

**City of Culver City, California
Agenda Item Report**

Meeting Date: 03/01/2010		Item Number: J-1	
CITY COUNCIL / REDEVELOPMENT AGENCY JOINT AGENDA ITEM: (1) Termination of the Contract with FEI Enterprises, Inc. for the Construction of Fire Station No. 3, Project P-857, (2) Authorization to File a Notice of Cessation, and (3) Authorization to Release a Portion of the Project Retention Funds.			
Contact Person/Dept.: Andy O'Connell/PW		Phone Number: (310) 253-5606	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☒ No ☐	
Public Hearing: ☐		Action Item: ☒ Attachments: ☐	
Commission Action Required: Yes ☐ No ☒		Date: _____	
Public Notification: (E-Mail) Meetings and Agendas – City Council (02/24/10) and FEI Enterprises, Inc. (02/24/10)			
Department Approval: Charles Herbertson (02/23/10)		City Attorney Approval: Carol Schwab (by H. Baker) (02/23/10) Agency General Counsel: Murray Kane (02/24/10)	
Chief Financial Officer Approval: Mark Scott (by N. Kimball) (02/23/10)		City Manager/Executive Director Approval: (02/24/10)	

RECOMMENDATION:

Staff recommends that the City Council 1) terminate the contract with FEI Enterprises, Inc. for the construction of Fire Station No. 3, Project P-857; 2) authorize the filing of a Notice of Cessation; and 3) authorize the release of a portion of the retention after the expiration of the 35-day lien period and the clearance of all stop notices.

Staff recommends that the Redevelopment Agency Board terminate the contract with FEI for the construction of Fire Station No. 3, RDA Project (55393700).

BACKGROUND:

On June 18, 2007, at a joint City Council/Redevelopment Agency meeting, FEI Enterprises, Inc. ("FEI") was awarded a contract for the construction of the new Fire Station No. 3 located at 6030 Bristol Parkway (the "Project"). Work started on the Project on August 7, 2007, with a contract duration of 345 days and formal completion date of July 16, 2008. During the first year of work, the contract duration was formally extended to September 11, 2008 due mostly to rain delays.

Between January 9, 2009 and February 18, 2009, after the untimely death of the City's construction manager, work on the Project was suspended. Upon recommencement of the work, FEI provided the City with assurances the Project would be completed by the end May 2009. Despite the fact that this "new"

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completion date was eight months after the last approved completion date (September 11, 2008), FEI was unable to complete the Project by the May 2009 deadline and continued providing the City with new completion dates that were never met. Finally, in November 2009, the City informed FEI that the Project must be completed by December 11, 2009, and the cost of all unfinished work would be deducted from their final payment. On December 28, 2009 a formal letter (Attachment 1) was sent to FEI stating the Project was substantially complete on December 11, 2009 and the cost of all corrective work (Attachment 2) would be submitted to FEI as a deductive change order. On February 9, 2010, the deductive change order was mailed to FEI by certified mail and was received by FEI on Thursday February 11, 2009 (Attachments 3 and 4). FEI was instructed to review and sign the deductive change order within five days of its receipt. Liquidated damages of approximately \$385,000 (\$1,000 per day) for Project delay were also included in the deductive change order as allowed in the contract documents. Staff has calculated an increase in contract time of 61 days which reflects all of the reasonable delays, beyond September 11, 2008, caused by the temporary shutdown, rain, and change order work (Attachment 5). Subtracting the deductive change order amount of \$358,860.21 from the remaining FEI contract balance of \$296,519.77 leaves FEI owing the City \$62,340.44. FEI has declined to sign the deductive change order.

DISCUSSION:

In order to release the undisputed retention funds and move forward with the completion of the final corrective work and complete the Project, staff recommends the City and Agency terminate the contract with FEI for convenience per Section 14.4 of the contract documents (Attachment 6). Subsection 14.4.3 of the contract documents states that the contractor is entitled to reasonable overhead and profit on work not executed. Applying a 15% rate on the estimated cost to complete the unfinished work (\$94,250.00), the overhead and profit amount is determined to be \$14,137.50. Subtracting that amount from the \$62,340.44 that FEI owes the City, leaves a balance due to the City of \$48,202.94. The provisions of the contract documents, as well as State Law, allow the City to withhold 150% of the disputed amount from the retention funds, which amounts to \$72,304.41. Staff recommends the City Council authorize the release of a portion of the retention (less 150% of the disputed amount) in the amount of \$427,483.63 after the expiration of the 35-day lien period and clearance of all stop notices

FISCAL ANALYSIS:

In addition to the original retention amount of \$499,788.04, which is currently held in an escrow account, there is \$370,763 remaining in the Fire Station No. 3 project budget (42000857). The City may authorize release of the \$427,483.63 retention payment, after all legal obligations have been met by FEI, including the clearance of

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all stop notices. This will leave a total remaining project budget of approximately \$440,000 which will be used to complete any remaining work and other contractual obligations. Staff expects the final Fire Station No. 3 Project to be completed under budget due primarily to the liquidated damages charged against FEI due to Project delays.

ATTACHMENTS:

1. Substantial Completion Letter, dated December 28, 2009
2. Estimated Cost to Complete Work
3. Deductive Change Order Letter, dated February 9, 2010
4. Deductive Change Order
5. Liquidated Damages Calculation
6. Section 14.4 of Contract documents

MOTION:

That the City Council:

1. Terminate the contract with FEI Enterprises, Inc. for the construction of Fire Station No. 3, Project P-857 per Section 14.4 of the contract documents; and,
2. Authorize the City Attorney to review/prepare the necessary documents; and,
3. Authorize the City Manager to execute such documents on behalf of the City; and,
4. Authorize the City Manager to execute the Notice of Cessation and submit it to the Los Angeles County Recorder's office; and,
5. Authorize the release of a portion of the retention (less 150% of the disputed amount) in the amount of \$427,483.63 following the expiration of the 35-day lien period and the clearance of all stop notices.

That the Redevelopment Agency Board:

1. Terminate the contract with FEI Enterprises, Inc. for the construction of Fire Station No. 3, Project P-857 per Section 14.4 of the contract documents.
2. Authorize the Agency General Counsel to review/prepare the necessary documents; and,
3. Authorize the Executive Director to execute such documents on behalf of the City.