



Weymouth Chlorination Systems Upgrades Subcontractor Substitution

Engineering & Operations Committee
Item 8-2
September 9, 2019

Current Action

- Approve contractor request for subcontractor substitution for the Weymouth Plant chlorination systems upgrades construction contract, consistent with the Hearing Officer's recommendation

Distribution System



Project Background

- In December 2018, Board awarded \$8,487,170 contract to J. F. Shea Construction, Inc. (Shea) for chlorination system upgrades
- In June 2019, Shea requested approval to substitute a subcontractor identified in its bid with another qualified subcontractor
- Subcontractor, Three Point Structural Steel Construction (TPC), objected to substitution & requested hearing

Substitution Process

- Public Contract Code Requirements
 - Subcontractors with work totaling 0.5 % or greater of bid are listed by prime contractor at time bids are submitted
 - Listed subcontractor may not be substituted without awarding authority approval
 - Approval limited to specific situations
 - If subcontractor objects to substitution, awarding authority to conduct hearing
- Administrative Code §8148
 - General Manager or designee authorized to conduct hearing
 - Based on hearing, Board makes determination

Rationale for Granting a Substitution

- Public Contract Code - Section §4107
 - (a) (3) When the listed subcontractor fails or refuses to perform his or her subcontract
 - (a) (7) When the awarding authority , or its duly authorized officer, determines that the work performed by the subcontractor is substantially unsatisfactory and not in accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of work

Dispute

- Hearing held on Aug. 1, 2019
- Over 500 pages of supporting documents
- Each party presented its case & rebuttal
- Contractor claims
 - Subcontractor is unable to comply with submittal requirements (4 of 23 completed)
 - Remaining submittals were not submitted or were returned for revision
 - Work cannot proceed without approved submittals
- Subcontractor claims
 - The submittal process is flawed
 - TPC was excluded from pre-construction meeting
 - TPC was prevented from contacting Metropolitan staff
 - Shea never intended to honor TPC's subcontract

Hearing Officer's Conclusions

- Contract specifications relevant to TPC's scope of work were clear
- Metropolitan pre-construction meetings are focused on prime contractors project responsibilities
- Metropolitan staff does not meet with subcontractors unless the prime is present
- Shea attempted to guide TPC through the submittal process
- Detailed record of proceedings prepared & has been available for review at Executive Secretary's office

Hearing Officer's Recommendation

- Hearing Officer's finding that a substitution is in conformance w/ the Code
- Approval of subcontractor substitution request is recommended

Board Options

- Option #1
 - Approve the request for subcontractor substitution for the Weymouth Plant chlorination system upgrades construction contract
- Option #2
 - Do not adopt the recommendation of Hearing Officer and deny the contractor's request for subcontractor substitution for the Weymouth Plant chlorination system upgrades construction contract

Staff Recommendation

- Option #1

