

ASSEMBLY BILL

No. 334

Introduced by Assembly Member Blanca Rubio

January 30, 2023

An act to add Section 1097.6 to the Government Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 334, as introduced, Blanca Rubio. Public contracts: conflicts of interest.

Existing law prohibits members of the Legislature and state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law authorizes the Fair Political Practices Commission to commence an administrative or civil action against persons who violate this prohibition, as prescribed, and includes provisions for the collection of penalties after the time for judicial review of a commission order or decision has lapsed, or if all means of judicial review of the order or decision have been exhausted. Existing law identifies certain remote interests in contracts that are not subject to this prohibition and other situations in which an official is not deemed to be financially interested in a contract.

This bill would establish that an independent contractor, who meets specified requirements, is not an officer for purposes of being subject to the prohibition on being financially interested in a contract.

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

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

SECTION 1. Section 1097.6 is added to the Government Code, to read:

1097.6. (a) For a public entity that has entered a contract with an independent contractor to perform one phase of a project and seeks to enter into a subsequent contract with that independent contractor for a later phase of the same project, the independent contractor is not an “officer” for purposes of this article if either of the following conditions are met:

(1) The independent contractor did not have responsibilities for public contracting on behalf of the public entity under the initial contract.

(2) The independent contractor did not participate in making the subsequent contract through its performance of the initial contract.

(b) For the purposes of this section, an independent contractor:

(1) Does not “have responsibilities for public contracting” if (A) the public entity at all times retains responsibility for public contracting, including with respect to any subsequent phase of a project and (B) the independent contractor’s duties under the initial contract do not include preparing or assisting the public entity with the public entity’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity.

(2) Does not “participate in the making of the subsequent contract” if (A) the independent contractor’s participation in the planning, discussions, or drawing of plans or specifications during an initial stage of a project are limited to conceptual, preliminary, or initial plans or specifications and (B) all bidders or proposers for the subsequent contract have access to the same information, including all conceptual, preliminary, or initial plans or specifications.