

**CONTRACTORS STATE LICENSE BOARD
LEGISLATIVE PROPOSAL
Business & Profession Code §7059**

SUBJECT: Public Works Contracts

PROBLEM/SUMMARY:

As written, Business and Professions (B&P) Code section 7059(b) states that the awarding authority “*shall*” determine which license classification is fit to bid and erect, construct, alter, repair, or improve any public structure, building, road, or other public improvement of any kind needed for a public works project. This rule poses a problem for the Contractors State License Board (CSLB) because the word “shall” stresses with certainty that the awarding agency, not CSLB, is responsible for determining which licensed contractor is suitable to perform construction related work on public works projects.

Pursuant to B&P Code, Chapter 9, articles 1 through 9, known as the *Contractors’ State License Law*, CSLB is the State’s regulatory agency appointed to license and regulate all forms of construction activity in the State of California, which includes construction conducted on public works projects. This law includes several references that state that CSLB is the authority that determines which license classification is appropriate to perform construction work: B&P Code sections 7055 through 7059.1 of Article 4, “*Classifications*,” B&P Code section 7065; and, ironically, B&P Code section 7059(a), “*Rules and regulations affecting classifications of contractors*.”

As composed, B&P Code section 7059(b) does not ensure that, when determining which license classification is necessary to bid and perform work on a public works project, awarding agencies make this determination according to the law and regulations related to license classifications. Consequently, when CSLB receives a complaint that a contractor on a public works project is performing work outside of his or her trade, the board cannot enforce B&P Code section 7117.6, “*Acting as contractor in unauthorized classifications*.” Legal counsel from the California Attorney General’s Office has advised CSLB that, as currently written, a violation of B&P Code section 7059(b) cannot be sustained.

PROPOSED CHANGE:

CSLB requests an amendment to B&P Code section 7059(b), “*Public Works Contract*,” to specify that the board can discipline contractors working out of class on public works projects.

STAFF COMMENTS:

The Board approved this proposal at the December 2015 meeting. Staff recommends modifying the language of the proposal to address concerns raised at that meeting.

“Public works contract,” as used in this part, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

Under existing law for public works contracts the awarding authority determines the license classification to bid on and perform the project. The law does prohibit awarding a prime contract to a specialty contractor whose classification constitutes less than a majority of the project. But, CSLB cannot take disciplinary action against contractors that work out of class on a public works project.

Existing law does not require awarding agencies, when determining which license classification is necessary to bid and perform work on a public works project, to make that determination according to the laws and regulations related to license classifications.

The Licensing division has provided awarding agencies for public works projects with classification determinations to ensure that they advertise for the appropriate classification and CSLB continues to work with state and local agencies to provide training for contract staff.

Examples of cases from the Enforcement division where the Attorney General’s Office (AG) has advised CSLB that a citation alleging a violation of B&P Code section 7117.6 (acting as a contractor in an unauthorized classification) cannot be sustained include:

1. The awarding agency’s contract stated either a General A or a C-16 (Fire Protection) licensee could bid on the project. A General Engineering contractor without the necessary C-16 Fire Protection classification won the bid. CSLB issued a citation but later withdrew it after advice from the AG that the awarding agency, pursuant to B&P Code section 7059, could determine that an “A” could perform the contracted fire protection work.
2. A school district solicited a bid for a contract to install ADA pedestrian ramps in a K-8 school. CSLB’s classification deputy reviewed the awarding agency’s advertisement for the project and recommended a General A perform the scope of work. The agency ignored that recommendation and advertised for, and awarded the bid to, a General B contractor. The agency experienced problems with the contractor’s ability to perform the work, which resulted in a financial injury. CSLB filed an accusation and the licensee has stipulated to a revocation of the license because of the large financial injury and other violations.

While CSLB successfully took action against this licensee under current law, the case illustrates the potential harm awarding agencies face when they hire contractors operating outside their classification. The awarding agency disregarded CSLB’s recommendation and suffered a significant financial loss because of poor workmanship committed by the unqualified contractor.

3. A contractor won a bid to perform work at the John Wayne Airport. CSLB determined that the contractor was working out of class for the scope of work and

issued a citation; the contractor appealed. Because of how the awarding agency advertised the project and since, per B&P Code section 7059(b), that agency can make the license classification determination, CSLB agreed to withdraw the citation if the contractor obtained the appropriate classification.

PROPOSED LANGUAGE:

Revised Language:

(b) In public works contracts, as defined in Section 1101 of the Public Contract Code, the awarding authority shall ~~determine the license classification necessary to~~ permit a contractor to bid and perform the project in any license classification that is permitted under this Chapter and by the Contractors State License Board. In no case shall the awarding authority award a prime contract to a specialty contractor whose classification constitutes less than a majority of the project. When a specialty contractor is authorized to bid a project, all work to be performed outside of his or her license specialty, except work authorized by subdivision (a), shall be performed by a licensed subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code). Any contractor acting in the capacity of a contractor in a classification other than that currently held by the licensee constitutes a cause for disciplinary action.

(Language Approved at December 2015 Board meeting) Modify B&P Code section 7059 :

(b) In public works contracts, as defined in Section 1101 of the Public Contract Code, the awarding authority shall determine the license classification necessary to permit a contractor to bid and perform the project in any classification that is permitted under this Chapter and by the Contractors State License Board. In no case shall the awarding authority award a prime contract to a specialty contractor whose classification constitutes less than a majority of the project. When a specialty contractor is authorized to bid a project, all work to be performed outside of his or her license specialty, except work authorized by subdivision (a), shall be performed by a licensed subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code). Any contractor acting in the capacity of a contractor in a classification other than that currently held by the licensee constitutes a cause for disciplinary action.

STAFF RECOMMENDATION:

Approve this revised language to amend B&P Code section 7059 regarding public works contracting.