



November 17, 2015

Honorable Board of Supervisors  
County of Alameda  
1221 Oak Street, Suite 536  
Oakland, CA 94612-4305

Dear Board Members:

**SUBJECT:** ADOPT FINDINGS AND RECOMMENDATIONS BY HEARING OFFICER TO ASSESS PENALTY FOR VIOLATING SECTION 4107(a) OF THE PUBLIC CONTRACT CODE ON ALAMEDA COUNTY PUBLIC WORKS AGENCY PROJECT SPECIFICATION NUMBER 2253, THE INSTALLATION OF PEDESTRIAN RAMPS AT VARIOUS LOCATIONS

**RECOMMENDATION:**

Adopt findings and recommendations by Hearing Officer to assess a \$3,857.11 penalty to Rosas Brothers Construction for violating Section 4107(a) of the Public Contract Code on Public Works Agency Project Specification Number 2253, The Installation of Pedestrian Ramps at Various Locations.

**DISCUSSION/SUMMARY:**

Public Contract Code Section 4107(a) requires a contractor to request the awarding agency's consent before it substitutes a listed subcontractor. Violations of this requirement may lead to penalties, subject to a hearing. The awarding authority may delegate its hearing function to a hearing officer under Public Contract Code Section 4114.

The Alameda County Public Works Agency charged Rosas Brothers Construction, the contractor for the Agency's Pedestrian Ramp Installation Project, with violating Public Contract Code Section 4107(a), because Rosas Brothers Construction failed to seek consent to substitute two listed subcontractors (Bay Line Cutting & Coring and D&S Trucking) on the project known as Specification Number 2253, Installation of Pedestrian Ramps at Various Locations.

On September 15, 2015, the Alameda County Board of Supervisors adopted Resolution No. R-2015-325, which delegated hearing officer authority to the Director of Public Works or his designee as to hearings required under Chapter 4 of the California Public Contract Code.

Arthur Carrera, Principal Civil Engineer, was designated as hearing officer for this matter. He held a hearing on October 6, 2015. Upon review of all testimony and written submissions provided, the Hearing Officer determined that Rosas Brothers Construction failed to follow the requirements in Public Contract Code Section 4107(a).

The Hearing Officer recommends that the County assesses a penalty of \$3,857.11, which is 10% of the unpaid amount of the subcontract work that should have been paid to the listed subcontractors. This recommendation is based on substantial evidence, as reflected in the attached findings. This penalty is authorized by Public Contract Code Section 4110.

**FINANCING:**

There will be no impact on the County General Fund.

Yours truly,



Daniel Woldesenbet, Ph.D., P.E.  
Director of Public Works

DW/AC/rk

Attachment: Hearing Officer: Findings and Recommendations re: Substitution of Subcontractor

cc: Susan S. Muranishi, County Administrator  
Steve Manning, Auditor-Controller  
Donna R. Ziegler, County Counsel

**Findings and Recommendations  
Re: Substitution of Subcontractors**

**In**

**Alameda County Public Works Agency Project  
Specification No. 2253  
Installation of Pedestrian Ramps at Various Locations**

**Arthur G. Carrera, P.E., T.E., Principal Civil Engineer  
Alameda County Public Works Agency, Hearing Officer**

**Hearing Date: October 6, 2015**

**November 4, 2015**

**Introduction:**

This hearing arises from an Alameda County Public Works Agency construction project known as Specification 2253, Installation of Pedestrian Ramps at Various Locations (“the Project”). On April 29, 2014, the County received bids on the Project. Rosas Brothers Construction, (“Contractor” or “Rosas Brothers”) was found to be the lowest responsible bidder and subsequently was awarded the contract. The Contractor listed two subcontractors, Bay Line Cutting and Coring, Inc. to provide saw cutting services, and D & S Trucking to provide trucking services (together, “Listed Subcontractors”) in its proposal for the contract.

It was brought to the attention of the County that the Contractor utilized its own forces to perform certain work that was indicated in the bid proposal to be done by the Listed Subcontractors. An administrative meeting did not resolve the issue.

On September 15, 2015, the Alameda County Board of Supervisors delegated hearing officer authority to the Director of Public Works or his designee as to hearings for non-compliance with the Alameda County Construction Compliance Program and as to hearings required under Chapter 4 of the California Public Contract Code. The undersigned was then designated as hearing officer for this matter.

The subject hearing followed.

**Call to Order:**

The hearing was called to order at or around 9:00 a.m. on Tuesday October 6, 2015, in conference room 118 at 951 Turner Court in Hayward, California.

The following individuals attended the hearing:

Arthur Carrera, Principal Civil Engineer, Alameda County Public Works Agency (Hearing Officer)

Victor M. Rosas, Rosas Brothers Construction

Susan Jones, D & S Trucking

David Lau, Construction Program Manager, Alameda County Public Works Agency

Roel Villacarlos, Contract and Labor Compliance Administrator, Alameda County Public Works Agency

Aarti Kumar, Contract and Labor Compliance, Alameda County Public Works Agency

Greg Hilst, Construction Inspector, Alameda County Public Works Agency

Kathy Lee, Deputy County Counsel, Alameda County

The hearing concluded at or around 10:00 am.

