

AMENDED IN SENATE AUGUST 13, 1998

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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1569

**Introduced by Committee on Labor and Employment (Floyd
(Chair), Escutia, Havice, Knox, Martinez, and Washington)**

March 17, 1997

An act to amend Section 1777.1 of the Labor Code, and to amend Section 4107 of, and to add Section 6109 to, the Public Contract Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 1569, as amended, Committee on Labor and Employment. Public works: contractor eligibility.

Under existing law, whenever a contractor or subcontractor performing a public works project is found by the Labor Commissioner to be either in violation of certain provisions of law, with intent to defraud, or in willful violation of those provisions of law, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible to bid on or to receive a public works contract for specified periods of time.

This bill would provide that the commissioner may also deny a contractor or subcontractor the ability to bid on or be awarded a contract for a public works contract, or to perform work as a subcontractor on a public works project, if he or she

is found to be in violation of those laws under those same circumstances.

The bill also would require, not less than semiannually, the commissioner to publish and distribute to awarding bodies a list of contractors that are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project, as specified.

This bill would provide that any contract on a public works project entered into between a contractor and a debarred subcontractor is void.

This bill also would provide that a public entity may not permit a contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project, as specified, to bid on, be awarded, or perform work as a subcontractor on, a public works project, and would require that every public works project contain a provision regarding this prohibition.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1777.1 of the Labor Code is
2 amended to read:

3 1777.1. (a) Whenever a contractor or subcontractor
4 performing a public works project pursuant to this
5 chapter is found by the Labor Commissioner to be in
6 violation of this chapter with intent to defraud, except
7 Section 1777.5, the contractor or subcontractor or a firm,
8 corporation, partnership, or association in which the
9 contractor or subcontractor has a substantial interest shall
10 be ineligible for a period of not less than one year or more
11 than threeyears to do either of the following:

12 (1) Bid on or be awarded a contract for a public works
13 project.

14 (2) Perform work as a subcontractor on a public works
15 project.

16 (b) Whenever a contractor or subcontractor
17 performing a public works project pursuant to this
18 chapter is found by the Labor Commissioner to be in
19 willful violation of this chapter, except Section 1777.5, the



1 contractor or subcontractor or a firm, corporation,
2 partnership, or association in which the contractor or
3 subcontractor has a substantial interest shall be ineligible
4 for a period up to three years for each second and
5 subsequent violation occurring within three years of a
6 separate and previous willful violation of this chapter to
7 do either of the following:

8 (1) Bid on or be awarded a contract for a public works
9 project.

10 (2) Perform work as a subcontractor on a public works
11 project.

12 ~~(e) A determination by the Labor Commissioner shall~~
13 ~~be made after a full investigation by the Labor~~
14 ~~Commissioner and a fair and impartial hearing with~~
15 ~~reasonable notice. The periods of debarment specified in~~
16 ~~this section shall commence on the date the~~
17 ~~determination of the violation is made by the Labor~~
18 ~~Commissioner.~~

19 ~~(d)~~

20 (c) A willful violation occurs when the contractor or
21 subcontractor knew or reasonably should have known of
22 his or her obligations under the public works law and
23 deliberately fails or refuses to comply with its provisions.
24 Not less than semiannually, the Labor Commissioner
25 shall publish and distribute to awarding bodies a list of
26 contractors ~~that~~ *who* are ineligible to bid on or be
27 awarded a public works contract, or to perform work as
28 a subcontractor on a public works project pursuant to this
29 chapter. The list shall contain the name of the contractor,
30 the Contractor's State License Board license number of
31 the contractor, and the effective period of debarment of
32 the contractor.

33 ~~(e)~~

34 (d) The Labor Commissioner shall adopt rules and
35 regulations for the administration and enforcement of
36 this section, the definition of terms, and appropriate
37 penalties.

38 SEC. 2. Section 4107 of the Public Contract Code is
39 amended to read:



1 4107. A prime contractor whose bid is accepted may
2 not:

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

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

16 (2) When the listed subcontractor becomes
17 bankrupt or insolvent.

18 (3) When the listed subcontractor fails or refuses to
19 perform his or her subcontract.

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

23 (5) When the prime contractor demonstrates to the
24 awarding authority, or its duly authorized officer,
25 subject to the further provisions set forth in Section
26 4107.5, that the name of the subcontractor was listed as
27 the result of an inadvertent clerical error.

28 (6) When the listed subcontractor is not licensed
29 pursuant to the Contractors License Law.

30 (7) When the awarding authority, or its duly
31 authorized officer, determines that the work
32 performed by the listed subcontractor is substantially
33 unsatisfactory and not in substantial accordance with
34 the plans and specifications, or that the subcontractor
35 is substantially delaying or disrupting the progress of
36 the work.

37 (8) When the listed subcontractor is ineligible to
38 work on a public works project pursuant to Section
39 1777.1 or 1777.7 of the Labor Code.



1 Prior to approval of the prime contractor's request for the
2 substitution the awarding authority, or its duly
3 authorized officer, shall give notice in writing to the listed
4 subcontractor of the prime contractor's request to
5 substitute and of the reasons for the request. The notice
6 shall be served by certified or registered mail to the last
7 known address of the subcontractor. The listed
8 subcontractor who has been so notified shall have five
9 working days within which to submit written objections
10 to the substitution to the awarding authority. Failure to
11 file these written objections shall constitute the listed
12 subcontractor's consent to the substitution.

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

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

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

29 SEC. 3. Section 6109 is added to the Public Contract
30 Code, to read:

31 6109. (a) A public entity, as defined in Section 1100,
32 may not permit a contractor or subcontractor who is
33 ineligible to bid or work on, or be awarded, a public works
34 project pursuant to Section 1777.1 or 1777.7 of the Labor
35 Code to bid on, be awarded, or perform work as a
36 subcontractor on, a public works project. Every public
37 works project shall contain a provision prohibiting a
38 contractor from performing work on a public works
39 project with a subcontractor who is ineligible to perform



1 work on the public works project pursuant to Section
2 1777.1 or 1777.7 of the Labor Code.

3 *(b) Any contract on a public works project entered*
4 *into between a contractor and a debarred subcontractor*
5 *is void as a matter of law. A debarred subcontractor may*
6 *not receive any public money for performing work as a*
7 *subcontractor on a public works contract, and any public*
8 *money that may have been paid to a debarred*
9 *subcontractor by a contractor on the project shall be*
10 *returned to the awarding body. The contractor shall be*
11 *responsible for the payment of wages to workers of a*
12 *debarred subcontractor who has been allowed to work on*
13 *the project.*

