



Board Agenda Item 44

DATE: March 28, 2017

TO: Board of Supervisors

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

SUBJECT: Request for Approval to Substitute A.C. Dike Company for Asphalt Dike Construction, Inc. dba APCO for paving the 4-foot wide pedestrian walkway on Contract No. 16-03-C, Mt. Whitney Paved Pedestrian Walkway.

RECOMMENDED ACTION:

Approve the substitution of A.C. Dike Company for APCO for paving of the 4-foot wide pedestrian walkway on Contract No. 16-03-C, Mt. Whitney Paved Pedestrian Walkway.

This action is in accordance with Section 4107 (a) (2) of the Public Contract Code because the contractor for the project substituted a subcontractor.

ALTERNATIVE ACTION:

If this action is not approved, the contractor could be subject to a penalty of up to 10 percent of the subcontract amount in accordance with Section 4110 (2) of the Public Contract Code.

FISCAL IMPACT:

There is no Net County Cost associated with the Recommended Action. The contract amount of the project will not change. If the 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 Public Works and Planning - Roads Org 4510. The maximum penalty, if one were to be assessed, would be \$720.

DISCUSSION:

On August 23, 2016, your Board awarded Contract No. 16-03-C to Seal Rite Paving and Grading ("Seal Rite") for the construction of the Mt. Whitney Paved Pedestrian Walkway. Construction of the project was completed on October 19, 2016 and accepted by the County on November 7, 2016.

Public Contract Code Section 4104 requires the prime contractor to submit a list of subcontractors with their bids 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, \$10,000 governs.

Seal Rite's bid documents indicated that APCO would be the paving subcontractor for work in the amount of \$7,200. Since this amount is less than \$10,000, they were not required to be listed on the subcontractor list submitted with the bid, but they were still listed. During the project, Seal Rite requested that A.C. Dike Company become the subcontractor for the paving of the pedestrian walkway because APCO declined the work due to their heavy work load at the time.

Staff overseeing the project did not raise an issue with the substitution because they believed that, since the subcontractor didn't actually need to be listed, it was not necessary. It was later determined that the formal substitution process should be followed. Upon notification of this, Seal Rite then submitted a written request for substitution.

In accordance with Section 4107 (a) (9), the Department sent a certified letter to APCO giving them notice of Seal Rite's request for substitution. APCO replied that they did not have an objection to the substitution. The Department recommends that the substitution request be approved and that a penalty not be assessed.

REFERENCE MATERIAL:

BAI #9, August 23, 2016

BAI #53, June 21, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

Seal Rite's Substitution Request

APCO Substitution Notice

APCO Substitution Response

CAO ANALYST:

John Hays