

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2
4095 SJUD SB 341 (FILE 3)

Sec. 36.30.690. This chapter and the regulations adopted under it are the exclusive procedures for asserting a claim against the state or an agency arising in relation to a procurement conducted under this chapter.

Sec. 36.30.695. The commissioner of administration may adopt by regulation additional rules of procedure.

Sec. 36.30.699. The definition of interested party is given.

Article 8. Intergovernmental Relations.

Sec. 36.30.700. Cooperative purchasing is authorized between public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

Sec. 36.30.710. Sale, acquisition, or use of supplies among public procurement units or with external procurement activity may be done independent of certain requirements of this chapter.

Sec. 36.30.720. Joint use of facilities is allowable.

Sec. 36.30.730. A public procurement unit may provide personnel, information and technical services to a requesting public procurement unit or external procurement activity.

Sec. 36.30.735. Current Alaska law on restrictions of contracting with or employing experts on radiation hazards is retained.

Sec. 36.30.740. The commissioner may collect information concerning supplies, services or construction being procured or used by state public procurement units.

Sec. 36.30.750. Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with this chapter.

Sec. 36.30.790. Definitions for this article are provided.

Article 9. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract

solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

This chapter does not apply to: grants; contracts for professional witnesses; contracts of the University of Alaska where the work is to be performed substantially by enrolled students; contracts for medical doctors and dentists; contracts for the purchase of residential child care services under AS 47.40; disposals of land or interest in land; disposals under AS 38.05; contracts for the preparation of ballots under AS 15.15.030; acquisitions or disposals of property and other contracts relating to airports; acquisitions of real property or disposals of obsolete property under AS 19.05.060, 19.05.100, 19.05.110 or 19.05.120; disposals of obsolete material or equipment under AS 35.20.060; or leases of ferry terminal facilities under AS 19.60.010.

Except for AS 36.30.700-36.30.895, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

Sec. 36.30.860. Unless displaced by the particular provision of this chapter, all other principles of law and equity shall supplement the provisions of this chapter.

Sec. 36.30.870. Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act. Regulations applicable to procurements of construction or procurements for or disposal of property of the state equipment fleet shall be adopted by the commissioner of administration only after consultation with the commissioner of transportation and public facilities.

Sec. 36.30.880. This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Sec. 36.30.890. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision, the federal statute or regulation shall prevail.

Sec. 36.30.900. This chapter does not modify, amend, or alter laws regarding preference for Alaska forest products or preference to producers or dealers in Alaska, except as provided in AS 36.30.170(c).

Sec. 36.30.910. This chapter does not prevent purchasing through the general services administration as provided by law.

Sec. 36.30.920. Suspected anticompetitive practices are to be reported to the attorney general.

Sec. 36.30.930. In addition to penalties prescribed for unethical conduct, civil and criminal penalties are provided for violations of this chapter.

Sec. 36.30.940. The attorney general on behalf of the state shall enforce the provisions of this chapter.

Sec. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 61 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 62. The commissioner must report to the legislature by December 1, 1987, concerning procurements by state agencies during the first 6 months of 1987.

SECTION 63. The commissioner of administration shall adopt the regulations required under this chapter by January 1, 1987.

SECTION 64. This is the repealer section.

SECTION 65. Section 63 of this Act takes effect immediately.

SECTION 66. Except as provided in sec. 65, this Act takes effect January 1, 1987.

Alaska State Legislature



SENATOR
ARLISS STURGULEWSKI

Chairman, Senate Resources Committee

Also Chairman, Senate Health, Education and Social Services Committee
Member, Senate Community and Regional Affairs Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99509


Write in Jingles
POUCHY
JUNEAU, ALASKA 99901
(907) 465-3818

Senate

MEMORANDUM

January 21, 1986

TO: Senator Pat Rodey

FROM: Senator Arliss Sturgulewski 

RE: SB 341 "An Act relating to state procurement practices and procedures; and providing for an effective date."

Pat, this memo will confirm our earlier discussion regarding SB 204 "An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date" which was introduced by myself and co-sponsored by you. I feel it is entirely appropriate to fold SB 204 into SB 341 as it obviously is an important part of overall state procurement practices. I will be happy to work with you personally on this issue.

Although Senator Faiks plans to schedule SB 204 for a hearing next week, I still feel it is important to include SB 204 in SB 341. I would welcome your testimony on SB 204. The exact date of the hearing is uncertain at this time but I will advise you as soon as I know the date and time of the meeting.

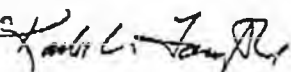
Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : March 6, 1986

FROM: Karla L. Forsythe
Staff Counsel



SUBJECT: SB 341 - State Procurement Practices

I have reviewed the latest work draft (dated February 26, 1986) of SB 341.

As you know, I worked closely with court system purchasing staff over the past two years to develop comprehensive procurement guidelines for the court system based on the Model Procurement Code. Although the guidelines reflect the Code's competitive principles, they have been drafted to accommodate the specific needs of the judiciary as a separate branch of government.

I am concerned that passage of SB 341 would require revision of the guidelines we worked so hard to develop. This concern is based upon two provisions of SB 341. Section 1 (2) (page 1, line 14) states that one of the purposes of the act is to make as consistent as possible the procurement practices among the branches of state government. Additionally, under proposed section 36.30.030 (page 5, lines 16-20) the court system is required to adopt its own procedures which must be substantially equivalent to the procedures described in SB 341.

Court system guidelines do not deviate in spirit or concept from the proposed legislation. However, many details have been drafted with the needs of the judiciary in mind, and therefore differ from the proposed bill. I am concerned that court system procedures will be challenged on the grounds that they are not "substantially equivalent" or "as consistent as possible" with executive branch practices.

I suggest the following amendments:

1. Change section 1, paragraph (2) to provide that one of the purposes of the act is to:

"establish consistent procurement principles for all branches of state government".

2. Change proposed section 36.30.030 to provide:

The administrative director shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the judicial branch. Procedures must be based on the competitive principles established under this act, and shall be adapted to the special needs of the judiciary as determined by the administrative director of courts.

ALASKA COURT SYSTEM

Proposed amendments to SB 341

1. Section 1, paragraph (2) (page 1, line 14):
 - (2) establish consistent procurement principles for all branches of state government.

2. Section 36.30.030 (page 5, lines 16-20):

The administrative director of courts shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the judicial branch. Procedures must be based on the competitive principles established by this act, and shall be adapted to the special needs of the judiciary as determined by the administrative director of courts.

SB 341: State Procurement Practices
March 6, 1986, Page 2

This language is analagous to AS 22.20.037 relating to court system personnel rules, which provides:

- (a) Judicial employees shall be employed subject to classification and wage plans based on the merit principle and adopted to the special needs of the judiciary, as determined by the administrative director of courts. Except as otherwise provided by law, all employees of the Alaska court system and the Judicial Council are subject to the general state laws regarding leave, retirement and travel."

A separate page containing these proposed amendments is attached.

KF/k1



Alaska Public
Employees Association **APEA**

~~State Headquarters: 240 W. Franklin, Juneau, AK 99801 (907) 586-2334~~
210 Ferry Way, Suite 200, Juneau, AK 99801
(907)586-2334

February 6, 1986

Senator Pat Rodey
Chairman, Senate Judiciary Committee
Pouch V
Juneau, AK 99811

RE: Senate Procurement Bill (SB 341)

Dear Senator Rodey:

On behalf of the membership of the Alaska Public Employees Association (APEA), I would like to comment on one section of the bill on state procurement practices prepared by the Senate Select Interim Committee on Procurement Practices and Procedures (SB 341) which I understand your committee will be considering soon. APEA sees the bill on the whole as a positive step toward finer procurement practices. However, it does contain one provision that we see as far more onerous on procurement employees than is necessary to reach the bill's goals.

That provision is proposed AS 36.30.930(1), which subjects state procurement personnel to heavy potential liability if they act in a manner contrary to the statutes. Certainly such liability is appropriate if the violation is intentional or knowing; we have no problem with AS 36.30.930(2), which makes intentional or knowing acts felonious. However, if the violations are in good faith, even if negligent, no personal liability should attach. No other statute comes to mind that imposes personal liability on an employee for a merely negligent act - this is traditionally a risk assumed by the state, who as employer chooses whom works for it. If the negligent act is sufficiently egregious, the state can discipline the employee. But personal liability is not appropriate.

Personal liability is especially inappropriate in this context, because this bill is such a sweeping overhaul of past practices. A procurement officer may commit a technical violation of the law - contacting too few vendors, for instance - which is consistent with previous practices for many years. Yet under

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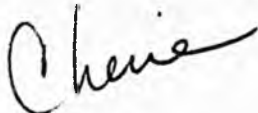
proposed AS 36.30.930(1), this officer, acting in good faith and in consonance with years of past practice, is now open to heavy financial penalties. This is not right.

To take an extreme example, consider the recent litigation over the downtown parking garage in Juneau. The city attorney and the city council, acting in what they saw as the city's best interests, followed a common construction procurement practice in contracting for the garage. However, this practice was a technical violation of the city charter. The result was litigation costs and construction delay expenses of several hundred thousand dollars. Should the city attorney and council members be held personally liable? No - if they were, it would be well nigh impossible to fill jobs. But proposed AS 36.30.930(1) would allow liability.

The solution as we see it is simple - use the "knowing and intentional" language of proposed AS 36.30.930(2) (the criminal section) in subsection (1) as well. Then liability will be limited to cases where it is appropriate.

Thank you for your kind attention to our comments.

Very truly yours,



Cherie Shelley
Executive Director

CS/kg

Alaska State Legislature

SENATOR

ROBERT H ZIEGLER SR
307 BAWDEN STREET
KETCHIKAN ALASKA 99901

WHILE IN JUNEAU

POUCH V
JUNEAU ALASKA 99811



Senate

MEMBER
SENATE JUDICIARY COMMITTEE

SELECT COMMITTEE ON LEGISLATIVE ETHICS

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

EXECUTIVE COMMITTEE
WESTERN LEGISLATIVE CONFERENCE
COUNCIL OF STATE GOVERNMENTS

ALTERNATE MEMBER
NATIONAL CONFERENCE OF STATE LEGISLATURES
STATE AND FEDERAL ASSEMBLY
COMMITTEE ON
FEDERAL TAXATION, TRADE AND ECONOMIC DEVELOPMENT

February 10, 1986

All Members
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Dear Jan and Gentlemen:

As of the moment of dictation, it appears as if the Judiciary Committee contemplates throwing a Superior Court Judge for Ketchikan into Senator Kerttula's bill.

For your files, I have enclosed a letter of justification which pretty well points out the need for the additional judge.

Regards,

A handwritten signature in dark ink, appearing to be 'R. Ziegler'.

Robert H. Ziegler, Sr.

Enclosure



Trial Courts

State of Alaska

FIRST JUDICIAL DISTRICT
415 MAIN STREET
ROOM 206
KETCHIKAN, ALASKA 99901
(907) 225-9875

KRISTEN CARLISLE
AREA COURT ADMINISTRATOR

January 30, 1986

The Honorable Robert H. Ziegler, Sr.
Alaska Senate
P.O. Box V
Juneau, Alaska 99811 (Mail Stop 3100)

The Honorable John Sund
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811 (Mail Stop 3100)

The Honorable Robin L. Taylor
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811 (Mail Stop 3100)

Re: Ketchikan Judgeship Position

Dear Senator Ziegler, Representatives Sund and Taylor:

The growing need for an additional Superior Court Judge in the Ketchikan Trial Courts has been more apparent in the past five years. Presiding Judge Thomas E. Schulz and I feel that it has now reached a critical situation and are requesting your support in obtaining an additional position for a Superior Court Judge in Ketchikan.

I have gathered some statistical information to support our request. I will be happy to share the sources of this information with you if you wish.

Ketchikan Gateway Borough and the Outer Ketchikan Census Division have experienced a 15% population increase in 1984 over 1980. Total population for the area is 17,357. If the rate of increase remains constant for the next five years the population will be 19,960 by 1990. This compares with a current estimated

Hon. Robert H. Ziegler, Sr.
Hon. John Sund
Hon. Robin L. Taylor

-2-

January 30, 1986

population for the Juneau area of 25,964. Juneau has had two Superior Court Judges for approximately 10 years.

During the period of 1980 to 1984 there was a 41% increase in the estimated local workforce despite slow downs in the local pulp mill and fishing industries. The State will be constructing a Ferry Maintenance Facility in Ketchikan next year which is estimated to create up to 200+ new jobs in the area. If the long pending mining ventures planned for the Ketchikan area actually commence, the population and workforce estimates will, of course, be increased significantly.

The 1985 Bar roster shows there are 39 attorneys practicing in Ketchikan which is a 39% increase over 1980. There is also a 44% increase in the number of police/troopers in the area. Ketchikan's total of 46 law enforcement personnel compares with 43 law enforcement personnel in Juneau.

The Ketchikan jury costs have increased 163% over FY 1981. It's total FY'85 costs of \$65,575 is 10% higher than Juneau at \$59,739. The increase in jury trials has had a major impact on the processing of cases on a timely basis through the Ketchikan Trial Courts. Superior Court case filings excluding all probate and domestic relation cases, have increased 70% in the last five years. These types of cases require a great deal of pre-trial and motion activity and therefore have a significant impact on the court operations and the judge's time.

Ketchikan has had the caseload of more than one Superior Court Judge for the last several years. To meet this increased demand, Ketchikan has used a very high rate of visiting or retired judges appointed on a pro tem basis. In 1983 Ketchikan received the assistance of a visiting or pro tem judge for approximately 126 days, and in 1984 130 days. This is approximately 60% of a Full Time Equivalent (FTE) judge. In 1985 and in 1986, these figures are expected to be much higher because of a long murder case that is being tried in Ketchikan. The Wrangell/Petersburg Superior Court Judge has spent an average of two weeks a month in Ketchikan for the past several years in order to assist Judge Schulz with the growing caseload. The caseloads in Wrangell and Petersburg are also growing and the demands on that judge's time have significantly increased. While the use of pro tem and visiting judges has allowed us to function, it is very dependent on the schedules of those judges. Retired judges work when their schedule permits, and are not always available when required. Although we have had very good relations with Judges Henry C. Keene, Jr. and Thomas B. Stewart, both retired First District Judges, their personal lives and retirement plans sometimes take precedence over the needs of the Ketchikan Trial Courts. It is difficult to assign them a regular

Hon. Robert H. Ziegler, Sr.
Hon. John Sund
Hon. Robin L. Taylor

-3-

January 30, 1986

caseload and they have been used most often on an emergency basis.

Primarily due to the increase in jury trials and motion practice, Judge Schulz's bench time has increased tremendously in the last several years. He is also the Presiding Judge for the district which requires significant administrative duties. In order to keep up with these demands, Judge Schulz has continually worked long hours and weekends. Even with this, it has become impossible for the Ketchikan Trial Courts to accommodate anything out of the ordinary. For instance, in 1985 a civil case projected to last 10 days ended up lasting nine weeks. In addition, the murder case of State vs John Kenneth Peel has required an inordinate amount of special attention. While these cases are not routine, the Ketchikan Trial Courts operates on a very narrow margin and anything unusual seriously to disrupt the timely disposition of other cases.

It is hoped that this information will assist you in obtaining the necessary backing for another Superior Court judgeship position in Ketchikan. Judge Schulz and I wish to thank you for your continued support and would be glad to supply any other information that you may deem necessary.

Sincerely,



Kristen Carlisle
Area Court Administrator

KC:cwt

cc: Presiding Superior Court Judge Thomas E. Schulz
Representative John Binkley

Alaska State Legislature

SENATOR
ROBERT H ZIEGLER SR
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

WHILE IN JUNEAU
POUCH V
JUNEAU ALASKA 99811

January 29, 1986



Senate

MEMBER
SENATE JUDICIARY COMMITTEE
—
SELECT COMMITTEE ON LEGISLATIVE ETHICS
—
WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE
—
EXECUTIVE COMMITTEE
WESTERN LEGISLATIVE CONFERENCE
COUNCIL OF STATE GOVERNMENTS

ALTERNATE MEMBER
NATIONAL CONFERENCE OF STATE LEGISLATURES
STATE AND FEDERAL ASSEMBLY
COMMITTEE ON
FEDERAL TAXATION, TRADE AND ECONOMIC DEVELOPMENT

Senator Pat Rodey, Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: SB 341.

Dear Pat:

Attached hereto are a copy of my letter to Senator Faiks of January 24th and the material to which I referred in that letter.

Senator Faiks indicated to me that she did her job and she doesn't much care what happens to the bill now that it's been introduced.

In a word, the subject matter is not near and dear her heart.

If you want to talk to the involved Juneau citizen, I'll have him get in touch with your office.

Regards,

3 -

Robert H. Ziegler, Sr.

Enclosures

Alaska State Legislature

pl

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901



Senate

WHILE IN JUNEAU
POUCH V
JUNEAU ALASKA 99811

MEMBER
SENATE JUDICIARY COMMITTEE
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WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE
EXECUTIVE COMMITTEE
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STATE AND FEDERAL ASSEMBLY
COMMITTEE ON
FEDERAL TAXATION TRADE AND ECONOMIC DEVELOPMENT

January 24, 1986

Senator Jan Faiks, Co-Chair
Senate Finance Committee
Alaska State Legislature
Juneau, Alaska

Re: SB 341

Dear Jan:

I carry no brief one way or the other (at this time) for SB 341. However, I concede the subject matter is near and dear your heart.

I have enclosed some comments recently given me by a friend here in Juneau. He is more than willing to discuss these comments with you, should that be your desire, but he was reluctant to stick his nose into your business unless requested so to do.

A great deal of what he has to say makes sense to me.

Regards,

Robert H. Ziegler, Sr.

Enclosure

Sec. 36.30.210. REQUEST FOR PROPOSALS

The use of the RFP process in the selection of consultants for professional services contracts, such as data processing systems analysis and programming is, by and large, an expensive, time consuming exercise in presenting an appearance of propriety to the selection process. There are many reasons for this.

- a) The description of services desired is often so vague that it is difficult or impossible for a vendor to respond or for any reasonable evaluation criteria to be established by the state.
- b) Evaluation factors are usually so vague or generic that the evaluation process can be biased for almost any reason so long as a "reasonable basis" can be stated for that evaluation. A "reasonable basis" can always be found. In other words, evaluation criteria is rarely objective, it is almost always subjective.
- c) In some cases, a demonstrated and specific knowledge and experience level is not merely needed, it is imperative. When that occurs, a restricted RFP process can be used or a "sole source" award granted. However, in the many cases where generic experience, such as "systems analysis and programming on state data center compatible computer systems and software" is needed, the evaluation of the quality and depth of that experience becomes highly subjective.

That subjectivity is then entrusted to an evaluation team for assignment of points. However in most cases the team members are hardly qualified to make such an evaluation and fall back on the "glossy" resumes' or other material included in a vendors proposal. Occassionally, a single team member who is qualified makes the evaluation for the team at large. Whoever took that team member to lunch last, or perhaps uses even potentially more dangerous forms of persuasion, may then prevail.

- d) The single specific objective evaluation criteria is cost. But it has been absolutely amazing the low weighting factor that is assigned to it and also the lack of any intelligent means by which a point assignment is given to cost. As an example: Cost has a 25% weighting factor. 10 points are assigned to cost. There are 4 proposals and three have responsive costs. One is eliminated because it is an obvious "low-ball" offering.

Vendor 'A' proposes \$85,000
Vendor 'B' proposes \$57,000
Vendor 'C' proposes \$72,000

A typical state evaluation might give vendor 'B'-10 points; 'C'-9 points; and, 'A'-8 points. A more fair evaluation would be to mathematically give vendor 'B'-10 points; 'C'-7.9 points; and, 'A'-6.7 points.

e) As stated in item a, above, the description of services desired must be more specific in RFPs. If it is not, then several things result:

1. A vendor doesn't know what the state wants and the proposal becomes a costly guess.
2. A vendor may easily have proposed at a significantly lower cost if the factors were known. This could make a sizable cost savings to the state and certainly be more fair to vendors in general.
3. Evaluation of cost cannot be made objectively. It is forced to be made on a subjective and relative basis.

SB 341 could be stronger and more specific regarding Request for Proposal procurements. Suggested wording might be:

- a)must contain the date by which the proposal must be received, [and must contain a specific] description of the supplies, construction services, or professional services to be provided under contract,.....
- b) A request for proposals must contain that information necessary for an offeror to submit a proposal, [and upon which an objective evaluation of proposals may be made.]
- c) A request for proposals must contain references to any information or material that cannot be reasonably included with the request. [No agency may withhold from review by a prospective offeror any information or material not of a proprietary or confidential nature, regardless of whether referenced in the request for proposal.]
- d) A request for proposals must contain the factors and their relative importance by which proposals received will be evaluated. Such factors must be realistically objective and based on the specific description of supplies, construction services, or professional services included in the request for proposals. Price shall be not less than 40 percent of total evaluation criteria and be evaluated as follows:
 1. The price must be judged as realistic and not a deliberate attempt at undercutting.
 2. The responsible and responsive low price offeror shall receive the maximum price evaluation point assignment.
 3. All other responsible and responsive offerors shall receive a mathematically proportionate price evaluation point assignment by dividing the low price by the offerors price and multiplying the result by the maximum price evaluation point assignment.

