



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.

7

Meeting Date: **APRIL 4, 2013**

Subject:

Consent to the Substitution of RJ Lanthier with Able Heating and Air Conditioning, to Perform HVAC Work as a Subcontractor to Soltek Pacific Construction Company, for Capital Improvement Project No. 104056-Expand Terminal 2 East Facility and Grant the President/CEO Blanket Authority to Act as the "Duly Authorized Officer" and "Awarding Authority" Under Sections 4107-4110 of the Public Contract Code

Recommendation:

Adopt Resolution No. 2013-0036, consenting to the substitution of RJ Lanthier with Able Heating and Air Conditioning, to perform HVAC work as a subcontractor to Soltek Pacific Construction Company, for Capital Improvement Project No. 104056-Expand Terminal 2 East Facility.

Adopt Resolution No. 2013-0037, granting blanket Authority to the President/CEO to act as the "duly authorized officer" and delegating to the President/CEO the Board's functions as the "awarding authority" Under Sections 4107-4110 of the Public Contract code.

Background/Justification:

CONSENT TO SUBCONTRACTOR SUBSTITUTION IN THE AGREEMENT WITH SOLTEK PACIFIC CONSTRUCTION COMPANY

On November 1, 2012, the San Diego County Regional Airport Authority Board ("Board") awarded a public works contract ("Contract") to Solpac Construction Company, Inc., dba Soltek Pacific Construction Company ("Soltek") in the amount of \$11,941,000 for Capital Improvement Project No. 104056 [Resolution No. 2012-0124] to expand Terminal 2 East facilities. The Contract was awarded by the Board after a competitive bidding process. Soltek's bid listed RJ Lanthier Co. ("RJ Lanthier") as a subcontractor who would perform the heating, ventilation and air conditioning (HVAC) portion of the work valued at \$968,000.

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On March 11, 2013, RJ Lanthier notified Soltek that it would be unable to perform the HVAC work due to its inability to provide the proper manpower and material to complete the project. [See Exhibit A, Letter from RJ Lanthier to Soltek dated March 11, 2013]. On March 14, 2013, Soltek notified the San Diego County Regional Airport Authority ("Authority") of RJ Lanthier's inability to fulfill its contractual obligations and requested the substitution of Able Heating and Cooling to perform the HVAC work specified in Soltek's contract. [See Exhibit B, Letter from Soltek to the Authority dated March 14, 2013]

Public Contract Code section 4107 requires the consent of the awarding authority or its duly authorized officer before a prime contractor can allow work to be performed by anyone other than the subcontractor listed in the bid. [Public Contract Code 4107(a)(3) and (b)].

RJ Lanthier informed Soltek that it could not perform the HVAC work for which it was listed as a subcontractor in Soltek's bid. Soltek seeks the consent of the Authority to allow Able Heating and Air Conditioning to perform the HVAC work. Staff has determined that Able Heating and Air Conditioning is properly licensed and capable of performing the work, and recommends that the Board consent to the substitution of Able Heating and Air Conditioning to perform the subcontracted HVAC work.

BLANKET AUTHORITY FOR FUTURE SUBCONTRACTOR SUBSTITUTIONS

The request by Soltek for a subcontractor substitution raised to staff the issue of consent by the awarding authority to substitutions of subcontractors. In order to prevent future delays in similar situations and to allow projects minimal disruption, staff recommends that the Board take the additional actions described below.

Public Contract Code sections 4100-4114 is known as the "Subletting and Subcontracting Fair Practices Act" ("Act"). The purpose of the Act is to prevent the practices of bid shopping and bid peddling in connection with the construction, alteration and repair of public improvements and to ensure the public the full benefits of fair competition among prime contractors and subcontractors. The Act contains provisions governing the listing of subcontractors in public works bids, self-performance of work for which a subcontractor has not been listed and the substitution of subcontractors once a bid has been awarded.

Section 4107 of the Act prohibits a prime contractor from substituting a person as a subcontractor in place of a subcontractor listed in the original bid unless the "awarding authority or its duly authorized officer" consents to the substitution. Staff recommends that the Board authorize the President/CEO to act as the "duly authorized officer" in instances where consent to substitution of subcontractors is required under the Act because requiring Board action in such instances may cause delay to ongoing projects and allowing such authority will ensure that work can continue with minimal interruption.

Section 4109 of the Act states that "subletting or subcontracting of any portion of the work in excess of one half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting for the facts constituting the emergency or necessity." Staff recommends that the Board delegate to the President/CEO its powers as the "awarding authority" under the Act because obtaining Board approval in such instances may cause delay in projects and allowing such authority will ensure that work can continue with minimal interruption.

