

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

DEPT: Public Works *MD*

BOARD AGENDA # *C-2

Urgent Routine

AGENDA DATE October 5, 2010

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Substitute a Subcontractor on the ARRA Hughson Sphere Of Influence Cape Seal Project

STAFF RECOMMENDATIONS:

1. Approve the subcontractor substitution request received from Bond Blacktop, Inc. to substitute their subcontractor Rodgers Construction & Engineering on the ARRA Hughson Sphere of Influence (SOI) Cape Seal project.
2. Designate the Director of Public Works to act as the County's duly authorized officer per Section 4107(a) of the Public Contract Code, for all future subcontractor substitution requests on Public Works projects.

FISCAL IMPACT:

There are no costs associated with the substitution of Rodgers Construction & Engineering on the ARRA Hughson Sphere of Influence (SOI) Cape Seal project. There are also no costs associated with authorizing the Director of Public Works to act as the County's duly authorized officer per Section 4107(a) of the Public Contract Code.

BOARD ACTION AS FOLLOWS:

No. 2010-625

On motion of Supervisor O'Brien, Seconded by Supervisor Monteith

and approved by the following vote,

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

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:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Substitute a Subcontractor for Bond Blacktop, Inc. on the ARRA Hughson Sphere Of Influence Cape Seal Project

DISCUSSION:

The ARRA Hughson Sphere of Influence (SOI) Cape Seal project consists of a type II slurry seal over a 3/8 inch polymer modified chip seal. The cape seal will be placed over 5.4 miles of road surfaces creating a smooth, durable, water resistant pavement surface. New striping will be applied on the centerline and edge lines as well as various pavement markings.

The funding for the ARRA Hughson Cape Seal project was provided to the County by Stanislaus Council of Governments (StanCOG) and the City of Hughson to perform projects in and near the City of Hughson's Sphere of Influence. Due to staffing and time constraints at the City, these roads were chosen in conjunction with their Public Works Director as these roads are important to the citizens of Hughson. The County was chosen to receive these funds as the County was better able to design and process the projects through Caltrans under tight deadlines in order for these funds to remain in the region.

All preliminary engineering was done in-house by Public Works Department staff.

The following roads are included in the project:

- Geer Road (Hatch Road to Santa Fe Ave)
- Whitmore Ave (Faith Home Road to Mountain View Road)
- Santa Fe Ave (Hatch Road to Tuolumne River Bridge)

This project is exempt from the California Environmental Quality Act, Class 1, California Code of Regulations, Title 14, #15301 (Existing Facilities).

On February 16, 2010, the Board of Supervisors approved and adopted the plans and specifications for the project and directed the Public Works staff to publish and mail the notice inviting bids.

On March 31, 2010, five (5) sealed bids were received, publicly read and opened. Bond Blacktop, Inc. was deemed the lowest responsible bidder and was awarded the contract on May 4, 2010.

As of late August 2010, work had not begun on this project. County construction staff communicated to Bond Blacktop that it was imperative that work on the ARRA Hughson Cape Seal project get underway to assure the project was delivered before fall or winter weather conditions hampered the quality and progress of the project.

It was brought to the County's attention by Bond Blacktop that their subcontractor Rodgers Construction & Engineering was the reason they had not begun work on the ARRA Hughson SOI Cape Seal project. County staff verified Bond Blacktop's concerns with this subcontractor. If Bond Blacktop were to wait for Rodgers Construction & Engineering to complete the ARRA 2009 Cape Seal project, the ARRA Hughson Cape Seal project would be substantially delayed and in

Approval to Substitute a Subcontractor for Bond Blacktop, Inc. on the ARRA Hughson Sphere Of Influence Cape Seal Project

danger of going into the winter season and possibly suspended until the spring of 2011.

In order to expedite the commencement of the ARRA Hughson Cape Seal project, Bond Blacktop, Inc. has requested pursuant to Section 4107 of the Public Contract Code, to substitute their subcontractor, Rodgers Construction & Engineering, and to perform the work with their own forces. The County has notified Rodgers Construction & Engineering of the substitution request, per the requirements of Section 4107(a)(9) of the Public Contract Code. Rodgers Construction & Engineering has responded that they agree with Bond Blacktop, Inc. to terminate their subcontract for this project. Staff requests approval to substitute Rodgers Construction & Engineering, to assure the successful delivery of the project. The project is currently scheduled to be completed by October 22, 2010.

The Department is also requesting from the Board that they designate the Director of Public Works as the County's duly authorized officer to review and make determinations on all future subcontractor substitution requests for future Public Works projects. This will allow future substitutions requests to be processed in a much shorter time frame and will eliminate the timely process of taking the request to the Board for consideration.

POLICY ISSUES:

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Healthy Community and A Well Planned Infrastructure System by ensuring that the ARRA Hughson Sphere of Influence (SOI) Cape Seal project proceeds and is completed in a timely manner. The Board should also decide if it should designate the Director of Public Works as the County's duly authorized officer on all future subcontractor substitution requests for Public Works projects.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Matt Machado, Public Works Director. Telephone: (209) 525-6550.

