

Santa Barbara Metropolitan Transit District
State of California Provisions
For Public Works Projects
Fiscal Year 2011/2012

Public Contract Code Provisions

Subcontractor Listing in Bid—In compliance with Section 4104 of the California Public Contract Code, Bidders shall provide with their bid:

(a) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid.

(b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

Contractor as Subcontractor Violation—In compliance with Section 4105 of the California Public Contract Code, circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him or her to list his or her subcontractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this provision and shall subject that prime contractor to the penalties set forth in Sections 4110 and 4111.

Failure to Specify a Subcontractor—In compliance with Section 4106 of the California Public Contract Code, if a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to penalties named in Section 4111.

Subcontractor Substitution—In compliance with Section 4107 of the California Public Contract Code, a prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that MTD, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of 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, 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 bankrupt or insolvent.
- (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 Section 4108.

- (5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 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 MTD 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 Section 1777.1 or 1777.7 of the Labor Code.
- (9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution MTD shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, MTD shall give notice in writing of at least five working days to the listed subcontractor of a hearing by MTD on the prime contractor's request for substitution.

- (b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of MTD.
- (c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

No Carpet Contractor Subletting—In compliance with Section 4107.2 of the California Public Contract Code, no subcontractor listed by a prime contractor under Section 4104 as furnishing and installing carpeting, shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.

Subcontractor Listing Error—In compliance with Section 4107.5 of the California Public Contract Code, 4107.5, the prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by MTD give written notice to the MTD and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening. Any listed subcontractor who has been notified by the prime contractor in accordance with this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to MTD and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file the written notice within the six working days shall be primary evidence of his or her agreement that an inadvertent clerical error was made. MTD shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, consent to the substitution of the intended subcontractor:

- (a) If (1) the prime contractor, (2) the subcontractor listed in error, and (3) the intended subcontractor each submit an affidavit to MTD along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or

(b) If the affidavits are filed by both the prime contractor and the intended subcontractor within the specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to MTD and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

If the affidavits are filed by both the prime contractor and the intended subcontractor but the listed subcontractor has, within six working days from the time of the prime bid opening, submitted to MTD and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error, MTD shall investigate the claims of the parties and shall hold a public hearing as provided in Section 4107 to determine the validity of those claims. Any determination made 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. MTD may, on its own motion or that of any other party, admit testimony of other contractors, any bid registries or depositories, or any other party in possession of facts which may have a bearing on the decision of MTD.

Subcontractor Bonding Requirements—In compliance with Section 4108 of the California Public Contract Code:

(a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond or bonds if so requested by the prime contractor.

(b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to the prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the prime contractor may reject the bid and make a substitution of another subcontractor subject to Section 4107.

(c)(1) The bond or bonds may be required under this section only if the prime contractor in his or her written or published request for subbids clearly specifies the amount and requirements of the bond or bonds. (2) If the expense of the bond or bonds required under this section is to be borne by the subcontractor, that requirement shall also be specified in the prime contractor's written or published request for subbids. (3) The prime contractor's failure to specify bond requirements, in accordance with this subdivision, in the written or published request for subbids shall preclude the prime contractor from imposing bond requirements under this section.

Subcontracting in Emergency—In compliance with Section 4109 of the California Public Contract Code, subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of MTD setting forth the facts constituting the emergency or necessity.

Public Contract Code Violations—In compliance with Section 4110 of the California Public Contract Code, a prime contractor violating any of the preceding Public Contract Code provisions violates his or her contract and MTD may exercise the option, in its own discretion, of (1) canceling his or her contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.

Contractors State License Board Violation—In compliance with Section 4111 of the California Public Contract Code, violation of the preceding Public Contract Code provisions by a licensee under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code constitutes grounds for disciplinary action by the Contractors State License Board, in addition to the penalties prescribed in Section 4110.

No Defense by Provisions—In compliance with Section 4112 of the California Public Contract Code, the failure on the part of a contractor to comply with the preceding Public Contract Code provisions does not constitute a defense to the contractor in any action brought against the contractor by a subcontractor.

Family Support Obligations—In compliance with Section 7110 of the California Public Contract Code, the Contractor shall recognize and acknowledge the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code. Furthermore, the Contractor shall recognize and acknowledge that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department. Contractor recognition and acknowledgement is signified by its signature upon the Project Agreement.

Retention Rate Limitation—In compliance with Section 7200 of the California Public Contract Code, for any contract for this Project between the Contractor and any Subcontractor, and between a Subcontractor and any Subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between MTD and the Contractor. This requirement shall not apply to the Contractor if a Subcontractor fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the Contractor. This requirement shall not apply to a Subcontractor if a Subcontractor thereunder fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the Subcontractor. No party identified herein shall require any other party to waive any provision of this section. In the event that the Contractor elects to substitute securities in lieu of retentions, the Contractor may withhold from its Subcontractors, who have not elected to substitute securities in lieu of retentions, the amount of retentions that would have otherwise been withheld.

California Labor Code Provisions

Prevailing Wages—In compliance with Section 1771 of the California Labor Code, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Division 2, Part 7, Chapter 1 of the Labor Code, shall be paid to all workers employed on this public work. In compliance with Section 1774 of the California Labor Code, the Contractor and any Subcontractor thereunder shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

Per Diem Wages—In compliance with Section 1773.1 of the California Labor Code, per diem wages shall include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay, apprenticeship or other training programs, worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978, industry advancement and collective bargaining agreements administrative fees, or other similar purposes when the term “per diem wages” is used in these State of California Provisions.

Payroll Records—In compliance with Section 1776 of the California Labor Code:

(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct. (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis: (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request. (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations. (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2) , the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the

contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

Legal Day's Work—In compliance with Section 1810 of the California Labor Code, eight (8) hours constitutes a legal day's work under this Contract.

Workman Hours Limitations—In compliance with Section 1811 of the California Labor Code, the time of service of any workman employed under this Contract is limited and restricted to eight (8) hours in any one calendar day, and forty (40) hours in any one calendar week, except as provided for under Section 1815.

Hours Records—In compliance with Section 1812 of the California Labor Code, the Contractor and every Subcontractor thereunder shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Project. The record shall be kept open at all reasonable hours to the inspection of MTD and the State of California.

Work Hours Violations—In compliance with Section 1813 of the California Labor Code, the Contractor or any Subcontractor shall, as a penalty to MTD, forfeit twenty-five dollars (\$25) for each worker employed in execution of this Contract by the respective Contractor or Subcontractor for each calendar day during which Section 1810 or 1811 are violated.

Overtime Pay—In compliance with Section 1815 of the California Labor Code, notwithstanding the provisions of Sections 1810 to 1813, work performed by employees under this Project in excess of 8 hours per day and 40 hours during any one week, shall be permitted at not less than one and one half (1½) times the basic rate of pay.