



## Legislation Details (With Text)

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**On agenda:** 11/19/2015    **Final action:** 11/19/2015  
**Title:** Approve a substitution of a listed subcontractor, Penguin Engineering for Emergency Generator Upgrade at City Hall Project - Project ID SC00003 (Council District 3)  
**Sponsors:** Public Works Department  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. 15-1018 Request for Substitution

Date	Ver.	Action By	Action	Result
11/19/2015	1	City Council	approved	Pass

## REPORT TO THE CITY COUNCIL

**November 19, 2015**

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Public Works Department

**THROUGH:** ROBERT N. ANDERSEN, PE, Assistant Director  
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Public Works Department, Construction Management Division

**BY:** BILL HERR, Assistant Construction Manager  
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## SUBJECT

Approve a substitution of a listed subcontractor, Penguin Engineering for Emergency Generator Upgrade at City Hall Project - Project ID SC00003 (Council District 3)

## RECOMMENDATION

It is recommended that the City Council approve the request from R&H Industries dba Best Electric (Best Electric) to substitute Penguin Engineering and utilize SJL Plumbing & Piping, Inc. for plumbing and fuel tank installation for the Emergency Generator Upgrade at City Hall located in District 3.

## EXECUTIVE SUMMARY

Best Electric, the General Contractor who was awarded the referenced project has requested to substitute Penguin Engineering, who is listed in the bid documents as the plumbing and fuel tank subcontractor. In accordance with the bid documents, Best Electric listed Penguin Engineering for the plumbing and fuel tank portion of the project because the work exceeds one-half of one percent of the total contract amount. Best Electric notified the City by letter dated August 26, 2015, that their plumbing and fuel tank subcontractor Penguin Engineering fails or refuses to execute a written contract. Best Electric is requesting to utilize SJL Plumbing & Piping for the plumbing and fuel tank portion of the project. This action requires Council approval because Public Contract Code Section 4107 requires consent of the awarding authority to be request by a prime contractor for a substitution of a subcontractor.

## BACKGROUND

On February 5, 2015, a contract was issued in the amount of \$692,300 to Best Electric for the construction of the Emergency Generator Upgrade at Fresno City Hall; the Notice to Proceed was issued April 20, 2015.

In the original proposal, Penguin Engineering of Costa Mesa, CA was listed as the subcontractor for the plumbing and fuel tank work with the contract. On August 26, 2015, Best Electric provided the City a written request to substitute the listed subcontractor and utilize SJL Plumbing & Piping, Inc. to perform the work, since the listed subcontractor would not execute a contract under Public Contract Code 4107 (a) (1).

In accordance with Section 4107 of the Public Contracts Code, a Prime Contractor may substitute a listed Subcontractor, with the consent of the awarding authority, when the listed subcontractor has refused to execute a written contract

The Subletting and Subcontracting Fair Practice Act requires the Prime Contractor to secure the permission of the awarding agency before substituting a non-listed subcontractor for a listed subcontractor in order to protect the public and subcontractors from bid shopping and bid peddling. (Southern California Acoustics Co., Inc. v. C.V. Holder, Inc. (1969), 71 Cal.2d 719,726.

Best Electric has requested that SJL Plumbing & Piping be allowed to perform the plumbing and fuel tank work in place of Penguin Engineering, by letter dated August 26, 2015. Section 4107 of the Public Contract Code allows the prime contractor to substitute listed subcontractor with prior consent from the awarding authority.

In accordance with provisions of the Public Contract Code, the City has notified Penguin Engineering of the proposed substitution by USPS certified mail which was delivered on September 2, 2015. Penguin Engineering did not timely provide written objections to the City within five working days of receipt of the notification ending at 5:00 pm on September 10, 2015. In accordance with Public Contract Code 4107 the failure to provide timely written objections constitutes the listed subcontractor's consent to the substitution. The City Attorney's Office finds the proposed substitution of subcontractor to be legal and proper if Council consents to the substitution.

The replacement of the subcontractor for the plumbing and fuel tank portion of the contract will not

increase the cost of the project.

This project does not contain an Underutilized Disadvantaged Business Enterprise requirement.

## **ENVIRONMENTAL FINDINGS**

This is not a “project” for the purposes of CEQA pursuant to CEQA guidelines section 15378(b)(5), as it is an administrative action that will not result in direct or indirect changes in the environment.

## **LOCAL PREFERENCE**

Local Preference was not considered because this action does not include a bid or an award of a City construction contract.

## **FISCAL IMPACT**

There will be no impact to the General Fund or the project budget by this substitution.

Attachment:  
Request for Substitution