

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

251



**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
September 16, 2010

**SUBJECT:** Palm Desert Sheriff Station – Subcontractor Substitution Request by ASR Constructors

**RECOMMENDED MOTION:** That the Board of Supervisors approve the substitution of Franklin Mechanical Systems, Inc., in place of Olympic Air as proposed by ASR Constructors, Inc., upon the recommendation of the Economic Development Agency (EDA) after a hearing pursuant to Resolution No. 2010-097.

**BACKGROUND:** On April 5, 2010, EDA received a subcontractor substitution request letter from ASR Constructors, Inc., to request the substitution of the Heating, Ventilation, and Air Conditioning (HVAC) subcontractor, Olympic Air. ASR Constructors is the general contractor for the Palm Desert Sheriff Station. The basis of this request, according to ASR Constructors, was pursuant to Public Contract Code 4107 (a); (2), (3), and (7), failure to pay your employees is evidence that it is insolvent, breach of contract, delay, and disruption of the project. EDA notified Olympic Air of this request.

(Continued)

Robert Field  
Assistant County Executive Officer/EDA

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

**COMPANION ITEM ON BOARD OF DIRECTORS AGENDA:** No

<b>SOURCE OF FUNDS:</b> Riverside County Palm Desert Finance Authority Bond Proceeds	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE  
BY Jennifer L. Sargent

**County Executive Office Signature** Jennifer L. Sargent

FORM APPROVED COUNTY COUNSEL  
BY: MARSHAL VICTOR  
DATE: 9-13-10

Departmental Concurrence

Dep't Recomm.:  Consent  Policy

Per Exec. Ofc.:  Consent  Policy

3.27

**BACKGROUND:** (Continued)

On April 13, 2010, EDA received a written objection from Olympic Air to the substitution requested by ASR Constructors.

When objections to request for substitutions are filed, Public Contract Code 4107, requires a hearing be conducted by the awarding authority, or a designated officer, to determine whether consent to such substitution is appropriate. In accordance with Public Contract Code 4107 and 4114, a hearing was scheduled to hear the matter under Resolution No. 2010-097, which delegates the authority to the Assistant County Executive Officer/EDA (or designee Assistant Director) to hold such hearings.

EDA conducted a hearing with both ASR Constructors and Olympic Air on July 28, 2010. Based on all the evidence and testimony provided by both parties, the Agency determined the following:

1. ASR Constructors contended that Olympic Air's management and field personnel failed to:
  - a. Meet project schedule dates
  - b. Pay vendors timely
  - c. Provide skilled manpower
  - d. Install their work per plan and industry standards, and
  - e. Make proper payments to the Internal Revenue Service (IRS) for project income
2. The project's construction manager confirmed that Olympic Air was not keeping up with the project schedule, manpower on site lacked adequate skill, and deficient work was found that needed to be reworked or replaced.

Consent to the subcontractor substitution proposed by ASR Constructors was determined to be justified under the Public Contract Code. Pursuant to Public Contract Code Section 4114, the Board of Supervisors may adopt the recommendation by the Agency without further notice or hearing, or may set the matter for a de novo hearing before the Board. Agency staff recommends that the Board of Directors consent to the subcontractor substitution proposed by ASR Constructors.