



Date: May 19, 2015

To: Thomas J. Bonfield, City Manager

Through: W. Bowman Ferguson, Deputy City Manager

From: Jina B. Propst, Assistant Director, General Services Department

Subject: Third Amendment to the Contract for Special Inspections and Constructions Materials Testing Services for the Fire Station 9 Project with A1 Consulting Group Inc.

Executive Summary

Fire Station 9 (the "Project") began construction on February 18, 2013, and was scheduled for substantial completion on December 15, 2013. The substantial completion date was extended to March 22, 2014 when change order 2 was executed and weather delays were approved. Due to continued non-performance by the contractor, Morlando Construction LLC ("Morlando"), the Project is significantly delayed, and Morlando has failed to deliver the Project within the contract time. On April 8, 2014, City Council approved a contract amendment for additional third party inspections for A1 Consulting Group, Inc. ("A1 Consulting"), to provide additional oversight of corrective work.

Contractor continued non-performance and an extended construction schedule have resulted in additional services due to additional oversight, inspections, and other services from A1 Consulting. General Services Department ("GSD") is seeking additional full time inspections from A1 Consulting, while the non-conforming cold-formed steel trusses are remediated.

Recommendation

The General Services Department recommends that the City Council:

1. Authorize the City Manager to execute a contract amendment to the Contract for Special Inspections and Constructions Materials Testing Services for the Fire Station 9 Project with A1 Consulting Group Inc. in the amount of \$50,800.00 so that the total contract amount will not exceed \$140,550.00.
2. Maintain a contract contingency of \$8,975 and authorize the City Manager to negotiate and execute contract amendments to the Contract for Special Inspections and Constructions Materials Testing Services for the Fire Station 9 Project, provided the total contract cost does not exceed \$149,525.00.

Background

On December 19, 2012, the City executed a Service Contract with A1 Consulting Group Inc. ("A1") in the amount of \$30,000.00 to provide construction materials testing ("CMT") and special inspection ("SI") services. On January 16, 2014, the City executed Amendment # 1 to A1's contract for \$20,000 to provide work associated with numerous failed inspections by Morlando due to non-conforming work. On April 8, 2014, City Council approved a contract amendment for additional third party inspections for A1 Consulting to provide additional oversight of corrective work. The City is seeking reimbursement from Morlando for failed inspection as allowed by the contract. The current contract amount for A1 Consulting is \$89,750.00.

On November 20, 2013, City Council authorized the City Manager to execute a construction contract for Durham Fire Station 9 with Morlando Construction LLC. The contract was executed on January 25, 2013, and a Notice to Proceed was issued on February 18, 2013 establishing December 15, 2013 as substantial completion for the Project. Due to weather delays and additional site work, the substantial completion date was revised via Change Order 2 to March 22, 2014. To date, the Project is not complete, and Morlando has failed to deliver the project within the contract time. The project is four hundred and fifty days behind schedule and the City is assessing liquidated damages at five hundred dollars a day.

Issues/Analysis

On November 1, 2013, the Architect, Garner & Brown, gave notice to Morlando of its failure to prosecute the work in accordance with the contract documents. Since then, the City and Architect have repeatedly notified Morlando Construction of defective and noncompliant work and failure to perform in accordance with the contract.

On February 17, 2014, General Services Department sent written notice to the Surety that Morlando is in breach of its contractual obligations due to multiple contractual failures including 1) failure to supervise the Project and supply properly skilled subcontractors resulting in nonconforming and defective work, 2) failure to provide adequate engineering to provide remedial solutions to correct defective work, and 3) persistently failing to correct nonconforming and defective work. The City demanded that the Surety honor its obligations under the Performance Bond and rectify the contractual breaches by Morlando. The Surety is currently monitoring Morlando's progress, and the City and Architect are copying the Surety on continued issues including correspondence regarding corrective work on roof trusses.

Through the spring and summer of 2014, Morlando repeatedly disregarded instructions from the architect and structural engineer of record. Morlando failed to supply skilled workers and oversight on the cold-formed steel trusses. The City has repeatedly requested Morlando to correct the work. Although the City and Morlando are closer to agreeing on what corrective action required the work currently in place remains noncompliant.

In September 2014, the City provided formal notice of termination to Morlando and The Guarantee Company of North America ("Surety"). The City suspended the termination in October 2014 while the City and Morlando negotiated terms where Morlando would provide engineering services for a forensic truss analysis and an engineering submittal with repair drawings. Morlando submitted drawings in April 2015 which are under review by the Architect and Engineer of Record. Morlando has also submitted qualification of a truss subcontractor, which was reviewed and accepted by the Architect and City. It is unknown when the project

is expected to be complete as Morlando has failed to submit an acceptable recovery schedule.

Alternatives

City Council could choose not to amend A1 Consulting’s service contract. Staff does not recommend this alternative as A1 Consulting will continue to provide testing/inspections services that are essential to completing the Fire Station 9 project.

Financial Impacts

Project Funding		
Certificates of Participation		\$2,878,637.00
2009 Limited Obligation Bonds		\$1,442,963.00
Total Project Funding		\$4,321,600.00
Funding Uses Summary		
Prior:		
Land Acquisition		\$231,458.00
Fire Truck and Equipment		\$1,000,000.00
Professional Services-Design (Garner & Brown)		\$335,423.36
Professional Services-Design Contingency (Garner & Brown)		\$33,542.33
Construction Materials Testing (A1)		\$89,750.00
Construction Materials Testing – Contingency (A1)		\$8,975.00
Construction Contract (Morlando)		\$2,153,691.92
Construction Contingency		\$186,448.08
*Other Owner’s Expenses		\$231,511.31
Total		\$4,270,800.00
Current:		
Construction Materials Testing Amendment (A1)	3501B900-731003-CB007	\$50,800.00
Total		\$50,800.00
Funding Uses Total		\$4,321,600.00

*Other Owner’s Expenses include but are not limited to Impact Fees, Permits, Surveys, and Reviews.

SDBE Summary

This is a contract amendment that was not reviewed for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting. A-1 Consulting is a certified SDBE firm.