

ASSEMBLY BILL

No. 216

Introduced by Assembly Member Beall

February 3, 2009

An act to amend Sections 20104 and 20104.2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 216, as introduced, Beall. Public contracts: claims.

Existing law authorizes a public entity to compromise or otherwise settle any 3rd-party claim relating to a public works contract.

This bill would define "claim" for those purposes to mean a written demand or assertion by a contractor, a local agency, charter city, or charter county or other relief with respect to the contract documents, as specified.

This bill would, for contracts entered into on or after January 1, 2010, provide for a mediation process and binding arbitration process for claim disputes over \$100,000 between a contractor and a local agency, charter city, or charter county that does not have an alternative dispute process, if those claims remain unresolved after a specified time period.

By requiring local agencies, charter cities, and charter counties to incorporate this mediation and binding arbitration process in specified claim disputes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 20104 of the Public Contract Code is
2 amended to read:

3 20104. (a) ~~(1)~~ This article applies to all public works claims
4 of three hundred seventy-five thousand dollars (\$375,000) or less
5 which ~~that~~ arise between a contractor and a local agency, *charter*
6 *city, or charter county.*

7 ~~(2)~~ This article shall not apply to any claims resulting from a
8 contract between a contractor and a public agency when the public
9 agency has elected to resolve any disputes pursuant to Article 7.1
10 (commencing with Section 10240) of Chapter 1 of Part 2.

11 (b) (1) “Public work” has the same meaning as in Sections 3100
12 and 3106 of the Civil Code, except that “public work” does not
13 include any work or improvement contracted for by the state or
14 the Regents of the University of California.

15 (2) “Claim” means a separate demand by the contractor for (A)
16 a time extension, (B) payment of money or damages arising from
17 work done by, or on behalf of, the contractor pursuant to the
18 contract for a public work and payment of which is not otherwise
19 expressly provided for or the claimant is not otherwise entitled to,
20 or (C) an amount the payment of which is disputed by the local
21 agency *written demand or assertion by a contractor, local agency,*
22 *charter city, or charter county, including change orders seeking*
23 *an adjustment or interpretation of the terms of the contract*
24 *documents, payment of money, extension of time, or other relief*
25 *with respect to the contract documents, including a determination*
26 *of disputes or matters in question between the local agency, charter*
27 *city, or charter county and contractor arising out of or related to*
28 *the contract documents of the performance of the work.*

29 (c) The provisions of this article or a summary thereof shall be
30 set forth in the plans or specifications for any work ~~which that~~
31 may give rise to a claim under this article.

32 (d) This article applies only to contracts entered into on or after
33 January 1, ~~1994~~ 2010.

1 SEC. 2. Section 20104.2 of the Public Contract Code is
2 amended to read:

3 20104.2. For any claim subject to this article, the following
4 requirements apply:

5 (a) The claim shall be in writing and include the documents
6 necessary to substantiate the claim. Claims must be filed on or
7 before the date of final payment. Nothing in this subdivision is
8 intended to extend the time limit or supersede notice requirements
9 otherwise provided by contract for the filing of claims.

10 (b) (1) For claims of less than ~~fifty one hundred thousand~~
11 ~~dollars (\$50,000) (\$100,000)~~, the local agency, *charter city, charter*
12 *county, or contractor* shall respond in writing to any written claim
13 within 45 days of receipt of the claim, or may request, in writing,
14 within 30 days of receipt of the claim, ~~any additional~~
15 ~~documentation supporting the claim or relating to defenses to the~~
16 ~~claim the local agency may have against the claimant that the~~
17 ~~responding party reasonably and in good faith believes supports~~
18 ~~the claim or relates to defenses to the claim the local agency,~~
19 ~~charter city, charter county, or contractor may have against the~~
20 ~~claimant.~~

21 (2) If additional information is thereafter required, it shall be
22 requested and provided pursuant to this subdivision, upon mutual
23 agreement of the local agency, *charter city, charter county, or*
24 *contractor* and the claimant.

25 (3) The local agency's, *charter city's, charter county's, or*
26 *contractor's* written response to the claim, as further documented,
27 shall be submitted to the claimant within 15 days after receipt of
28 the further documentation or within a period of time no greater
29 than that taken by the claimant in producing the additional
30 information, whichever is greater.

31 ~~(e) (1) For claims of over fifty thousand dollars (\$50,000) and~~
32 ~~less than or equal to three hundred seventy-five thousand dollars~~
33 ~~(\$375,000), the local agency shall respond in writing to all written~~
34 ~~claims within 60 days of receipt of the claim, or may request, in~~
35 ~~writing, within 30 days of receipt of the claim, any additional~~
36 ~~documentation supporting the claim or relating to defenses to the~~
37 ~~claim the local agency may have against the claimant.~~

38 ~~(2) If additional information is thereafter required, it shall be~~
39 ~~requested and provided pursuant to this subdivision, upon mutual~~
40 ~~agreement of the local agency and the claimant.~~

1 ~~(3) The local agency's written response to the claim, as further~~
2 ~~documented, shall be submitted to the claimant within 30 days~~
3 ~~after receipt of the further documentation, or within a period of~~
4 ~~time no greater than that taken by the claimant in producing the~~
5 ~~additional information or requested documentation, whichever is~~
6 ~~greater.~~

