



# Board Agenda Item 59

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DATE: December 4, 2018

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director  
Department of Public Works and Planning

SUBJECT: Request for Approval to Substitute a Fowler Avenue Shoulder Improvement Project  
Subcontractor

RECOMMENDED ACTION:

**Approve the substitution of Dust Control Etc., Inc. with Talley Oil Inc., for a portion of the oil spreading associated with Contract No. 17-09-C, Fowler Avenue Shoulder Improvements.**

Approval of the recommended action would allow substitution of a subcontractor for the Fowler Avenue Shoulder Improvements project. The request is made in accordance with Section 4107(a)(3) of the Public Contract Code (PCC), as the subcontractor, Talley Oil Inc. (Talley), originally listed on the bid proposal advised the prime contractor, AJ Excavation (AJ) that he was unable to perform the work for a portion of the project. This item pertains to a location in District 4.

ALTERNATIVE ACTION:

The project has been completed and the subcontractor's work has already been performed. Your Board may assess the prime contractor a penalty of up to 10% of the subcontract amount in accordance with Section 4110(2) of the PCC.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action. The contract amount for the project will not change. If your Board determines that a penalty should be assessed due to the subcontractor substitution, it would be withheld from remaining funds due to the prime contractor paid out of the Department of Public Works and Planning - Roads Org 4510. The maximum penalty, if one were to be assessed, would be 10% of the work done by the substituted subcontractor, \$4,680.92.

DISCUSSION:

On April 3, 2018, your Board awarded Contract No. 17-09-C to AJ for the construction of the Fowler Avenue Shoulder Improvement project for \$4,542,752. The bid documents submitted by AJ's listed Talley as a subcontractor for oil spreading. Talley performed some work on the project, but sent a letter dated August 31, 2018 to AJ indicating that they were unavailable to perform work for approximately six weeks of the project duration, see Attachment A. AJ enlisted Dust Control Etc., Inc. (Dust Control) as a subcontractor to perform the oil spreading for the time that Talley was unavailable. When Talley was available again, they resumed their work on the project.

AJ's bid documents indicated that Talley would perform 2% of the total bid amount of \$4,542,752, or \$90,855.04. On September 4, 2018, AJ requested that Dust Control perform a portion of the subcontracted work, see Attachment B, the value of the work that Dust Control performed was \$46,809.27.

PCC, Section 4104 requires the prime contractor to submit with its bid a list of subcontractors whose work on the project constitutes more than one-half of one percent of the prime contractor's total bid or \$10,000, whichever is greater. For this project, one-half of one percent of the total bid is \$22,713.76, which governs. AJ listed Talley as a subcontractor, but did not list Dust Control, which is a violation of the PCC. PCC, Section 4107(a)(3) allows the awarding authority to consent to a substitution if the listed subcontractor fails or refuses to perform his or her subcontract. Additionally, per PCC, Section 4110, the awarding authority has the option of assessing a prime contractor who is in violation of the PCC a penalty of not more than 10% of the amount of the subcontract involved. If your Board chooses to assess this penalty, the maximum would be \$4,680.92.

Based upon the above the Department recommends that your Board approve the substitution without assessing the penalty, as Talley was unaware that another subcontractor would be needed at the time the bid was submitted.

REFERENCE MATERIAL:

BAI #37, April 3, 2018

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachment A  
Attachment B

CAO ANALYST:

Sonia M. De La Rosa