30.170. CONTRACT AWARD AFTER BID

definition of "Alaska bidder" continues to follow standards that are not
e if it is the intent to promote and foster resident hire and businesses of

A stronger definition, which in our opinion would pass scrutiny, might be:

holds a current Alaska business license;

submits a bid [or a response to a request for proposals] for goods,
services, or construction under the name appearing on the person's [or
firm's] current Alaska business license;

has maintained a place of business within the state [staffed by the bidder
or a direct employee of the bidder] for a period of six months immediately
preceding the date of the bid;

[is incorporated as a domestic corporation of Alaska, or is a sole
proprietorship or partnership whose principal(s) are bonafide residents of
Alaska;]

[derives at least 50 percent of income within the state of Alaska;]

if a joint venture, is composed entirely of ventures that qualify under
(1)-(5) of this subsection.

ase note that these provisions should also apply to request for proposals which
ted in the current draft of the bill.

purpose of the proposed act might also contain a provision for Alaska bidders.

.1) foster and promote resident hire and Alaska businesses providing goods
services to the state;]

Sec. 36.30.320. SMALL PROCUREMENTS

The limit of \$5,000 per aggregate dollar amount that defines a small procurement is low for many cases of professional services contracting. That amount has been in place for several years now. If for no other reason than inflation, it should be raised to \$6,000. However, for reasons of mere practicality and efficiency, an amount of \$10,000 would be more realistic.

Item (b) delineates that professional services contracts of up to \$25,000 may be awarded under regulations adopted by the commissioner and that not more than \$25,000 in contracts per person (firm) may be awarded by an agency within a 12 month period.

The 12 month period would be better stated as "state fiscal year" (July 1-June 30). More importantly, however, the dollar limit per agency, per year just doesn't fit many contractual situations where a firm, within a fiscal year, performs many bonafide separate and different services for a department or agency which exceed the limit in total.

We would recommend that item b(2) be removed in its entirety. Item (d) would appear to provide the protection the state is seeking, along with the fact that a departmental commissioner must also sign the contract.

Chapter 2

SUBLETTING AND SUBCONTRACTING

Sec.

4100. Short title.
- 4100.5. Application of chapter.
4101. Legislative finding; bid shopping and bid peddling.
4102. Renumbered.
4103. Preservation of rights and remedies.
4104. Identification of subcontractors by bidders.
4105. Circumvention of identification requirements.
4106. Failure to specify subcontractor; performance of work; subcontracting after award.
- 4106.5. Renumbered.
4107. Substitution of subcontractors: consent; assignment of subcontract; subcontracting after award.
- 4107.2. Carpeting; specifying labor subcontractor in bid.
- 4107.5. Clerical error in listing subcontractor; objections by listed subcontractor; substitution of intended subcontractor.
4108. Subcontractors' performance bonds.
4109. Conditions under which subcontract permitted after failure to designate subcontractor in bid.
4110. Violation of chapter as contract violation; hearing; cancellation; penalty.
4111. Violation of chapter as grounds for discipline.
4112. Contractor's noncompliance not defense in action by subcontractor.
4113. Subcontractor; prime contractor.

Cross References

Contractors License Law, see Business and Professions Code § 7000 et seq.
 State purchases and services, see § 14730 et seq.

Law Review Commentaries

Bid shopping and peddling in the subcontract construction industry. (1970) 18 U.C.L.A. Law Rev. 329.

§ 4100. Short title

This chapter may be cited as the "Subletting and Subcontracting Fair Practices Act."

(Stats.1943, c. 134, p. 890, § 4100. Amended by Stats.1949, c. 1453, p. 2535, § 1; Stats.1963, c. 2125, p. 4411, § 1.)

Historical Note

The 1949 amendment declared that the chapter did not apply to contracts for the construction, improvement or repair of "streets or highways, including bridges". Previously the section declared that the chapter did not apply to contracts for the

§ 4100

PUBLIC WORK AND PURCHASES

Title 1

Div. 5

construction, improvement or repair of "State highways, including bridges, nor to city or county projects financed in whole or in part with motor vehicle fuel fuels".

The 1963 amendment rewrote this section to read as it now appears.

Provisions formerly contained in this section prior to the 1963 amendment are now contained in § 4100.5.

Derivation: Stats.1941, c. 1283, p. 3220, § 1.

1. In gene
Bid shop
when done
contract 1

Forms

See West's California Code Forms, Government.

Library References

Municipal Corporations § 226 et seq.
States § 90 et seq.

C.J.S. Municipal Corporations § 1142 et seq.
C.J.S. States §§ 154, 155, 160.

§ 4101

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Notes of Decisions

Construction and application 1
Purpose 2

1. Construction and application

Where electrical contractor's mistaken bid was due to failure of its estimator to take into account that he was dealing with half-size plans although estimator knew plans were half-size and general contractor was not aware of mistake until ten minutes before bids were opened, general contractor was entitled to recover from electrical contractor the additional monies which general contractor was required to pay to have work performed by another electrical contractor after electrical contractor which submitted bid refused to

perform in accordance with bid. Saliba-Kringlen Corp. v. Allen Engineering Co. (1971) 92 Cal.Rptr. 799, 15 C.A.3d 95.

2. Purpose

The purpose of Subletting and Subcontracting Fair Practices Act was not limited to providing the awarding authority with opportunity to approve substitute subcontractors, but also to protect the public and subcontractors from the evils attendant upon practices of bid shopping and bid peddling subsequent to the award of prime contract for a public facility. Southern California Acoustics Co. v. C. V. Holder, Inc. (1969) 79 Cal.Rptr. 319, 456 P.2d 975, 71 C.2d 719.

Former §
134, p. 98
1945, c. 13

Municipal
States §

§ 4100.5. Application of chapter

With the exclusion of that portion of work covering street lighting and traffic signals, this chapter does not apply to the balance of contracts for the construction, improvement or repair of streets or highways, including bridges.

(Added by Stats.1963, c. 2125, p. 4411, § 2. Amended by Stats.1972, c. 834, p. 1488, § 1.)

In general
Definitions
Purpose

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Historical Note

The 1972 amendment inserted the exclusion of work covering street lighting and traffic signals and inserted the words "the balance of" preceding "contracts".

The provisions now contained in this section were formerly contained in § 4100 prior to the 1963 amendment.

Library References

Municipal Corporations § 226 et seq.
States § 90 et seq.

C.J.S. Municipal Corporations § 1142.
C.J.S. States §§ 154, 155, 160.

Notes of Decisions

1. In general

Bid shopping is not against public policy when done by general contractor awarded contract for construction of freeway.

Saliba-Kringlen Corp. v. Allen Engineering Co. (1971) 92 Cal.Rptr. 799, 15 C.A.3d 95.

§ 4101. Legislative finding; bid shopping and bid peddling

The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.

(Added by Stats.1963, c. 2125, p. 4411, § 4.)

Historical Note

Former § 4101, enacted by Stats.1943, c. 134, p. 981, § 4101, amended by Stats. 1945, c. 1350, p. 2576, § 1, was renumbered

§ 4103 and amended by Stats.1963, c. 2125, p. 4411, § 4.

Library References

Municipal Corporations § 926 et seq.
States § 90 et seq.

C.J.S. Municipal Corporations § 1142 et seq.
C.J.S. States §§ 154, 155, 160.

Notes of Decisions

In general 1
Definitions 3
Purpose 2

1. In general

Where prime contractor utilized mason's bid in compiling its total bid for construction project, but inadvertently failed to schedule mason on list of subcontractors in bid, prime contractor could not be held liable to mason under Subletting and Subcontracting Fair Practices Act, absent detrimental reliance on part of mason. *C. L. Smith Co., Inc. v. Roger Ducharme, Inc.* (1977) 135 Cal.Rptr. 483, 65 C.A.3d 725.

2. Purpose

Purpose of this Act is to prevent practices of bid shopping and bid peddling in connection with public works projects. *Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co.* (1976) 128 Cal.Rptr. 632, 56 C.A.3d 361.

The purpose of subletting and subcontracting fair practices act was not limited to providing the awarding authority with opportunity to approve substitute subcontractors, but also to protect the public and subcontractors from the evils attendant upon practices of bid shopping and bid peddling subsequent to the award of prime contract for a public facility. *Southern California Acoustics Co. v. C. V. Holder, Inc.* (1969) 79 Cal.Rptr. 319, 456 P.2d 975, 71 C.2d 719.

3. Definitions

"Bid shopping", practice sought to be prevented by this Act, is use of lowest bid already received by general or prime contractor to pressure other subcontractors into submitting even lower bids. *Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co.* (1976) 128 Cal.Rptr. 632, 56 C.A.3d 361.

§ 4102 PUBLIC WORK AND PURCHASES Title 1

§ 4102. Renumbered § 4104 and amended by Stats.1963, c. 2125, p. 4411, § 5

§ 4103. Preservation of rights and remedies

Nothing in this chapter limits or diminishes any rights or remedies, either legal or equitable, which:

(a) An original or substituted subcontractor may have against the prime contractor, his successors or assigns.

(b) The State or any county, city, body politic, or public agency may have against the prime contractor, his successors or assigns, including the right to take over and complete the contract.

(Formerly § 4101, enacted by Stats.1943, c. 134, p. 981, § 4101. Amended by Stats.1945, c. 1380, p. 2576, § 1. Renumbered § 4103 and amended by Stats.1963, c. 2125, p. 4411, § 4.)

Historical Note

The 1945 amendment, throughout the section, referred to the "general contractor" instead of to the "contractor", and in subd. (b), it deleted "public corporations" from the list of political bodies.

The 1945 amendatory act contained the following provision: "If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

The 1963 amendment substituted "prime" for "general" preceding "contractor" in both subdivisions.

Former § 4103, enacted by Stats.1943, c. 134, p. 981, § 4103, amended by Stats. 1945, c. 1380, p. 2576, § 3, was renumbered § 4106 and amended by Stats.1963, c. 2125, p. 4412, § 7.

Derivation: Stats.1941, c. 1283, p. 3230, § 1.

Library References

Municipal Corporations § 326 et seq. States § 99 et seq.

C.L.S. Municipal Corporations § 1142 et seq. C.L.S. States §§ 154, 155, 160.

Notes of Decisions

1. In general

Where general contractors awarded prime contracts formally solicit bid from subcontractor using another subcontractor's bid in computing prime bid, there is "bid chiseling" forbidden by Bid Listing Law. People v. Inland Bid Depository (1965) 13 Cal.Rptr. 206, 233 C.A.2d 851.

tor's bid in computing prime bid, there is "bid chiseling" forbidden by Bid Listing Law. People v. Inland Bid Depository (1965) 13 Cal.Rptr. 206, 233 C.A.2d 851.

§ 4104. Identification of subcontractors by bidders

Any officer, department, board or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person

Div. 5

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Div. 5 SUBLETTING AND SUBCONTRACTING § 4104

making a bid or offer to perform the work, shall, in his bid or offer, set forth:

(a) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid.

(b) The portion of the work which will be done by each such subcontractor under this act. The prime contractor shall list only one subcontractor for each such portion as is defined by the prime contractor in his bid.

(Formerly § 4102, enacted by Stats.1943, c. 134, p. 981, § 4102. Amended by Stats.1945, c. 1380, p. 2576, § 2. Renumbered § 4104 and amended by Stats.1963, c. 2125, p. 4411, § 5; Stats.1971, c. 376, p. 743, § 1; Stats.1971, c. 1534, p. 3195, § 1.)

Historical Note

The 1945 amendment, in subd. (a), required the name and location of the "place of business" of each subcontractor instead of the name and location of the "mill, shop, or office". Reference was made to the "general contractor" instead of to the "contractor". The percentage restriction was added. In subd. (b), reference was made to work to be done by each "such" subcontractor "under this act".

For partial validity provision of the 1945 act, see Historical Note under § 4102.

The 1963 amendment added the second sentence of subd. (b) relating to the listing of subcontractors.

The 1971 amendments inserted in subd. (a) subcontractors licensed by the state who, under subcontract to the prime contractor, specially fabricate and install a portion of the work or improvement according to detailed drawings contained in the plans and specifications.

Former § 4101, enacted by Stats.1943, c. 134, p. 981, § 4101, amended by Stats. 1945, c. 1380, p. 2576, § 4, was renumbered § 4107 and amended by Stats.1963, c. 2125, p. 4412, § 8.

Derivation: Stats.1941, c. 1283, p. 3230, § 1.

Cross References

Carpentering, sublet of subcontract, see § 4107.2.

Library References

Municipal Corporations C-332, States C-98.

C.J.S. Municipal Corporations § 1151, C.J.S. States §§ 160 to 167.

Notes of Decisions

- Acceptance of bids 2
Bid chiseling 5
Construction and application 1
Designation of subcontractors 3
Existence of subcontract 4

1. Construction and application

A public body has neither the power nor the obligation at the time of or after awarding the prime contract, to substitute a California subcontractor in place of an

out-of-state subcontractor whose bid is not more than 5 per cent lower than the California subcontractor under § 4107, 4334 and this section. 18 Ops.Att'y.Gen. 187.

2. Acceptance of bids

In absence of an agreement to the contrary listing of subcontractor in prime bid for public school construction was not an implied acceptance of subcontractor's bid by general contractor, since the listing by general contractor of subcontractors he intends to retain is in response to statutory command and cannot reasonably be construed as an expression of acceptance. *Southern California Acoustics Co. v. C. V. Holder, Inc.* (1969) 79 Cal.Rptr. 319, 456 P.2d 975, 71 C.2d 719.

3. Designation of subcontractors

Prime contractor, which was to excavate, by designating both itself and paying subcontractor on same line in designation of subcontractors for paving and excavating violated this Act. *Day Cities Paving & Grading, Inc. v. Donald Phelps Const. Co.* (1976) 128 Cal.Rptr. 632, 59 C.A.3d 351.

Where it was agreed that subcontractor was to pave and prime contractor was to excavate and prime contractor was willing to allow subcontractor to pave but subcontractor refused unless it was also awarded excavation work, there was no benefit of bargain to be recovered by subcontractor; thus it was not entitled to recover from prime contractor which had violated this section by, in designating subcontractors, listing both itself and subcontractor on same line without differentiating the work to be done by each. Id.

This section does not require a prime contractor to list in his bid hardware suppliers who deliver packaged, finished hardware to the job site to be installed by someone other than the supplier. 49 Ops.Att'y.Gen. 15, 2-7-67.

4. Existence of subcontract

Where prime contractor received unqualified oral bid for masonry work from mason, figures submitted were used by prime contractor in compiling its total bid, after prime contractor was awarded prime contract, it sent to mason a form of subcontract agreement for purpose of determining terms and conditions of its offer

of performance, there was exchange of writings which led to preparation of document which was finally sent to mason, who signed it and returned it to prime contractor, but prime contractor never signed it and informed mason that it could not proceed with masonry work because, through prime contractor's inadvertence, mason had not been scheduled as subcontractor on bid proposal submitted to owner and therefore could not be legally utilized on project, no subcontract existed between parties. *C. L. Smith Co., Inc. v. Roger Ducharme, Inc.* (1977) 135 Cal.Rptr. 487, 65 C.A.3d 755.

Where subcontractor did not rely on any promise by school construction general contractor, but only on the listing of subcontractors required by this section and on restriction on general contractor's right to change its listed subcontractors without consent of school district under § 4107, and general contractor neither accepted subcontractor's offer, nor made any promise or offer to subcontractor intended to induce action or forbearance of a definite and substantial character, subcontractor had no cause of action for breach of contract against general contractor which obtained school district's consent to change of subcontractors. *Southern California Acoustics Co. v. C. V. Holder, Inc.* (1969) 79 Cal.Rptr. 319, 456 P.2d 975, 71 C.2d 719.

A mistake, through which corporation subcontracting to do steel work on junior high school auditoriums and connecting shelter for construction of which another corporation aware of such mistake, had general contract with school district, seemingly agreed to perform for \$37,700 for work reasonably worth at least \$17,000 because of failure to exclude from subcontractor steel decking specifically excluded in subcontractor's oral bids, was so essential and fundamental that parties' minds never met on subcontract as executed and subcontractor was entitled to rescission thereof. *Bruzell Const. Co. v. G. J. Weisbrod Inc.* (1955) 285 P.2d 989, 131 C.A.2d 278.

5. Bid chiseling

Where general contractor awarded prime contract to formally solicit lower bid from subcontractor using another subcontractor's bid in compiling prime bid, there is "bid chiseling" forbidden by Bid Listing Law. *People v. Island Bid Depository* (1965) 41 Cal.Rptr. 293, 237 C.A.2d 851.

§ 4105. Circumvention of identification requirements

Circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him to list his sub-

Div. 5

contractors, by turn sublet part the prime contractor shall subject sections 4110 and 4 (Added by Stats

Former § 4105, 194, p. 981, § 4105, v. 1389, p. 2577.

Municipal Corporations § 109.

§ 4106.

If a prime contractor specifies portion of work to of 1 percent of fully qualified form that port

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The 1963 amend tion, which prevents contractor fails t for any portion

In general 1 Standing 2

contractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this chapter and shall subject such prime contractor to the penalties set forth in Sections 4110 and 4111.

(Added by Stats.1963, c. 2125, p. 4411, § 6.)

Historical Note

Former § 4105, enacted by Stats.1943, c. 4139 and amended by Stats.1963, c. 2125, p. 4411, p. 981, § 4105, amended by Stats.1945, c. 1380, p. 2577, § 5, was renumbered §

Library References

Municipal Corporations (C=475),
States (C=109).

U.S. Municipal Corporations § 1203 et
seq.
U.S. States §§ 151, 152, 174 to 175.

§ 4106. Failure to specify subcontractor; performance of work; subcontracting after award

If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, he agrees that he is fully qualified to perform that portion himself, and that he shall perform that portion himself.

If after award of contract such prime contractor shall, except as provided for in Sections 4107 or 4109, subcontract any such portion of the work, such prime contractor shall be subject to the penalties named in Section 4111.

(Formerly § 4103, enacted by Stats.1943, c. 134, p. 981, § 4103. Amended by Stats.1945, c. 1380, p. 2576, § 5. Renumbered § 4106 and amended by Stats.1963, c. 2125, p. 4412, § 7.)

Historical Note

The 1945 amendment referred to "general contractor" instead of to "contractor" and added the percentage limitation.

The partial liability provision of the 1945 act, see Historical Note under § 4105.

The 1963 amendment rewrote the provision which previously read: "If a general contractor fails to specify a subcontractor for any portion of the work to be per-

formed under the contract in excess of one-half (1/2) of one per cent (1%) of the general contractor's total bid, he agrees to perform that portion himself."

Former § 4104, enacted by Stats.1943, c. 414, p. 981, § 4104, amended by Stats.1945, c. 1380, p. 2577, § 6, was renumbered § 4110 and amended by Stats.1963, c. 2125, p. 4412, § 4.

Derivation: Stats.1941, c. 1238, p. 3229.

Notes of Decisions

In general 1
Standing 2

1. In general
Where prime contractor specified more than one subcontractor in computing the total bid for contract.

§ 4106

PUBLIC WORK AND PURCHASES

Title 1

Div. 5

tion project, but inadvertently failed to schedule mason on list of subcontractors in bid, prime contractor could not be held liable to mason under Subletting and Subcontracting Fair Practices Act, absent detrimental reliance on part of mason. C. L. Smith Co., Inc., v. Roger Ducharme, Inc. (1977) 135 Cal.Rptr. 483, 65 C.A.3d 735.

2. Standing

Where subcontractor was not designated or intended to perform excavation work on public contract, it had no standing to contest whether or not prime contractor improperly retained a subcontractor to perform that work. Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co. (1976) 128 Cal.Rptr. 632, 56 C.A.3d 361.

§ 4106.5. Renumbered § 4111 and amended by Stats.1963, c. 2125, p. 4413, § 12

§ 4107. Substitution of subcontractors; consent; assignment of subcontract; subcontracting after award

No prime contractor whose bid is accepted shall:

(a) Substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor:

(1) When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of such subcontractor's written bid, is presented to him by the prime contractor,

(2) When the listed subcontractor becomes bankrupt or insolvent, or

(3) When the listed subcontractor fails or refuses to perform his subcontract, or

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108, or

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error, or

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law, or

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with

the plans and delaying or

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(b) F transferre original s of the awa

(c) C changes c tract any prime cor nate a su

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The 1915 paragraph, tor" instea subd. (b), "such" su made to th in the bid" provision added.

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the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

Prior to approval of the prime contractor's request for such substitution the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for such request. Such notice shall be served by certified or registered mail to the last known address of such subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file such written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit any such subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his original bid did not designate a subcontractor.

(Formerly § 4104, Enacted by Stats.1943, c. 134, p. 981, § 4104. Amended by Stats.1945, c. 1380, p. 1576, § 4. Renumbered § 4107 and amended by Stats.1963, c. 2125, p. 4412, § 8; Stats.1969, c. 332, p. 705, § 1; Stats.1974, c. 889, p. 1889, § 1; Stats.1975, c. 678, p. 1482, § 25.)

