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So, Is There A Deal? ... Court of Appeal Rules That Subcontractor Which Initially Was Awarded Subcontract As Part Of A Large Public Improvements Project Was Not Entitled To Damages When The Prime Contractor Decided To Use A Different Subcontractor

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A key part of California public contracts law is the "Subletting and Subcontracting Fair Practices Act," *see* § 4100 of the Public Contract Code. The Subletting and Subcontracting Practices Act requires the bidding prime contractor to list in its bid each subcontractor that will perform work in an amount in excess of one-half of one percent of the prime contractor's total bid and further sets forth a process through which substitutions may be made.

In Golden State Boring & Pipejacking, Inc. v. Astaldi Construction Corp., et al. 2025 Cal.App.LRXIS 249 ("Golden State case") the Fourth Appellate District of the California Court of Appeal, Division Three, ruled that the reach of the Subletting and Subcontracting Practices Act is limited to situations where the prime contractor includes a subcontractor in its bid having in excess of one-half of one percent of the prime contractor's total bid and later engages in a substitution. In the Golden State case, a large joint venture known as "OC 405" (a joint venture which included OHLA USA, Inc.), bid on improvements to Interstate 405 in California. In 2016, OC 405 submitted its bid for the Project to the Orange County Transportation Authority, and was awarded a large design build contract which exceeded \$1.217 billion. As part of that bid, Golden State Boring & Pipejacking, Inc. ("Golden State") provided a bid and received an email from OC 405 congratulating Golden State on having been awarded a subcontract for the project. However, there were disagreements between OC 405 and Golden State over Scope of Work and the parties never entered into a written subcontract. As a result, OC 405 contracted with a different subcontractor.

Thereafter, Golden State filed a Complaint alleging lost benefit of the bargain damages based upon the Subletting and Subcontracting Practices Act. The Trial Court granted Summary Judgment in December 2022. The Trial Court held that Golden State's situation did not fall within the parameters of case law interpreting the subject Subletting and Subcontracting Practices Act. On appeal, the Court of Appeal affirmed the trial court's ruling. In its opinion, the Court of Appeal held that, where a subcontractor had a portion of the work which was less than one-half of one percent, the Subletting and Subcontracting Practices Act would not apply finding that it would be unduly burdensome to require the prime contractor to submit and review substitution requests for every subcontract, regardless of the value or size of the work.

The Golden State case provides a clear line as to when the Subletting and Subcontracting Practices Act applies.

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