Section 4110 of the Act states that a "a prime contractor violating any provision of this chapter violates his or her contract and the awarding authority may exercise the option, in its discretion, of (1) canceling his or her contract; (2) assessing the prime contractor a penalty in an amount of not more than 10% of the amount of the subcontract involved . . ." Staff recommends that the Board delegate to the President/CEO its powers as the "awarding authority" under this provision to allow increased efficiency in the contracting process.

Finally, it is recommended that when the President/CEO acts in the above-described delegated capacities, the Board would receive a report of any such actions at the next regularly-noticed Board meeting.

Fiscal Impact:

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

Authority Strategies:

This item supports one or more of the Authority Strategies, as follows:

- Community Strategy
 Customer Strategy
 Employee Strategy
 Financial Strategy
 Operations Strategy

Environmental Review:

- A. This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act Pub. Res. Code §30106.

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:

BRYAN ENARSON
VICE PRESIDENT, DEVELOPMENT

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R. J. LANTHIER CO., INC.

485 Corporate Drive • Escondido, CA 92029-1607

CA Lic. No. 929500

NV Lic. No. 0053514

March 11, 2013

Soltek Pacific Construction Company
2424 Congress Street
San Diego, CA 92110

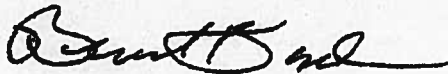
Attn: John Myers

Subj: Expand Terminal 2 East Facility: Gate 25 ~ 27
San Diego International Airport

Dear John,

Due to financial difficulties, R.J. Lanthier Co., Inc. will be unable to perform the HVAC portion of the Expand Terminal 2 East Facility Gates 25 ~ 27 at the San Diego International Airport. R.J. Lanthier would not be able to provide proper manpower or material to complete this project and request Soltek Pacific Construction Company substitute another HVAC subcontractor in place of R.J. Lanthier Co., Inc.

Sincerely,



Brent Boyd
C.E.O.
R.J. Lanthier Co., Inc.



Fax: (760) 738-8859 • Telephone: (760) 738-9798 • www.rjlancoo.com
MECHANICAL CONTRACTORS
SINCE 1974



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Exhibit B



2424 Congress Street
San Diego, California 92110-2888
619-298-6247 EOE
619-298-7109 fax
Contractor License 703828
www.soltekpacific.com

Hand Delivered & E-mailed
silyas@san.org

March 14, 2013

Saad Ilyas
Facilities Development Department
San Diego County Regional Airport Authority
2320 Stillwater Road
San Diego, CA 92101

Reference: Project No. 104056-D (WEST) Expand Terminal 2- East Facility
Gate 25 – Gate 27
San Diego International Airport, San Diego, California

Subject: Termination/Substitution of Subcontractor

Dear Mr. Ilyas,

Pursuant to IB-4.2 F, this letter shall serve as Soltek Pacific Construction's written notification to the Airport Authority that as of today's date, March 14, 2013 R.J. Lanthier Co., Inc., the listed subcontractor for the HVAC scope of work will be unable to fulfill its contractual obligations for the above referenced project, this as evidenced by copy of the letter from R.J. Lanthier attached.

Soltek Pacific has completed its due diligence in obtaining other comparable bids for the HVAC scope of work. We have determined that Able Heating and Air Conditioning is an equitable replacement. We have attached their bid flyer and copy of their Contractors License for your review.

In an effort to mitigate any delays to the project, we respectfully request your prompt review and approval.

Should you require any further information, please contact me at (619) 666-5351.

Sincerely,
**SOLTEK PACIFIC
CONSTRUCTION CO., INC.**

A handwritten signature in black ink, appearing to read 'Sonya Mancilla', is written over a printed name and title.

Sonya Mancilla
Project Manager

cc: Job File
James Brown
John Myers

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RESOLUTION NO. 2013-0036

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY CONSENTING TO THE SUBSTITUTION OF RJ LANTHIER WITH ABLE HEATING AND AIR CONDITIONING TO PERFORM THE HVAC WORK AS A SUBCONTRACTOR TO SOLTEK PACIFIC CONSTRUCTION COMPANY FOR PROJECT NO. 104056-EXPAND TERMINAL 2 EAST FACILITY

WHEREAS, on November 1, 2012, the San Diego County Regional Airport Authority Board ("Board") awarded a public works contract ("Contract") to Solpac Construction, Company, Inc. dba Soltek Pacific Construction Company ("Soltek") in the amount of \$11,941,000 for Project No. 104056 [Resolution No. 2012-0124] to expand Terminal 2 East facilities; and

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

WHEREAS, the bid submitted by Soltek listed RJ Lanthier Co. as a subcontractor who would perform the heating, ventilation and air conditioning (HVAC) work valued at \$968,000; and

