

AMENDED IN SENATE JANUARY 17, 2002
AMENDED IN SENATE SEPTEMBER 12, 2001

SENATE BILL

No. 937

Introduced by Senator Margett

February 23, 2001

An act to amend ~~Sections 4104.5 and 19100 of, and to add Section 9204 and Article 1.4 (commencing with Section 20103.9) of Chapter 1 of Part 3 of Division 2 to, Section 4104.5 of the Public Contract Code, relating to public contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 937, as amended, Margett. Public contracts: bids and disputes.

The Subletting and Subcontracting Fair Practices Act requires a public entity taking bids for construction of a public work or improvement to establish a date for submission of bids by prime contractors. Existing law applicable to local agencies requires that any bids that are submitted after the bid submittal deadline must be returned unopened to the bidder.

This bill would recast the provisions governing notice of bid submittal deadlines, and would also apply to state agencies the requirement that postdeadline bids be returned unopened.

~~The State Contract Act contains provisions governing the resolution of disputes between contractors and state agencies, including establishing a statute of limitations for damages on a contract with the state and recognizing a cause for the 2nd lowest bidder on a contract, if the successful bidder violated provisions governing workers' compensation and unemployment insurance.~~

~~This bill would apply similar cause of action provisions to all contracts subject to the Public Contract Code and would establish separate statutes of limitations for claims involving local agencies. The bill would also make technical and clarifying changes.~~

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 4104.5 of the Public Contract Code is
2 amended to read:

3 4104.5. (a) The officer, department, board, or commission
4 taking bids for construction of any public work or improvement
5 shall specify in the bid invitation and public notice the place the
6 bids of the prime contractors are to be received and the time by
7 which they shall be received. The date and time shall be extended
8 by no less than 72 hours if the officer, department, board, or
9 commission issues any material changes, additions, or deletions to
10 the invitation later than 72 hours prior to the bid closing. Any bids
11 received after the time specified in the notice or any extension due
12 to material changes shall be returned unopened.

13 (b) As used in this section, the term “material change” means
14 a change with a substantial cost impact on the total bid as
15 determined by the awarding agency.

16 (c) As used in this section, the term “bid invitation” shall
17 include any documents issued to prime contractors that contain
18 descriptions of the work to be bid or the content, form, or manner
19 of submission of bids by bidders.

20 ~~SEC. 2. Section 9204 is added to the Public Contract Code, to~~
21 ~~read:~~

22 ~~9204. (a) (1) The second lowest responsible bidder, and any~~
23 ~~person, firm, association, trust, partnership, labor organization,~~
24 ~~corporation, or other legal entity that has, prior to the letting of the~~
25 ~~bids on the public works project in question, entered into a contract~~
26 ~~with the second lowest responsible bidder, may bring an action in~~
27 ~~superior court against the successful bidder if that entity suffers~~
28 ~~damages as a result of the bid of the second lowest responsible~~
29 ~~bidder for any contract subject to this part not being accepted due~~
30 ~~to the successful bidder’s violation, as evidenced by the conviction~~
31 ~~of the successful bidder therefor, of any provision of Division 4~~



1 ~~(commencing with Section 3200) of the Labor Code or of the~~
2 ~~Unemployment Insurance Code, or of both.~~

3 ~~(2) There is a rebuttable presumption that a successful bidder~~
4 ~~who has been convicted of a violation of any provision of Division~~
5 ~~4 (commencing with Section 3200) of the Labor Code or of the~~
6 ~~Unemployment Insurance Code, or of both, was awarded the bid~~
7 ~~because that successful bidder was able to lower the bid due to this~~
8 ~~violation or these violations occurring on the contract for public~~
9 ~~work awarded by the public entity.~~

10 ~~(b) In an action brought pursuant to this section, the court may~~
11 ~~award costs and reasonable attorney's fees, in an amount to be~~
12 ~~determined in the court's discretion, to the prevailing party.~~

