



**SAN BERNARDINO COUNTY
POLICY MANUAL**

No. 11-14

PAGE 1 OF 2

EFFECTIVE DATE January 14, 2025

**POLICY: SUBCONTRACTOR SUBSTITUTION
HEARINGS**

APPROVED

Chair, Board of Supervisors

POLICY STATEMENT AND PURPOSE

It is the policy of the Board of Supervisors to utilize a Hearing Officer for subcontractor substitution hearings required under the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 *et seq.*). Upon completion of the hearing, the Hearing Officer's findings and decision will be presented to the Awarding Authority, if the Awarding Authority was not the Hearing Officer.

DEPARTMENTS AFFECTED

All County Departments, Board-governed Districts and the San Bernardino County Flood Control District.

DEFINITIONS

Awarding Authority – Awarding Authority refers to the County body or official that signed and approved, or will sign and approve, the construction contract. The Awarding Authority may be the Board of Supervisors, the Chief Executive Officer (CEO) or the Purchasing Agent as authorized by San Bernardino County Code sections 14.0102 and 14.0114.

County – San Bernardino County.

Department – Department refers to the County Department or District that recommended to the Awarding Authority the award of the construction contract and is managing the construction contract.

District(s) - The Big Bear Valley Recreation and Park District, Bloomington Recreation and Park District, Board-governed County Service Areas, San Bernardino County Fire Protection District, and San Bernardino County Flood Control District.

Duly Authorized Officer(s) - The Chief Executive Officer (CEO), Director of the Project and Facilities Management Department, Fire Chief, Director of the Department of Public Works, Director of the San Bernardino County Flood Control District, and the Chief Flood Control Engineer.

Hearing Officer – The individual or body identified in this policy that presides over hearings required by Public Contract Code section 4100 *et seq.*

POLICY AMPLIFICATION

1. All code sections referenced in this policy incorporate the current versions of the code sections and any future amended versions of the referenced code sections.
2. By Resolution No. _____, the Board of Supervisors has delegated to each Duly Authorized Officer the authority to evaluate requests for substitution of subcontractors on County and District public works construction projects, and approve such requests, upon consultation with County Counsel, if the following conditions, as may be applicable, are met:
 - a. The Duly Authorized Officer determines that the prime contractor's request to substitute a subcontractor is authorized pursuant to Public Contract Code sections 4107(a), 4107(b) or 4107.5, or Labor Code section 1771.1.
 - b. The subcontractor either:
 - i. Is provided written notice in accordance with Public Contract Code sections 4107(a) or 4107.5, as applicable, and consents to the substitution or fails to object to the notice within the time provided by the applicable Public Contract Code section; or

- ii. Desires to voluntarily assign or transfer the subcontract pursuant to Public Contract Code section 4107(b).
 - c. The listed subcontractor does not submit an objection to the substitution within the time provided by the applicable Public Contract Code section that would trigger a hearing on the substitution request.
 - d. The Duly Authorized Officer determines that the requirements of Public Contract Code section 4100 *et seq.* for substitution of subcontractors have been met.
3. All hearing procedures will comply with the requirements of Public Contract Code section 4100 *et seq.*
4. Upon receipt of an objection to the request for a subcontractor substitution, the Department will contact, consult, and coordinate with County Counsel.
5. Upon receipt of a timely objection to the request for the substitution of a subcontractor, Department staff will contact all of the concerned parties to schedule a hearing in front of a Hearing Officer.
6. If the Awarding Authority for the construction contract is the Board of Supervisors, the Duly Authorized Officer that is responsible for the public works construction project, at his/her sole discretion, can preside over the hearing as the Hearing Officer, can designate another County or District employee to preside over the hearing as the Hearing Officer, or can request the parties stipulate to the appointment of a non-County/District employee as the Hearing Officer.
7. If the Awarding Authority for the construction contract is the CEO, then at the CEO's sole discretion, the CEO can preside over the hearing as the Hearing Officer, the CEO can designate another County or District employee to preside over the hearing as the Hearing Officer, or the CEO can request the parties stipulate to the appointment of a non-County/District employee as the Hearing Officer.
8. If the Awarding Authority for the construction contract is the Purchasing Agent, then at the Purchasing Agent's sole discretion, the Purchasing Agent can preside over the hearing as the Hearing Officer, the Purchasing Agent can designate another County or District employee to preside over the hearing as the Hearing Officer, or the Purchasing Agent can request the parties stipulate to the appointment of a non-County/District employee as the Hearing Officer.
9. If the Hearing Officer is not the Awarding Authority, the Hearing Officer's findings and decision will be presented to the Board of Supervisors/Awarding Authority for consideration and adoption. All decisions of the Board of Supervisors/Awarding Authority are final.

LEAD DEPARTMENT

Project and Facilities Management Department in consultation with County Administrative Office

APPROVAL HISTORY

Adopted March 20, 2018 (Item No. 67)

Amended January 14, 2025 (Item No. XX)

REVIEW DATES

January 2030