

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-5

Urgent Routine

AGENDA DATE March 3, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Substitution of the Painting Subcontractor for Greg Opinski Construction, Inc. for the Emergency Power and Fire Suppression System Improvements at the Sheriff's Operation Center and Public Safety Center Facilities

STAFF RECOMMENDATIONS:

Approval of substitution of the painting subcontractor for Greg Opinski Construction, Inc. for the emergency power and fire suppression system improvements at the Sheriff's Operation Center and Public Safety Center facilities.

FISCAL IMPACT:

On November 18, 2008 the Board approved the award of the construction contract for emergency power and fire suppression system improvements at the Sheriff's Operations Center to the lowest responsible bidder, Greg Opinski Construction, Inc. for the lump sum amount not to exceed \$1,044,000. The Board also authorized the Project Manager to issue a notice to proceed contingent upon receipt of proper insurance and bonds.

At this time the Chief Executive Office is returning to the Board to approve the substitution of the painting
(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2009-134

On motion of Supervisor Chiesa, Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT: (Continued)

the painting subcontractor for Greg Opinski Construction, Inc. There is no additional impact to the General Fund associated with this request. The substitution will be funded by existing appropriations in the Capital Project budget of \$1,536,600 approved by the Board on September 30, 2008.

DISCUSSION:

In April 2008, the County contracted with Miller Pezzoni and Associates, Inc. to proceed with a study to identify specific areas and critical functions which require emergency power to maintain effective operations during an extended electrical power disruption. These critical areas included the Sheriff's Operations Center (SOC) and the IT server room in the Sheriff Headquarters facility, and existing kitchen and laundry facilities located in the Public Safety Center (PSC) adjacent to Headquarters.

As a result of the study, the Board authorized the staff to proceed with the project. In November 2008, the County contracted with Miller Pezzoni and Associates, Inc., a local electrical engineering firm to add emergency power to the Sheriff's Operations Center, Kitchen and Laundry Facilities, and add a server room for the Sheriff's Operations Center with a fire suppression system. Miller Pezzoni and Associates, Inc were the original Electrical Engineers for the Sheriff's Operations Center and staff believed they would have superior knowledge for the study.

On September 30, 2008, the Board of Supervisors approved the plans and specifications for the emergency power and fire suppression system improvements at the Sheriff's Operations Center. The total Project Budget approved by the Board is \$1,536,600. The estimated cost of the construction included in the budget is \$1,147,773. The Board authorized the call for bids for the emergency power and fire suppression improvements.

On November 5, 2008, eight bids were received and opened. Through a blind bid process comprised of five sequestered team members, it was determined the lowest responsible bid was Greg Opinski Construction, Inc. A total of 8 bids were received from Applegate Johnston, Inc., of Modesto, California, Titan Structures, of Modesto, California, BC Construction, of Ceres, California, Gowan Construction, of Tracy, California, Greg Opinski Construction, of Merced, California, Pullman Construction, of Middletown, California, Becker Field Construction, of Oakdale, California, and Diede Construction, of Lodi, California.

The bids ranged from \$1,044,000 to \$1,558,000 for the base bid. One bid alternate was also requested as part of the bid package. The bid alternate, which is not recommended, was to upgrade the existing engine generator synchronization control systems for each of two generators, and the matching new generator, including all components. The alternate also included provisions to remove all of the existing analog devices. Provide new digital

Approval of Substitution of the Painting Subcontractor for Greg Opinski Construction, Inc. for the Emergency Power and Fire Suppression System Improvements at the Sheriff's Operation Center and Public Safety Center Facilities-Chief Executive Office
Page 3

generator control system including engine governors, voltage regulators, actuators, engine generators, and synchronization controllers. The bid alternates ranged from \$370,000 to \$461,143. The basis of award was the base bid only. Staff did not recommend awarding the bid alternate.

By law, Public Contract Code Section 4100 – 4113, Greg Opinski Construction, Inc. was required to list the name of each subcontractor who would perform the work or labor in excess of one-half of one percent of the base bid.

The County may legally consent to a substitution of a listed subcontractor only in limited cases. One of the limited cases is when the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid.

Greg Opinski Construction has informed the Project Manager and Construction Manager that their listed painting subcontractor, Downey & Son Painting, failed or refused to execute their subcontract. On February 2, 2009 the Project Manager notified Downey & Son Painting of Greg Opinski Construction, Inc request to substitute. In accordance with Public Contract Code Section 4107, the Project Manager allowed Downey & Son Painting five (5) working days to provide written objection to the requested substitution. On February 12, 2009 the Project Manager notified Downey & Son Painting that since staff had not received a written objection, the staff must consider Downey & Son Painting failure to submit written objections as consent to the substitution as allowed by Section 4107 of the Public Contract Code. Copies of the correspondence are attached.

At this time the Chief Executive Office is returning to the Board to approve the substitution of the painting subcontractor for Greg Opinski Construction, Inc. There is no additional impact to the General Fund associated with this request. The substitution will be funded by existing appropriations in the Capital Project budget approved by the Board on September 30, 2008.

