



## Legislation Details (With Text)

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**Title:** Approve a substitution of a replacement subcontractor, Total Concrete Services for Fresno Fire Station No. 18 (Council District 1)  
**Sponsors:** Public Works Department  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. 21-516 Contractor's Request for Substitution Letter

Date	Ver.	Action By	Action	Result
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## REPORT TO THE CITY COUNCIL

**April 22, 2021**

**FROM:** SCOTT L. MOZIER, PE, Director  
Public Works Department

**THROUGH:** WILLIAM C. HERR, Assistant Director  
Public Works Department, Facilities and Construction Management Divisions

**BY:** KARL LENHOF, Chief Engineering Inspector  
Public Works Department, Construction Management Division

## SUBJECT

Approve a substitution of a replacement subcontractor, Total Concrete Services for Fresno Fire Station No. 18 (Council District 1)

## RECOMMENDATION

It is recommended that the Council approve the request from Klassen Corporation (Klassen), to substitute Total Concrete Services (Total Concrete) and utilize Celtic Construction, Inc. (Celtic Concrete) for the cast in-place concrete portion of this project. Substituting Celtic Construction, Inc. will not result in an increase to the cost of the project.

## EXECUTIVE SUMMARY

Klassen, the General Contractor who was awarded the referenced project, has requested to substitute Total Concrete Services, who was previously substituted for the listed subcontractor, Todd Companies in the bid documents as performing the cast in-place concrete portion of the project. In accordance with the bid documents, Klassen listed Todd Companies for the cast in-place concrete portion of the project because the work exceeds one-half of one percent of the total contract amount. On December 3, 2020, the City Council approved Klassen's request to utilize Total Concrete Services, Inc. to perform the cast in place concrete portion of the subject project, in place of JT2 Inc. Todd Companies.

Klassen notified the City by letter dated February 17, 2021, that their replacement Subcontractor, Total Concrete, after having a reasonable opportunity to do so has failed or refused to perform their subcontract. Klassen is asking that they be allowed to use Celtic Concrete to perform the cast in-place concrete portion. This action requires Council approval because Public Contract Code section 4107 requires consent of the awarding authority to approve a request by a prime contractor for a substitution of a subcontractor.

## **BACKGROUND**

On November 14, 2019, a contract was awarded in the amount of \$6,260,000 to Klassen, for the Fresno Fire Station No. 18 Project; the Notice to Proceed was issued with a start date of February 18, 2020.

In the original proposal, Todd Companies was listed as the subcontractor for the cast in-place concrete portion of the contract. On October 1, 2020, Klassen provided the City a written request to substitute the listed Subcontractor, since the listed Subcontractor has refused to perform its subcontract under Public Contract Code section 4107(a)(1). On December 3, 2020, the City Council approved Klassen's request to utilize Total Concrete Services, Inc. to perform the cast in place concrete portion of the subject project, in place of JT2 Inc. Todd Companies. On February 17, 2021, Klassen provided the City a written request to substitute the replacement Subcontractor, since that subcontractor failed or refused to perform its subcontract under Public Contract Code section 4107(a)(3).

In accordance with section 4107 of the Public Contract Code, a Prime Contractor may substitute a listed Subcontractor, with the consent of the awarding authority, when the listed subcontractor has refused to perform his or her subcontract as set forth in section 4107.

The Subletting and Subcontracting Fair Practice Act requires the Prime Contractor to secure the permission of the awarding agency before substituting a non-listed subcontractor for a listed subcontractor in order to protect the public and subcontractors from bid shopping and bid peddling. (*Southern California Acoustics Co., Inc. v. C.V. Holder, Inc.* (1969), 71 Cal.2d 719,726)

Klassen has requested that they be allowed to substitute Celtic Concrete to perform the cast in-place concrete portion of the contract in place of Total Concrete by letter dated February 17, 2021. Section 4107 of the Public Contract Code allows the Prime Contractor to substitute listed Subcontractors with prior consent from the awarding authority.

In accordance with provisions of the Public Contract Code, the City notified Total Concrete, at its last known address, of the proposed substitution by OnTrac shipment on February 17, 2021, which was delivered and received by Josh Allen, an agent for Total Concrete on February 23, 2021. An

electronic signature was utilized by the OnTrac delivery agent due to COVID 19 restrictions.

The City Attorney's Office finds the proposed substitution of subcontractor to be legal and proper if Council consents to the substitution. In accordance with section 4107 the failure to file these written objections within five working days of receipt of that notification ending at 5 p.m. on March 2, 2021, constitutes the listed Subcontractor's consent to the substitution. The City has not received an objection in accordance with Public Contract Code 4107.

The replacement of the Subcontractor for the cast in-place concrete portion of the contract will not increase the cost of the project.

There is not a Disadvantaged Business Enterprise goal in this project.

## **ENVIRONMENTAL FINDINGS**

This project was previously found to be categorically exempt based on Class 32 Section 15332 of the CEQA Guidelines. No substantial changes to the project are being made as this is a substitution of a contractor to perform work already included in the project's scope and contemplated in the categorical exemption.

## **LOCAL PREFERENCE**

Local preference was not utilized in the prior award as the apparent second low bid was over 5% higher than the lowest responsive and responsible bidder. The current substitution does not change the amount of the cost of the project.

## **FISCAL IMPACT**

There will be no impact to the General Fund or the project budget by this substitution.

Attachment:  
Contractor's Request for Substitution Letter