amount of \$5,958,000 for Project No. 104056, to expand Terminal 2 East Facilities, at San Diego International Airport [Resolution No. 2011-0133]. The Contract was awarded by the Board after a competitive bidding process. The bid submitted by Soltek included self performance of the demolition portion of the project (\$130,000 or 2.18% of the total project costs).

Phase 1 of the project was completed on August 1, 2012; Phase 2, which included the demolition portion of the project, was to begin on August 2, 2012. Due to delays in finalizing the lease/operating agreement, the demolition portion of the project has been on hold since August 2, 2012, and is now scheduled to begin January 14, 2013. This lengthy delay created a challenge for Soltek, which was communicated to the San Diego County Regional Airport Authority ("Authority") in letters dated December 18 and December 28, 2012. Soltek's letters state, that due to delays in commencing the Phase 2 demolition, their "demolition team had resigned" and found work with other companies. The delay in starting Phase 2 is now approximately 5 months; as a result, Soltek is requesting permission to replace the demolition portion of the contract with a local subcontractor.

According to the Contract, Soltek is required to comply with the Subletting and Subcontracting Fair Practice Act, which states, "subletting or subcontracting any portion of the work in excess of one half of one percent of the prime contractors total bid, shall be permitted in case of public emergency or necessity." The contemplated work to be performed by Anton's Service, Inc., is valued at approximately \$130,000 which is in

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excess of one half of one percent of the total bid. Soltek has requested to utilize Anton's Service, Inc., as a subcontractor to perform the remaining demolition work. The use of Anton's Service, Inc., to perform the remaining demolition work is a necessity because it will prevent the delay and will not result in an increased cost to the Authority.

Fiscal Impact:

Adequate funds for SOLPAC Construction, Inc., d.b.a. Soltek Pacific Construction Company are included within the FY2012-FY2016 Capital Budget, in Project No. 104056, Expand Terminal 2 East Facilities. Sources of funding for this project include Airport Revenue Bonds and Passenger Facility Charges.

Environmental Review:

- A. This Board action is for the Terminal 2 East project that was determined to be a class of project not to have a significant effect on the environment (Section 15301, Existing Facilities – Class 1) and a categorical exemption was prepared in accordance with the California Environmental Quality Act (CEQA).
- B. This Board action is for the Terminal 2 East project for which the California Coastal Commission issued a Notice of Permit Waiver Effectiveness (Waiver Number 6-11-036-W) effective on July 14, 2011 in accordance with the California Coastal Act.

Equal Opportunity Program:

The Authority's small business program promotes the utilization of small, local, disadvantaged, and other business enterprises, on all contracts, to provide equal opportunity for qualified firms. By providing education programs, making resources available, and communicating through effective outreach, the Authority strives for diversity in all contracting opportunities.

The Authority has a Disadvantaged Business Enterprise ("DBE") Plan as required by the Department of Transportation, 49 CFR Part 26. The DBE Plan calls for the Authority to submit an annual overall goal for DBE participation on all federally funded projects.

This project does not utilize federal funds; therefore, it will not be applied toward the Authority's over-all DBE goal.

Prepared by:

IRAJ GHAEMI, P.E.
DIRECTOR, FACILITIES DEVELOPMENT

RESOLUTION NO. 2013-0007

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, MAKING A FINDING OF "NECESSITY" UNDER PUBLIC CONTRACT CODE SECTION 4109 AND AUTHORIZING ANTON'S SERVICE, INC., TO PERFORM DEMOLITION WORK AS A SUBCONTRACTOR TO SOLPAC CONSTRUCTION, INC., DBA SOLTEK PACIFIC CONSTRUCTION COMPANY, ON PROJECT NO. 104056, EXPAND TERMINAL 2 EAST FACILITIES

WHEREAS, on November 3, 2011, the San Diego County Regional Airport Authority Board ("Board") awarded a public works contract ("Contract") to Solpac Construction, Inc., d.b.a. Soltek Pacific Construction Company ("Soltek") in the amount of \$5,958,000 for Project No. 104056, to expand Terminal 2 East Facilities, at San Diego International Airport [Resolution No. 2011-0133]; and

WHEREAS, the Contract was awarded by the Board after a competitive bidding process; and

WHEREAS, the bid submitted by Soltek did not identify or list any subcontractors to perform demolition work; and

WHEREAS, on December 18, 2012, Soltek informed the Facilities Development Department that its demolition crew had found other work due to standby time of approximately 5 months between Phase 1 and Phase 2; and

WHEREAS, the Contract states that Soltek "shall comply with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Section 4100 and its subsequent sections"; and

WHEREAS, Public Contract Code Section 4109 states, "subletting or subcontracting any portion of the work in excess of one half of one percent of the prime contractor's total bid, shall only be permitted in cases of public emergency or necessity"; and

WHEREAS, the contemplated demolition work to be performed by Anton's Service, Inc., is estimated to be approximately \$130,000 which is in excess of one half of one percent of the total bid; and

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WHEREAS, the use of Anton's Service, Inc., is a necessity for the following reasons: (1) Soltek does not have the ability to perform the work using its own staff; (2) Anton's Service, Inc., has the requisite skill and manpower to perform the work; (3) allowing Anton's Service, Inc., to perform the demolition work will avoid delay in the project; (4) allowing Anton's Service, Inc., to perform the demolition work will not result in an increased cost to the Authority.

NOW, THEREFORE, BE IT RESOLVED that the Board finds that the use of Anton's Service, Inc., to perform demolition work is a "necessity" pursuant to Public Contract Code section 4109 and authorizes Anton's Service, Inc., to perform demolition work as a subcontractor to Solpac Construction, Inc., dba Soltek Pacific Construction Company, on Project No. 104056, to expand Terminal 2 East facilities, at San Diego International Airport; and

BE IT FURTHER RESOLVED that this Board action is a project determined not to have a significant effect on the environment (Section 15301, Existing Facilities-Class 1) and a categorical exemption was prepared in accordance with the California Environmental Quality Act; and the California Coastal Commission issued a Notice of Permit Waiver Effectiveness (Waiver Number 6-11-036-W) effective July 14, 2011, in accordance with the California Coastal Act.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a special meeting this 10th day of January, 2013, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

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