

City Council Agenda
El Centro City Hall, City Council Chambers
1275 Main Street, El Centro
El Centro, California

SPECIAL MEETING
Wednesday, March 20, 2013
11:00 A.M.

Mayor: Benjamin James Solomon, III
Mayor Pro-Tem: Cheryl Viegas-Walker
Council Members: Efrain Silva
Jason Jackson
Sedalia Sanders

City Clerk: Diane Caldwell
City Manager: Ruben Duran
City Attorney: Kris Becker

Mayor & Council Members can be reached at (760) 336-8989

NOTICE TO THE PUBLIC

This is a public meeting, if there is an item on the Agenda on which you wish to be heard, please complete a "Speakers Slip" and submit it to the City Clerk prior to the start of the meeting. When the item is announced and your name is called by the Mayor, please come forward to the microphone, address yourself to the Council, stating your name and address for the record. Unless the Mayor extends the time, there is a three (3) minute time limit for each public presentation.

**11:00 a.m. CALL TO ORDER: Roll-Call
PLEDGE OF ALLEGIANCE & INVOCATION**

PUBLIC HEARING

1. Public Hearing for potential substitution of the landscaping subcontractor on the El Centro Regional Bus Transfer Terminal Project.

PRESENTATION: Terry L. Hagen, PE, City Engineer/Public Works Director

RECOMMENDATION:

FINAL ACTION:

NO OTHER BUSINESS WILL BE TRANSACTED

ADJOURNMENT:

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet will be available for public inspection at the Office of the City Clerk, 1275 Main Street, El Centro, California 92243, Monday-Friday during normal business hours.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the office of the City Clerk at (760)337-4515. Notification at least 48 hours prior to the meeting will enable the City to make reasonable arrangement to assure accessibility to this meeting.

COUNCIL AGENDA REPORT

City of El Centro

MEETING DATE: March 20, 2013
AGENDA ITEM NO: _____
Approved by: _____
City Attorney: <i>VMB</i>
City Manager: <i>[Signature]</i>

FROM: Terry L. Hagen, PE *[Signature]*
City Engineer / Public Works Director

PREPARED BY: Abraham Campos, PE – Senior Engineer *[Signature]*

SUBJECT: Public Hearing for potential substitution of the landscaping subcontractor on the El Centro Regional Bus Transfer Terminal Project.

CITY MANAGER'S RECOMMENDATION:

Open public hearing

FISCAL IMPACT:

There is no fiscal impact to General fund. This is a Federal Transit Authority (FTA) funded project with a component of FTA-ARRA and a regional match.

Construction contract available funding sources (including contingency):

Regional match:	\$ 635,368
FTA:	\$2,541,478
<u>FTA-ARRA:</u>	<u>\$1,136,066</u>
Total	\$4,312,912

Total Construction Contract is: \$3,646,871.50
Subcontractor portion of work is: \$110,000 (3% of contract)

STRATEGIC PLANNING PROGRAM 2008-2013 RELATION:

Goal 1 Transportation & Mobility; Objective 2 Increase Public Transportation; Task A, New Transfer Terminal.

BACKGROUND:

Hazard Construction submitted a letter dated February 1, 2013 to the City's contracted Construction Manager for the project, Tom Clark of Griffin-Lyon, requesting the City's authorization for the removal and substitution of the landscaping contractor, Green Desert Landscape. Mr. Opper of Hazard Construction advised that they sent the subcontract to Green Desert Landscape after having been awarded the project. Because they had not received a response after a week, Hazard attempted to

contact the Green Desert Landscape owner, Gilbert Leon, but was unable to for several weeks. When they were finally able to speak with Mr. Leon, a subcontract was sent to him that included their insurance and bonding requirements. Hazard was advised by Mr. Leon that he will not provide a bond or insurance certificates for his portion of the work that meet Hazard's requirements.

Hazard is requesting that Sun Landscape be substituted for the landscape subcontract as they are a local firm who is able to meet Hazard's insurance and performance bond requirements. Sun Landscape has agreed to perform the landscape portion of the work at the same cost quoted by Green Desert Landscape.

Mr. Leon did contact City staff to talk about Hazard's requirement for a performance bond on the project. He related that he had not been told during the bidding process that a bond would be required and had not budgeted for it in his quote. After some questioning by staff, Mr. Leon stated that he had never actually spoken to any representatives at Hazard during the bidding process to ask about any additional requirements they would have for the project. He stated that he had prepared a quote for the work based on the plans and specs for the project and electronically submitted it to all potential contractors bidding the project.

