

VOLUME 5, PART I

CHAPTER 10

SUBCONTRACTOR SUBSTITUTION DURING THE BIDDING PERIOD

INTRODUCTION

This chapter addresses how to handle subcontractor substitution situations that arise *during* the competitive bidding period.

10.1 SUBSTITUTION OF SUBCONTRACTORS DURING THE BIDDING PERIOD

References:

[Public Contract Code, State of California, Section 4100 et seq.](#), **Subletting and Subcontracting Fair Practices Act.**

The University is subject to and follows the requirements of the Subletting and Subcontracting Fair Practices Act (the act):

1. The act prohibits the performance of any work for which a subcontractor was listed by any other person or firm (including the contractor) without the consent of the awarding authority (the University).
2. The act provides for substitution of subcontractors, but limits the situations (grounds) when the awarding authority may consent to a contractor's request to substitute a subcontractor not listed in its bid.
3. The act also establishes procedures for the awarding authority to consent to substitute subcontractors.

The Public Contract Code lists seven grounds for which the University may consent to substitute another entity for a listed subcontractor. Only one of the grounds applies during the bidding process: "When the Prime Contractor demonstrates to the awarding authority, or its duly authorized officer, subject to further provisions set forth in [Public Contract Code, Section 4107.5](#), that the name of the subcontractor was listed as a result of an inadvertent clerical error."

10.1.1 Procedures Applicable to Substitution for Clerical Error

(For substitution requests **not** resulting from clerical error, see [III:1.5.2](#).)

When a substitution request is due to an inadvertent clerical error, resolve the request before awarding the contract. If there is any question regarding a claim of clerical error, send the questions and pertinent background data to the Office of the General Counsel for advice. Then, review the required contractor procedures stated herein with the contractor. (See RD1.6, Flow Chart: Substitution Procedures for Clerical Error.)

In order to assert an effective claim of inadvertent clerical error in the listing of a subcontractor, the contractor must, within two working days after the time of the prime bid opening, give written notice of the claimed error to the University and give copies of that notice to the subcontractor claimed to have been listed in error and the intended subcontractor who had submitted bid to the prime contractor prior to bid opening.

Any listed subcontractor who has been notified of the request to substitute by the contractor is allowed six working days from the time of the prime bid opening within which to submit, to the University and to the prime contractor, written objections to the prime contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file written notice within the six working days is primary evidence of the listed subcontractor's agreement that an inadvertent clerical error was made.

To have the claim of inadvertent clerical error considered by the University, the prime contractor and the intended subcontractor must also, within eight working days from the time of the prime bid opening, submit to the University affidavits (along with such additional evidence as they may wish) affirming that an inadvertent clerical error was in fact made.

Listed Subcontractor Agrees With the Error. If the prime contractor, the listed subcontractor, and the intended subcontractor have submitted timely affidavits, no public hearing is required (see Figures, RD1.6; follow "Case B").

Listed Subcontractor Fails to Make a Written Objection. If timely affidavits are filed by the prime contractor and intended subcontractor, but the listed subcontractor does not submit within six working days written objection to the contractor's claim of inadvertent clerical error, no public hearing is required (see Figures, RD1.6; follow "Case C").

Listed Subcontractor Objects to the Clerical Error. If timely affidavits are filed by the contractor and the intended subcontractor, but the listed subcontractor has, within six working days from the time of the bid opening, submitted to the University and to the contractor written objection to the contractor's claim of inadvertent clerical error, a public hearing must be held. Request a hearing officer to hold a public hearing. (See Figures, RD1.6; follow "Case A").

Public Hearing. To set up a public hearing, request a hearing officer from the Office of the President. Make the request in writing, or if the request is made by telephone, follow up with a written request, and attach a copy of all related correspondence. Send a copy of the request and attachments to General Counsel.

The hearing officer working with General Counsel, the Office of the President, and the Facility gives written notice of the public hearing, by a means that provides proof of receipt, to the last known street address of the listed subcontractor, at least five working days before the date of the scheduled hearing. The hearing officer sends copies of the hearing notice to the contractor, the intended subcontractor, and to General Counsel.

The Facility must consent to the substitution after the public hearing if:

1. The hearing officer determines that an inadvertent clerical error has been made. The determination shall be based on the facts contained in the declarations submitted under penalty of perjury by all three parties and supported by testimony under oath and subject to cross-examination; and
2. The intended subcontractor is acceptable, that is, considered "responsible" (see [II:4.1](#)), by the University and, if applicable, by the University's Representative.

(See [RD2.24](#), Consent to Substitution of Subcontractors.)

10.1.2 Consent Does Not Change the Contract

The Facility should inform the contractor that a consent to substitution or consent to the contractor's performance of the listed work does not entitle the contractor to any increase in the contract sum or an extension of the contract time.

Revision November 5, 2007 (Change No. 07-090-P)



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