Historical Note

The 1945 amendment, in the opening paragraph, referred to "general contractor" instead of to the "contractor". In subd. (b), reference was made to any "such" subcontract and reference was made to the original subcontractor "listed in the bid". In subd. (c), the percentage provision was added. A subd. (d) was added.

For partial validity provision of the 1945 act, see Historical Note under § 4103.

The 1963 amendment rewrote the question, which previously read:

"No general contractor whose bid is accepted shall, without the consent of the awarding authority, either:

"(a) Substitute any person as subcontractor in place of the subcontractor designated in the original bid.

"(b) Permit any such subcontract to be assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the bid.

"(c) Sublet or subcontract any portion of the work in excess of one-half (1/2) of one per cent (1%) of the general contractor's total bid as to which his original bid did not designate a subcontractor.

"(d) The awarding authority may consent to the substitution of another person as a subcontractor, when the subcontractor named in the bid after having had a reasonable opportunity to do so, fails or refuses to execute a written contract,

§ 4107

PUBLIC WORK AND PURCHASES

Title 1

Note 1

when said written contract, based upon the general terms, conditions, plans and specifications for the project involved, or the terms of such subcontractor's written bid, is presented to him by the contractor."

The 1969 amendment rephrased subd. (a) by inserting numbered subparagraphs; in the introductory provision of subd. (a), added the exception as to § 4107.5; in subpar. 2, added bankruptcy as a ground for substitution; inserted the subject matter contained in subpars. (5), (6), and (7); and substantially rewrote the first and second sentences of the second paragraph of subd. (a) relating to notice of prime contractor's request to substitute.

The 1971 amendment included, throughout the section, following "awarding authority", the words "or its duly authorized officer"; added the last two sentences of the second paragraph of subd. (a); and added the third paragraph of subd. (a) relating to written objections.

The 1975 amendment amended the section without change in the text.

Former § 4107, enacted by Stats.1943, c. 134, p. 981, § 4107, was renumbered § 4132 and amended by Stats.1963, c. 2125, p. 1413, § 13.

Derivation: Stats.1941, c. 1283, p. 3230, § 1.

Cross References

Contractors License Law, see Business and Professions Code § 7000 et seq.

Library References

Municipal Corporations § 374(1),
States § 1081½.

C.J.S. Municipal Corporations § 1208 et
seq.
C.J.S. States § 174 to 183.

Notes of Decisions

Burden of proof 9
Construction and application 1
Damages 5
Estoppel 8
Existence of subcontract 3
Penalties 6
Pleadings 7
Purpose 2
Substitution of subcontractors 4

asserting claim of clerical error, and plaintiff was entitled to recover from prime contractor the benefit of the bargain it would have realized had it not been wrongfully deprived of subcontract. *Coast Pump Associates v. Stephen Tyler Corp.* (1976) 133 Cal.Rptr. 88, 62 C.A.3d 421.

Once prime contractor's bid has been accepted for public project, it may not retain new subcontractors or substitute new subcontractors for existing subcontractors without approval of awarding authority. *Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co.* (1970) 128 Cal.Rptr. 632, 56 C.A.3d 361.

A general contractor on a public contract could not recover from a subcontractor for breach of such subcontract where contractor failed to comply with applicable provisions of § 4100 et seq., governing performance of subcontracts by a party other than original subcontractor listed in its bid, and where such violation was an integral and essential part of the transaction upon which its asserted cause of action was based. *Kiehl Corp. v. Gibson* (1965) 41 Cal.Rptr. 559, 231 C.A.2d 330.

No contractual relationship is created between subcontractor and general contractor by the submission by general contractor of bid using subcontractor's bid, though bid is accepted by awarding au-

1. Construction and application

Where prime contractor utilized mason's bid in compiling its total bid for construction project, but inadvertently failed to schedule mason on list of subcontractors in bid, prime contractor could not be held liable to mason under Subletting and Subcontracting Fair Practices Act, absent detrimental reliance on part of mason. *C. L. Smith Co., Inc. v. Roger Ducharme, Inc.* (1977) 135 Cal.Rptr. 182, 65 C.A.3d 735.

Even if prime contractor's bid had reflected savings afforded by subcontract bid lower than plaintiff's bid, where plaintiff's name and make of machinery it offered to supply were shown on bid form, prime contractor which obtained permission, at or award of contract, to use other machinery supplied by lower bidder violated Subletting and Subcontracting Fair Practices Act, in absence of prime contractor's complying with § 4107.5 procedures for

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thority. *Klose v. Sequoia Union High School Dist.* (1953) 258 P.2d 515, 118 C.A.2d 636.

Subcontractor, whose name is submitted with bid of general contractor, secures no legal rights as result of acceptance of general contractor's bid by awarding authority. *Id.*

2. Purpose

This section was intended to protect original subcontractor against replacement by another subcontractor. *Coast Pump Associates v. Stephen Tyler Corp.* (1979) 133 Cal.Rptr. 88, 62 C.A.3d 421.

Purpose of this section forbidding prime contractor, once his bid is accepted, from substituting subcontractor designated in original bid, except with consent of contracting agency is to protect original subcontractor against replacement by either another subcontractor or by the prime contractor. *Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co.* (1976) 128 Cal.Rptr. 632, 56 C.A.3d 361.

3. Existence of subcontract

Where prime contractor received unsolicited oral bid for masonry work from mason, figures submitted were used by prime contractor in compiling its total bid, after prime contractor was awarded prime contract, it sent to mason a form of subcontract agreement for purpose of determining terms and conditions of its offer of performance, there was exchange of writings which led to preparation of document which was finally sent to mason, who signed it and returned it to prime contractor, but prime contractor never signed it and informed mason that it could not proceed with masonry work because, through prime contractor's inadvertence, mason had not been scheduled as subcontractor on bid proposal submitted to owner and therefore could not be legally utilized on project, no subcontract existed between parties. *C. L. Smith Co., Inc. v. Roger Duclarme, Inc.* (1977) 135 Cal.Rptr. 183, 65 C.A.3d 735.

No contractual relationship is created between subcontractor and general contractor by the submission by general contractor of bid using subcontractor's bid, though bid is accepted by awarding authority. *Klose v. Sequoia Union High School Dist.* (1953) 258 P.2d 515, 118 C.A.2d 636.

4. Substitution of subcontractors

Unless a listed subcontractor becomes insolvent or fails or refuses to perform a written contract for work or fails or refuses to meet the bond requirements of

the prime contractor, the prime contractor may not substitute another subcontractor for the listed subcontractor and the awarding authority may not consent to such a substitution until the contract is presented to the listed subcontractor and he, after having had a reasonable opportunity to do so, fails or refuses to execute the written contract. *Southern California Acoustics Co. v. C. V. Holder, Inc.* (1969) 79 Cal.Rptr. 319, 456 P.2d 975, 71 C.2d 719.

Where general contractor for school construction listed plaintiff acoustical tile subcontractor as required by § 4104 requiring inclusion of names of subcontractors who are to perform one-half of one percent or more of construction work, and subcontractor acting on assumption that its bid had been accepted refrained from bidding on other construction jobs to remain within his bonding limits, and general contractor requested permission from school district to substitute another subcontractor, general contractor had no right to substitute another subcontractor in place of the plaintiff, and school district had no right to consent to that substitution. *Id.*

Contractor could not, without consent of county sanitation district, substitute itself for "earth work" subcontractor named in bid on public work for performance of the "earth work" after contractor declined to enter into contract with subcontractor even though subcontractor was willing to do so, and therefore, district properly withheld part of contract price as penalty for contractor's violation of his contract. *Fred L. Early, Jr., Co. v. County Sanitation Dist. No. 2 of Los Angeles County* (1963) 29 Cal.Rptr. 633, 214 C.A.2d 505.

Where general contractor, in making bid for repair of high school, inadvertently inserted wrong name for the electrical subcontractor, and bid of the one wrongfully named was \$500 higher than bid of the one who was intended to be named, board of trustees had authority to consent to substitution of proper name for the electrical subcontractor. *Klose v. Sequoia Union High School Dist.* (1953) 258 P.2d 515, 118 C.A.2d 636.

A prime contractor does not violate this section, prohibiting substitution of subcontractors once prime contractor's bid has been accepted, if he permits a subcontractor to use additional subcontractors to perform certain phases of the subcontract. 50 Ops.Atty.Gen. 11, 3-9-67.

A public body has neither the power nor the obligation, at the time of or after awarding the prime contract, to substitute

§ 4107

PUBLIC WORK AND PURCHASES

Title 1

Div 5

Note 4

a California subcontractor in place of an out-of-state subcontractor whose bid is not more than 5 per cent lower than the California subcontractor under § 4101, 4102 and this section. 18 Op.Atty.Gen. 185.

5. Damages

In action by general contractor for subcontractor's failure to honor his bid to perform certain subcontracting work at an agreed price, awarding general contractor as damages the amount representing the difference between the subcontractor's bid and the actual cost to the general contractor for the performance of the job was proper where the general contractor made reasonable efforts to negotiate a contract with other subcontractor but was unsuccessful in doing so. Norcross v. Winters, 1922, 25 Cal.Rptr. 821, 209 C.A.2d 297.

6. Penalties

Where general contractor entered into construction contract with county before 1961 amendment to § 4106 (renumbered: see, now, § 4110) and after effective date of section, contractor violated this section, county had right to recover the ten per cent penalty provided for in § 4106 (renumbered: see, now, § 4110) as amended, since no substantial change in the rights of contractors was made by the amendment. 30 Op.Atty.Gen. 282.

7. Pleadings

Where plaintiff alleged that it submitted to general contractor for school construction a subcontract bid, that general contractor, as required by law, submitted

plaintiff's name among listed subcontractors, that plaintiff read trade newspaper report and acting on assumption that its bid had been accepted, refrained from bidding on other construction jobs in order to remain within bonding limits, and that thereafter the general contractor requested permission from school district to substitute another subcontractor for the plaintiff, which consent was granted, plaintiff stated a cause of action against general contractor for breach of statutory duty. Southern California Acoustics Co. v. C. V. Holder, Inc. (1969) 79 Cal.Rptr. 619, 159 P.2d 1475, 71 C.2d 719.

8. Estoppel

School district employee's advice to prime contractor that it should take no action to substitute subcontractor before contract was signed and that a request for substitution would be granted after contract was awarded did not estop school district from assessing penalty against contractor where district was without power to permit substitution. Merco Const. Engineers, Inc. v. Los Angeles Unified School Dist. of Los Angeles County (1969) 79 Cal.Rptr. 23, 274 C.A.2d 154.

9. Burden of proof

Plaintiff who asserted violation by prime contractor of Subletting and Subcontracting Fair Practices Act did not have burden of proving defendant's non-compliance with Act. Coast Pump Associates v. Stephen Tyler Corp. (1976) 133 Cal.Rptr. 85, 62 C.A.3d 421.

§ 4107.2. Carpeting; specifying labor subcontractor in bid

No subcontractor listed by a prime contractor under Section 4101 as furnishing and installing carpeting, shall voluntarily sublet or subcontract with respect to any portion of the labor to be performed unless he specified the subcontractor in his bid for such subcontract to the prime contractor.

(Added by Stats.1975, c. 271, p. 682, § 1.)

Library References

Municipal Corporations (2000), States (1978).

C.I.S., Municipal Corporations & Cities, C.I.S., States §§ 160 to 167.

§ 4107.

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The award Section 4107, consent

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(b) If the intended contractor who not submit the prime claim of in

If such intended working design the award to the prime awarding shall hold

§ 4107.5. Clerical error in listing subcontractor; objections by listed subcontractor; substitution of intended subcontractor

The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of such notice to both the subcontractor he claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening.

Any listed subcontractor who has been notified by the prime contractor in accordance with the provisions of this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error. Failure of such listed subcontractor to file such written notice within the six working days shall be primary evidence of his agreement that an inadvertent clerical error was made.

The awarding authority shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, consent to the substitution of the intended subcontractor:

(a) If (1) the prime contractor, (2) the subcontractor listed in error and (3) the intended subcontractor each submit an affidavit to the awarding authority along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or

(b) If such affidavits are filed by both the prime contractor and the intended subcontractor within such specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to the awarding authority and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

If such affidavits are filed by both the prime contractor and the intended subcontractor but the listed subcontractor has, within six working days from the time of the prime bid opening, submitted to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error, the awarding authority shall investigate the claims of the parties and shall hold a public hearing as provided in Section 4107 to determine

§ 4107.5

PUBLIC WORK AND PURCHASES

Title 1

Div. 5

the validity of such claims. Any determination made shall be based on the facts contained in the declarations submitted under penalty of perjury by all three parties and supported by testimony under oath and subject to cross-examination. The awarding authority may, on its own motion or that of any other party, admit testimony of other contractors, any bid registries or depositories, or any other party in possession of facts which may have a bearing on the decision of the awarding authority.

(Added by Stats.1969, c. 332, p. 706, § 3.)

Cross References

Perjury and subornation of perjury, see Penal Code § 118 et seq.

Notes of Decisions

1. In general

Even if prime contractor's bid had reflected savings afforded by subcontract bid lower than plaintiff's bid, where plaintiff's name and make of machinery it offered to supply were shown on bid form, prime contractor which obtained permission, after award of contract, to use other machinery supplied by lower bidder violated Subletting and Subcontracting Fair Prac-

tices Act, in absence of prime contractor's complying with this section procedures for asserting claim of clerical error, and plaintiff was entitled to recover from prime contractor the benefit of the bargain it would have realized had it not been wrongfully deprived of subcontract. Coast Pump Associates v. Stephen Tyler Corp. (1976) 153 Cal.Rptr. 88, 62 C.A.3d 421.

§ 4108. Subcontractors' performance bonds

(a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit faithful performance and payment bond or bonds if so requested by the prime contractor.

(b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to such prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of such subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under such subcontract, the prime contractor may reject such bid and make a substitution of another subcontractor subject to the provisions of Section 4107. Such bond or bonds may be required at the expense of the subcontractor only if the prime contractor in his written or published request for subbids (1) specifies that the expense for such bond or bonds shall be borne by the subcontractor and (2) clearly specifies the amount and requirements of such bond or bonds.

(Added by Stats.1963, c. 2125, p. 4112, § 9. Amended by Stats.1974, c. 544, p. 1248, § 6.)

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Historical Note

The 1974 amendment substituted "payment bond" for "labor and materials bond".

Former § 4108, enacted by Stats.1945, c. 1380, p. 2577, § 7, as renumbered § 4113 and amended by Stats.1963, c. 2125, p. 4413, § 14.

Cross References

Payment bond for public works, see Civil Code § 3217 et seq.

Library References

Municipal Corporations § 311 et seq.
States § 101.

C.J.S. Municipal Corporations § 1171 et seq.
C.J.S. States §§ 184 to 193.

Notes of Decisions**1. In general**

Even though general contractor which contracted to perform work for public college could have required delivery of performance bond by subcontractor under this section, such a bond was not general contractor's sole means of protecting it-

self against loss resulting from non-performance, and surety which issued \$2,500 bond on behalf of subcontractor was not thereby relieved of liability on such bond. *Bailey-Sporber, Inc. v. Yosemite* (1976) 134 Cal.Rptr. 740, 64 C.A.3d 725.

§ 4109. Conditions under which subcontract permitted after failure to designate subcontractor in bid

Subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.

(Formerly § 4105, enacted by Stats.1943, c. 134, p. 981, § 4105. Amended by Stats.1945, c. 1380, p. 2577, § 5. Renumbered § 4109 and amended by Stats.1963, c. 2125, p. 4413, § 10.)

Historical Note

The 1945 amendment added the percentage provisions.

For partial validity provision of the 1945 act, see Historical Note under § 4103.

The 1963 amendment referred to "prime contractor's" instead of "general contractor's".

Derivation: Stats.1941, c. 1283, p. 3220, § 1.

Library References

Municipal Corporations § 373.
States § 107.

C.J.S. Municipal Corporation § 1182.

C.J.S. Schools and School Districts § 301.

C.J.S. State § 69.

4110 PUBLIC WORK AND PURCHASES Title 1

Div. 5 S

4110. Violation of chapter as contract violation; hearing; cancellation; penalty

any opportunity to present any facts of the exercise of the predicated. Merco v. Los Angeles Unified School District, 117 Cal. App. 2d 151.

A prime contractor violating any of the provisions of this chapter violates his contract and the awarding authority may exercise the option, in its own discretion, of (1) cancelling his contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.

2. Construction and

A general contractor could not recover for breach of contract where contractor was not the party governing performance. See applicable provisions of the contract. In a party other than listed in its bid, as was an integral part of the transaction upon which the action was based. (1965) 41 Cal. App. 2d 30.

Formerly § 4106, enacted by Stats.1943, c. 134, p. 981, § 4106. Amended by Stats.1945, c. 1380, p. 2577, § 6; Stats.1961, c. 1963, p. 4140, § 1. Renumbered § 4110 and amended by Stats.1963, c. 2125, p. 4413, § 11. Amended by Stats.1969, c. 332, p. 706, § 2.)

Where general contractor construction contract 1961 amendment effective date of section § 4107, relating to work done by subcontractor to recover right to recover provided for in contract since no substantial of contractors' contract. 39 Ops.Att.

Historical Note

The 1943 amendment, in the first sentence, referred to "general contractor" instead of "contractor". The second sentence, which declared that after a violation the contractor could not recover for value of the materials furnished on the public work or improvement, was deleted, and a second and third sentence were substituted which provided that the penalty shall be 20 percent of the amount of the contract and that the penalties referred would be paid to the state treasurer who would deposit them in the general fund.

The 1961 amendment gave the awarding authority the option of canceling the contract or assessing a penalty of not more than 10 percent of the amount of the subcontract or both, and provided that the penalty would be deposited in the fund out of which the contract was awarded.

The 1963 amendment referred to "prime contractor" instead of "general contractor".

The 1969 amendment deleted subsec. (3) which contained an option of both canceling the contract and assessing the penalty and added the second sentence.

3. Status of subcontractor

No contractual relationship between subcontractor and contractor by the subcontractor of bid although bid is authority. Klose School Dist. (1965) 41 Cal. App. 2d 636.

For partial validity provision of the 1965 act, see Historical Note under § 4110.

Derivation: Stats.1941, c. 1283, p. 3230, § 1.

Subcontractor, with bid of general contractor, legal rights as general contractor. Authority, id.

Cross References

Convention of identification requirements, see § 4105.

4. Mistake

A mistake in subcontracting a high school building.

Library References

Municipal Corporations § 375, 409.

C.L.S. Municipal Corporations § 1208 et seq. C.L.S. States §§ 151, 153, 174 to 176.

Notes of Decisions

Construction and application 2
Undated damages 5
Mistake 4
Status of subcontractor 3
Validity 1
Withholding contract price 6

I. Validity

This section authorizing awarding authority, in its discretion, to assess 10% penalty against prime contractor who violates the provisions of Chapter 2 violates due process in that it does not provide

§ 4111.

Violation of contract with Section 4110 constitutes

any opportunity to the contractor to present any facts or arguments on which the exercise of that discretion might be predicated. *Merco Const. Engineers, Inc. v. Los Angeles Unified School Dist. of Los Angeles County* (1969) 79 Cal.Rptr. 23, 274 C.A.2d 154.

2. Construction and application

A general contractor on a public contract could not recover from a subcontractor for breach of such subcontract where contractor failed to comply with applicable provisions of § 4100 et seq. governing performance of subcontracts by a party other than original subcontractor listed in its bid, and where such violation was an integral and essential part of the transaction upon which its asserted cause of action was based. *Kiely Corp. v. Gibson* (1965) 41 Cal.Rptr. 559, 231 C.A.2d 39.

Where general contractor entered into construction contract with county before 1961 amendment to this section and after effective date of section, contractor violated § 4107, relating to public construction work done by subcontractors, county had right to recover the ten percent penalty provided for in this section, as amended, since no substantial change in the rights of contractors was made by the amendment. 39 Ops.Atty.Gen. 253.

3. Status of subcontractor

No contractual relationship is created between subcontractor and general contractor by the submission by general contractor of bid using subcontractor's bid, though bid is accepted by awarding authority. *Klose v. Sequoia Union High School Dist.* (1953) 258 P.2d 515, 118 C.A.2d 620.

Subcontractor, whose name is submitted with bid of general contractor, secures no legal rights as result of acceptance of general contractor's bid by awarding authority. *Id.*

4. Mistake

A mistake through which corporation subcontracting to do steel work on junior high school auditoriums and connecting

shelter, for construction of which another corporation, aware of such mistake, had general contract with school district, seemingly agreed to perform for \$37,700 for work reasonably worth at least \$17,000 because of failure to exclude from subcontract steel decking specifically excluded in subcontractor's oral bids, was so essential and fundamental that parties' minds never met on subcontract as executed and subcontractor was entitled to rescission thereof. *Brunzell Const. Co. v. G. J. Welsbrod Inc.* (1955) 285 P.2d 989, 134 C.A.2d 278.

