

**LAKE BERRYESSA RESORT IMPROVEMENT DISTRICT
Board Agenda Letter**

TO: Members of the Governing Board
FROM: Phillip Miller - District Engineer
Lake Berryessa Resort Improvement District
REPORT BY: Annamaria Martinez, Assistant Engineer - 259-8378
SUBJECT: Delegating Authority to Approve Substitution of Subcontractors to the District Engineer

RECOMMENDATION

District Engineer requests adoption of a resolution delegating authority to the District Engineer to approve requests for substitution of subcontractors where such request is in compliance with Public Contract Code Sections 4100 et seq. and the subcontractor being replaced consents or fails to object to the substitution after receiving notice.

EXECUTIVE SUMMARY

California Public Contract Code (PCC) Section 4104 requires general contractors to designate all subcontractors who will perform more than one-half of one percent (1/2 %) of the contractor's total bid. Designated subcontractors in the bid can only be substituted for one of the reasons and by the process stated in PCC section 4107. PCC 4107 allows the District to delegate the authority to approve substitutions to appropriate staff.

Delegation of authority to the District Engineer to manage requests for substitution of contractors will allow for efficiencies in the management of public works projects at the Lake Berryessa Resort Improvement District. This delegation will also prevent what could be costly delays during the course of a construction project.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

Although infrequent, a general contractor will occasionally request the Lake Berryessa Resort Improvement District (District) to approve the substitution of a subcontractor listed in the general contractor's bid. Prior to the approval of a general contractor's request for substitution, the District must give notice in writing to the listed subcontractor that it has received the general contractor's request to substitute and the reason for the general contractor's request. The subcontractor then has five working days in which to submit to the District written objections to the substitution. Public Contract Code Sections 4107 and 4107.5 require that a hearing be held if a listed subcontractor that is proposed to be removed submits an objection. Where a subcontractor fails to respond within the five working days, Public Contract Code Section 4107(a) finds such failure to act constitutes consent to the substitution.

While the District may in the future look at examples from other agencies to determine the best process to address substitutions where the subcontractor objects to a substitution and may subsequently bring an item to the board to request authority to hold hearings triggered by such objections, the current item before the Board merely requests that the Board expressly delegate the authority to approve substitutions where the subcontractor has consented to the substitution either through (1) a letter from the subcontractor expressly consenting to the substitution, or (2) the subcontractor's failure to object to the requested substitution within the time frame setup by PCC 4107 (a). Delegating this authority is important to ensure these matters are processed in a timely manner to avoid what could be costly delays.

Adoption of the attached resolution will formally authorize the District Engineer, or designee, to handle these requests by determining compliance with Public Contract Code 4100 et seq., approving the requests if the subcontractor consents or does not submit a timely object upon receiving notice of the request for substitution, and determining that the subcontractor being named to replace the substituted subcontractor is responsible.

The Board of Supervisors granted the same authority to the Director of Public Works during a Board meeting on March 13, 2012.

SUPPORTING DOCUMENTS

A . Resolution

District Engineer Recommendation: Approve

Reviewed By: Helene Franchi