

**COUNTY OF VENTURA
PUBLIC WORKS AGENCY**

**INFORMATION FOR CONTRACTORS CONCERNING
CHANGES IN LISTED SUBCONTRACTORS**

The **Subletting and Subcontracting Fair Practices Act** contained in Public Contract Code Sections 4100 to 4114 governs all actions concerning the approval of changes in listed subcontractors by public agencies. While the following information is derived from that Act, the Act itself should be referred to when considering what action needs to be taken. *Also included below are opinions of the County Counsel.*

The main provisions of the Act are as follows:

Section 4104 requires the listing of a single subcontractor for each portion of the work which is to be subcontracted and which exceeds 1/2 of 1% of the prime contractor's total bid, or, in the case of road work, including bridges, where the subcontracted work exceeds 1/2 of 1% of the prime contractor's total bid or \$10,000, which ever is greater.

Section 4106 provides that if the prime contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of work, the prime contractor must perform the work.

Section 4107 lists the situations under which a subcontractor may be substituted for the one listed. These include:

1. Listed Subcontractor fails or refuses to execute a written contract.
2. Listed Subcontractor becomes bankrupt or insolvent.
3. Listed Subcontractor fails or refuses to perform the work.
4. Listed Subcontractor fails or refuses to meet bond requirements of the Prime Contractor. See also §4108.
5. Prime Contractor demonstrates to the Agency that the Subcontractor was listed as a result of an inadvertent clerical error, subject to the further provisions of §4107.5.
6. Listed Subcontractor is not properly licensed.
7. The Agency determines that the work being performed by the Subcontractor is substantially unsatisfactory and not in accordance with the plans and specifications, or the subcontractor is substantially delaying or disrupting the progress of work.
8. When the listed subcontractor is ineligible to work on a public works project pursuant to LC § 1777.1 or § 1777.7.
9. When the awarding authority determines that the listed subcontractor is not a responsible contractor.

NOTES

1. *A substitution requiring Agency approval occurs when a prime contractor performs the work identified for a listed subcontractor.*
2. *A substitution requiring Agency approval and a hearing occurs when a listed subcontractor subcontracts the work for which it was listed.*

CHANGES IN LISTED SUBCONTRACTORS (Continued)

Section 4107(a) specifies the procedure for approval of a substitution of Subcontractors, except as provided in Section 4107.5, as follows:

1. The Contractor must make a written request to the Agency indicating the reason for making the change, the name and address of the Listed Subcontractor, that of the substituted Subcontractor and the portion of the work involved.
2. The Agency must notify the Listed Subcontractor of the request for the change and the reason given by the Contractor for the substitution, allowing five working days for the Subcontractor to object in writing.
3. If written objections are received, the Listed Subcontractor must be given five days written notice of the hearing before the Director of Public Works Agency who will decide if the substitution is justified and recommend action to the Board of Supervisors who may act without further notice or set the matter for hearing.

Section 4107(b) provides that the work must not be performed by anyone other than the listed subcontractor without the consent of the Agency.

Section 4107(c) provides that an unlisted subcontractor may be used without approval of the Agency to perform work required by a contract change order.

Section 4107.5 provides the procedure for handling clerical errors in listing subcontractors. To assert the claim of the clerical error in the listing of a subcontractor, the prime contractor must notify the Agency within two days after the bid opening and provide copies of that notice to both the Listed Subcontractor and the Intended Subcontractor. The Listed Subcontractor has six working days after the prime contract bid opening to submit written objection to the Prime Contractors claim of error. The Agency must hold a public hearing, and in the absence of compelling reasons to the contrary, approve the substitution if:

- a. The Prime Contractor, the Listed Subcontractor and the Intended Subcontractor each submit an affidavit that in fact an error was made, or
- b. The Prime Contractor and the Intended Subcontractor each submit affidavits as specified in (a) and the Listed Subcontractor does not file a written objection within six working days.

Section 4108 specifies the responsibility for obtaining and paying for performance bonds by subcontractors if notified of the requirement in advance of bidding.

Section 4109 provides that a subcontractor may be added for a portion of the work in excess of 1/2 of 1% for which no subcontractor was designated only in cases of public emergency or necessity and then only after a Board Hearing and finding of such emergency or necessity.

Section 4110 provides penalties by the Agency for Contractor's violations of up to 10% of the amount of the subcontract involved or Agency may cancel the contract.

Section 4111 provides that violation of this law constitutes grounds for disciplinary action by the Contractor's State License Board.

If you have any questions concerning substitution of subcontractors, please call the PWA project manager.