Where general contractor, in making bid for repair of high school, inadvertently inserted wrong name for the electrical subcontractor, and bid of the one wrongfully named was \$500 higher than bid of the one who was intended to be named, board of trustees had authority to consent to substitution of proper name for the electrical subcontractor. *Klose v. Sequoia Union High School Dist.* (1953) 258 P.2d 515, 118 C.A.2d 636.

5. Liquidated damages

Where school district was specifically authorized by this section to provide for penalty for substitution or deletion of subcontractors, school district did not violate Civ.C. § 1670 (repealed; see, now, Civ.C. § 1671) prohibiting contracts fixing damages for breach of an obligation when district assessed penalty against contractor for making substitution. *Merco Const. Engineers, Inc. v. Los Angeles Unified School Dist. of Los Angeles County* (1969) 79 Cal.Rptr. 23, 274 C.A.2d 154.

6. Withholding contract price

Contractor could not, without consent of county sanitation district, substitute itself for "earth work" subcontractor named in bid on public work for performance of the "earth work" after contractor declined to enter into contract with subcontractor even though subcontractor was willing to do so, and, therefore, district properly withheld part of contract price as penalty for contractor's violation of his contract. *Fred J. Early, Jr., Co. v. County Sanitation Dist. No. 2 of Los Angeles County* (1963) 29 Cal.Rptr. 633, 214 C.A.2d 505.

§ 4111. Violation of chapter as grounds for discipline

Violation of this chapter by a licensee under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code constitutes grounds for disciplinary action by the Contractors

§ 4111 PUBLIC WORK AND PURCHASES Title 1

State License Board, in addition to the penalties prescribed in Section 4110.

(Formerly § 4106.5, added by Stats.1961, c. 1963, p. 4141, § 2. Renumbered § 4111 and amended by Stats.1963, c. 2125, p. 4413, § 12.)

Historical Note

The 1963 amendment referred to "Section 4110" instead of "Section 4106".

Cross References

Conventions and certification requirements, see § 4105.
Disciplinary proceedings against contractors, see Business and Professions Code § 7000 et seq.
Subcontracting after award, see § 4109.

Library References

Licenses § 1150, 95. C.S. Licenses §§ 30, 43, 44.

§ 4112. Contractor's noncompliance not defense in action by subcontractor

The failure on the part of a contractor to comply with any provision of this chapter does not constitute a defense to the contractor in any action brought against him by a subcontractor.

(Formerly § 4107, enacted by Stats.1943, c. 134, p. 981, § 4107. Renumbered § 4112 and amended by Stats.1963, c. 2125, p. 4413, § 13.)

Historical Note

The 1963 act renumbered this section without changing the text. Derivation: Stats.1911, c. 1283, p. 3230, § 1.

Library References

Municipal Corporations § 27411. C.S. Municipal Corporations § 1208 et seq.
C.S. States §§ 174 to 183.

Notes of Decisions

1. Construction and application

In view of provision of this section that failure on the part of a public contractor to comply with certain provisions pertaining to transfer or subdivision of subcontractors their non-compliance with contractor's duties in fact shall not constitute a defense to the contractor in any action

brought against him by a subcontractor, without such privilege having been extended to the general contractor, failure of contractor to comply would be deemed to bar his right to maintain a suit against a subcontractor for breach of contract. 1945 Comm. (Gilson) 41 Cal.Rptr. 759, 231 C.A.2d 130.

§ 4113. Subcontractor; prime contractor

As used in this chapter, the word "subcontractor" shall mean a contractor, within the meaning of the provisions of Chapter 9 (con-

Div. 5

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For partial 1945 act, see 4103.

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rence with Section 7009) of Division 3 of the Business and Professions Code, who contracts directly with the prime contractor.

"Prime contractor" shall mean the contractor who contracts directly with the awarding authority.

Formerly § 4108, added by Stats.1945, c. 1330, p. 2577, § 7. Renumbered § 4113 and amended by Stats.1963, c. 2125, p. 4413, § 14. Amended by Stats. 1974, c. 423, p. 1023, § 2.)

Historical Note

The 1963 amendment added the second paragraph which defines "prime contractor".

For partial validity provision of the 1945 act, see Historical Note under § 4108.

The 1974 amendment rewrote the first paragraph, which previously read: "As used in this chapter, the word 'subcontractor' shall have the meaning given to it by the provisions of Chapter 9 of Division 3 of the Business and Professions Code."

Library References

Municipal Corporations § 426 et seq.
States § 50 et seq.

C.I.S. Municipal Corporations § 1142 et seq.
C.I.S. States §§ 154, 155, 160.

Chapter 2.5

CONTRACTOR'S RESPONSIBILITY FOR WORK

Sec.

- 4150. Exclusion of acts of God; insurance.
- 4151. Definitions.
- 4152. Applicability.
- 4153. Changes in contracts to comply with environmental requirements and standards.
- 4154. Contracts: termination, amendment, or modification of public contracts: competitive bids.

Chapter 2.5 was added by Stats.1971, c. 1793, p. 3642, § 1.

§ 4150. Exclusion of acts of God; insurance

Construction contracts of public agencies shall not require the contractor to be responsible for the cost of repairing or restoring damage to the work which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the awarding authority. However, such contracts may include provisions for terminating the contract. The requirements of this section shall not be mandatory as to construction contracts fi-

§§ 3600 to 3802
Repealed

GOVERNMENT CODE

DIVISION 4.5. CONFLICT OF INTEREST [REPEALED]

Division 4.5 was repealed by Stats.1981, c. 160, p. 963, § 4.

§§ 3600 to 3802. Repealed by Stats.1981, c. 160, p. 963, § 4

DIVISION 5. PUBLIC WORK AND PUBLIC PURCHASES

Chapter

3.2. Energy Conservation Contracts	4217
10.5. Target Area Contract Preference Act	4216
11. Child Care Facilities for State Employees [Renumbered]	4217
12. Child Care Facilities for State Employees	4217
13. Withheld Contract Funds	4217
14. Arbitration of Public Works Contract Claims	4217

CHAPTER 2. SUBLETTING AND SUBCONTRACTING

Section

4114. Counties with population of 6,000,000 or more; delegation of awarding authority; procedure	
§ 4107. Substitution of subcontractors; consent; assignment of subcontract; subcontracting after award	

Notes of Decisions

3. Existence of subcontract

Mere listing of a subcontractor's name by the prime contractor in its bid to the public agency does not create a contract between subcontractor and prime contractor nor does it create any other common-law right to maintain an action against the prime contractor and "duty" created is purely a statutory one under Subletting and Subcontracting Fair Practices Act (§ 4100 et seq.). Interior Systems, Inc. v. Del E. Webb Corp. (1981) 175 Cal Rptr 301, 121 C.A.3d 312.

4. Substitution of subcontractors

Substituted subcontractor on government construction project failed to state claim against prime contractor for alleged breach of duty under Subletting and Subcontracting Fair Practice Act (§ 4100 et seq.) absent allegation that substitution was wrongful or unlawful or that permission of

agency to substitute was wrong or unlawful or absent allegation of any fact implying that substitution was unlawful or wrongful and, in any event, complaint alleged no statutory defense, i.e., that agency permitted substitution because of subcontractor's failure to sign subcontract. Interior Systems, Inc. v. Del E. Webb Corp. (1981) 175 Cal Rptr 301, 121 C.A.3d 312.

Prime contractor, faced with refusal by subcontractor to execute subcontract for certain underground work called for in proposed project, was not required by this section to give subcontractor notice of its request to city development agency for permission to perform underground work in question itself and did not breach a statutory duty to subcontractor by substituting itself after affording subcontractor a reasonable opportunity to perform work. W J Lewis Corp. v. C. Harper Const. Co., Inc. (1981) 171 Cal Rptr 806, 116 C.A.3d 27.

§ 4114. Counties with population of 6,000,000 or more; delegation of awarding authority; procedure

In counties with a population of 6,000,000 or more, the county board of supervisors, when it is the awarding authority, may delegate its functions under Sections 4107 and 4110 to a hearing officer designated by the board.

The hearing officer shall make a written recommendation to the board of supervisors. The board of supervisors may adopt the recommendation without further notice or hearing, or may set the matter for a de novo hearing before the board.

(Added by Stats.1982, c. 362, p. 1676, § 1.)

CHAPTER 3. RELIEF OF BIDDERS [REPEALED]

Former Chapter 3 was repealed by Stats.1982, c. 435, p. 1801, § 1.

Underline indicates changes or additions by amendment

1200 to 4208. Repealed

Pub Con C. § 5100 et
Amendment of § 4201 by Stats
200 was subordinated under the

CHAPTER 3.1. PRO

Section
4215.5

Regional notification
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Regional notification c
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notice to member; a
Permit to excavate; n

§ 4215.5. Repealed by Stats.19

The repealed section, added by Stat
4215, § 1, amended by Stats.1982, c.
related to local ordinances requiring pu

§ 4216. Regional notification c
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tion number; notice

(a) For purposes of this section
(1) "Inquiry identification num
notification center to every pers
(2) "Subsurface installation" m
structure, except nonpressurized s
drain lines, operated or maintained
(3) "Regional notification center"
of subsurface installations which p
existing subsurface installations, fr
removal, relocation, or repair.

(4) "Emergency" means a sudden,
demanding immediate action to prev
essential public services. "Emergenc
soil or geologic movements, as well :

(b) Every owner of a subsurface
become a member of, participate in, a
of subsurface installations who are m
notification center, including, but not
Underground Service Alert—North
California, on or after July 1, 1984, st
section and Section 4217.

(c) Except in an emergency, every
appropriate regional notification cent
excavation, if the excavation will be co
known, to contain subsurface installati
by the excavator. The regional notifica
the person who contacts the center and
installation in the area of the proposed

(d) Every person planning to condu
appropriate regional notification center
known, to contain subsurface installati
by the excavator. The regional notifica

Asterisks . . . indicate deletions by am



Painters Local Union No. 1140

of the International Brotherhood Of Painters And Allied Trades AFL-CIO

TELEPHONE: (907) 279-3556

OFFICE: 1818 W. NORTHERN LIGHTS BLVD., ANCHORAGE, ALASKA 99503

February 7, 1986

Senator Patrick Rodey
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: SB341; Section 36.30.140

Dear Senator Rodey:

SB341 is one of those bills that has the potential to correct a large number of problems connected with construction projects funded with public monies.

However, there are some people who claim that certain sections of SB341 would not be beneficial to them.

The bill is not designed to be beneficial to a select group but to insure fairness to all bidders of public works projects.

There is however, one glaring weakness in the bill, the failure to list all subcontractors at bid opening!

The Department of Transportation and the Associated General Contractors claim that the listing of all subcontractors at bid opening is not feasible.

What they really mean to say is that it does not allow for the general contractors to "shop" the bids they have received prior to bid opening.

I have attached a copy of a letter this office sent to Senator Faiks on January 2, 1986. Part of the text of that letter covers the current policy of the Kenai Borough of listing subcontractors at bid opening. Also attached is a list of subcontractors for a Matanuska-Susitna Borough project. Please note that the Mat/Su borough requires notification of subcontractors within 24 hours of bid opening.

Of the eleven boroughs in the state, two of the largest boroughs are already requiring the listing of subcontractors either at bid opening or within 24 hours of bid opening.

We feel that it is time that all bidders on public construction projects were treated equally.

It is extremely frustrating to the subcontractors to spend

Covering Alaska Below The 63° Parallel

PAINTERS, SIGN PAINTERS, VINYL HANGERS, DRYWALL TAPERS, GLAZIERS, FLOORCOVERERS

time and money bidding a project, come in low bidder and then see their bid shopped to someone else at a lower price.

I have also enclosed a copy of the California statute on subletting and subcontracting. Not only is this statute currently in effect, the contractors in California feel that this one statute alone has done more to preserve the integrity of the state procurement office than any other recent piece of legislation in the state of California.

As our economy continues to constrict the problem of bid shopping will only intensify.

Twenty years ago the problem of bid shopping in Alaska did not exist. Of course twenty years ago there was only ten major contractors in the entire state.

Today there is literally hundreds of major contractors bidding work in Alaska and unfortunately many of the contractors now bidding do not have the same scruples as the long time Alaskan contractors.

The inclusion of language similar to California's statute 4100 would be a step in the right direction of treating all construction contractors equally.

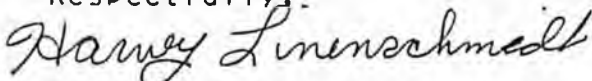
The current language in Title 36 (36.05.035) is totally ignored by not only the general contractor but also by the issuing agency and the State Department of Labor.

The Seward prison being a prime example of bid shopping.

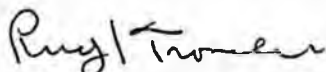
The award was made to Samwhan Corp. on 9/5/1985, there is still not a list of subcontractors, five months after the award. (See attached)

Your committee's consideration of language similar to the above suggestions in section 36.30.140 would be appreciated by all Alaskan subcontractors.

Respectfully:



Harvey Linenschmidt
Field Representative



Rudy Trosclair
Business Manager

CC: Senators
Tim Kelly
Jan Faiks
Rick Halford
Robert Ziegler, Sr.



Painters Local Union No. 1140

of the International Brotherhood Of Painters And Allied Trades AFL-CIO

TELEPHONE: (907) 279-3556

OFFICE: 1818 W. NORTHERN LIGHTS BLVD., ANCHORAGE, ALASKA 99503

January 2, 1985

Senator Jan Faiks
1024 West Sixth Ave.
Anchorage AK 99501

Re: AGC Testimony of 12/5/1985

Dear Senator Faiks;

Painters and Allied Trades, Local 1140 finds itself in agreement with most of the AGC testimony of 12/5/1985, with the exception of the comments made about section 36.30.110.

The eighty-one subcontractors who are signatory with Local 1140 not only have a clear understanding of the bid process, they are also the most vocal about the current practice of general contractors shopping their bids.

The AGC failed to note that the current policy of the Kenai Borough is to have the subcontractors listed at bid opening. The AGC also failed to inform the committee that the Matanuska-Susitna Borough has a policy of requiring the general contractor to submit to the architect with in 245 hours of bid opening a list of all subcontractors. (Attachment "A")

The AGC is quite aware that with rare exception does the general contractor require a subcontractor to bond a project. The AGC should also be aware of the fact that in order for a subcontractor to secure a Specialty Licenses the sub must provide proof of insurance to the Dept. of Commerce and Economic Development prior to the licenses being issued.

If general contractors were indeed checking qualification we would not be having all the problems that we currently are having.

Alaska Statute 08.18, section 08.18.011 states that "it is unlawful for a person to submit a bid or work as a contractor until that person has been issued a certificate of registration by the Dept. of Commerce and Economic Development." How the AGC can say that complying with the current laws of the state "is unreasonable" is most indicative of the AGC's attitude toward treating all bidders fairly.

The California statute 4107 address the problem of substitution of subcontractors quite adequately, yet the AGC has chosen to ignore a system that has been proven to work.

Covering Alaska Below The 63° Parallel

PAINTERS, SIGN PAINTERS, VINYL HANGERS, DRYWALL TAPERS, GLAZIERS, FLOORCOVERERS

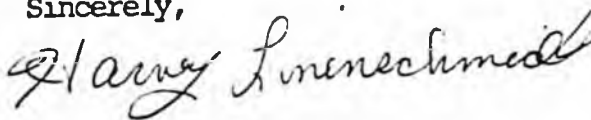
Page 2

Letter to Senator Jan Faiks
Dated January 2, 1986

In conclusion I feel that the AGC is taking a position on the subject of subcontracting that is not defensible.

Two of the states larger borough's are already using a system similar to other states and the state of California is using a system that has over the years demonstrated that construction cost is reduced and that all bidders are treated fairly.

Sincerely,



Harvey B. Linenschmidt
Field Representative

HBL/kia

(A)
PALMER HIGH SCHOOL

SPECIAL FRONT END DOCUMENTS - MAT-SU BOROUGH PROJECTS

1985

PROPOSED SUBCONTRACTORS AND SUPPLIERS

Note: This list to be delivered to the Architect by the end of the first work day following the Bid Opening.

<u>ITEM</u>	<u>CONTRACTOR NAME AND ADDRESS</u>
1. Earthwork	J.B. Warrack Company, P.O. Box 2080, Anchorage, AK 99510
2. Structural Steel & Misc. Iron	United Iron Works, P.O. Box 81023, Seattle, WA
3. Concrete	ALAGCO, 7800 Lake Otis Parkway, Anchorage, AK 99507
4. Masonry	Janssen Contracting, 1520 Post Road, Anchorage, AK 99501
5. IRMA Roofing	Anchorage Roofing, P.O. Box 110217, Anchorage, AK 99511
6. Windows	Alaska Curtain Wall, 1807 West 4th Avenue, Anchorage, AK 99517
7. Wood Doors	Northwest Millwork, 360 W. Nickerson, Seattle, WA 98119
8. Metal Doors	North Central Supply, P.O. Box 380, Rapid City, SD 57701
9. Aluminum Doors & Entrances	Alaska Curtain Wall, 1807 West 4th, Anchorage, AK
10. Door Frames - Hollow Metal	North Central Supply, P.O. Box 380, Rapid City, SD
11. Insulation	R.M. Eyre and Associates, 1013 E. Dimond, Anchorage, AK 99515
12. Casework	Northern School Specialties, P.O. Box 875496, Wasilla, AK 99687
13. Door Hardware	Brennan Commercial Co.
14. Painting	Coastal Painting, P.O. Box 871791, Wasilla, AK 99687 - 376 - 4303
15. Acoustical Ceilings	R.M. Eyre and Associates, 1013 E. Dimond, Anchorage, AK
16. Drywall	R.M. Eyre and Associates, 1013 E. Dimond, Anchorage, AK
17. Acoustical Panels	R.M. Eyre and Associates, 1013 E. Dimond, Anchorage, AK
18. Plumbing	M-K Mechanical, 1107 E. 70th, Anchorage, AK 99510
19. Fire Sprinkler System	M-K Mechanical, 1107 E. 70th, Anchorage, AK 99510
20. HVAC	M-K Mechanical 1107 E. 70th, Anchorage, AK 99510

21. Electrical Scofield Electric, Pouch 4-9013, Anchorage, AK 99509
22. Landscaping J.B. Warrack Company, Inc., P.O. Box 2080, Anchorage, AK 99510
23. Paving Rasco, Inc., P.O. Box 4-2377, Anchorage, AK 99509
24. - BADGER FLOORING



SAMWHAN AMERICA, INC.

290 Newhall Street
San Francisco, CA 94124
Tlx: 171462 SWC SFO
Tel: (415) 648-5020

900 W. 5th Ave. #615
Anchorage, Alaska 99501

Painters Local Union No.1140
1818 W. Northern Lights Blvd.,
Anchorage, Alaska 99503

Our Ref : 85-SML-001
Date : Oct.31,1985

Attn : Mr.Harvey B. Linenschmidt
Field Representative

Re : Subcontract List

Dear Sir;

We received your letter of Oct.28,1985 with much interests. As you may be aware of, severe winter is coming and no major Work will be performed with exception of small portion of site civil work. We expect next Spring would be time of commencement of Steel Structure Work and P.C. Work. In other words, trades like your line of business will commence in later part of next year, and for the moment we have no idea when a list of subcontractors be made available. If you contact us in next Spring, the list might be obtainable upon request. Should you need more information, please call us.

Very Truly Yours,

T. R. HAHM
Executive Vice-President

RECEIVED NOV - 7 1985

Chapter 2

SUBLETTING AND SUBCONTRACTING

Sec.

- 4100. Short title.
- 4100.5. Application of chapter.
- 4101. Legislative finding; bid shopping and bid peddling.
- 4102. Renumbered.
- 4103. Preservation of rights and remedies.
- 4104. Identification of subcontractors by bidders.
- 4105. ~~Circumvention of identification requirements.~~
- 4106. ~~Failure to specify subcontractor; performance of work~~ subcontracting after award. *amend*
- 4106.5. Renumbered. *commented*
- 4107. ~~Substitution of subcontractors;~~ consent; assignment of subcontract; subcontracting after award.
- 4107.2. Carpeting; specifying labor subcontractor in bid.
- 4107.5. Clerical error in listing subcontractor; objections by listed subcontractor; substitution of intended subcontractor.
- 4108. ~~Subcontractors' performance bonds.~~
- 4109. Conditions under which subcontract permitted after failure to designate subcontractor in bid.
- 4110. Violation of chapter as contract violation; hearing; ~~cancellation~~ *OK* penalty *10%*
- 4111. Violation of chapter as grounds for discipline *under licensing statute*
- 4112. Contractor's noncompliance not defense in action by subcontractor.
- 4113. Subcontractor; prime contractor.

Cross References

Contractors License Law, see Business and Professions Code § 7000 et seq.
State purchases and services, see § 14780 et seq.

Law Review Commentaries

Bid shopping and peddling in the subcontract construction industry. (1970) 18 U.C.L.A. Law Rev. 359.