On March 5th, City Council authorized staff to issue a letter to Green Dessert Landscape Construction Inc. describing the City's concurrence with Hazard's intent to substitute the landscape contractor.

Green Dessert Landscape responded to the city letter within the required time frame and has requested a public hearing to be held. Mr. Leon, the owner is claiming he was not advised of the bonding requirement at bid time and is requesting proof that Hazard requested bonds at bid time.

DISCUSSION:

Open public hearing.

CONCLUSION:

Staff request Council to hear both sides of the argument

Option A: Uphold the substitution request

Or

Option B: Deny substitution request

ATTACHMENT(S):

- Copy of Request letter from Hazard Construction dated February 1, 2013
- Copy of City Manager's Letter dated March 6, 2013 and March 13, 2013
- Copy of Green Desert Landscape response letter dated March 11, 2013



March 13, 2013

**REVISED Please note time change.
Via Certified Mail; Return Receipt Requested**

Gilbert Jose Leon or Responsible Managing Officer
PO Box 2755
El Centro, CA 92244

Re: City of El Centro
Regional Bus Terminal Project

Dear Mr. Leon or Other RMO:

Please take notice that the City Council of the City of El Centro will conduct a hearing on Hazard Construction's request for substitution of subcontractor on Wednesday, March 20, 2013 at 11:00 a.m. in the City Council Chambers located at 1275 West Main Street, El Centro.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruben A. Duran".

Ruben A. Duran
City Manager

Office of the City Manager
1275 Main Street, El Centro, CA 92243 (760) 337-4540 Fax (760) 352-6177



March 13, 2013

Via Certified Mail; Return Receipt Requested

Gilbert Jose Leon or Responsible Managing Officer
PO Box 2755
El Centro, CA 92244

Re: City of El Centro
Regional Bus Terminal Project

Dear Mr. Leon or Other RMO:

Please take notice that the City Council of the City of El Centro will conduct a hearing on Hazard Construction's request for substitution of subcontractor on Wednesday, March 20, 2013 at 11:30 a.m. in the City Council Chambers located at 1275 West Main Street, El Centro.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruben A. Duran".

Ruben A. Duran
City Manager

Office of the City Manager
1275 Main Street, El Centro, CA 92243 (760) 337-4540 Fax (760) 352-6177

GREEN DESERT

LANDSCAPE CONST INC.

March 11, 2013

Via certified mail/ Return receipt requested.

Office of the City Manager

1275 Main Street, El Centro, Ca. 92243

Attn. Ruben A. Duran

City Manager


CITY MANAGER
2013 3 13 13:31
CITY OF EL CENTRO

Dear Mr. Duran as a response to your letter March 6, 2013 in regards of substitution request by Hazard Construction of my company Green Desert Landscape Const Inc as a subcontractor on the project of El Centro Regional Bus Station for the landscape and irrigation portion of the work on the project and as stated on your letter, according to Public Contract Code 4108 (Copy attached) I had highlighted item No. 3 on this code, all I have to mention the fact that if Hazard Co. can show and/or produce written evidence of the fact that they had required a performance bond by my company at the time of bidding the project I will gladly set aside, otherwise they are obligated by this same Code 4108 to accept my bid.

Mr. Duran I had contacted Mr. Chad Opper; Hazard's contact person on Wednesday August 15 via phone call if they will accept a bid from my company and He accepted, furthermore even do the original bid date was postponed until August 29 they did not ever mention a performance bond from my company at the time of bid. Bottom line is the fact that 4 months later He (Chad Opper) ask me for performance bond, mentioning the fact that Hazard Co. requires such bond on new sub's working for them on the first time basis.

I had even started the process to get the bond but when I had ask him (Chad Opper) if they (Hazard) will cover the cost He refuses, then I told him via email to begin substitution process and we will meet at the Council meeting to hear the decision.

I had stated the fact that if they cover the cost for the bond I will get it otherwise I wont, again I am protected by the Contracting Laws of the State of California stated in the Public Contract Code 4108 (3).


Sincerely yours.

Gilbert Leon/President.