7 ~~(d) If the claimant disputes the local agency's written response,~~
8 ~~or the local agency fails to respond within the time prescribed, the~~
9 ~~claimant may so notify the local agency, in writing, either within~~
10 ~~15 days of receipt of the local agency's response or within 15 days~~
11 ~~of the local agency's failure to respond within the time prescribed,~~
12 ~~respectively, and demand an informal conference to meet and~~
13 ~~confer for settlement of the issues in dispute. Upon a demand, the~~
14 ~~local agency shall schedule a meet and confer conference within~~
15 ~~30 days for settlement of the dispute.~~

16 ~~(e) Following the meet and confer conference, if the claim or~~
17 ~~any portion remains in dispute, the claimant may file a claim as~~
18 ~~provided in Chapter 1 (commencing with Section 900) and Chapter~~
19 ~~2 (commencing with Section 910) of Part 3 of Division 3.6 of Title~~
20 ~~1 of the Government Code. For purposes of those provisions, the~~
21 ~~running of the period of time within which a claim must be filed~~
22 ~~shall be tolled from the time the claimant submits his or her written~~
23 ~~claim pursuant to subdivision (a) until the time that claim is denied~~
24 ~~as a result of the meet and confer process, including any period of~~
25 ~~time utilized by the meet and confer process.~~

26 ~~(c) (1) This subdivision shall apply to all claims over one~~
27 ~~hundred thousand dollars (\$100,000) with any local agency,~~
28 ~~charter city, charter county, or contractor that does not have an~~
29 ~~alternative dispute process provided for by contract.~~

30 ~~(2) Upon submission of the claim, the applicable local agency,~~
31 ~~charter city, charter county, or contractor shall review the claim~~
32 ~~and make a determination within a 45-day period as to what~~
33 ~~portion of the claim, if any, is undisputed and shall satisfy that~~
34 ~~portion of the claim. If the local agency, charter city, or charter~~
35 ~~county requests additional information that it reasonably and in~~
36 ~~good faith believes is necessary to analyze the claim or any portion~~
37 ~~of the claim, it shall submit a request for information within 30~~
38 ~~days of the date on which it first receives the claim. Once a local~~
39 ~~agency, charter city, charter county, or contractor has received~~
40 ~~additional information, it shall have an additional 30-day period~~

1 *in which to satisfy any undisputed portion of the claim, and to*
2 *identify those portions of the claim that it disputes. The maximum*
3 *amount of time the local agency, charter city, charter county, or*
4 *contractor may request additional information to extend the*
5 *requirement that it provide a final written determination is 105*
6 *days from the date of the first submission of the claim, unless the*
7 *parties mutually agree to extend the time limits set forth in this*
8 *section.*

9 (3) *In the event that there is any portion of a claim that remains*
10 *unresolved, either party may request a meet and confer conference*
11 *within five days of exhausting the maximum allowable time, or the*
12 *time mutually agreed upon pursuant to paragraph (2). Once a*
13 *meet and confer conference has been requested, the conference*
14 *shall be completed within 10 days of the request, unless both*
15 *parties agree to an extension of time.*

16 (4) *In the event there is any portion of a claim that remains*
17 *unresolved and the meet and confer conference period has been*
18 *exhausted, the party who submitted the claim, at its discretion,*
19 *may demand mediation with the parties mutually agreeing to a*
20 *mediator within 30 days from the date of the demand for mediation.*
21 *If the parties are unable to mutually agree on a mediator, the*
22 *parties shall utilize an alternative dispute resolution process to*
23 *assist in the selection of a mediator.*

24 (5) *If any portion of the claim remains unsettled after mediation,*
25 *the contractor and the local agency, charter city, or charter county*
26 *shall submit the dispute to binding arbitration, and shall follow*
27 *the same procedure for selecting an arbitrator as set forth in*
28 *paragraph (4) for the selection of a mediator.*

29 (6) *Failure by the local agency, charter city, or charter county*
30 *to respond to a claim within the time periods set forth in this*
31 *subdivision shall result in the claim being deemed approved in its*
32 *entirety, and shall be processed for payment within five days from*
33 *the expiration of the time period in which the local agency, charter*
34 *city, or charter county is required to act. Failure by the contractor*
35 *to respond to a claim from the local agency, charter city, or charter*
36 *county within the time periods prescribed in this subdivision shall*
37 *result in the claim being approved. The parties may extend the*
38 *time period for response by mutual agreement.*

39 (f)

1 (d) This article does not apply to tort claims and nothing in this
2 article is intended nor shall be construed to change the time periods
3 for filing tort claims or actions specified by Chapter 1 (commencing
4 with Section 900) and Chapter 2 (commencing with Section 910)
5 of Part 3 of Division 3.6 of Title 1 of the Government Code.

6 (e) *Exercising rights established under this section supersedes*
7 *any and all notice requirements under Part 3 (commencing with*
8 *Section 900) of Division 3.6 of Title 1 of the Government Code.*

9 SEC. 3. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.