§ 4100. Short title

This chapter may be cited as the "Subletting and Subcontracting Fair Practices Act."

(Stats.1943, c. 134, p. 980, § 4100. Amended by Stats.1949, c. 1453, p. 2535, § 1; Stats.1963, c. 2125, p. 4411, § 1.)

Historical Note

The 1949 amendment declared that the chapter did not apply to contracts for the construction, improvement or repair of "streets or highways, including bridges". Previously the section declared that the chapter did not apply to contracts for the

Corporations § 544.
§§ 120, 130 to 136, 139.

for
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construction, improvement or repair of "State highways, including bridges, nor to city or county projects financed in whole or in part with motor vehicle fuel funds".

The 1963 amendment rewrote this section to read as it now appears.

Provisions formerly contained in this section prior to the 1963 amendment are now contained in § 4100.5.

Derivation: Stats.1941, c. 1282, p. 3220, § 1.

Forms

See West's California Code Forms, Government.

Library References

Municipal Corporations § 326 et seq.
States § 90 et seq.

C.J.S. Municipal Corporations § 1142 et seq.
C.J.S. States §§ 154, 155, 160.

Notes of Decisions

Construction and application 1
Purpose 2

1. Construction and application

Where electrical contractor's mistaken bid was due to failure of its estimator to take into account that he was dealing with half-size plans although estimator knew plans were half-size and general contractor was not aware of mistake until ten minutes before bids were opened, general contractor was entitled to recover from electrical contractor the additional monies which general contractor was required to pay to have work performed by another electrical contractor after electrical contractor which submitted bid refused to

perform in accordance with bid. Saliba-Kringlen Corp. v. Allen Engineering Co. (1971) 92 Cal.Rptr. 799, 15 C.A.3d 95.

2. Purpose

The purpose of Subletting and Subcontracting Fair Practices Act was not limited to providing the awarding authority with opportunity to approve substitute subcontractors, but also to protect the public and subcontractors from the evils attendant upon practices of bid shopping and bid peddling subsequent to the award of prime contract for a public facility. Southern California Acoustics Co. v. C. V. Holder, Inc. (1969) 79 Cal.Rptr. 319, 456 P.2d 975, 71 C.2d 719.

§ 4100.5. Application of chapter

With the exclusion of that portion of work covering street lighting and traffic signals, this chapter does not apply to the balance of contracts for the construction, improvement or repair of streets or highways, including bridges.

(Added by Stats.1963, c. 2125, p. 4411, § 2. Amended by Stats.1972, c. 834, p. 1488, § 1.)

Historical Note

The 1972 amendment inserted the exclusion of work covering street lighting and traffic signals and inserted the words "the balance of" preceding "contracts".

The provisions now contained in this section were formerly contained in § 4100 prior to the 1963 amendment.

Library References

Municipal Corporations § 326 et seq.
States § 90 et seq.

C.J.S. Municipal Corporations § 1142.
C.J.S. States §§ 154, 155, 160.

1. In general

Bid shopping is not unguis when done by general contractor for construction

§ 4101. Legislative

The Legislature f peddling in connection public improvements workmanship to the d full benefits of fair co tractors, and lead to other evils.

(Added by Stats.1963, c

Former § 4101, enacted 134, p. 981, § 4101, ame 1945, c. 1380, p. 2576, § 1, 1

Municipal Corporations § States § 90 et seq.

In general 1
Definitions 3
Purpose 2

1. In general

Where prime contractor bid in compiling its total tion project, but inadver schedule mason on list o in bid, prime contractor e liable to mason under Sul contracting Fair Practic detrimental reliance on po L. Smith Co., Inc. v. R Inc. (1977) 135 Cal.Rptr 735.

2. Purpose

Purpose of this Act is tices of bid shopping in connection with public Bay Cities Paving & Hensel Phelps Const. Cal.Rptr. 632, 56 C.A.3d

Notes of Decisions

1. In general

Bid shopping is not against public policy when done by general contractor awarded contract for construction of freeway. Saliba-Kringlen Corp. v. Allen Engineering Co. (1971) 92 Cal.Rptr. 799, 15 C.A.3d 95.

§ 4101. Legislative finding; bid shopping and bid peddling

The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.

(Added by Stats.1963, c. 2125, p. 4411, § 4.)

Historical Note

Former § 4101, enacted by Stats.1943, c. 134, p. 981, § 4101, amended by Stats. 1945, c. 1380, p. 2576, § 1, was renumbered § 4103 and amended by Stats.1963, c. 2125, p. 4411, § 4.

Library References

Municipal Corporations § 226 et seq. States § 90 et seq. C.J.S. Municipal Corporations § 1142 et seq. C.J.S. States §§ 154, 155, 160.

Notes of Decisions

In general 1
Definitions 3
Purpose 2

1. In general

Where prime contractor utilized mason's bid in compiling its total bid for construction project, but inadvertently failed to schedule mason on list of subcontractors in bid, prime contractor could not be held liable to mason under Subletting and Subcontracting Fair Practices Act, absent detrimental reliance on part of mason. C. L. Smith Co., Inc. v. Roger Ducharme, Inc. (1977) 135 Cal.Rptr. 483, 65 C.A.3d 735.

2. Purpose

Purpose of this Act is to prevent practices of bid shopping and bid peddling in connection with public works projects. Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co. (1976) 123 Cal.Rptr. 632, 56 C.A.3d 361.

The purpose of subletting and subcontracting fair practices act was not limited to providing the awarding authority with opportunity to approve substitute subcontractors, but also to protect the public and subcontractors from the evils attendant upon practices of bid shopping and bid peddling subsequent to the award of prime contract for a public facility. Southern California Acoustics Co. v. C. V. Holder, Inc. (1969) 79 Cal.Rptr. 319, 456 P.2d 975, 71 C.2d 719.

3. Definitions

"Bid shopping", practice sought to be prevented by this Act, is use of lowest bid already received by general or prime contractor to pressure other subcontractors into submitting even lower bids. Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co. (1976) 128 Cal.Rptr. 632, 56 C.A.3d 361.

ly contained in this amendment are 4100.5

1941, c. 1283, p. 3230,

Corporations § 1142 et 54, 155, 160.

lance with bid. Saliba-Allen Engineering Co. r. 799, 15 C.A.3d 95.

Subletting and Subcontracting Act was not limit- the awarding authority to approve substitute ut also to protect the tractors from the evils ractices of bid shopping subsequent to the award t for a public facility. ia Acoustics Co. v. C. V. 9) 79 Cal.Rptr. 319, 456 719.

ering street lighting the balance of con- of streets or high-

y Stats.1972, c. 834, p.

now contained in this merly contained in § 4100 amendment.

al Corporations § 1142. § 154, 155, 160.

In the bid

making a bid or offer to perform the work, shall, in his bid or offer, set forth:

(a) ~~The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the~~ prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid.

(b) The portion of the work which will be done by each such subcontractor under this act. The prime contractor shall list only one subcontractor for each such portion as is defined by the prime contractor in his bid.

(Formerly § 4102, enacted by Stats.1943, c. 134, p. 981, § 4102. Amended by Stats.1945, c. 1380, p. 2576, § 2. Renumbered § 4104 and amended by Stats.1963, c. 2125, p. 4411, § 5; Stats.1971, c. 376, p. 743, § 1; Stats.1971, c. 1584, p. 3195, § 1.)

Historical Note

The 1945 amendment, in subd. (a), required the name and location of the "place of business" of each subcontractor instead of the name and location of the "mill, shop, or office". Reference was made to the "general contractor" instead of to the "contractor". The percentage restriction was added. In subd. (b), reference was made to work to be done by each "such" subcontractor "under this act".

The 1971 amendments inserted in subd. (a) subcontractors licensed by the state who, under subcontract to the prime contractor, specially fabricate and install a portion of the work or improvement according to detailed drawings contained in the plans and specifications.

Former § 4104, enacted by Stats.1943, c. 134, p. 981, § 4104, amended by Stats. 1945, c. 1380, p. 2576, § 4, was renumbered § 4107 and amended by Stats.1963, c. 2125, p. 4412, § 8.

Derivation: Stats.1941, c. 1283, p. 3230, § 1.

For partial validity provision of the 1945 act, see Historical Note under § 4103.

The 1963 amendment added the second sentence of subd. (b) relating to the listing of subcontractors.

Cross References

Carpeting, sublet of subcontract, see § 4107.2.

Library References

Municipal Corporations § 322, States § 98.

C.J.S. Municipal Corporations § 1151. C.J.S. States §§ 160 to 167.

Notes of Decisions

- Acceptance of bids 2
Bid chiselling 5
Construction and application 1
Designation of subcontractors 3
Existence of subcontract 4

1. Construction and application
A public body has neither the power nor the obligation at the time of or after awarding the prime contract, to substitute a California subcontractor in place of an

out-of-state subcontractor whose bid is not more than 2 per cent lower than the California subcontractor under §§ 4107, 4334 and this section. 18 Ops.Atty.Gen. 185.

2. Acceptance of bids

In absence of an agreement to the contrary listing of subcontractor in prime bid for public school construction was not an implied acceptance of subcontractor's bid by general contractor, since the listing by general contractor of subcontractors he intends to retain is in response to statutory command and cannot reasonably be construed as an expression of acceptance. Southern California Acoustics Co. v. C. V. Holder, Inc. (1969) 79 Cal.Rptr. 319, 450 P.2d 975, 71 C.2d 719.

3. Designation of subcontractors

Prime contractor, which was to excavate, by designating both itself and paving subcontractor on same line in designation of subcontractors for paving and excavating violated this Act. Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co. (1976) 128 Cal.Rptr. 632, 56 C.A.3d 361.

Where it was agreed that subcontractor was to pave and prime contractor was to excavate and prime contractor was willing to allow subcontractor to pave but subcontractor refused unless it was also awarded excavation work, there was no benefit of bargain to be recovered by subcontractor; thus it was not entitled to recover from prime contractor which had violated this section by, in designating subcontractors, listing both itself and subcontractor on same line without differentiating the work to be done by each. Id.

This section does not require a prime contractor to list in his bid hardware suppliers who deliver packaged, finished hardware to the job site to be installed by someone other than the supplier. 40 Ops.Atty.Gen. 15, 2-7-67.

4. Existence of subcontract

Where prime contractor received unsolicited oral bid for masonry work from mason, figures submitted were used by prime contractor in compiling its total bid, after prime contractor was awarded prime contract, it sent to mason a form of subcontract agreement for purpose of determining terms and conditions of its offer

of performance, there was exchange of writings which led to preparation of document which was finally sent to mason, who signed it and returned it to prime contractor, but prime contractor never signed it and informed mason that it could not proceed with masonry work because, through prime contractor's inadvertence, mason had not been scheduled as subcontractor on bid proposal submitted to owner and therefore could not be legally utilized on project, no subcontract existed between parties. C. L. Smith Co., Inc. v. Roger Ducharme, Inc. (1977) 135 Cal. Rptr. 482, 65 C.A.3d 735.

Where subcontractor did not rely on any promise by school construction general contractor, but only on the listing of subcontractors required by this section and on restriction on general contractor's right to change its listed subcontractors without consent of school district under § 4107, and general contractor neither accepted subcontractor's offer, nor made any promise or offer to subcontractor intended to induce action or forbearance of a definite and substantial character, subcontractor had no cause of action for breach of contract against general contractor which obtained school district's consent to change of subcontractors. Southern California Acoustics Co. v. C. V. Holder, Inc. (1969) 79 Cal.Rptr. 319, 456 P.2d 975, 71 C.2d 719.

A mistake, through which corporation subcontracting to do steel work on junior high school auditoriums and connecting shelter, for construction of which another corporation aware of such mistake, had general contract with school district, seemingly agreed to perform for \$37,700 for work reasonably worth at least \$47,000 because of failure to exclude from subcontract steel decking specifically excluded in subcontractor's oral bids, was so essential and fundamental that parties' minds never met on subcontract as executed and subcontractor was entitled to rescission thereof. Brunzell Const. Co. v. G. J. Weisbrod Inc. (1955) 285 P.2d 989, 134 C.A.2d 278.

5. Bid chiselling

Where general contractors awarded prime contracts formally solicit lower bid from subcontractor using another subcontractor's bid in computing prime bid, there is "bid chiseling" forbidden by Bid Listing Law. People v. Inland Bid Depository (1965) 44 Cal.Rptr. 206, 233 C.A.2d 351.

§ 4105 Circumvention of identification requirements

Circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him to list his sub-

contractors, by turn sublet portion the prime contract shall subject such tions 4110 and 411 (Added by Stats.19

Former § 4105, ena 134, p. 981. § 4105, an c. 1350, p. 2577. § 5

Municipal Corporat States 109.

§ 4106. Fa

If a prime contractor specification of work to l of 1 percent of t fully qualified to form that portio

If after aw provided for in of the work, suc named in Sectio (Formerly § 4106 by Stats.1945, c. Stats.1963, c. 212

The 1945 amendr eral contractor" in tor" and added the

For partial vali 1945 act, see His 4103.

The 1963 amendr tion, which previou contractor fails to : for any portion of

In general 1 Standing 2

contractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this chapter and shall subject such prime contractor to the penalties set forth in Sections 4110 and 4111.

(Added by Stats.1963, c. 2125, p. 4411, § 6.)

Historical Note

Former § 4105, enacted by Stats.1943, c. 134, p. 981, § 4103 and amended by Stats.1945, c. 1380, p. 2577, § 5, was renumbered § 4103 and amended by Stats.1963, c. 2125, p. 4413, § 10.

Library References

Municipal Corporations § 375. C.J.S. Municipal Corporations § 1208 et seq.
States § 169. C.J.S. States §§ 151, 153, 174 to 178.

§ 4106. Failure to specify subcontractor; performance of work; subcontracting after award

If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, he agrees that he is fully qualified to perform that portion himself and that he shall perform that portion himself.

If after award of contract such prime contractor shall, except as provided for in Sections 4107 or 4109, subcontract any such portion of the work, such prime contractor shall be subject to the penalties named in Section 4111.

(Formerly § 4103, enacted by Stats.1943, c. 134, p. 981, § 4103. Amended by Stats.1945, c. 1380, p. 2576, § 3. Renumbered § 4106 and amended by Stats.1963, c. 2125, p. 4412, § 7.)

Historical Note

The 1945 amendment referred to "general contractor" instead of to "contractor" and added the percentage limitation. formed under the contract in excess of one-half (1/2) of one per cent (1%) of the general contractor's total bid, he agrees to perform that portion himself."

For partial validity provision of the 1945 act, see Historical Note under § 4103.

The 1933 amendment rewrote the section, which previously read: "If a general contractor fails to specify a subcontractor for any portion of the work to be per-

Former § 4106, enacted by Stats.1943, c. 134, p. 981, § 4106, amended by Stats. 1945, c. 1380, p. 2577, § 6, was renumbered § 4110 and amended by Stats.1963, c. 2125, p. 4413, § 11.

Derivation: Stats.1941, c. 1283, p. 3230.

Notes of Decisions

In general 1
Standing 2

1. In general
Where prime contractor utilized mason's bid in compiling its total bid for construc-

§ 4106

PUBLIC WORK AND PURCHASES

Title 1

tion project, but inadvertently failed to schedule mason on list of subcontractors in bid, prime contractor could not be held liable to mason under Subletting and Subcontracting Fair Practices Act, absent detrimental reliance on part of mason. C. L. Smith Co., Inc., v. Roger Ducharme, Inc. (1977) 135 Cal.Rptr. 483, 65 C.A.3d 735.

2. Standing

Where subcontractor was not designated or intended to perform excavation work on public contract, it had no standing to contest whether or not prime contractor improperly retained a subcontractor to perform that work. Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co. (1970) 128 Cal.Rptr. 632, 56 C.A.3d 361.

§ 4106.5. Renumbered § 4111 and amended by Stats.1963, c. 2125, p. 4413, § 12

§ 4107. Substitution of subcontractors; consent; assignment of subcontract; subcontracting after award

No prime contractor whose bid is accepted shall:

(a) Substitute any person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor:

(1) When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when such written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of such subcontractor's written bid, is presented to him by the prime contractor,

(2) When the listed subcontractor becomes bankrupt or insolvent, or

(3) When the listed subcontractor fails or refuses to perform his subcontract, or

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108, or

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error or

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law, or

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with

Div. 5 SUBL

the plans and specific delaying or disruptive

Prior to approval the awarding authority shall give notice in writing to the contractor of its request to substitute a subcontractor. Such notice shall be served on the contractor at the address of such subcontractor. If such subcontractor so notified shall have objections to the substitution, he shall file such written objections with the awarding authority. The awarding authority shall not consent to the substitution of a subcontractor until the contractor has consented to the substitution.

If written objections are received, the awarding authority shall hold a hearing on the contractor's request for substitution.

(b) Permit any subcontract to be transferred or assigned to another subcontractor of the awarding authority.

(c) Other than as provided in this section, the awarding authority may make changes or deviations in any portion of a subcontract awarded by the prime contractor's subcontractor.

(Formerly § 4104, 1945 Stats., c. 13, 1963 Stats., c. 2125, 1989 Stats., c. 889, § 1;

The 1945 amendment to paragraph, referred to "contractor" instead of to the subcontractor. In subd. (b), reference "such" subcontractor made to the original subcontract in the bid". In subd. provision was added.

For partial validity: 1945 act, see Historical 4103.

The 1963 amendment, which previously "No general contract accepted shall, without awarding authority, vi

At Request of Special Committee of Finance \$5,000,000 Security
Alc. Planning

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tractor was not designated to perform excavation work... it had no standing to... or not prime contractor... named a subcontractor to... Bny Cities Paving &... Hensel Phelps Const. Co. Rptr. 632, 50 C.A.3d 361.

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all:

in place of the sub-... he awarding author-... s otherwise provided... another person as a

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bankrupt or insolvent,

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the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

Prior to approval of the prime contractor's request for such substitution the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for such request. Such notice shall be served by certified or registered mail to the last known address of such subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file such written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit any such subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his original bid did not designate a subcontractor.

(Formerly § 4104, Enacted by Stats.1943, c. 134, p. 981, § 4104. Amended by Stats.1945, c. 1380, p. 2576, § 4. Renumbered § 4107 and amended by Stats.1963, c. 2125, p. 4412, § 8; Stats.1969, c. 332, p. 705, § 1; Stats.1974, c. 889, p. 1889, § 1; Stats.1975, c. 678, p. 1482, § 25.)

Historical Note

The 1945 amendment, in the opening paragraph, referred to "general contractor" instead of to the "contractor". In subd. (b), reference was made to any "such" subcontract and reference was made to the original subcontractor "listed in the bid". In subd. (c), the percentage provision was added. A subd. (d) was added.

For partial validity provision of the 1945 act, see Historical Note under § 4103.

The 1963 amendment rewrote the section, which previously read:

"No general contractor whose bid is accepted shall, without the consent of the awarding authority, either:

"(a) Substitute any person as subcontractor in place of the subcontractor designated in the original bid.

"(b) Permit any such subcontract to be assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the bid.

"(c) Sublet or subcontract any portion of the work in excess of one-half (1/2) of one per cent (1%) of the general contractor's total bid as to which his original bid did not designate a subcontractor.

"(d) The awarding authority may consent to the substitution of another person as a subcontractor, when the subcontractor named in the bid after having had a reasonable opportunity to do so, fails or refuses to execute a written contract,

Note 1

when said written contract, based upon the general terms, conditions, plans and specifications for the project involved, or the terms of such subcontractor's written bid, is presented to him by the contractor."

The 1969 amendment rephrased subd. (a) by inserting numbered subparagraphs; in the introductory provision of subd. (a), added the exception as to § 4107.5; in subpar. 2, added bankruptcy as a ground for substitution; inserted the subject matter contained in subpars. (5), (6), and (7); and substantially rewrote the first and second sentences of the second paragraph of subd. (a) relating to notice of prime contractor's request to substitute,

The 1971 amendment included, throughout the section, following "awarding authority"; the words "or its duly authorized officer"; added the last two sentences of the second paragraph of subd. (a); and added the third paragraph of subd. (a) relating to written objections.

The 1975 amendment amended the section without change in the text.

Former § 4107, enacted by Stats.1943, c. 131, p. 981, § 4107, was renumbered § 4112 and amended by Stats.1963, c. 2125, p. 4413, § 13.

Derivation: Stats.1911, c. 1283, p. 3230, § 1.

Cross References

Contractors License Law, see Business and Professions Code § 7000 et seq.

Library References

Municipal Corporations 274(1),
States 108½.

C.J.S. Municipal Corporations § 1208 et seq.
C.J.S. States §§ 174 to 183.

Notes of Decisions

- Burden of proof 9
- Construction and application 1
- Damages 5
- Estoppel 8
- Existence of subcontract 3
- Penalties 6
- Pleadings 7
- Purpose 2
- Substitution of subcontractors 4

asserting claim of clerical error, and plaintiff was entitled to recover from prime contractor the benefit of the bargain it would have realized had it not been wrongfully deprived of subcontract. *Coast Pump Associates v. Stephen Tyler Corp.* (1976) 133 Cal.Rptr. 88, 62 C.A.3d 421.