POLICY ISSUES:

The Board of Supervisors is required to approve any substitution of listed subcontractors, pursuant to the Public Contract Code.

STAFF IMPACT:

There is no additional staffing impact associated with this item. Existing Capital Projects staff will manage the project.



CHIEF EXECUTIVE OFFICE

Richard W. Robinson
Chief Executive Officer

Patricia Hill Thomas
Chief Operations Officer/
Assistant Executive Officer

Monica Nino-Reid
Assistant Executive Officer

Stan Risen
Assistant Executive Officer

1010 10th Street, Suite 6800, Modesto, CA 95354
P.O. Box 3404, Modesto, CA 95353-3404
Phone: 209.525.6333 Fax: 209.544.6226

FAXED

February 12, 2009

Downey & Son Painting
PO Box 112
Livingston, California 95334

Sent via fax (209)394-8613 and mail

Subject: SOC Emergency Power + Server Room Upgrades
Reference: Request for Substitution of Downey & Son Painting

To Whom It May Concern:

On February 2, 2009, Downey & Son Painting was notified via facsimile and certified mail of the requested substitution for Downey & Son Painting as a listed subcontractor on the SOC Emergency Power + Server Room Upgrades project. Additionally, Downey & Son Painting was notified of its obligation to provide written objections to the requested substitution within five working days pursuant to Section 4107 of the Public Contract Code. As of February 12, 2009, we have not received a written objection to the substitution of Downey & Son Painting and we consider Downey & Son Painting's failure to submit written objections as consent to the substitution as allowed by Section 4107 of the California Public Contract Code.

Sincerely,

Don H. Phemister
Senior Construction Manager

DHP:tvv

cc: Patricia Hill Thomas
Ski Opinski, GOCl
Gino Colacchia
File AV 2.1.1 (039)
File DV 2.4



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FAXED
2.2.09

January 30, 2009

Downey & Son Painting
PO Box 112
Livingston, California 95334

****Via Certified/Return Receipt Mail****

Subject: SOC Emergency Power + Server Room Upgrades
Reference: Request for Substitution of Downey & Son Painting

To Whom It May Concern::

Stanislaus County's Board of Supervisors awarded a contract to Greg Opinski Construction, Inc. (GOCI) for the construction of the SOC Emergency Power + Server Room Upgrades on March 2, 2004. Downey & Son Painting was listed as a subcontractor in the bid GOCI submitted to Stanislaus County on November 5, 2008.

Attached is a copy of correspondence from GOCI dated January 20, 2009. GOCI is requesting a substitution for Downey & Son Painting. GOCI has cited Section 4107.5 of the California Public Contract Code as the cause for substitution. They claim a clerical error in their bid documents.

Please consider this as the required written notification pursuant to Section 4107 of the California Public Contract Code, of GOCI's request to substitute Downey & Son Painting on the SOC Emergency Power + Server Room Upgrades. In accordance with Section 4107 of the California Public Contract Code, Downey & Son Painting has five (5) working days to provide written objections to the requested substitution. Failure to file written objections constitutes Downey & Son Painting's consent to the substitution.

Sincerely,

Stanislaus County

Don H. Phemister
Senior Construction Manager

DHP:tvv

Attachment

cc: Patricia Hill Thomas
Ski Opinski, GOCI
Gino Colacchia
File AV 2.1.1(028)
File DV 2.4



January 20, 2009

Mr. Gino Colacchia
Capital Projects
Stanislaus County
825 12th Street
Modesto, CA 95354

RE: SOC – Power & Server Room Upgrades
Request for Subcontractor Substitution

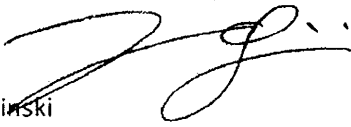
Dear Mr. Colacchia:

This letter is to provide you with written notice in accordance with the provisions of Public Contract Code 4107 (a), that we are requesting approval for the substitution of James L. Harris Painting, Inc. to replace Downey & Son Painting as the listed subcontractor to perform the painting for the above referenced project. We inadvertently listed Downey & Son Painting as the painting subcontractor. James L. Harris Painting, Inc. is the correct subcontractor with the lowest bid.

Pursuant to Public Contract Code 4107(a), Downey & Son Painting has five (5) working days within which to submit to the Owner any written objections to this substitution. Please note that failure to submit written objection in a timely fashion will constitute Downey & Son's consent to the substitution.

If you take no exception to the aforementioned substitution request, please sign below providing consent to GOCI's request for subcontractor substitution. We appreciate your prompt attention to this matter.

Very truly yours,
Greg Opinski Construction, Inc.


Greg Opinski
President

cc: Downey & Son Painting
James L. Harris Painting

Consent by: Gino Colacchia, Capital Projects
Stanislaus County

RECEIVED

JAN 20 2009

STANISLAUS COUNTY
CAPITAL PROJECTS

AV 2.1.2(025)

AV 2.4

Don.

Gino.

RECEIVED

JAN 20 2009

STANISLAUS COUNTY
CAPITAL PROJECTS