



# CITY OF LODI

# COUNCIL COMMUNICATION

**AGENDA TITLE:** Request that City Join Amicus Brief in the case of West Coast General Corp. v City of Carlsbad, et al., Fourth District Court of Appeal

**MEETING DATE:** March 19, 1997

**PREPARED BY:** City Attorney

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**RECOMMENDATION:** That the city join the amicus brief in the case of West Coast General Corp. v City of Carlsbad, et al., Fourth District Court of Appeal

**BACKGROUND:** *Amicus* briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court in order to assist the court in understanding all of the issues and arrive at a conclusion.

This case involves an important issue related to post-award bid shopping on public works contracts. This matter arose when the City of Carlsbad imposed a penalty of 10% of the amount of undisclosed subcontracts against a general contractor for violating the Subletting and Subcontracting Fair Practices Act ("SSFPA"). The city had discovered the undisclosed subcontractors when they showed up on the job and began working. The contractor claimed that the employees and equipment were leased from other companies and therefore did not need to be disclosed as subcontractors. The city won in the trial court and the contractor has appealed. The City of Carlsbad seeks the support of the City of Lodi as *Amicus Curiae*.

The city's position is the companies are subcontractors because they are not paid hourly wages are their sole compensation, they conduct independent business and have the right to control the details of their work. The contractor's position is that an hourly fee agreement to lease labors and equipment conclusively establishes the lessor companies as "employees" or "materialmen" of the lessee, rather than subcontractors.

This case has import to cities in general because an affirmance of the contractor's position would eviscerate the SSFPA by allowing contractors to "lease" labor and equipment from various companies without having to disclose the use of these companies to the city prior to the award. This position is contrary to the main purpose of the SSFPA which is to require contractors to disclose in their bids the names of subcontractors that would be used in the performance of the contract. With this information in the bids the city is placed on notice prior to the contract award of the identity of the companies who would actually perform the work and the percentage of the work that would be performed by subcontractors generally. With this information the city can make meaningful comparisons between bids and properly evaluate the ability of each bidder to perform the work to the required standards.

If general contractors are allowed to "lease" labor and equipment without disclosing this in the bidding documents cities will lose their ability to meaningfully evaluate the ability of bidders to perform or the quality of work that will be produced because the city will not know who is going to actually perform the work. Also, this practice will result in post-award bid shopping where the general contractor, in an effort to maximize profit, may seek out a "lease" arrangement that is cheaper than what is set out in the bid. The result of bid-shopping is the city pays the same money for lower quality work.

**FUNDING:** Not applicable.

**APPROVED:** \_\_\_\_\_  
H. Dixon Flynn -- City Manager



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Respectfully submitted,

Randall A. Hays, City Attorney

APPROVED: \_\_\_\_\_  
H. Dixon Flynn -- City Manager