Once prime contractor's bid has been accepted for public project, it may not retain new subcontractors or substitute new subcontractors for existing subcontractors without approval of awarding authority. *Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co.* (1976) 128 Cal.Rptr. 632, 56 C.A.3d 361.

A general contractor on a public contract could not recover from a subcontractor for breach of such subcontract where contractor failed to comply with applicable provisions of § 4100 et seq. governing performance of subcontracts by a party other than original subcontractor listed in its bid, and where such violation was an integral and essential part of the transaction upon which its asserted cause of action was based. *Kiely Corp. v. Gibson* (1965) 41 Cal.Rptr. 559, 231 C.A.2d 39.

No contractual relationship is created between subcontractor and general contractor by the submission by general contractor of bid using subcontractor's bid, though bid is accepted by awarding au-

thority. *Klose v. Sequoia School Dist.* (1953) 258 P.2d 636.

Subcontractor, whose bid with bid of general contractor, legal rights as result of general contractor's bid authority. *Id.*

2. Purpose

This section was intended original subcontractor agree by another subcontractor. *Associates v. Stephen Tyler* 133 Cal.Rptr. 88, 62 C.A.3d 421.

Purpose of this section contractor, once his bid is substituting subcontractor original bid, except with contracting agency is to protect contractor against replacement another subcontractor or contractor. *Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co.* 128 Cal.Rptr. 632, 56 C.A.3d 361.

3. Existence of subcontract

Where prime contractor solicited oral bid for masonry, figures submitted by prime contractor in contract, it sent to mason contract agreement for mining terms and conditions of performance, there writings which led to agreement which was finally signed it and returned contractor, but prime contractor signed it and informed mason not proceed with masonry through prime contractor mason had not been selected on bid proposal and therefore could not be relied on project, no subcontract between parties. *C. L. Roger DuCharme, Inc.* 128 Cal.Rptr. 483, 65 C.A.3d 735.

No contractual relationship between subcontractor and general contractor by the submission of bid using subcontractor's bid, though bid is accepted by awarding authority. *Klose v. Sequoia School Dist.* (1953) 258 P.2d 636.

4. Substitution of subcontractor

Unless a listed subcontractor is insolvent or fails or refuses to meet the bid,

1. Construction and application

Where prime contractor utilized mason's bid in compiling its total bid for construction project, but inadvertently failed to schedule mason on list of subcontractors in bid, prime contractor could not be held liable to mason under Subletting and Subcontracting Fair Practices Act, absent detrimental reliance on part of mason. *C. L. Smith Co., Inc. v. Roger DuCharme, Inc.* (1977) 135 Cal.Rptr. 482, 65 C.A.3d 735.

Even if prime contractor's bid had reflected savings afforded by subcontract bid lower than plaintiff's bid, where plaintiff's name and make of machinery it offered to supply were shown on bid form, prime contractor which obtained permission, after award of contract, to use other machinery supplied by lower bidder violated Subletting and Subcontracting Fair Practices Act, in absence of prime contractor's complying with § 4107.5 procedures for

...ment included, through- following "awarding au- ds" for its duly authorized the last two sentences of graph of subd. (a); and paragraph of subd. (a) objections.

...ment amended the sec- ge in the text.

...acted by Stats.1943, c. 1107, was renumbered § d by Stats.1963, c. 2125,

...rs.1941, c. 1283, p. 3230,

...000 et seq.

...l Corporations § 1208 et

...174 to 183.

...of clerical error, and titled to recover from the benefit of the bar- have realized had it not deprived of subcontract, ociates v. Stephen Tyler Cal.Rptr. 88, 62 C.A.3d

...ntractor's bid has been ic project, it may not re- ctors or substitute new r existing subcontractors of awarding authority. ng & Grading, Inc. v. onst. Co. (1976) 128 C.A.3d 361.

...ractor on a public con- recover from a subcon- ch of such subcontract failed to comply with ons of § 4100 et seq., nance of subcontracts by n original subcontractor nd where such violation nd essential part of the which its asserted cause ed. Kiely Corp. v. Gib- d.Rptr. 559, 231 C.A.2d

...relationship is created actor and general con- mission by general con- ing subcontractor's bid, epted by awarding au-

...thority. Klose v. Sequoia Union High School Dist. (1953) 258 P.2d 515, 118 C. A.2d 636.

...Subcontractor, whose name is submitted with bid of general contractor, secures no legal rights as result of acceptance of general contractor's bid by awarding authority. Id.

2. Purpose

...This section was intended to protect original subcontractor against replacement by another subcontractor. Coast Pump Associates v. Stephen Tyler Corp. (1976) 133 Cal.Rptr. 88, 62 C.A.3d 421.

...Purpose of this section forbidding prime contractor, once his bid is accepted, from substituting subcontractor designated in original bid, except with consent of contracting agency is to protect original subcontractor against replacement by either another subcontractor or by the prime contractor. Bay Cities Paving & Grading, Inc. v. Hensel Phelps Const. Co. (1976) 128 Cal.Rptr. 632, 56 C.A.3d 361.

3. Existence of subcontract

...Where prime contractor received unsolicited oral bid for masonry work from mason, figures submitted were used by prime contractor in compiling its total bid, after prime contractor was awarded prime contract, it sent to mason a form of subcontract agreement for purpose of determining terms and conditions of its offer of performance, there was exchange of writings which led to preparation of document which was finally sent to mason, who signed it and returned it to prime contractor, but prime contractor never signed it and informed mason that it could not proceed with masonry work because, through prime contractor's inadvertence, mason had not been scheduled as subcontractor on bid proposal submitted to owner and therefore could not be legally utilized on project, no subcontract existed between parties. C. L. Smith Co., Inc. v. Roger Ducharme, Inc. (1977) 135 Cal. Rptr. 483, 65 C.A.3d 735.

...No contractual relationship is created between subcontractor and general contractor by the submission by general contractor of bid using subcontractor's bid, though bid is accepted by awarding authority. Klose v. Sequoia Union High School Dist. (1953) 258 P.2d 515, 118 C. A.2d 636.

4. Substitution of subcontractors

...Unless a listed subcontractor becomes insolvent or fails or refuses to perform a written contract for work or fails or refuses to meet the bond requirements of

...the prime contractor, the prime contractor may not substitute another subcontractor for the listed subcontractor and the awarding authority may not consent to such a substitution until the contract is presented to the listed subcontractor and he, after having had a reasonable opportunity to do so, fails or refuses to execute the written contract. Southern California Acoustics Co. v. C. V. Holder, Inc. (1969) 79 Cal.Rptr. 319, 456 P.2d 975, 71 C.2d 719.

...Where general contractor for school construction listed plaintiff acoustical tile subcontractor as required by § 4104 requiring inclusion of names of subcontractors who are to perform one-half of one percent or more of construction work, and subcontractor acting on assumption that its bid had been accepted refrained from bidding on other construction jobs to remain within his bonding limits, and general contractor requested permission from school district to substitute another subcontractor, general contractor had no right to substitute another subcontractor in place of the plaintiff, and school district had no right to consent to that substitution. Id.

...Contractor could not, without consent of county sanitation district, substitute itself for "earth work" subcontractor named in bid on public work for performance of the "earth work" after contractor declined to enter into contract with subcontractor even though subcontractor was willing to do so, and therefore, district properly withheld part of contract price as penalty for contractor's violation of his contract. Fred J. Early, Jr., Co. v. County Sanitation Dist. No. 2 of Los Angeles County (1963) 29 Cal.Rptr. 633, 214 C.A.2d 505.

...Where general contractor, in making bid for repair of high school, inadvertently inserted wrong name for the electrical subcontractor, and bid of the one wrongfully named was \$500 higher than bid of the one who was intended to be named, board of trustees had authority to consent to substitution of proper name for the electrical subcontractor. Klose v. Sequoia Union High School Dist. (1953) 258 P.2d 515, 118 C.A.2d 636.

...A prime contractor does not violate this section, prohibiting substitution of subcontractors once prime contractor's bid has been accepted, if he permits a subcontractor to use additional subcontractors to perform certain phases of the subcontract. 50 Ops.Atty.Gen. 14, 8-9-67.

...A public body has neither the power nor the obligation at the time of or after awarding the prime contract, to substitute

§ 4107.5. Clerical error in listing subcontractor; objections by listed subcontractor; substitution of intended subcontractor

The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of such notice to both the subcontractor he claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening.

Any listed subcontractor who has been notified by the prime contractor in accordance with the provisions of this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error. Failure of such listed subcontractor to file such written notice within the six working days shall be primary evidence of his agreement that an inadvertent clerical error was made.

The awarding authority shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, consent to the substitution of the intended subcontractor:

(a) If (1) the prime contractor, (2) the subcontractor listed in error and (3) the intended subcontractor each submit an affidavit to the awarding authority along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or

(b) If such affidavits are filed by both the prime contractor and the intended subcontractor within such specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to the awarding authority and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

If such affidavits are filed by both the prime contractor and the intended subcontractor but the listed subcontractor has, within six working days from the time of the prime bid opening, submitted to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error, the awarding authority shall investigate the claims of the parties and shall hold a public hearing as provided in Section 4107 to determine

ired by law, submitted among listed subcontractors and trade newspaper on assumption that its ptol. refrained from bid-struction jobs in order bonding limits, and that neral contractor request-om school district to sub-subcontractor for the consent was granted, cause of action against r for breach of statutory California Acoustics Co. Inc. (1969) 70 Cal.Rptr. 71 C.2d 719.

employee's advice to that it should take no ute subcontractor before qued and that a request would be granted after rded did not estop school ssessing penalty against substitution of subcontract-et was without power to on. Merco Const. Engi-s Angeles Unified School angeles County (1969) 79 C.A.2d 154.

oof asserted violation by of Subletting and Sub- Practices Act did not proving defendant's non-Act. Coast Pump Asso- n Tyler Corp. (1976) 133 C.A.3d 421.

ontractor in bid or under Section 4104 tarily sublet his sub-to be performed un-such subcontract to

al Corporations § 1151. § 160 to 167.

§ 4107.5 PUBLIC WORK AND PURCHASES

Title 1

Div. 5 SUB

the validity of such claims. Any determination made shall be based on the facts contained in the declarations submitted under penalty of perjury by all three parties and supported by testimony under oath and subject to cross-examination. The awarding authority may, on its own motion or that of any other party, admit testimony of other contractors, any bid registries or depositories, or any other party in possession of facts which may have a bearing on the decision of the awarding authority.

(Added by Stats.1969, c. 332, p. 706, § 3.)

Cross References

Perjury and subornation of perjury, see Penal Code § 115 et seq.

Notes of Decisions

I. In general

Even if prime contractor's bid had reflected savings afforded by subcontract bid lower than plaintiff's bid, where plaintiff's name and make of machinery it offered to supply were shown on bid form, prime contractor which obtained permission, after award of contract, to use other machinery supplied by lower bidder violated Subletting and Subcontracting Fair Prac-

tices Act, in absence of prime contractor's complying with this section procedures for asserting claim of clerical error, and plaintiff was entitled to recover from prime contractor the benefit of the bargain it would have realized had it not been wrongfully deprived of subcontract. Coast Pump Associates v. Stephen Tyler Corp. (1976) 133 Cal.Rptr. 88, 62 C.A.3d 421.

§ 4108. Subcontractors' performance bonds

(a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit faithful performance and payment bond or bonds if so requested by the prime contractor.

(b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to such prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of such subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under such subcontract, the prime contractor may reject such bid and make a substitution of another subcontractor subject to the provisions of Section 4107. Such bond or bonds may be required at the expense of the subcontractor only if the prime contractor in his written or published request for subbids (1) specifies that the expense for such bond or bonds shall be borne by the subcontractor and (2) clearly specifies the amount and requirements of such bond or bonds.

(Added by Stats.1963, c. 2125, p. 4412, § 9. Amended by Stats.1974, c. 544, p. 1248, § 6.)

The 1974 amendment ment bond" for "lab bond".

Payment bond for public

Municipal Corporation States 101.

I. In general

Even though general contracted to perform work could have required performance bond by sub this section, such a bond contractor's sole means

§ 4109. Conditions

Subletting or s of one-half of 1 p which no subcontractor be permitted in case after a finding red authority setting fo sity.

(Formerly § 4105, e by Stats.1945, c. 131 Stats.1963, c. 2125,

The 1945 amendment age provisions.

For partial validity 1945 act, see Historic 4103.

Municipal Corporation States 105. C.J.S. Municipal Cor

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ociates v. Stephen Tyler
Cal.Rptr. 88, 62 C.A.3d

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nd or bonds.

by Stats.1974, c. 544,

Historical Note

The 1974 amendment substituted "pay-
ment bond" for "labor and materials
bond". Former § 4108, enacted by Stats.1945, c.
1380, p. 2577, § 7, was renumbered § 4113
and amended by Stats.1963, c. 2125, p.
4413, § 14.

Cross References

Payment bond for public works, see Civil Code § 3247 et seq.

Library References

Municipal Corporations § 344 et seq. C.J.S. Municipal Corporations § 1171 et
States § 101. seq.
C.J.S. States §§ 184 to 193.

Notes of Decisions

1. In general
Even though general contractor which self against loss resulting from non-per-
contracted to perform work for public col- formance, and surety which issued \$2,500
lege could have required delivery of per- bond on behalf of subcontractor was not
formance bond by subcontractor under thereby relieved of liability on such bond.
this section, such a bond was not general Bailey-Sperber, Inc. v. Yosemite (1976)
contractor's sole means of protecting it- 134 Cal.Rptr. 740, 64 C.A.3d 725.

§ 4109. Conditions under which subcontract permitted after fail-
ure to designate subcontractor in bid

Subletting or subcontracting of any portion of the work in excess
of one-half of 1 percent of the prime contractor's total bid as to
which no subcontractor was designated in the original bid shall only
be permitted in cases of public emergency or necessity, and then only
after a finding reduced to writing as a public record of the awarding
authority setting forth the facts constituting the emergency or neces-
sity.

(Formerly § 4105, enacted by Stats.1943, c. 134, p. 981, § 4105. Amended
by Stats.1945, c. 1380, p. 2577, § 5. Renumbered § 4109 and amended by
Stats.1963, c. 2125, p. 4413, § 10.)

Historical Note

The 1945 amendment added the percent- The 1963 amendment referred to "prime
age provisions. contractor's" instead of "general contrac-
For partial validity provision of the tor's".
1945 act, see Historical Note under § Derivation: Stats.1941, c. 1283, p. 3230,
4103. § 1.

Library References

Municipal Corporations § 353. C.J.S. Schools and School Districts §
States § 105. 301.
C.J.S. Municipal Corporations § 1182. C.J.S. States § 169.

§ 4110. Violation of chapter as contract violation; hearing; cancellation; penalty

A prime contractor violating any of the provisions of this chapter violates his contract and the awarding authority may exercise the option, in its own discretion, of (1) ~~cancelling his contract~~ (2) assessing the prime contractor a penalty in an amount of not more than ~~10 percent of the amount of the subcontract involved~~, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a ~~public hearing~~ and to five days' notice of the time and place thereof.

cancel K
penalty

(Formerly § 4106, enacted by Stats.1943, c. 134, p. 981, § 4106. Amended by Stats.1945, c. 1380, p. 2577, § 6; Stats.1961, c. 1963, p. 4140, § 1. Renumbered § 4110 and amended by Stats.1963, c. 2125, p. 4413, § 11. Amended by Stats.1969, c. 332, p. 706, § 2.)

Historical Note

The 1945 amendment, in the first sentence, referred to "general contractor" instead of "contractor". The second sentence, which declared that after a violation the contractor could not recover for any of the materials furnished on the public work or improvement, was deleted, and a second and third sentence were substituted which provided that the penalty would be 20 percent of the amount of the subcontract and that the penalties recovered would be paid to the state treasurer who would deposit them in the general fund.

For partial validity provision of the 1945 act, see Historical Note under § 4103.

The 1961 amendment gave the awarding authority the option of canceling the contract or assessing a penalty of not more than 10 percent of the amount of the subcontract or both, and provided that the penalty would be deposited in the fund out of which the contract was awarded.

The 1963 amendment referred to "prime contractor" instead of "general contractor".

The 1969 amendment deleted subsec. (3) which contained an option of both canceling the contract and assessing the penalty and added the second sentence.

Derivation: Stats.1941, c. 1283, p. 3230, § 1.

Cross References

Circumvention of identification requirements, see § 4105.

Library References

Municipal Corporations \hookrightarrow 375.
States \hookrightarrow 109.

C.J.S. Municipal Corporations § 1208 et seq.
C.J.S. States §§ 151, 153, 174 to 176.

Notes of Decisions

Construction and application 2
Liquidated damages 5
Mistake 4
Status of subcontractor 3
Validity 1
Withholding contract price 6

1. Validity

This section authorizing awarding authority, in its discretion, to assess 10% penalty against prime contractor who violates the provisions of Chapter 2 violates due process in that it does not provide

any opportunity to the present any facts or arg the exercise of that dis predicated. Merco Const v. Los Angeles Unified S Angeles County (1969) 274 C.A.2d 154.

2. Construction and appl

A general contractor tract could not recover tractor for breach of where contractor failed applicable provisions of governing performance o a party other than origi listed in its bid, and wh was an integral and ess transaction upon which of action was based. K son (1965) 41 Cal.Rptr 39.

Where general contru construction contract w 1961 amendment to this effective date of section, ed § 4107, relating to 1 work done by subcontri right to recover the te provided for in this se since no substantial ch of contractors was ma ment. 39 Ops.Atty.Gen.

3. Status of subcontrac

No contractual relat between subcontractor tractor by the submissi tractor of bid using s though bid is accepted thorty. Klose v. Se School Dist. (1953) 25 A.2d 636.

Subcontractor, whose with bid of general con legal rights as result general contractor's bi thorty. Id.

4. Mistake

A mistake through subcontracting to do st high school auditoriu

§ 4111. Viol

Violation of tl ing with Section 7 Code constitutes

tion; hearing; can-

sions of this chapter may exercise the op- contract or (2) assess- of not more than 10 ed, and this penalty e prime contract is he prime contractor days' notice of the

§ 4106. Amended 1963, p. 4140, § 1. Re- 1925, p. 4413, § 11.

ment gave the awarding on of canceling the con- a penalty of not more f the amount of the sub- and provided that the deposited in the fund out ct was awarded.

ment referred to "prime d of "general contrac-

ment deleted subsec. (3) a option of both cancel- and assessing the penal- econd sentence.

ats.1941, c. 1283, p.

Corporations § 1208 et 151, 153, 174 to 176.

horizing awarding au- rection, to assess 10% ne contractor who vio- e of Chapter 2 violates t it does not provide

any opportunity to the contractor to present any facts or arguments on which the exercise of that discretion might be predicated. Merco Const. Engineers, Inc. v. Los Angeles Unified School Dist. of Los Angeles County (1969) 79 Cal.Rptr. 23, 274 C.A.2d 154.

2. Construction and application

A general contractor on a public contract could not recover from a subcontractor for breach of such subcontract where contractor failed to comply with applicable provisions of § 4100 et seq., governing performance of subcontracts by a party other than original subcontractor listed in its bid, and where such violation was an integral and essential part of the transaction upon which its asserted cause of action was based. Kiely Corp. v. Gibson (1965) 41 Cal.Rptr. 559, 231 C.A.2d 30.

Where general contractor entered into construction contract with county before 1961 amendment to this section and after effective date of section, contractor violated § 4107, relating to public construction work done by subcontractors, county had right to recover the ten percent penalty provided for in this section, as amended, since no substantial change in the rights of contractors was made by the amendment. 39 Ops.Atty.Gen. 283.

3. Status of subcontractor

No contractual relationship is created between subcontractor and general contractor by the submission by general contractor of bid using subcontractor's bid, though bid is accepted by awarding authority. Klose v. Sequoia Union High School Dist. (1953) 258 P.2d 515, 118 C.A.2d 636.

Subcontractor, whose name is submitted with bid of general contractor, secures no legal rights as result of acceptance of general contractor's bid by awarding authority. Id.

4. Mistake

A mistake through which corporation subcontracting to do steel work on junior high school auditoriums and connecting

shelter, for construction of which another corporation, aware of such mistake, had general contract with school district, seemingly agreed to perform for \$37,700 for work reasonably worth at least \$47,000 because of failure to exclude from subcontract steel decking specifically excluded in subcontractor's oral bids, was so essential and fundamental that parties' minds never met on subcontract as executed and subcontractor was entitled to rescission thereof. Branzell Const. Co. v. G. J. Welsbrod Inc. (1955) 285 P.2d 989, 134 C.A.2d 278.

Where general contractor, in making bid for repair of high school, inadvertently inserted wrong name for the electrical subcontractor, and bid of the one wrongfully named was \$500 higher than bid of the one who was intended to be named, board of trustees had authority to consent to substitution of proper name for the electrical subcontractor. Klose v. Sequoia Union High School Dist. (1953) 258 P.2d 515, 118 C.A.2d 636.

