

**RESOLUTION 2023-04**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORTUNA  
ACCEPTING A REQUEST BY THE APPARENT LOW BIDDER TO SUBSTITUTE A  
LISTED SUBCONTRACTOR IN ITS BID FOR THE POLICE FACILITY REMODEL  
PROJECT PURSUANT TO LABOR CODE 1771 AND PUBLIC CONTRACT CODE  
SECTIONS 4107 AND 4107.5**

**WHEREAS**, the City of Fortuna (the “City”) issued a request for bids on October 31, 2022, for a work of public improvement known as the City of Fortuna Police Facility Remodel Project (CIP No. 9104) (the “Project”);

**WHEREAS**, bids for the Project were opened by the City on January 5, 2023, and Sequoia Specialties Inc, dba Sequoia Construction Specialties (“Sequoia”) was the apparent low bidder with a base bid of \$2,538,000.00, which amount is \$173,770.00 less than the next lowest bid submitted by Adams Commercial General Contracting, Inc. (“ACGC”);

**WHEREAS**, within two working days following the bid opening, by letter dated January 9, 2023, Sequoia notified the City that it inadvertently listed Jagimo Construction Inc., dba J&G Lawn & Garden (“J&G”) as its landscaping subcontractor in its bid submission on the ground J&G’s registration with the Department of Industrial Relations had expired and requesting to replace J&G with All Area Landscaping (“All Area”);

**WHEREAS**, All Area is properly licensed and registered with the Department of Industrial Relations;

**WHEREAS**, pursuant to Labor Code section 1771.1(a), a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered with the Department of Industrial Relations, as more particularly specified in Labor Code section 1725.5;

**WHEREAS**, notwithstanding the above, an inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the subcontractor is replaced by another registered subcontractor pursuant to section 4107 of the Public Contract Code;

**WHEREAS**, pursuant to Public Contract Code section 4107, the City may consent to the substitution of a subcontractor when the prime contractor demonstrates to the awarding authority, or its duly authorized officer, that the name of the subcontractor was listed as the result of an inadvertent clerical error, provided that:

(a) the prime contractor give written notice to the City of the claimed inadvertent clerical error within two (2) days following the opening of the bids, along with copies of the notice to the subcontractor he or she claims to have listed in error and the intended subcontractor;

(b) the inadvertently listed subcontractor does not submit a written objection to the claim of inadvertent error within six (6) working days of the date of the bid opening; and

(c) the prime contractor, the subcontractor listed in error, and the intended subcontractor each submit an affidavit to the City along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight (8) working days from the time of the bid opening.

**WHEREAS**, each of the foregoing prerequisites has been satisfied by Sequoia to the satisfaction of the City, to wit:

(a) Sequoia provided written notice to the City within two (2) working days of the bid opening of its claim of inadvertent error in listing J&G, with a copy of such notice having been provided to J&G;

(b) J&G did not object to the claim of inadvertent clerical error within six (6) working days of the date of the bid opening; and

(c) within eight (8) working days of the bid opening, Sequoia, J&G, and All Area, each submitted an affidavit attesting that an inadvertent clerical error was in fact made.

**WHEREAS**, additionally, the City provided the notice required by Public Contract Code section 4107 to J&G of the City Council's intended consideration of the subcontractor substitution request and no objection was received within the time required by law;

**WHEREAS**, pursuant to Public Contract Code sections 4107 and 4107.5, the originally listed subcontractor is deemed to have consented to the substitution if it does not submit its written objection to the request;

**WHEREAS**, on January 9, 2023, the second lowest bidder, ACGC, protested Sequoia's bid on the ground it not responsive to the request for bids because J&G is not registered with the Department of Industrial Relations;

**WHEREAS**, by written correspondence dated January 13, 2023, and January 19, 2023, the City's outside legal counsel responded to ACGC, explaining that the inadvertent listing of an unregistered subcontractor is not grounds for protest or for considering a bid nonresponsive if the unregistered subcontractor is replaced by a registered subcontractor pursuant to Public Contract Code 4107;

**WHEREAS**, since, by way of this Resolution, the City Council is approving the substitution of the unregistered subcontractor for a registered subcontractor pursuant to Public Contract Code 4107, there is no legal basis for the protest submitted by ACGC.

**NOW, THEREFORE, BE IT RESOVED** by the City Council of the City of Fortuna that:

1. The above-recitals are deemed findings of the City Council and incorporated herein by this reference.
2. That the City Council hereby approves the request by Sequoia Specialties Inc, dba Sequoia Construction Specialties to substitute Jagimo Construction Inc., dba J&G Lawn & Garden for All Area Landscaping in its bid for the work of public improvement known as the City of Fortuna Police Facility Remodel Project (CIP No. 9104).

PASSED and ADOPTED on this 6<sup>th</sup> day of February 2023, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

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Tami Tent, Mayor

Attest:

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Siana Emmons, City Clerk