13 ~~(c) For purposes of an action brought pursuant to this section:~~

14 ~~(1) Employee status shall be determined pursuant to Division~~
15 ~~4 (commencing with Section 3200) of the Labor Code with respect~~
16 ~~to alleged violations of that division, pursuant to the~~
17 ~~Unemployment Insurance Code with respect to alleged violations~~
18 ~~of that code, or pursuant to Section 2750.5 of the Labor Code with~~
19 ~~respect to alleged violations of either Division 4 (commencing~~
20 ~~with Section 3200) or of the Unemployment Insurance Code, or~~
21 ~~of both.~~

22 ~~(2) The "second lowest responsible bidder" and the~~
23 ~~"successful bidder" may include any person, firm, association,~~
24 ~~corporation, or other legal entity.~~

25 ~~(d) A second lowest responsible bidder who has been convicted~~
26 ~~of a violation of any provision of Division 4 (commencing with~~
27 ~~Section 3200) of the Labor Code or of the Unemployment~~
28 ~~Insurance Code, or both, within one year prior to filing the bid for~~
29 ~~public work, and who has failed to take affirmative steps to correct~~
30 ~~that violation or those violations, is prohibited from bringing any~~
31 ~~action authorized by this section.~~

32 ~~SEC. 3. Section 19100 of the Public Contract Code is~~
33 ~~amended to read:~~

34 ~~19100. (a) Presentation of a claim pursuant to Part 3~~
35 ~~(commencing with Section 900) of Division 3.6 of Title 1 of the~~
36 ~~Government Code is not required to commence a legal action or~~
37 ~~arbitration proceeding for money or damages on a contract with~~
38 ~~the state, but any action or proceeding shall be commenced not~~
39 ~~later than six months after either of the following:~~



1 ~~(1) The contracting agency's final written decision under~~
 2 ~~contract claim provisions.~~
 3 ~~(2) The accrual of the cause of action, if there are no contract~~
 4 ~~claim provisions.~~
 5 ~~(b) This section does not modify or affect any of the provisions~~
 6 ~~of Article 7.1 (commencing with Section 10240) of Chapter 1.~~
 7 ~~SEC. 4. Article 1.4 (commencing with Section 20103.9) is~~
 8 ~~added to Chapter 1 of Part 3 of Division 2 of the Public Contract~~
 9 ~~Code, to read:~~

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~~Article 1.4. Presentation of Claims~~

13 ~~20103.9. (a) Presentation of a claim pursuant to Part 3~~
 14 ~~(commencing with Section 900) of Division 3.6 of Title 1 of the~~
 15 ~~Government Code is not required to commence a legal action or~~
 16 ~~arbitration proceeding for money or damages on a contract with a~~
 17 ~~public entity other than the state. An action or proceeding against~~
 18 ~~a public entity other than the state shall be commenced within the~~
 19 ~~following time periods:~~

20 ~~(1) If the contract requires any claim of the contractor to be~~
 21 ~~considered under a claims presentation or dispute resolution~~
 22 ~~procedure that results in a written decision on the merits of the~~
 23 ~~claim after the last work under the contract has been performed,~~
 24 ~~then six months after the last written decision under the claims~~
 25 ~~presentation or dispute resolution procedure.~~

26 ~~(2) If the contract contains no claims presentation or dispute~~
 27 ~~resolution procedure that results in a written decision on the merits~~
 28 ~~of the claim after the last work under the contract has been~~
 29 ~~performed, then 12 months after the accrual of the cause of action.~~

30 ~~(b) This section does not modify or affect any of the provisions~~
 31 ~~of Article 7.1 (commencing with Section 10240) of Chapter 1 of~~
 32 ~~Part 2.~~

33 ~~(c) All actions or proceedings against the state are subject to the~~
 34 ~~provisions of Chapter 10 (commencing with Section 19100) of~~
 35 ~~Part 2.~~