5. Liquidated damages

Where school district was specifically authorized by this section to provide for penalty for substitution or deletion of subcontractors, school district did not violate Civ.C. § 1670 (repealed; see, now, Civ.C. § 1671) prohibiting contracts fixing damages for breach of an obligation when district assessed penalty against contractor for making substitution. Merco Const. Engineers, Inc. v. Los Angeles Unified School Dist. of Los Angeles County (1969) 79 Cal.Rptr. 23, 274 C.A.2d 154.

6. Withholding contract price

Contractor could not, without consent of county sanitation district, substitute itself for "earth work" subcontractor named in bid on public work for performance of the "earth work" after contractor declined to enter into contract with subcontractor even though subcontractor was willing to do so, and, therefore, district properly withheld part of contract price as penalty for contractor's violation of his contract. Fred J. Early, Jr., Co. v. County Sanitation Dist. No. 2 of Los Angeles County (1963) 29 Cal.Rptr. 633, 214 C.A.2d 505.

§ 4111. Violation of chapter as grounds for discipline

Violation of this chapter by a licensee under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code constitutes grounds for disciplinary action by the Contractors

Research Present Statutes

§ 4111

PUBLIC WORK AND PURCHASES

Title 1

State License Board, in addition to the penalties prescribed in Section 4110.

(Formerly § 4106.5, added by Stats.1961, c. 1963, p. 4141, § 2. Renumbered § 4111 and amended by Stats.1963, c. 2125, p. 4413, § 12.)

Historical Note

The 1963 amendment referred to "Section 4110" instead of "Section 4106".

Cross References

Circumvention of identification requirements, see § 4107.
Disciplinary proceedings against contractors, see Business and Professions Code § 7000 et seq.
Subcontracting after award, see § 4106.

Library References

Licenses § 11(5), 38. C.J.S. Licenses §§ 30, 43, 44.

§ 4112. Contractor's noncompliance not defense in action by subcontractor

The failure on the part of a contractor to comply with any provision of this chapter does not constitute a defense to the contractor in any action brought against him by a subcontractor.

(Formerly § 4107, enacted by Stats.1943, c. 134, p. 981, § 4107. Renumbered § 4112 and amended by Stats.1963, c. 2125, p. 4413, § 13.)

Historical Note

The 1963 act renumbered this section without changing the text. Derivation: Stats.1941, c. 1983, p. 3230, § 1.

Library References

Municipal Corporations § 374(1). States § 105 1/2. C.J.S. Municipal Corporations § 1208 et seq. C.J.S. States §§ 174 to 183.

Notes of Decisions

I. Construction and application

In view of provision of this section that failure on the part of a public contractor to comply with certain provisions pertaining to transfer or substitution of subcontractors other than original subcontractors listed in bid shall not constitute a defense to the contractor in any action

brought against him by a subcontractor, without such privilege having been extended to the general contractor, failure of contractor to comply would be deemed to bar his right to maintain a suit against a subcontractor for breach of contract. Kiely Corp v. Gibson (1965) 41 Cal.Rptr. 559, 231 C.A.2d 39.

§ 4113. Subcontractor; prime contractor

As used in this chapter, the word "subcontractor" shall mean a contractor, within the meaning of the provisions of Chapter 9 (com-

Div. 5 CON

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(Formerly § 4108, add
4113 and amended by :
1974, c. 423, p. 1023,

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For partial validity p
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4103.

Municipal Corporations
States § 90 et seq.

CONTRACT

- Sec.
4150. Exclusion of a
4151. Definitions.
4152. Applicability.
4153. Changes in co
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Chapter 2
§ 1.

§ 4150. Excl

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"Prime contractor" shall mean the contractor who contracts directly with the awarding authority.

(Formerly § 4108, added by Stats.1945, c. 1380, p. 2577, § 7. Renumbered § 4113 and amended by Stats.1963, c. 2125, p. 4413, § 14. Amended by Stats. 1974, c. 423, p. 1023, § 3.)

Historical Note

The 1963 amendment added the second paragraph which defines "prime contractor".

The 1974 amendment rewrote the first paragraph, which previously read: "As used in this chapter, the word 'subcontractor' shall have the meaning given to it by the provisions of Chapter 9 of Division 3 of the Business and Professions Code."

For partial validity provision of the 1945 act, see Historical Note under § 4103.

Library References

Municipal Corporations § 326 et seq. States § 90 et seq.

C.J.S. Municipal Corporations § 1142 et seq. C.J.S. States §§ 154, 155, 160.

Chapter 2.5

CONTRACTOR'S RESPONSIBILITY FOR WORK

Sec.

- 4150. Exclusion of acts of God; insurance.
- 4151. Definitions.
- 4152. Applicability.
- 4153. Changes in contracts to comply with environmental requirements and standards.
- 4154. Contracts; termination, amendment, or modification of public contracts; competitive bids.

Chapter 2.5 was added by Stats.1971, c. 1703, p. 3642, § 1.

§ 4150. Exclusion of acts of God; insurance

Construction contracts of public agencies shall not require the contractor to be responsible for the cost of repairing or restoring damage to the work, which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the awarding authority. However, such contracts may include provisions for terminating the contract. The requirements of this section shall not be mandatory as to construction contracts fi-

§§ 3600 to 3802
Repealed

GOVERNMENT CODE

DIVISION 4.5. CONFLICT OF INTEREST [REPEALED]

Division 4.5 was repealed by Stats.1981, c. 160, p. 963, § 4.

§§ 3600 to 3802. Repealed by Stats.1981, c. 160, p. 963, § 4

DIVISION 5. PUBLIC WORK AND PUBLIC PURCHASES

Chapter		
3.2.	Energy Conservation Contracts	
10.5.	Target Area Contract Preference Act	
11.	Child Care Facilities for State Employees [Renumbered]	4217
12.	Child Care Facilities for State Employees	4216
13.	Withheld Contract Funds	4215
14.	Arbitration of Public Works Contract Claims	4215.5

§§ 4200 to 4208. Repealed
Pub. Con. C §§ 5100 to 5109
Amendment of § 4201 by Stats. 1984 was subordinated under the

CHAPTER 3.1. PROTECTION

CHAPTER 2. SUBLETTING AND SUBCONTRACTING

Section	
4114.	Counties with population of 6,000,000 or more: delegation of awarding authority; procedure
§ 4107.	Substitution of subcontractors; consent; assignment of subcontract; subcontracting

Section
4215.5 Regional notification center
4216. Regional notification center and sharing in costs; notice to member; a permit to excavate; no

§ 4215.5. Repealed by Stats.1981
The repealed section, added by Stat. 1981, § 1, amended by Stats.1982, c. 1 related to local ordinances requiring pu

§ 4216. Regional notification center and sharing in notification number; notice

Notes of Decisions

3. Existence of subcontract

Mere listing of a subcontractor's name by the prime contractor in its bid to the public agency does not create a contract between subcontractor and prime contractor nor does it create any other common-law right to maintain an action against the prime contractor and "duty" created is purely a statutory one under Subletting and Subcontracting Fair Practices Act (§ 4100 et seq.) Interior Systems, Inc. v. Del E. Webb Corp. (1981) 175 Cal Rptr. 301, 121 C.A.3d 312.

agency to substitute was wrong or unlawful or absence of allegation of any fact implying that substitution was unlawful or wrongful and, in any event, complaint alleged no statutory defense, i.e., that agency permitted substitution because of subcontractor's failure to sign subcontract. Interior Systems, Inc. v. Del E. Webb Corp. (1981) 175 Cal Rptr. 301, 121 C.A.3d 312.

4. Substitution of subcontractors

Substituted subcontractor on government construction project failed to state claim against prime contractor for alleged breach of duty under Subletting and Subcontracting Fair Practice Act (§ 4100 et seq.) absent allegation that substitution was wrongful or unlawful or that permission of

Prime contractor, faced with refusal by subcontractor to execute subcontract for certain underground work called for in proposed project, was not required by this section to give subcontractor notice of its request to city development agency for permission to perform underground work in question itself and did not breach a statutory duty to subcontractor by substituting itself after affording subcontractor a reasonable opportunity to perform work. W. J. Lewis Corp. v. C. Harper Const. Co., Inc. (1981) 171 Cal Rptr. 806, 116 C.A.3d 27.

§ 4114. Counties with population of 6,000,000 or more: delegation of awarding authority; procedure

In counties with a population of 6,000,000 or more, the county board of supervisors, when it is the awarding authority, may delegate its functions under Sections 4107 and 4110 to a hearing officer designated by the board.

The hearing officer shall make a written recommendation to the board of supervisors. The board of supervisors may adopt the recommendation without further notice or hearing, or may set the matter for a de novo hearing before the board.

(Added by Stats.1982, c. 362, p. 1676, § 1.)

CHAPTER 3. RELIEF OF BIDDERS [REPEALED]

Former Chapter 3 was repealed by Stats.1982, c. 435, p. 1803, § 1.

Underline indicates changes or additions by amendment

Asterisks * * * indicate deletions by

**CONTRACTORS'
GUIDE TO
CALIFORNIA
CONTRACTORS'
STATE
LICENSE
BOARD
CITATION
PROCEDURE**

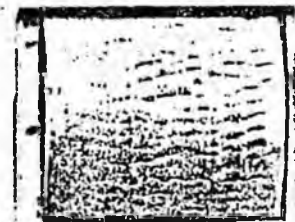
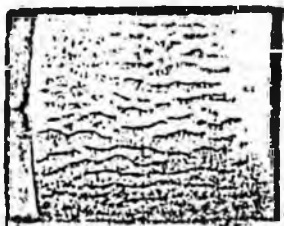


INTRODUCTION

In 1980, the Legislature enacted Section 7099 of the Business and Professions Code as part of the Contractors' License Law. That law authorized the Contractors' State License Board (CSLB) to issue Citations, Correction Orders and Civil Penalties for violations of laws pertaining to contractors. The CSLB passed Board Rules implementing the Citation procedures. These rules implement the State Law and they can be found as Board Rule Numbers 803 to 806.

Section I of this booklet will be a brief explanation of the Citation Procedures. Section II is a list of the Statutes and the recommended minimum and maximum penalty for each. Section III is a listing of each Statute, in numerical order with a brief explanation of the wording of that Statute. We have also included an Appendix of various forms that may be utilized by the Contractors' State License Board.

This booklet merely highlights the Citation procedure and the Laws that the procedure is intended to enforce. For a detailed understanding and explanation of each, we would recommend that you utilize the services of your attorney, or in the alternative, read the Business & Professions Code or the Board's Rules and Regulations themselves.



SECTION I CITATION PROCEDURE

The Citation Procedures being implemented by the CSLB are an alternative to the more formalized procedures that the Board has used in the past. Previously, the CSLB has filed an Accusation to revoke or suspend a license when they found that a contractor had violated the law. This would mean that the contractor would hire an attorney and proceed to an Administrative Hearing in order to defend himself. That procedure was costly, and, in numerous instances, wasteful.

The Citation Procedure would allow the Contractors' State License Board to issue a Citation, requiring the Contractor to do various things. It may require him to correct a deficiency in his construction project, it may require him to pay a penalty of \$50.00 to \$1,500.00, or the Citation may require him to do both. In no event can a citation for a single construction project have a fine in excess of \$2,000.00. The Citation system, when fully implemented and the "bugs" worked out, will allow the CSLB to act in a much quicker fashion. Issuing citations will be a much simpler process.

As any new enforcement tool, it can be both helpful and subject to abuse. The prior ultimate enforcement tool utilized by the CSLB, going to a formal hearing, was costly to the Contractor. Further, in many instances, the CSLB would utilize the fact that the Contractor had violated technical portions of the law, for example; failure to put his License Number on the Contract, or the date of completion, to coerce the Contractor into doing certain corrective work that it could not otherwise have him do. In order to defend himself the Contractor would have to hire an attorney and proceed to a formal hearing. The Citation Procedure allows the CSLB to issue a civil penalty in nominal sums thereby enforcing the law and not requiring the Contractor to expend large sums of money in defense.

However, like any other enforcement tool, the Citation Procedure is subject to abuse. It is possible that CSLB Deputies

will indiscriminately write Citations and that the amounts of the penalty would be excessive in light of the alleged violation.

The CSLB has attempted to insure against such arbitrary use of the procedure by having their Citations issued by only District Offices, rather than a Junior Deputy. Further, the rules themselves have a built-in appeal procedure.

If you are issued a Citation, you have various alternatives. You may choose to pay the Civil Penalty and correct any deficiencies that are alleged in the Citation. In the alternative, you may wish to appeal all or any portion of the Citation. You can do this by checking off boxes, in the form that is provided along with the Citation (See Appendix "D").

You may appeal the fact that you have not violated the Business & Professions Code Section that is cited. You may appeal the amount of the Civil Penalty, the Order of Correction, or both. This appeal must be made in writing and within fifteen (15) days. If you wish to appeal, you will still have the opportunity to be heard before an Administrative Law Judge. You may represent yourself, or have an attorney represent you.

The various forms that are used by the CSLB are enclosed as an Appendix to this booklet. You should look them over so you are familiar with what is being used.

It should be clearly understood that this is probably the most revolutionary enforcement tool that has been afforded to the CSLB in many, many years. The interpretation and implementation of these procedures, as well as the force given to these procedures by the Office of Administrative Hearings, is not determined at this time. The full impact of the new Citation System may not be felt for a number of years.

SECTION II
SHORT TITLE OF BUSINESS AND
PROFESSIONS CODE SECTIONS AFFECTED
BY CITATION PROCEDURE

Business &
Professions
Code Section

- 7018.5 Lengthy notice of Mechanic's Lien Laws
- 7026.7 You must have the proper license to do work for which you advertise.
- 7028 Contracting without a license is a misdemeanor.
- 7028.5 Officers, Directors and RMO's cannot individually contract without their own license.
- 7029 Two or more individual licensees must have a joint venture license to work together.
- 7029.5 Identification requirements for well-digging truck or rig.
- 7029.6 Identification requirements for Plumbing Contractor's vehicle.
- 7029.7 Identification requirements for C-45 Electrical Sign Contractor's vehicle.
- 7030 Contract must contain notice of Contractors' License Law
- 7030.5 Contractor's identification requirements.
- 7034 Contracts may not contain any indemnity against negligence or misconduct, or waiver of lien rights.
- 7068.1 Requirements and responsibilities of a qualifying individual.

- 7068.2 Notice required regarding loss of RMO or RME.
- 7071.11 Claims against license bond or deposit.
- 7071.13 You cannot refer to your license bond in selling jobs.
- 7075 A license is non-transferable and you must carry it on the job.
- 7083 You must report changes in name, address, of managing personnel.
- 7107 Abandonment of a project.
- 7108 Diversion of funds.
- 7108.5 Prime contractor must pay subs within 10 days of receipt from owner.
- 7109 You cannot willfully disregard the plans and specifications.
- 7109.5 Violation of safety provisions of Labor Code.
- 7110 Violation of State, City or County Building and Safety, Health and Safety, Civil, or Water Codes.
- 7110.1 You cannot require a release of claims on wages unless full payment is made.
- 7111 You must keep records of all transactions on a job and maintain them for three years afterwards.
- 7113 Failure to complete for the contract price.
- 7113.5 Avoiding obligations or settling for less than the amount owed.

- 7114 Allowing an unlicensed individual to use your license.
- 7116 Willful or fraudulent acts.
- 7117 Contractor must act in the name of the licensee.
- 7117.5 Inactive licenses.
- 7118 Contracting with an unlicensed contractor.
- 7119 Failure to diligently complete a project.
- 7120 Failure to pay money when due.
- 7123 Criminal convictions.
- 7125 Reporting Worker's Compensation Carrier.
- 7154 Employing an unregistered home improvement salesman.
- 7157 No kickbacks or compensation to customers.
- 7158 False certificate of completion.
- 7159 Requirements of Home Improvement Contracts.
- 7161 False, fraudulent or deceptive advertising.
- 7167 Requirements of swimming pool contracts.
- 7168 Copy of swimming pool contract must be given to buyer at signing.

70311
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Sec. 10

**SECTION III
BUSINESS AND PROFESSIONS CODE SECTIONS
AND RECOMMENDED CIVIL PENALTIES**

7018.5 **\$50.00-\$150.00**

The State Contractors' Board has prepared a lengthy form entitled "Notice to Owner" which clearly describes in common laymen's language the pertinent provisions of the California mechanics' lien laws and the rights and responsibilities of a property owner and a contractor under these laws. This also includes the possibility of filing a contract with the county recorder and the recording of contractor's payment bond for private work in the county recorder's office. Each licensed contractor must give a copy of this "Notice to Owner" to the owner, his agent, or the payer, before entering into a contract with an owner for work for which a contractor's license is required.

7026.7 **\$50.00-\$150.00**

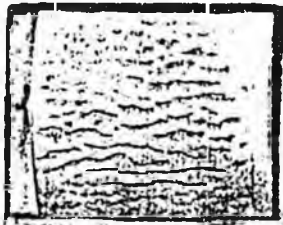
It is a misdemeanor for any person to advertise for construction or for work of improvement covered by state law unless he holds a valid license in the classification so advertised. The exception to this rule is that a licensed building or engineering contractor may advertise as a general contractor. For the purposes of this rule, "advertise" is given broad interpretation.

7028. **\$50.00-\$500.00**

Contracting without a license is a misdemeanor. A second conviction is punishable by a fine of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000), or imprisonment in the county jail for not less than 10 days nor more than six months, or both.

7028.5 **\$50.00-\$500.00**

A person who is or has been a member, officer, director or responsible managing officer of a licensed contractor cannot individually engage in the business or individually act in the capacity of a contractor without having a valid contractor's license.



7029. **\$50.00-\$150.00**

An additional joint venture license is required in order for two or more individually licensed contractors to jointly submit a bid or otherwise act as joint venturers.

7029.5 **\$50.00-\$150.00**

A well-drilling contractors' truck or drill rig must have displayed on each of its sides the contractor's name, permanent business address, and the contractor's license number in letters not less than 1½ inches high.

7029.6 **\$50.00-\$150.00**

A licensed plumbing contractor must display his name, permanent business address, and contractor's license number on each side of each motor vehicle used in his business in letters not less than 1½ inches high.

7029.7 **\$50.00-\$150.00**

A licensed C-45 electrical sign contractor who manufactures, installs or maintains electrical business signs must have displayed on each side of each commercially registered motor vehicle used in his business: his name, permanent business address and contractor's license number in letters not less than 1½ inches high.

7030. **\$50.00-\$100.00**

Contractors must include the following statement in at least 10-point type on all written contracts where he or she is a prime contractor: (Not Subcontractor)

"Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, 1020 N. Street, Sacramento, California 95814." Please note that this address has been changed to: P.O. Box 26000, Sacramento, CA 95826.

7030.5 **\$50.00-\$100.00**

A licensed contractor must include his license number in: (a) all construction contracts; (b) subcontracts and calls for bid;

and (c) all forms of advertising.

7034. **\$50.00-\$150.00**

(a) A licensed contractor cannot be a party to any contract which contains a provision, clause, covenant, or agreement which indemnifies him against liability for any personal injury or property damage caused by his negligence, willful misconduct, or defect in design furnished by him or his agent, servant or subcontractor.

(b) A licensed contractor cannot require any subcontractor, employee or supplier to waive his lien rights unless they give their written permission. Any term of a contract which attempts to waive these lien rights without express written permission is null and void if the contract is for the construction of any of the following:

- (1) A single family dwelling or duplex.
- (2) Improvements to a single family dwelling or duplex.
- (3) Improvements to real property upon which a single family dwelling or duplex is located, or is to be located, where the improvement is related to residential use.

7068.1 **\$50.00-\$1000.00**

The person qualifying on behalf of an individual or firm shall be responsible for exercising enough direct supervision and control of his employer's or principal's construction operations as is necessary to secure full compliance with state law, and the qualifier shall not act in the capacity of the qualifying person for an additional individual or firm unless one of the following conditions exists:

(a) There is a common ownership of at least 20 percent of the equity of each individual or firm for which the person acts in a qualifying capacity.

(b) The additional firm is a subsidiary or a joint venture of the first. "Subsidiary" means any firm at least 20 percent of the equity of which is owned by the other firm.

(c) With respect to a firm under Section 7068(b) or (c), the majority of the partners or officers are the same.

"Firm" means a co-partnership, a limited partnership, a corporation, or any other combination or organization described in Section 7068.

"Person" is limited to natural persons.

7068.2 **\$50.00-\$150.00**

If a responsible managing officer or employee stops being employed or associated with the firm, a notice must be given to the Registrar by the licensed contractor or firm and the responsible managing officer or employee in writing within 30 days from the disassociation. If a notice is given, the license will remain in force for a reasonable length of time determined by board rules.

If the required notice is not received by the Registrar within 30 days, the license is automatically suspended. The license will be reinstated when a qualified individual takes the place of the responsible managing officer or responsible managing employee.

To replace a responsible managing officer or managing employee, the licensed contractor or firm must file an application with the Registrar. The Application must be executed by the licensed contractor or firm or a member of the firm, and it must designate an individual qualified under state law on the licensed contractor's or firm's behalf. The application must be accompanied by a fee. The application must state that the individual qualifying has not had his license suspended or revoked for reasons that would keep such individual from personally qualifying.