## **Purpose of Hearing:**

As described in the hearing notice dated September 22, 2015, the Alameda County Public Works Agency has charged the Contractor with violating Public Contract Code Section 4107 (a), because the Contractor failed to seek the Agency's consent to substitute the Listed Subcontractors (Bay Line Cutting & Coring and D & S Trucking) on the project known as Specification Number 2253, Installation of Pedestrian Ramps at Various Locations.

The purpose of the hearing was to hear evidence presented from the Alameda County Public Works Agency and the Contractor and to make findings regarding whether a violation of Public Contract Code Section 4107 (a) occurred.

## **Summary of Evidence & Arguments:**

Representing the Alameda County Public Works Agency, Roel Villacarlos, Contract Compliance Officer, presented testimony, argument, and documents relating to, among other things, the contract, work performed by the Contractor and Subcontractors, subcontractor payments, notice of violation, and an administrative meeting regarding non-compliance. Greg Hilst also testified.

Representing one of the listed Subcontractors, Susan Jones, an owner of D & S Trucking, testified that the Contractor never contacted her about using D & S Trucking for the Project and that the Contractor has done this in connection with other contracts as well. Ms. Jones testified that the failure to utilize her services hurts her firm financially. Ms. Jones provided a signed letter attesting to these topics.

Victor Rosas, representing Rosas Brothers Construction, argued that he did not utilize D & S Trucking because he claims Ms. Jones told Rosas Brothers that D & S Trucking did not have trucks available when needed. Nevertheless, Mr. Rosas also testified that he did not contact the Alameda County Public Works Agency to request any substitution of the Listed Subcontractors. Mr. Rosas provided no documentary evidence at the hearing. At Mr. Rosas's request, the undersigned granted leave for Mr. Rosas to provide written evidence after the hearing. Mr. Rosas thereafter provided telephone records purporting to show contact between him and the Listed Subcontractors.

## **Findings and Recommendation:**

Based on the information presented at the hearing by the Alameda County Public Works Agency, the Contractor, D & S Trucking, and all documentary evidence proffered, I hereby make the following findings and recommendation as the duly-appointed Hearing Officer:

- 1) On or around April 29, 2014, the Contractor submitted a bid proposal to the County of Alameda for Specification Number 2253, Installation of Pedestrian Ramps at Various Locations. In the bid proposal, the Contractor listed Bay Line Cutting & Coring and D & S Trucking as Subcontractors to be used for this construction work.

- 2) The Contractor was awarded the construction contract for the Project in the amount of \$218,795 by the Alameda County Board of Supervisors on or around May 27, 2014.
- 3) Of the contract amount awarded to the Contractor, subcontract work in the amount of \$11,000 was allocated to D & S Trucking and \$33,000 was allocated to Bay Line Cutting & Coring.
- 4) The Contractor did not utilize the listed subcontractors at the rate specified in the construction contract. Instead, as reflected in documents related to project close-out, \$0 of the \$11,000 allocated was paid to D & S Trucking, and \$5,428.90 of the \$33,000 allocated was paid to Bay Line Cutting & Coring. The Contractor did not dispute these amounts.
- 5) The Contractor did not request proper consent for substitution:
  - a. At the hearing, the Alameda County Public Works Agency presented oral and documentary evidence of the contract award, subcontracting amounts, and subcontractor payments made. The Alameda County Public Works Agency presented evidence showing that Rosas Brothers Construction did not request consent before it self-performed. The Alameda County Public Works Agency presented evidence showing that Rosas Brothers was informed that it must provide notice and request such consent.
  - b. At the hearing, the Contractor specifically admitted that:
    - i. It did not request consent for substitution of Bay Line Cutting and Coring or D & S Trucking.
    - ii. It knew that it was required to request consent for such substitution, because this requirement was discussed at the pre-construction meeting.
    - iii. The failure to notify the Alameda County Public Works Agency regarding its wish to self-perform was “our fault.”
- 6) If the Contractor had properly sought consent for substitution, any disputes as to subcontractor availability could have been timely resolved through Public Contract Code Section 4107(a).
- 7) Based upon the evidence presented at the hearing, I hereby find that the Contractor failed to follow the requirements in Public Contract Code Section 4107 (a) in its substitution of the Listed Subcontractors for this Project;
  - a. The Contractor admitted that it did not request approval for substitution as required under both Section 4107 (a) and the terms of its contract.

b. The Contractor substituted the Listed Subcontractors without approval from the awarding authority, a violation of Section 4107 (a).

8) Based on the totality of evidence submitted, including the Contractor's acceptance of responsibility for its failure to provide notice, it is recommended that, pursuant to Public Contract Code Section 4110, the Contractor be assessed a penalty of 10% of the amount of the unpaid subcontract work that should have been granted to the Listed Subcontractors, in the amount of \$3857.11.



Arthur G. Carrera, P.E., T.E.  
Hearing Officer

11/5/15  
Date: