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RCA of Southern California Email Update

2009 PROJECT REROOF COMPLETE!!
March 24, 2009 MEMBERSHIP MTG. – REGISTER NOW!
CHRISTMAS PARTY PICTURES AVAILABLE
SUBSTITUTION IN PUBLIC WORKS PROJECTS

2009 PROJECT RE ROOF COMPLETE

Message from Project Coordinator, Martha Richter

Project Reroof is 100% complete – everyone was on time, had good attitudes and worked together well – from tear-off to roofing.

All the men were just great. They completed the roof in 3 1/2 hrs – that includes ground clean up!

I thank you all for participating by donating your time and materials, particularly in this tough market.

The ladies at Ashland House are thrilled!

Photos and complete list of all who donated will be forthcoming in the Spring Issue of the RCA newsletter.

BT SHEET METAL	Brad Tetherton Chad Norman Jim Hildebrand
CHAPMAN-COAST	Louie Maravilla Manual Luna Francisco Samono
EBERHARD	Tony Ulloa Jose Gayton
HONEYCUTT	Aaron Jenkins Albino Magana & Crew
LETNER	Gonzale Estrada Guadalupe Estrado

MALARKEY	Andy Pocock
PACIFIC SUPPLY	Dave Coleman
ROOFERS MART	Frederico, Martin & Miguel
SAN MARINO	Bill Bennett Emmett Farmer Daravy Phean
STRUCTURAL	Frank Paour

**MEMBERSHIP MEETING
MARCH 24, 2009
OLD RANCH COUNTRY CLUB**

BACK BY POPULAR DEMAND!

GUEST SPEAKER

KEVIN MONSON, ATTORNEY AT LAW

Kevin Monson, attorney at law is back by popular demand! Mr. Monson has almost 30 years experience in commercial litigation and the representation of small businesses. After working with large law firms for the first eight years of practice, Mr. Monson has been a sole practitioner in Orange County for over 20 years. Throughout his practice, Mr. Monson has represented owners, developers and contractors in construction and building disputes, but he spent most of his time suing insurance companies (which make their money by charging outrageous premiums and then not paying claims). Mr. Monson graduated from the J. Rueben Clarke law school at Brigham Young University.

JOIN US FOR THIS INFORMATIVE EVENT!

VENDOR TABLES ARE ALSO AVAILABE. USE THE REGISTRATION FORM ATTACHED TO SIGN UP OR GO TO OUR WEBSITE
WWW.RCASOCAL.ORG

VIEW YOUR PICTURES!

RCA CHRISTMAS PARTY
DECEMBER 11, 2008 AT OLD RANCH COUNTRY CLUB

The direct link to the album is: www.RCAsoCal.org/events/08xmas

SUBSTITUTION IN PUBLIC WORKS PROJECTS

By Sam K. Abdulaziz
Abdulaziz, Grossbart & Rudman

Kemp Bros. Construction, Inc. (Kemp) was the prime contractor for the Los Angeles Unified School District (District) on two public works projects. Titan Electric Corp. (Titan) was Kemp's electrical subcontractor on both projects. During construction, Kemp petitioned, under Public Contract Code section 4107 to replace Titan with another subcontractor contending that Titan had failed to perform its subcontract, which in turn disrupted the process of the work. Of course, Titan opposed the substitution claiming that it was ready, willing and able to perform the remaining work had Kemp not hired another electrician.

The District granted Kemp's motion for substitution and denied Titan's request for a hearing. Pending the decision, Kemp hired another subcontractor who completed the subcontract work.

Titan then petitioned for a Writ of Administrative Mandate (which is the manner in which one may seek a decision and have the court correct its prior actions). The Superior Court denied Titan's petition. Titan then appealed, contending that section 4107(b) of the Public Contract Code prohibited Kemp from replacing Titan before the District approved the substitution.

The Appellate Court affirmed the decision. It actually upheld Kemp's substitution. The case was affirmed allowing the awarding authority to consent to substituting out the listed subcontractor for a proposed replacement. Typically, consent must occur before the prime contractor permits the replacement to perform any work. However, a deviation from this procedure is valid if the procedure used actually complies in substance with the reasonable objective of the statute. Kemp replaced Titan because Titan abandoned the projects. Kemp's procedure in substituting Titan, though not in literal compliance, substantively complied with the purpose of section 4107. Therefore, the District's consent should not be invalidated. That is because this continues the practice by preventing bid peddling and bid shopping after the award of a public works contract and providing for an opportunity to the awarding authority to investigate the proposed replacement subcontractor before consenting to substitution.

The court held that although section 4107 asserts that the awarding authorities consent to the substitution approval of a replacement subcontractor will occur before the replacement performs the subcontracted work, a deviation from this procedure is valid so long as the procedure used actually complies in substance with the reasonable objectives of the statutes. Here, such substantial compliance occurred. The court also held that although Titan is correct in arguing that section 4107 contemplates the holding of a substitution hearing and the issuing of a ruling before a replacement subcontractor performs the work, Titan is incorrect in asserting that the failure to comply with the chronology necessarily invalidates the awarding authorities consent. Nothing in the statutory language allows that to happen. The grounds that were cited on behalf of Kemp was that Titan failed to perform its subcontract and substantially

delayed or disrupted the project. By then, the substituted subcontractor had completed the subcontract work.

The court also stated that where there is compliance as to all matters of substance, technical deviations are not to be given the stature of noncompliance. Substance prevails over form. When the plaintiff embarks on a course of substantial compliance, every reasonable objective of the statute at issue has been satisfied.

Although I agree with the decision, it is somewhat of a problem in determining when it should be put into effect.