7071.11 **\$50.00-\$500.00**

This is a lengthy section dealing with how to file a claim against a bond or cash deposit as well as setting out the preferences, etc. However, it does require the contractor to keep the license bond or cash deposit in full force and further states that any judgment or admitted claim against the bond or deposit is grounds for discipline.

7071.13 **\$50.00-\$100.00**

Any reference by a contractor in his advertising, soliciting, or other representation to the public to any bond required to be filed by state law is a ground for suspension of the contractor's license. (You cannot refer to your license bond.)

7075. **\$50.00-\$100.00**

A contractor's license is non-transferable and must be displayed in the contractor's main office or chief place of business. A contractor must be able to prove upon demand that he has possession of his license and that it is up-to-date. This means you must carry your pocket license.

7083. **\$50.00-\$100.00**

Contractors must report to the Registrar all changes of personnel, name style or addresses recorded within 30 days after the changes are made.

7107. **\$100.00-\$1000.00**

Abandonment of a construction project without legal excuse is a cause for disciplinary action.

7108. **\$100.00-\$1000.00**

A contractor who diverts funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the construction project or operation, or who fails to substantially account for the application or use of such funds or property on the construction project or operation for which such funds or property was received, is subject to disciplinary action.

7108.5 **\$100.00-\$1000.00**

A prime contractor must pay his subcontractor within 10 days of receipt of each progress payment, for which the subcontractor has performed, unless otherwise agreed to in writing.

7109. **\$50.00-\$1500.00**

Willful departure from or disregard of specific plans or specifications, or accepted trade standards for good and

workman-like construction (if there are no plans and specifications), in any material respect, that damage another and are done without the owner's consent is grounds for disciplinary action.

7109.5 **\$50.00-\$1500.00**

Violation of any safety provision in, or authorized by, the Labor Code resulting in death or serious injury to an employee is grounds for disciplinary action.

7110. **\$50.00-\$1000.00**

Willful or deliberate disregard and violation of State building laws, or of any political subdivision of them, or the State's minimum painting standards, safety laws, labor laws, compensation insurance laws, or violation by a licensee of provisions of the Health and Safety Code, Civil Code, or Water Code, relating to the digging, boring or drilling of water wells is cause for disciplinary action.

7110.1 **\$50.00-\$150.00**

A contractor cannot require the execution or release of any claim or right on account of wages unless payment of the wages has been made. Any such release is null and void as between the employer and the employee and is a misdemeanor. (Labor Code Section 206.5)

7111. **\$50.00-\$500.00**

A licensed contractor must keep records showing all contracts, documents, records, receipts and disbursements of all his transactions as a contractor, and make available for the Registrar's inspection for a period of not less than three years after completion of any construction project or operation to which the records refer.

7113. **\$50.00-\$1500.00**

A licensed contractor's material failure to complete any construction project or operation for the price agreed is grounds for disciplinary action.

7113.5 **\$50.00-\$500.00**

A licensed contractor's avoidance or settlement for less than

their full amount of his lawful obligations *incurred as a contractor*, whether by (a) composition, arrangement or reorganization with creditors under state law, (b) composition, arrangement or reorganization with creditors under any agreement or understanding, (c) receivership, (d) assignment for the benefit of creditors, (e) trusteeship, or (f) dissolution, constitutes a cause for disciplinary action.

A licensed contractor will not be subject to disciplinary action for avoiding or settling his obligations in bankruptcy, or by composition, arrangement or reorganization with creditors *under federal law*.

7114. **\$100.00-\$1000.00**

Aiding or abetting an unlicensed person to evade the state contractor's law, or combining and conspiring with him, or allowing one's license to be used by an unlicensed person, or acting as agent, partner, associate or otherwise, of an unlicensed person with the intent to evade the state contractor's law is a cause for disciplinary action.

7116. **\$50.00-\$1500.00**

A licensed contractor who does any willful or fraudulent act which substantially injures another is subject to disciplinary action.

7117. **\$50.00-\$150.00**

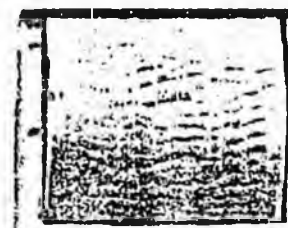
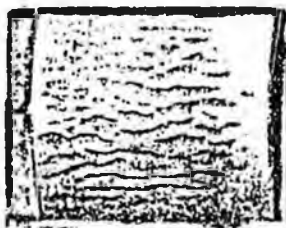
A contractor must act in the name that is on his license and in accordance with the personnel of the license. (Those persons listed on your application form.)

7117.5 **\$50.00-\$500.00**

A person who acts under an inactive license is subject to disciplinary action.

7118. **\$100.00-\$1000.00**

Entering into a contract with an unlicensed contractor is a cause for disciplinary action.



7119. \$100.00-\$1000.00

A contractor who injures another due to his willful failure or unjustified refusal to carry out a construction project or operation with reasonable diligence is subject to disciplinary action.

7120. \$100.00-\$1000.00

Willful or deliberate failure to pay money when due for any materials or services when a contractor is able to pay, or when the contractor was paid, is a cause for disciplinary action. Also, denying of the amount due made with the intent to secure any discount upon the debt or with the intent to hinder, delay or defraud the person to whom the debt is due is a cause for disciplinary action, if it is done falsely.

7123. \$500.00-\$1500.00

A conviction of a crime substantially related to the qualifications, functions and duties of a contractor is a cause for disciplinary action.

7125. \$50.00-\$150.00

A licensed contractor must report in writing the name and address of his Worker's Compensation Insurance Carrier after any policy of insurance is issued to him.

The carrier must then report to the Registrar any cancellation or lapse of the policy within 10 days after the cancellation or lapse.

7154. \$50.00-\$500.00

A home improvement contractor who employs an unregistered home improvement salesman to sell home improvement contracts is subject to disciplinary action.

7157. \$50.00-\$500.00

(a) A contractor cannot give compensation or reward of any kind to an owner for referral sales regarding home improvement contracts.

(b) A contractor, his agent or salesman may give tangible items to prospective customers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a contract for home improvement work, if the gift does not

exceed a value of five dollars (\$5.00) and only one such gift is given in connection with any transaction.

(c) No salesman or contractor's agent can accept any compensation of any kind, for or on account of any work of improvement transaction, from any person other than the contractor whom he represents, nor shall he make any payment to any person other than his employer on account of sales.

"Owner" also means "tenant" under this rule.

(d) You cannot make a payment or give other considerations to a contractor or salesperson unless he is licensed, except where the person who you are paying is exempt from licensing or where the project is exempt.

7158. \$50.00-\$1500.00

Any person who accepts or receives a false certificate of completion on performance of a work of improvement contract with knowledge that the document is false, and who uses the document in connection with the making or accepting of any assignment or negotiation of the right to receive any payment from the owner with regard to the contract, or who does so in order to obtain or grant any credit or loan on the security of the right to receive any payment, is guilty of a misdemeanor.

7159. \$50.00-\$1000.00

This is a long list of contractual requirements in one or more Home Improvement Contracts totalling more than \$500. It says that these contracts must be in writing and signed by the parties, and shall include the following:

(a) The name, address and license number of the contractor, and the name and registration number of any salesman who solicited or negotiated the contract.

(b) The approximate dates when the work will begin and be substantially completed.

(c) A description of the work to be done and description of the materials to be used, and the equipment to be used or

installed, and the agreed consideration for the work.

(d) The down payment cannot be more than 10 percent or \$1,000.00, whichever is less.

(e) A schedule of payments showing the amount to be paid in dollars and cents (not just percentages). The schedule of payments shall be referenced to work performed and any material or equipment supplied. You can never receive proportionately more money than the work performed (except for the down payment). If you fail to substantially commence work within 20 days of the date specified in the contract, the next payment due will be postponed for the same period.

(f) The provisions of (d) and (e) above, relating to the payment schedule, do not apply when you furnish a performance and payment bond, lien and completion bond, or a joint control approved by the Registrar. You must also place a notice in at least 10-point type, within three inches of the signature line, telling the tenant or owner that he has the right to require a performance and payment bond.

(g) Any salesman's commission can only be paid in proportion to the schedule of payments.

(h) You must give the notice required by Section 7018.5.

(i) A statement defining what constitutes substantial commencement.

(j) A notice that failure by the contractor without lawful excuse to substantially commence work within twenty (20) days from the approximate date specified in the contract when work will begin is a violation of the Contractors' License Law.

(k) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in such joint control.

You must give a signed copy of the contract to the owner.

7161.

\$50.00-\$1500.00

The following acts are misdemeanors. Any licensed contractor or applicant who commits one of these acts is subject to disciplinary actions:

(a) Using false, misleading or deceptive advertising to induce a person into any contract for a work of improvement.

(b) Making any substantial misrepresentation in obtaining a home improvement contract or other work of improvement, or making any false promise of a character likely to influence, persuade, or induce any person to enter into such a contract.

(c) Any fraud in the execution of, or in the material alteration of any contract, trust deed, mortgage, promissory note or other document incident to a home improvement transaction or other transaction involving a work of improvement.

(d) Preparing or accepting any trust deed, mortgage or promissory note of any work of improvement transaction with knowledge that it is for more money than the real value of the improvement work.

(e) Publishing any advertisement which is in any way false, deceptive or misleading. Advertising any improvement work while intending not to accept contracts for that particular work or at the price which is advertised or offered to the public.

7167.

\$50.00-\$1000.00

Like Section 7159, this section sets out the requirement that any contract and changes whose primary purpose is to construct a swimming pool must be in writing and signed, and must contain:

(a) The name, address and license number of the contractor, and the name and registration number of any salesman who solicited or negotiated the contract.

(b) The approximate date when the work will begin and the date certain on which all construction is to be completed.

(c) A plan and scale drawing showing the shape, size, dimensions, and construction and equipment specifications of the pool, as approved by the person contracting for construction, and a description of all work to be done, the materials and equipment to be used, and the agreed consideration for the work.

(d) If the payment schedule contained in the contract provides for a down payment to be paid to the contractor by the owner before the commencement of work, the down payment shall not exceed \$200.00 or 2 percent, whichever is less.

(e) A schedule of payments showing the amount to be paid in dollars and cents (not just percentages). The schedule must be referenced to work performed or any material or equipment supplied. You can never receive proportionately more money than work performed, except for the down payment. You may receive a final payment at the completion of final plastering *provided* that any installation or construction of equipment, decking or fencing required by the contract is also complete.

(f) Upon any payment being made for any portion of the work, the contractor shall obtain unconditional, full lien releases from everyone who may have a right to claim a lien. The lien release shall be for that portion of the work that was paid for.

(g) The requirements of (d), (e) and (f) above, relating to payment schedule, do not apply when you furnish a performance and payment bond, lien and completion bond, or bond equivalent covering full performance and completion of the contract. You must also place a notice in at least 10-point type, within three inches of the signature line, telling the owner that he has a right to require a performance and payment bond.

No additional work may be done without prior written authorization. The authorization must be on a change-order form showing the reason for the change, and it shall become a part of the contract.

(i) The contract must be legible and you must give a signed copy to the owner before beginning work.

7168.

\$50.00-\$150.00

A swimming pool contractor must deliver a signed, legible copy of the construction contract for the swimming pool to the person contracting for such construction at the time the contract is signed.

APPENDIX A TEXT OF BOARD RULES AND REGULATIONS

Add Article 8, Citation, to include following Sections:

(1) Add section 803 to read:

803. Order of Correction – Practical Feasibility.

Before including an order of correction in a citation, due consideration shall be given to the practical feasibility of correction in accordance with, but not limited to, the following criteria:

A. An order of correction is appropriate where it would not result in excessive destruction of or substantial waste of existing acceptable construction.

B. An order of correction is appropriate where the owner of the construction project is willing to allow the cited licensee to correct.

C. An order of correction is appropriate where it appears to the Registrar that the cited licensee has competence or ability to correct.

(2) Add section 803.1 to read:

803.1 Order of Correction – Alternative Compliance.

A cited licensee may comply with an order of correction by having and paying for another licensee to do the corrective work. The cited licensee remains responsible, however, for any failure to fully comply with the order of correction.

An order of correction may, but need not, contain the alternative that the cited person may pay a specified sum to the owner of the construction project in lieu of correcting.

(3) Add section 804. to read:

804. Order of Correction – Time Required to Correct.

Where an order of correction is included in a citation, due consideration shall be given to the time required to correct in accordance with, but not limited to, the following criteria:

A. Accepted industry practice in that area relating to performance of such work under certain climate or weather conditions.

B. A reasonable time in which to obtain necessary materials.

C. The number of working days the construction project will be made accessible by the owner for corrections.

(4) Add section 804.1 to read:

804.1 Order of Correction – Extension of Time to Correct.

If the cited person, after exercising substantial efforts and reasonable diligence, is unable to complete the correction within the time allowed because of conditions beyond his control, he may request an extension of time in which to correct. Such request must be made in writing, and must be made prior to the expiration of the time allowed in the order of correction. An extension may be granted upon showing of good cause which determination is within the discretion of the Registrar. If a request for extension of time is not made prior to the expiration of time allowed in the order of correction, failure to correct within the time allowed shall constitute a violation of the order of correction whether or not good cause for an extension of time existed.

(5) Add section 805. to read:

805. Recommended Assessments of Civil Penalties.

In assessing a civil penalty against a person who has not previously been cited for violation of the same or similar section of the Contractors License Law, the Registrar shall give due consideration to the following guidelines:

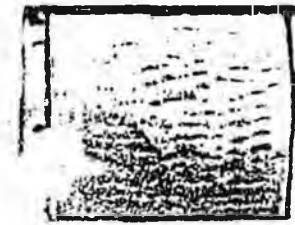
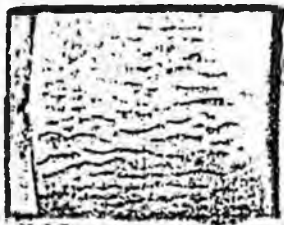
Section Violated	Recommended Minimum Civil Penalty	Recommended Maximum Civil Penalty
7030	\$50.	\$100.
7030.5	50.	100.
7071.13	50.	100.
7075	50.	100.
7083	50.	100.
7018.5	50.	150.
7026.7	50.	150.

Section Violated

Recommended Minimum Civil Penalty

Recommended Maximum Civil Penalty

7029	50.	150.
7029.5	50.	150.
7029.6	50.	150.
7029.7	50.	150.
7034	50.	150.
7068.2	50.	150.
7110.1	50.	150.
7117	50.	150.
7125	50.	150.
7168	50.	150.
7028	50.	500.
7028.5	50.	500.
7071.11	50.	500.
7111	50.	500.
7113.5	50.	500.
7117.5	50.	500.
7154	50.	500.
7157	50.	500.
7110	50.	1000.
7068.1	50.	1000.
7159	50.	1000.
7167	50.	1000.
7107	100.	1000.
7108	100.	1000.
7108.5	100.	1000.
7114	100.	1000.
7118	100.	1000.
7119	100.	1000.
7120	100.	1000.
7109	50.	1500.
7109.5	50.	1500.



Section Violated	Recommended Minimum Civil Penalty	Recommended Maximum Civil Penalty
7113	50.	1500.
7116	50.	1500.
7158	50.	1500.
7161	50.	1500.
7123	500.	1500.

The maximum and minimum penalties as set forth above are advisory only. When there is more than one violation where, in the judgment of the Registrar, a person has exhibited bad faith, or where, in the judgment of the Registrar, the violation is grave, the maximum recommended civil penalty shall be \$2,000.00

Where a cited person has a history of violations of the same or similar sections of the Contractors License Law, the maximum recommended civil penalty shall be \$2,000.00.

Where a citation lists more than one violation, the amount of assessed civil penalty shall be stated separately for each section violated.

Where a citation lists more than one violation, and each of the violations relates to the same construction project, the total penalty assessment in each citation shall not exceed \$2,000.00.

(6) Add section 806. to read:
806. Appeal of Citation.

Any person served with a citation pursuant to section 7099 of the Business and Professions Code may contest the citation by appealing to the Registrar within 15 working days from the receipt of such citation. The 15 day period may be extended upon showing of good cause which determination is within the discretion of the Registrar.

The cited person may contest any or all of the following aspects of the citation:

1. *The occurrence of a violation of the Contractors License Law;*
2. *The reasonableness of the order of correction, if an order of correction is included in the citation;*
3. *The period of time allowed for correction, if an order of correction is included in the citation;*
4. *The amount of the civil penalty, if a civil penalty is assessed in the citation.*

(7) Add section 806.1 to read:
806.1 Service of Citation.

Service of a citation shall be made in accordance with the provisions of section 11505(c) of the Government Code, and further that a copy of the citation be sent by regular mail.

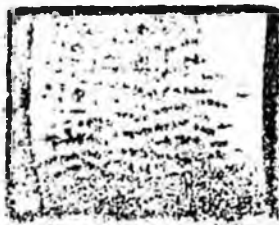
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Bill seeks buying changes

by Dean Fosdick
Associated Press

JUNEAU — An 82-page bill designed to simplify the state's "inconsistent, inadequate, outdated and sporadically scattered" buying policies was introduced Tuesday in the Senate.

The measure grew out of hearings last year by a Senate interim committee created to investigate and review grand jury recommendations about procurement methods and executive-branch ethics.

A Juneau grand jury last summer accused Gov. Bill Sheffield of steering a \$9.1 million state office lease in Fairbanks to a friend and political supporter, then lying about it while under oath.

The panel returned no indictments in the case, but it recommended that lawmakers meet to consider whether Sheffield should be impeached for his actions in the matter. The lease later was canceled on the advice of former Attorney General Norm Gorsuch.

The Senate dropped impeachment proceedings after finding no evidence that Sheffield did anything illegal. Before leaving Juneau, however, it did create the committee in efforts to help tighten state procurement and ethics policies.

"This (bill) brings us full circle since the grand jury made its recommendations," said Sen. Jan Faiks, R-Anchorage and committee chairwoman.

Among other things, the bill recommends that:

- A comprehensive procurement policy be passed to replace buying methods the committee called "inconsistent, inadequate, outdated and sporadically scattered throughout our laws."

- Buying be centralized within the executive branch.

- Non-competitive and sole-source contracts be strictly limited.

- Procurement officers be trained and protected from political pressure.

- A clear and uniform appeals procedure be passed.

Bill could tighten bidding laws

By JOHN LINDBACK

Daily News reporter

JUNEAU — A reform bill that is an outgrowth of last summer's impeachment hearings against Gov. Bill Sheffield could dramatically reduce non-competitive bid contracting and purchasing by state government, a state official said Monday.

Competitive bidding is legally bypassed by the state Department of Administration in about 680 major contracts and purchases each year, Deputy Commissioner Marsha Hubbard said.

"We anticipate that only 20 percent of those would remain sole-source under passage of this law," Hubbard said.

The bill, scheduled for public hearings this week before the Senate Judiciary Committee, was first proposed by a special committee of legislators and other state officials. The committee was asked to propose a bill because the grand jury that criticized Sheffield for awarding a non-competitive, \$9 million state lease for office space in Fairbanks said a new procurement code was needed to protect the public interest.

The biggest policy change in the 82-page bill — which is based on an American Bar Association model for state procurement codes — is the restriction of

non-competitive bid contracts and purchases, according to Hubbard and legislators.

Under current law, state officials can award a non-competitive bid contract for more than \$25,000 if they can prove that the favored contractor had previously done a good job for the state on similar work or if they prove that only one contractor can perform the task.

The new bill would allow state officials to skip competitive bidding only if they determine in writing that just one source exists for the product or service.

State officials are not required to call for competitive bidding on contracts under \$25,000 or purchases of \$5,000 or less. The proposed bill does not change those dollar limits, so it would primarily effect the major contracts and purchases.

But the bill does make other changes in state contracting and purchasing. It requires:

- Other branches and subdivisions of state government to adopt contracting and purchasing regulations that are "substantially equivalent" to the code. The court system, legislature and Alaska Railroad are cited in the bill.

- The hiring of an experienced chief procurement officer to supervise contracting and purchasing by the executive

branch.

- That state officials who award a contract or purchase a product in violation of the code be held personally liable for the recovery of all state money plus 20 percent of the total amount and "all costs and damages arising out of the violation."

- Extensive public notice in newspapers and the Alaska Administrative Journal of contracts available for bid and contracting and purchasing regulations under consideration by the state.

Senate Judiciary Chairman Pat Rodey said the bill is needed to standardize procurement practices in state government and to improve legislative oversight of contracting and purchasing.

"The present system has fallen together by accident. It has received no legislative oversight since oil revenues ballooned," Rodey said.

Rodey's Judiciary Committee is scheduled to hear public testimony on the bill today and discuss it Saturday at an Anchorage meeting. The hearing today starts at 1:30 p.m. and residents throughout the state can testify by teleconference.

Saturday's hearing is scheduled at 10 a.m. at the Legislative Information Office in Anchorage, 1024 W. Sixth Ave.