WHEREAS, RJ Lanthier notified Soltek that it was unable to perform the HVAC work due to inability to provide the proper manpower or material to complete the project; and

WHEREAS, Soltek notified the Authority of RJ Lanthier's inability to fulfill its contractual obligations and requested the substitution of Able Heating and Cooling ("Able") to perform the HVAC work; and

WHEREAS, Public Contract Code section 4107 requires the consent of the awarding authority or its duly authorized officer before a prime contractor can allow work to be performed by anyone other than the subcontractor listed in the bid. [Public Contract Code 4107(a)(3) and (b)]; and

WHEREAS, staff has determined that Able is properly licensed and capable of performing the work and recommends that the Board consent to the substitution of Able to perform the subcontracted HVAC work.

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NOW, THEREFORE, BE IT RESOLVED that the Board hereby consents to the substitution of RJ Lanthier with Able Heating and Air Conditioning, to perform HVAC work as a subcontractor to Soltek Pacific Construction Company, for Capital Improvement Project No. 104056-Expand Terminal 2 East Facility; and

BE IT FURTHER RESOLVED by the Board that it finds that this Board action is not a "project" as defined by the California Environmental Quality Act ("CEQA") (California Public Resources Code §21065); and is not a "development" as defined by the California Coastal Act (California Public Resources Code §30106).

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4TH day of April, 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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RESOLUTION NO. 2013-0037

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY GRANTING BLANKET AUTHORITY TO THE PRESIDENT/CEO TO ACT AS THE "DULY AUTHORIZED OFFICER" AND DELEGATING TO THE PRESIDENT/CEO THE BOARD'S FUNCTIONS AS THE "AWARDING AUTHORITY" UNDER SECTIONS 4107-4110 OF THE PUBLIC CONTRACT CODE

WHEREAS, Public Contract Code sections 4100-4114 is known as the "Subletting and Subcontracting Fair Practices Act" ("Act"). The purpose of the Act is to prevent the practices of bid shopping and bid peddling in connection with the construction, alteration and repair of public improvements and to ensure the public the full benefits of fair competition among prime contractors and subcontractors; and

WHEREAS, the Act contains provisions governing the listing of subcontractors in public works bids, self-performance of work for which a subcontractor has not been listed and the substitution of subcontractors once a bid has been awarded; and

WHEREAS, section 4107 of the Act prohibits a prime contractor from substituting a person as a subcontractor in place of a subcontractor listed in the original bid unless the "awarding authority or its duly authorized officer" consents to the substitution; and

WHEREAS, staff recommends that the Board grant blanket authority to the President/CEO to act as the "duly authorized officer" in instances where consent to substitution of subcontractors is required under the Act because requiring Board action in such instances may cause delay to ongoing projects and allowing such authority will ensure that work can continue with minimal interruption; and

WHEREAS, section 4109 of the Act states that "subletting or subcontracting of any portion of the work in excess of one half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting for the facts constituting the emergency or necessity"; and

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WHEREAS, staff recommends that the Board delegate to the President/CEO its powers as the "awarding authority" under the Act because obtaining Board approval in such instances may cause delay in projects and allowing such authority will ensure that work can continue with minimal interruption; and

WHEREAS, Section 4110 of the Act states that a "a prime contractor violating any provision of this chapter violates his or her contract and the awarding authority may exercise the option, in its discretion, of (1) canceling his or her contract; (2) assessing the prime contractor a penalty in an amount of not more than 10% of the amount of the subcontract involved . . ."; and

WHEREAS, staff recommends that the Board delegate to the President/CEO its powers as the "awarding authority" under the Act to allow increased efficiency in the contracting process.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby grants blanket authority to the President/CEO to act as the "duly authorized officer" in instances where consent to substitution of subcontractors is required under the Act because requiring Board action in such instances may cause delay to ongoing projects and allowing such authority will ensure that work can continue with minimal interruption; and

BE IT FURTHER RESOLVED that the Board delegates to the President/CEO its powers as the "awarding authority" under the Act because obtaining Board approval in such instances may cause delay in projects and allowing such authority will ensure that work can continue with minimal interruption; and

BE IT FURTHER RESOLVED that the Board delegates to the President/CEO its powers as the "awarding authority" under the Act because it will result in increased efficiency in the contracting process; and

BE IT FURTHER RESOLVED that the President/CEO shall report to the Board any actions taken pursuant to this Resolution regarding Public Contract Code section 4107-4110 at its next regular Board meeting; and

BE IT FURTHER RESOLVED by the Board that it finds that this Board action is not a "project" as defined by the California Environmental Quality Act ("CEQA") (California Public Resources Code §21065); and is not a "development" as defined by the California Coastal Act (California Public Resources Code §30106).

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PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4TH day of April, 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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