CB:la

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September 15, 2010

Mr. Paul Saini
Stanislaus County Public Works
1716 Morgan Road
Modesto, CA 95358
ARRA Hughson SOI Cape Seal

RE: Request for Subcontractor Substitution

Dear Mr. Saini,

Bond Blacktop requests to remove subcontractor Rodgers Construction & Engineering, Inc. and perform the work with our own forces. Per California Public Contract Code 4107.7, the subcontractor may be removed when the work performed is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or when the subcontractor is substantially delaying or disrupting the progress of the work. Bond Blacktop has notified Rodgers Construction & Engineering, Inc. of this request, and Rodgers Construction & Engineering has agreed to have their subcontract voided for this project.

Bond Blacktop cites the following examples of Rodgers Construction and Engineering Inc.'s work on the current 2009 ARRA Cape Seal Project for the County of Stanislaus, a project similar in cope to this project:

- Insufficient or inadequate traffic control, creating unsafe conditions.
- Leaving roadway with dig outs not fully paved back to grade.
- Insufficient manpower and equipment to complete work on schedule.
- Paving back digouts in lifts of varying/uneven thickness.
- Asphalt spoils left on side of the road and on private property.

The issues listed above have been discussed with Rodgers Construction by both Bond Blacktop and the County of Stanislaus, and Rodgers Construction has failed to maintain an improved level of quality on any of the issues.

In addition, Rodgers Construction was originally scheduled to complete dig out work on the ARRA 2009 Cape Seal project prior to starting the ARRA Hughson SOI project, but has fallen substantially behind and cannot perform the work on the Hughson project as scheduled.

At the request of the County of Stanislaus, Bond Blacktop has previously inquired about the ability of Rodgers Construction to provide a second crew in order to complete the ARRA Hughson SOI project

prior to the rainy season, and Rodgers has stated that they cannot provide the crew and equipment necessary to run both projects concurrently.

Should you have any questions, or if I can be of any additional assistance, please call me at (510) 441-9981 x301.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Akiyoshi', written in a cursive style.

Scott Akiyoshi
Project Manager
Bond Blacktop, Inc.



P.O. Box 6885 Stockton, CA 95206-6885
Phone 209/464-5780 Fax 209/464-5782

Department of Transportation UDBE/MBE certified

September 16, 2010

Bond Blacktop, Inc.
PO Box 616
Union City, CA 94587

Re: Mutual Contract Termination and Agreement. Contract ARRA Hughson SOI Cape Seal Project
Contract No. 2009-11

Gentlemen,

This letter is to serve notice that the contractor-sub contractor contracted agreement between Bond Blacktop, Inc. and Rodgers Construction & Engineering Co., Inc. for the 2010 Hughson Cape Seal project is no longer to be in effect. This contract dated 8/11/2010 and its termination has been mutually agreed upon by Bond Blacktop, Inc. and Rodgers Construction & Engineering Co., Inc. and is due to the projects contractual time restraints and is effective immediately as of today's date 9/16/2010. As part of this mutual contract termination, both parties to this agreement mutually agree to hold each other harmless and waive any and all legal rights to seek monetary compensation for damages or any other purpose and reason which may exist now or in the future with regards to this contracts termination and its release of contractual obligations. Furthermore, both parties agree to not hold the other liable in any legal proceedings, and promises to cooperate and aid in the defense of the other in the event of legal actions are brought forth by any third party not named as part of this agreement between Bond Blacktop, Inc. and Rodgers Construction & Engineering Co., Inc.

Bond Blacktop, Inc.

Edward Dillan 9/16/10
Print Name Date

President
Title of person signing

Edward Dillan
Signature

Rodgers Construction & Engineering Co., Inc.

Donna F. Rooden 9-16-10
Print Name Date

Secretary-Treasurer
Title of person signing

Donna F. Rooden
Signature

Cc: Stanislaus Department of Public Works



DEPARTMENT OF PUBLIC WORKS

Matt Machado, PE
Director

Laurie Barton, PE
Deputy Director, Engineering/Operations

Diane Haugh
Assistant Director, Business/Finance

Engineering & Operations Division
1716 Morgan Road, Modesto, CA 95358
Phone: 209-525-4130; Fax: 209-525-4140

September 17, 2010

Dan Rodgers
Rodgers Construction & Engineering, Inc.
P.O. Box 6885
Stockton, CA 95206-6885

Subject: ARRA Hughson SOI Cape Seal Project

Re: Subcontractor Substitution Request

Dear Dan,

Per the requirements of Public Contract Code (PCC) Section 4107(a)(9), the County is notifying Rodgers Construction that Bond Blacktop, Inc. has formally submitted a subcontractor substitution request for the subject project. Bond Blacktop, Inc. wishes to exercise its rights per PCC Section 4107, to substitute their subcontractor Rodgers Construction & Engineering, Inc.

Per PCC Section 4107(a)(9), Rodgers Construction has five working days from the date of receipt of this letter to submit written objections to the substitution to the County. Failure to file these written objections constitutes Rodgers Construction's consent to the substitution.

Please contact Chris Brady or myself if you have any further questions regarding this matter.

Sincerely,

Matt Machado, P.E.
Director of Public Works

Cc: Tom Boze, Stanislaus County
Paul Saini, Stanislaus County
Ed Dillion, Bond Blacktop, Inc.