



American Subcontractors Association, Inc.

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ASA Supports Due Process for Subcontractors in Letter to California Supreme Court

ALEXANDRIA, Va. — In April 2007, the American Subcontractors Association (ASA) asked the California Supreme Court to uphold the right of construction subcontractors that have worked on state projects to the due process of the law.

“Subcontractors everywhere in this country depend on our courts to recognize the fundamental right of due process,” said 2006-07 ASA President Stephen Rohrbach, CPC, president of F. A. Rohrbach Inc., Allentown, Pa. “ASA believes California’s subcontractors should be entitled to their full rights and any erosion of those rights sets a dangerous precedent.”

In *Amelco Industries., et. al. v. Automated Switching and Controls Inc.*, a lower court of appeal ruled that Automated, a subcontractor for communications equipment, could not litigate issues it did not raise at a 1995 administrative hearing. Prior to the hearing, Automated had been removed from a San Francisco Bay Area Rapid Transit District project and subsequently filed suit against the project’s general contractor.

California’s Subletting and Subcontracting Fair Practices Act (§ 4100, *et. seq.*) requires the prime contractor on a California public works project to include in its bid package, or “list,” the name of each subcontractor that will perform work for the prime contractor in an amount in excess of one-half of 1 percent of the prime contractor’s total bid.

In order to prevent illegal substitution of a listed subcontractor, the subcontractor must be given notice in writing and an opportunity to object to removal from the project in an administrative hearing. According to the aforementioned law, an “awarding authority shall investigate the claims of the parties and shall hold a public hearing as provided in Section 4107 to determine the validity of those claims.” Any substitution or removal of the subcontractor is the decision of the awarding authority and “shall be based on the facts contained in the declarations submitted” during such a hearing.

In its letter to the Supreme Court, ASA argues that California subcontractors are entitled to a full court hearing of contractual issues, which was denied in this case. ASA also argues that the lower court decision ignores the fact that substitution hearings are limited in nature, is in conflict with a previous court decision, and demonstrates the need for the Supreme Court to clarify

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subcontractor due process rights to a court hearing after an administrative substitution hearing to prevent denial of full due process to subcontractors in the state. In its letter, ASA argues:

“The decision in this case appears to be in direct contravention of a more recently published decision, *Kemp Bros. Construction v. Titan Electric Corporation* (2007), 146 Cal. App. 4th 1474, where the Fourth District Court of Appeals recognized that the Subcontractor Fair Practices Act Substitution hearing is only to determine whether there are statutory grounds for substitution, not whether a party breached the contract. *Kemp Bros.* emphasized the due process considerations that are denied when the Substitution hearing is deemed by collaterally estoppel to preclude subsequent litigation which occurred in this case. Accordingly the petition and this amicus request have been filed to assure full due process for subcontractors on California Public Works projects.”

ASA’s involvement in this case was made possible by generous contributions of subcontractors and suppliers across the country to ASA’s Subcontractors Legal Defense Fund (SLDF). The SLDF is funded entirely by voluntary contributions, and is earmarked for cases in which ASA determines that important legal precedents affecting subcontractor rights are at stake.

For more information, contact ASA Senior Director and Counsel, Government and Industry Relations, Bill Isokait at (703) 684-3450, Ext. 1311, or bisokait@asa-hq.com. Or, visit ASA’s Web site at www.asaonline.com and click on “Subcontractor Advocacy.”

Founded in 1966, ASA amplifies the voice of, and leads, trade contractors to improve the business environment for the construction industry and to serve as a steward for the community. ASA’s vision is to be the united voice dedicated to improving the business environment in the construction industry. The ideals and beliefs of ASA are ethical and equitable business practices, quality construction, a safe and healthy work environment, and integrity and membership diversity.

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