



## Legislation Text

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**File #:** 20-0289, **Version:** 1

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HEARING - Department of Transportation recommending the Board consider the following pertaining to the Bassi Road at Granite Creek Bridge Replacement Project, CIP 77128/36105001, Contract 2777:

- 1) Reject the subcontractor substitution protest filed by Willis Rebar, Inc.; and
- 2) Approve Steelhead Constructors, Inc.'s request for substitution of subcontractor, Willis Rebar, Inc. (Est. Time: 30 Min.)

**FUNDING:** N/A

### **DISCUSSION / BACKGROUND**

California Public Contract Code section 4100 et seq., Subletting and Subcontracting Fair Practices Act, requires bidders on a public works project to list all subcontractors that will be performing work in excess of 0.5% of the total bid or ten thousand dollars (\$10,000), whichever is greater (Public Contract Code § 4104). Once a subcontractor is listed, the prime contractor can only substitute subcontractors with the consent of the awarding authority and only in certain statutorily-enumerated situations. One such situation is when the awarding authority finds that "the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work" (Public Contract Code § 4107(a)(7)).

The Bassi Road at Granite Creek Bridge Replacement Project (Project) was awarded by the Board on March 19, 2019, Item 15, Legistar 19-0276, and Notice to Proceed for the Project was issued for May 13, 2019. There are 120 contract working days for the Project. The Project is currently 73% complete with no working days remaining. All aspects of the Project have been successful except for ongoing schedule impacts by the rebar subcontractor, Willis Rebar, Inc. (WRI). At least two (2) months of delays are attributed to WRI for providing incorrect materials, insufficient crews to meet schedule, and refusal to provide crews to meet schedule. As a result, the prime contractor, Steelhead Constructors, Inc. (SCI) has requested authority to substitute another subcontractor for WRI. Pursuant to Public Contract Code § 4107 and based upon the facts presented below, along with the supporting documents attached hereto, the Department of Transportation (Transportation) is recommending that the Board of Supervisors find that WRI is substantially delaying or disrupting the progress of the work and approve the request for substitution. Notice of this hearing on SCI's request for substitution has been given to WRI in accordance with Public Contract Code § 4107.

SCI and Transportation have made numerous attempts to facilitate performance by WRI. SCI and Transportation have both performed reviews of WRI shop drawings and provided red-lined drawings of missing bar details, incorrect bar details, and bar details of the wrong quantity. In most instances, WRI made orders and delivery of rebar that was fabricated to the initial shop drawings instead of the red-lined drawings, which resulted in delivery of the wrong materials, missing materials, and/or incorrect quantity of materials to the jobsite.

During every stage of the bridge structure's construction from foundation through bridge deck, SCI

and Transportation worked with WRI to mitigate schedule impacts. SCI provided their own workers to place rebar that was missed by WRI or delivered at a later date when WRI crews were not present. Transportation worked with field crews to fabricate or substitute rebar that was delivered in the wrong size, quantity, or detail. SCI has also requested WRI to attend schedule meetings in the field to discuss the schedule of remaining work only to be declined by WRI. The remaining work required by WRI is now on the critical path and WRI continues to refuse to provide crews to meet schedule.

SCI and Transportation have made numerous attempts to pay WRI for materials that have been delivered to the Project site, but not yet installed (materials on hand), in accordance with the Contract. WRI did not submit the correct payment forms supplied by Transportation and in some cases did not sign the payment form submittal that was filled out by SCI for any of the materials on hand. SCI and Transportation have made weekly attempts to contact WRI on cell, office phones, and via email to discuss payments and schedule. WRI has not picked up the phone calls or responded to email, and their voicemail has been full so that no messages concerning the matter could be recorded.

The subcontract amount between SCI and WRI for WRI's portion of the work on the Project is \$149,637.94. Early in the Project schedule on July 3, 2019, WRI emailed a joint check request to SCI with a Joint Check Agreement and Guarantee (Attachment B) between WRI and their rebar supplier, Farwest Steel Reinforcing Company (Farwest). With the exception of the first check of \$11,515.34 paid to WRI for work performed through June 30, 2019, all remaining checks totaling \$79,528.43 have been paid to WRI by SCI as a joint check with all of the money paid to Farwest for materials received. Every payment required a conditional waiver and lien release signed by WRI and Farwest for the corresponding portions of materials paid (Payments and lien releases in Attachment C). The balance of all work performed by WRI to date has been paid in full by Transportation to SCI on Pay Estimate 7 for work performed through November 20, 2019 (Attachment D). Transportation also attempted to pay for the final materials delivered to the Project, for approach slabs and type 80 modified concrete bridge barrier rail but not installed, on Pay Estimate 8 for work performed through December 20, 2019. However, WRI did not sign the request for payment of materials on hand form provided by SCI and therefore could not be paid.

