

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.8**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Capital Programs and Construction

**BRIEF DESCRIPTION:**

Delegating to the Director of Transportation the Board of Director's authority to hold hearings required by the State law to approve the substitution of listed subcontractors performing work under construction contracts, and authorizing re-delegation by the Director of Transportation to hold such hearings to the director(s) of the SFMTA division(s) responsible for administration of said contract or to such other hearing officer as the Director of Transportation may designate.

**SUMMARY:**

- The California Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100 *et seq.*, provides the legal grounds and procedures that a contractor for a public works (construction) project and the agency that awarded the contract must follow if the contractor seeks to replace (substitute) a subcontractor listed in the contractor's bid. If the listed subcontractor objects to the contractor's request to the agency to approve the substitution, the agency must hold a hearing to determine whether based on the facts alleged by the contractor good cause exists under the Act to approve the substitution of the listed subcontractor.
- Public Contract Code section 4107(a) provides that the hearing required under the Subcontracting Act may be held by the authority that awarded the contract or by its duly authorized officer. If the hearing is held by the Director of Transportation (or his designee), as the SFMTA's duly authorized officer, a contractor's request for substitution may be resolved more quickly than if the Board of Directors held the hearing, thereby avoiding delay to the project and associated costs to the Agency.

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_

July 8, 2013

SECRETARY \_\_\_\_\_

July 8, 2013

**ASSIGNED SFMTAB CALENDAR DATE:** July 16, 2013

**PURPOSE**

Delegating to the Director of Transportation the authority to hold hearings required by State law to consider whether good cause exists to approve a contractor's request to substitute a listed subcontractor, and authorizing re-delegation by the Director of Transportation to hold such hearings to the director(s) of the SFMTA division(s) responsible for administration of said contract or to such other hearing officer as the Director of Transportation may designate.

**GOAL:**

This recommendation would assist in meeting or furthering the following goal and related objectives in the SFMTA Strategic Plan by maintaining project schedules for construction of SFMTA's capital programs:

Goal 2: Make transit, walking, bicycling, taxi, ridesharing & carsharing the preferred means of travel.

Objective 2.2: Improve transit performance.

**DESCRIPTION**

**Background:**

The California Subletting and Subcontracting Fair Practices Act ("Subcontracting Act"), Public Contract Code section 4107, requires the awarding authority of a public works contract or the duly authorized officer of that authority to conduct a hearing to determine if good cause exists to approve a prime contractor's request to substitute a listed subcontractor where the listed subcontractor objects to the prime contractor's request to substitute the subcontractor.

The Subcontracting Act protects subcontractors from unfair practices (commonly referenced as "bid shopping") by contractors where a contractor seeks to renegotiate a subcontractor's bid after award of a public works contract. The Subcontracting Act requires a contractor bidding on a public works project to submit with its bid a list of all subcontractors that will perform work valued at more than one-half of one percent of the value of the contract. The Subcontracting Act requires that the contractor subcontract the work in the trades and values stated in its bid to those subcontractors listed in its bid. A contractor that seeks to replace (substitute) a listed subcontractor with another subcontractor must request the agency's approval. The Subcontracting Act lists nine bases on which a prime contractor may request that a listed subcontractor be substituted. Those bases include a subcontractor's refusal to execute a subcontract, subcontractor's refusal or failure to perform the work according to its subcontract or the project's plans and specifications, subcontractor's delay of the work, or subcontractor's insolvency, bankruptcy, unlicensed, improperly licensed or other non-responsible status, or failure to provide required bonds. The awarding agency may approve the contractor's request if the listed subcontractor does not object. If the subcontractor objects in writing to the substitution, the awarding agency must hold a hearing to determine if the facts alleged by the contractor are correct and if those facts meet any of the legal grounds for substitution set out in the Subcontracting Act.

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If the hearing is held by the Director of Transportation (or his designee), a contractor's request to substitute a listed subcontractor may be quickly resolved, thereby avoiding delay to the project and associated costs of delay to the Agency.

This item also authorizes the Director of Transportation to delegate the authority to hold such hearings to the director(s) of the SFMTA division(s) responsible for administration of said contract or to such other hearing officer as the Director of Transportation may designate.

If the subcontractor to be replaced is a certified Small Business Enterprise, Disadvantaged Business Enterprise or Local Business Enterprise, the substitution will be subject to the appropriate governing regulation (e.g., San Francisco Administrative Code Chapter 14B, 49 CFR Part 26) and must be approved by the SFMTA's Contract Compliance Office.

## **ALTERNATIVES CONSIDERED**

The other alternative is for the SFMTA Board of Directors to hold the hearing to determine if the request for substitution is justified. This alternative has the possibility of impacting a project's construction schedule due to the length of time it would take to schedule a hearing before the Board.

## **FUNDING IMPACT**

There are no funding impacts presented by this action. There will be no additional costs to the SFMTA, whether or not a subcontractor is substituted.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

No other approvals are required to approve this resolution and delegation of authority.

The Contract Compliance Office (CCO) and the City Attorney's Office have reviewed this calendar item.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors delegate to the Director of Transportation the authority to hold hearings required by the California Subletting and Subcontracting Fair Practices Act to consider a contractor's request to substitute a listed subcontractor, and that the Director of Transportation also be authorized to delegate the authority to hold said hearings to the director(s) of the SFMTA division responsible for administration of the prime contract at issue, or to such other hearing officer as the Director of Transportation may designate.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The California Subletting and Subcontracting Fair Practices Act, requires that the agency that awarded a construction contract hold a hearing to determine whether based on the facts alleged and requirements of the Subcontracting Act the Agency may approve a contractor's request to substitute a listed subcontractor, if that listed subcontractor objects to the contractor's request to substitute the subcontractor; and,

WHEREAS, Holding of the hearing by the Director of Transportation (or his designee) will expedite resolution of contractor's request to substitute a listed subcontractor, and thereby avoid delay to the project and associated costs to the Agency; and,

WHEREAS, If the subcontractor is a certified Small Business Enterprise, Disadvantaged Business Enterprise or Local Business Enterprise, the requested substitution will be subject to the appropriate governing regulation (e.g., San Francisco Administrative Code Chapter 14B, 49 CFR Part 26) and must be approved by the SFMTA's Contract Compliance Office; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors delegates authority to the Director of Transportation to hold such hearings as are required under the California Subletting and Subcontracting Fair Practices Act to consider, approve or deny a contractor's request to replace a listed subcontractor on a construction contract; and be it

FURTHER RESOLVED, That the Director of Transportation may further delegate such authority to the Director of that SFMTA Division that is responsible for administration of such contract or to such other hearing officer as the Director of Transportation may designate.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 16, 2013.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency