

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA

IN THE MATTER OF DULY AUTHORIZING)
THE PUBLIC WORKS DIRECTOR AS THE)
HEARING OFFICER PURSUANT TO)
CALIFORNIA PUBLIC CONTRACT CODE §4107)

RESOLUTION NO. 21-201

WHEREAS, the “Subletting and Subcontracting Fair Practices Act” as codified in California Public Contract Code §4100 et seq., is intended to prevent bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements; and

WHEREAS, prime contractors bidding on public works are required to list and submit information on any subcontractors charged with performing an amount in excess of one-half of 1 percent (0.5%) of the prime contractor’s total bid (or in excess of \$10,000 if transportation related work); and

WHEREAS, California Public Contract Code §4107 prohibits the substitution of a listed subcontractor except that the awarding authority, or its duly authorized officer, may, except as otherwise provided for an inadvertent clerical error per §4107.5, consent to the substitution of another person as a subcontractor for the following situations:

- (1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.
- (2) When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.
- (3) When the listed subcontractor fails or refuses to perform his or her subcontract.
- (4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in §4108.
- (5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in §4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.
- (6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

- (7) When the awarding authority, or its duly authorized officer, determines 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.
- (8) When the listed subcontractor is ineligible to work on a public works project pursuant to §1777.1 or §1777.7 of the Labor Code.
- (9) When the awarding authority determines that a listed subcontractor is not a responsible contractor; and

WHEREAS, prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request: and,

WHEREAS, the listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED as follows:

1. That the foregoing recitations are true and correct.
2. That the Santa Barbara County Board of Supervisors duly authorizes the Santa Barbara County Public Works Director, or designee, to act on its behalf to consider and consent to the substitution of subcontractors in accordance with California Public Contract Code §4107.
3. That the Santa Barbara County Board of Supervisors duly authorizes the Santa Barbara County Public Works Director, or designee, to act on its behalf to give notice of requests for substitution of a subcontractor in accordance with California Public Contract Code §4107.
4. That the Santa Barbara County Board of Supervisors duly authorizes the Santa Barbara County Public Works Director, or designee, to act as the duly authorized officer to hold said hearing described above.
5. That the hearing shall be conducted as an administrative hearing and may be limited to only the parties involved. The hearing need not be conducted according to technical rules relating to evidence and witnesses. The administrative hearing officer shall only admit into evidence all relevant information related to the proposed substitution of subcontractors for reasons enumerated in §4107 and

may limit the hearing to two (2) hours. The administrative hearing officer may find, upon a preponderance of the evidence, that the grounds for substitution are founded and allow the prime contractor to substitute subcontractor(s). Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admissions of such evidence over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant or unduly repetitious evidence shall be excluded.

6. The foregoing notwithstanding, a determination that a listed subcontractor is not a responsible contractor as provided in California Public Contract Code §4107(a)(9) shall only be made by the Board of Supervisors. If this determination has previously been made, the administrative hearing officer may make the finding necessary to approve a substitution request.

PASSED AND ADOPTED by the Board of Supervisors, State of California, this 2nd day of November, 2021 by the following vote:

AYES: Supervisors Williams, Hart, Hartmann, Nelson, and Lavagnino

NOES: None

ABSENT: None

ABSTAIN: None

Bob Nelson

Bob Nelson, Chair, Board of Supervisors

Date: 11.2.2021

ATTEST:
MONA MIYASATO
COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: *Shirley MacGuerra*
Deputy

APPROVED AS TO FORM:
RACHEL VAN MULLEM
County Counsel

By: *Bruce*