⑤

ic. No, 938635

O. BOX 2755 El Centro, CA. 92244

Phone: 760-457-6351

gil.greendesert@live.com

4108. (a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond or [REDACTED]

(b) [REDACTED] prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to the prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the prime contractor may reject the bid and make a substitution of another subcontractor subject to Section 4107.

(c) (1) The bond or bonds may be required under this section only if the prime contractor in his [REDACTED] or published request for subbids clearly specifies the amount and requirements of the bond or bonds.

(2) [REDACTED] request for subbids.



March 6, 2013

Via Certified Mail; Return Receipt Requested

Gilbert Jose Leon or Responsible Managing Officer
PO Box 2755
El Centro, CA 92244

Re: City of El Centro
Regional Bus Terminal Project

Dear Mr. Leon or Other RMO:

Please be advised that Hazard Construction Company ("Hazard") has asked the City of El Centro ("the City") to consent to the substitution of another company as the landscape subcontractor in the place of Green Desert Landscape Const., Inc. ("Green Desert") in the above-referenced project. The reason for the request is because Green Desert has failed or is refusing to meet Hazard's bond requirements as set forth in Public Contract Code §4108.

It is the City's position that this failure and/or refusal on the part of Green Desert constitutes a situation such as that set forth in Public Contract Code §4107(a)(4). Accordingly, the City plans to consent to the requested substitution.

Please be advised that Green Desert has five (5) working days within which to submit written objections to the substitution to the City. Failure to timely file these written objections will constitute Green Desert's consent to the substitution.

Sincerely,

Ruben A. Duran
City Manager

Office of the City Manager

1275 Main Street, El Centro, CA 92243 (760) 337-4540 Fax (760) 352-6177



Phone (858) 587-3600
Fax (858) 453-6034
6465 Marindustry Place
San Diego, CA 92121
hazardconstruction.com
License No. 750542A/B

February 1, 2013

Griffin-Lyon
C/O City of El Centro
780 N. 4th Street
El Centro, CA 92243
Attn: Tom Clark

Reference: El Centro Bus Transfer Station

Subject: Green Desert Landscape

Mr. Clark,

The purpose of this letter is to request the removal and substitution of the Landscaping contractor on the above referenced project. Below is an explanation and the reasons for Hazard Construction Company (HCC) to request this action.

After HCC received notice of award for the Bus Transfer Station we drafted the subcontract agreements and sent them out to all our subcontractors on October 22, 2012. We have a cover letter that is attached to our subcontracts that requires our subcontractors respond within seven days of receipt of their subcontract. It is HCC policy to require a bond on all subcontractors that have not previously worked with our firm. This allows our firm to establish a relationship and track record with new subcontractors to make sure they can perform to HCC standards.

Once the subcontract was not received back in our office after the seven day window I tried to contact Mr. Gilbert Leon the owner and president of Green Desert Landscape through e-mails and phone calls, with no response. Due to the fact that I could not make contact with Mr. Leon for several weeks I notified Mr. Abraham Compos, Senior Engineer, P.E. on November 7, 2012 with an e-mail and a phone call to let him know of this situation.

On December 8, 2012 Mr. Leon sent me an e-mail that he had been out of town for a few weeks with some personal problems but that he was still interested in performing the contract. I told Mr. Leon that HCC was very concerned with this situation and that we had already started the process of replacing his subcontract on this project with a new contractor. Mr. Leon expressed to HCC that he would do whatever was required to ensure that he be awarded the contract.

At that time we gave Green Desert Landscape the opportunity and sent Mr. Leon a new subcontract dated December 10, 2012 with our insurance requirements and the notification that Mr. Leon would need to provide a performance bond for his portion of work. Mr. Gilbert Leon cannot provide a bond for his portion of work nor can he provide the proper insurance certificates that will meet our requirements.

HCC subcontracts and requirements are the same for all our subcontractors and there are no special considerations that are taken by our firm. At this time HCC requests the City of El Centro allow HCC to replace Green Desert Landscape with Sun Landscape of El Centro, CA. Sun Landscape has worked with HCC in the past and is able to meet our insurance and performance bond requirements.

I have attached the e-mails and correspondence that HCC has had with Green Desert Landscape for your use.

If you have any questions regarding this request, please do not hesitate to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad Opper", with a long horizontal flourish extending to the right.

Chad Opper
Hazard Construction Company