

RESOLUTION NO

RESOLUTION OF THE BOARD OF PUBLIC UTILITIES PERMITTING THE ADDITION OF SUBCONTRACTOR WUNDERLICH-MALEC ENGINEERING OF PLEASANTON, CALIFORNIA TO THE LAGUNA TREATMENT PLANT CHILLERS AND CLIMATE CONTROL UPGRADES PROJECT DUE TO PUBLIC NECESSITY ANDELECTION NOT TO ASSESS POTENTIAL PENALTIES

WHEREAS, on October 17, 2019, the Board of Public Utilities, by motion, approved construction Contract No. C02105 in the amount of \$1,004,198.40 to the lowest responsive bidder, Matrix HG, Inc. (“Matrix”), of Novato, CA for Laguna Treatment Plant Chillers and Climate Control Upgrades at Administration and Annex Building project (“Project”); and

WHEREAS, the Project involves the replacement of two chillers and two condensing boilers located in the Administration building, and one chiller at the Annex building. Improvements also include upgrades of the climate control system at both buildings; and

WHEREAS, completion of the Project this year is necessary to the continued Water Department staff work at the Laguna Treatment Plant because the Laguna Treatment Plant Administration and Annex buildings house essential City staff and the Laguna Treatment Laboratory, where staff work to ensure the Laguna Treatment Plant operates in conformance with applicable regulatory requirements; and

WHEREAS, on November 25, 2019, a Notice to Proceed was issued to Matrix, and they proceeded with acquiring the equipment necessary to complete the Project; and

WHEREAS, on March 24, 2020, Matrix submitted a request for Wunderlich-Malec Engineering (“WM”) to be added to Contract No. C02105 as a subcontractor responsible for the programmable logic controllers (“PLC”) panel building, programming, testing and commissioning work (“PLC Work”); and

WHEREAS, Matrix must comply with the Subletting and Subcontracting Fair Practices Act, Public Contract Code (“PCC”) Sections 4100-4113, inclusive (the “Act”) for all subcontracts in excess of one-half of one percent of the total amount of a bid, and such compliance is further required by Section 2-1.33C (Subcontractors) of the Special Provisions of Contract No. C02105; and

WHEREAS, PCC Section 4104 and Section 2-1.33 C in the Special Provisions of Contract No. C02105 required Matrix to list any subcontractor performing work valued in excess of one-half of one percent of the total amount of the bid and the value of the PLC Work that WM would complete is approximately \$125,000.00 and in excess of one-half of one percent of the total amount of the bid; and

WHEREAS, Matrix failed to separately list WM or any other subcontractor in the Matrix bid to complete the PLC Work; and

WHEREAS, PCC Section 4106 provides that if a prime contractor fails to specify a subcontractor for work under the contract in excess of one-half of one percent of the bid price, the prime contractor agrees that it is fully qualified to perform that portion itself and shall perform that portion itself; and

WHEREAS, on April 28, 2020, Matrix confirmed to the City that Matrix is not qualified to self-perform the PLC Work; and

WHEREAS, pursuant to PCC Section 4110, a violation of PCC Section 4106 subjects the contractor to cancellation of the contract or assessment of a penalty of up to 10 percent of the subcontract involved; and

WHEREAS, PCC Section 4109 authorizes an owner to permit an unlisted subcontractor to perform work only “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 forth the facts constituting the emergency or necessity; and

WHEREAS, completion of the Project this year, including the PLC Work, is necessary for Water Department staff working at the Administration and Annex Buildings to carry out essential City functions; and

WHEREAS, termination of Contract No. C02105 would result in unnecessary Project delay and additional City costs related to staff time and professional engineering services required to assess the work completed to date and revisit the plans and specifications to in order reissue a construction contract; and

WHEREAS, such delays and additional costs could jeopardize the City’s ability to complete the Project this year; and

WHEREAS, Matrix has displayed a commitment to complete the work within the allotted contract time; and

WHEREAS, for these reasons, maintaining Matrix as the prime contractor for the Project and permitting the addition of subcontractor, WM, is necessary, cost effective and in the City’s best interest; and

WHEREAS, Matrix’s failure to list a subcontractor for the PLC Work could subject Matrix to a penalty of up to \$12,500 pursuant to PCC Section 4110, which is 10% of the value of the subcontracted work; and

WHEREAS, because Matrix’s failure to list a subcontractor for the PLC Work appears to be an inadvertent error, and the cost of collection of the penalty is likely to be equal to or exceed the value of the potential penalty, staff has recommended not assessing a penalty against Matrix under PCC Section 4110.

NOW, THEREFORE, BE IT RESOLVED that the Board of Public Utilities hereby adopts the findings set forth above and on the basis of these findings permits the addition of Wunderlich-Malec Engineering of Pleasanton, California as a subcontractor for the Laguna Treatment Plant Chillers and Climate Control Upgrades Project (Contract No. C02105) due to public necessity under California Public Contract Code Section 4109; and

BE IT FURTHER RESOLVED, that the Board of Public Utilities elects not to assess penalties against the prime contractor, Matrix HG, Inc., of Novato, California under California Public Contract Code section 4110; and

BE IT FURTHER RESOLVED, that the Board of Public Utilities delegates authority to the Water Director or her designee to execute any change orders or other associated agreements or documentation reasonably related to the permitted addition of subcontractor Wunderlich-Malec Engineering.

DULY AND REGULARLY ADOPTED by the City of Santa Rosa Board of Public Utilities this 16th day of July 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____
Daniel J. Galvin III, Chair

ATTEST: _____
Gina Perez
Recording Secretary

APPROVED AS TO FORM:

City Attorney