On two separate occasions, WRI failed to submit two (2) months of weekly certified payroll, required by Contract and Labor Code Section 1776, to the Department of Industrial Relations (DIR), the Prime Contractor, and Transportation. All certified payroll for the months of August and September 2019 were submitted to the DIR on October 21, 2019. All certified payroll for October and November 2019 were submitted to the DIR on December 6, 2019 (Attachment E). In accordance with Labor Code Section 1775, SCI was forced to hold October and November payments until the certified payroll was submitted. Once submitted, SCI processed the October 20, 2019 payment. On January 17, 2020, further information was received via email from the Ironworkers Union that fringe benefits, required by Labor Code Section 1771, and part of the prevailing wage rates reported on the certified payroll, have not actually been paid to the Ironworkers Union since September 2019 (Attachment F). In accordance with California Labor Code 1775, SCI could be held responsible for the payment of the wages and penalties unless, "Upon becoming aware of the failure of the subcontractor to pay workers the specified prevailing rate of wages, the prime contractor shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the subcontractor for work performed." SCI now has a withhold of \$15,502.00 on the November 20, 2019 payment until the certified payroll and fringe benefits payment issues are resolved with the DIR and the Labor Union. Transportation will also file a report with the Labor Commissioner through the

DIR for investigation. SCI has made payment to WRI via joint check for all work completed by WRI to date, except for \$5,607.67 in retention and the additional withhold of \$15,502.00 for certified payroll and fringe benefits issues. The subcontract (Attachment G) includes the clauses required by Labor Code Section 1775 for the payment withholds (Attachment H). There is \$41,402.17 of subcontract work left to be performed on the Project by WRI, which is on the Project's critical path. On November 22, 2019, SCI received an email from WRI that they would not perform any further work on the Project until they are paid in full for the work performed to date.

On November 26, 2019, Transportation received a letter from SCI requesting substitution of WRI due to WRI's inability to meet schedule (Attachment I). Subject to Public Contract Code Section 4107(7), a subcontractor substitution for delaying or disrupting the progress of the work is warranted. In accordance with Public Contract Code 4107(9), a letter was sent to WRI notifying them of the request for substitution (Attachment J). In accordance with this section, WRI had five (5) working days to respond. During that time period, SCI and WRI exchanged written correspondence regarding payments and the substitution. SCI invited WRI to attend a field schedule meeting via email to discuss the substitution and impacts to the schedule to which WRI declined (Attachment K). On December 5, 2019, response was received from WRI within the allotted time of their protest to the substitution (Attachment L). WRI stated that they could not perform their work due to non-payment for past work and inability to make payroll. WRI also stated that they were prepared to continue work as soon as they were compensated for work completed. Once payment to WRI was confirmed by SCI, Transportation sent a follow-up letter to WRI on December 30, 2019 via certified mail and email (Attachment M). The subject of the letter was payments, performance, schedule, and liquidated damages. No email, written, or verbal responses have been received from WRI. Transportation has also made weekly attempts to contact WRI via cell and office phone since December 2, 2019.

Given the above summary and that WRI has made themselves unavailable to discuss payments and schedule, it is in the Project's best interest to substitute WRI to mitigate further schedule impacts and complete the critical path items of work. A partial chronologic timeline of schedule impacts, payments, certified payroll submittals, and substitution correspondence is included (Attachment N).

## **ALTERNATIVES**

The Board could choose to approve the protest of substitution by WRI. By approval of the protest, the substitution requested by SCI will not be authorized. The Project will continue to suffer from schedule impacts and increased costs.

## **PRIOR BOARD ACTION**

The Board authorized the advertisement for bids for this Project on January 29, 2019, Item 22, Legistar 19-0017.

## **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel has reviewed the Department's request to substitute the subcontractor.

## **CAO RECOMMENDATION / COMMENTS**

It is recommended that the Board approve this item.

## **FINANCIAL IMPACT**

There is no financial impact or change to net County cost associated with this item. The Board will not obligate the County with the current requested action.

**CLERK OF THE BOARD FOLLOW UP ACTIONS**

N/A

**TRANSPORTATION FOLLOW UP ACTIONS**

Once approved by the Board, Transportation will authorize the substitution of WRI in writing to SCI.

**STRATEGIC PLAN COMPONENT**

Infrastructure

**CONTACT**

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