

ASSEMBLY BILL

No. 649

Introduced by Assembly Members Nestande and Portantino

February 25, 2009

An act to add Article 1.6 (commencing with Section 10507.1) to Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 649, as introduced, Nestande. Contracts: University of California.

Existing law authorizes the Regents of the University of California to enter into contracts for the erection, construction, alteration, repair, or improvement of a university structure, as specified.

This bill would provide for specified procedures when a contractor, as defined, files a change order with the Regents of the University of California pursuant to an existing contract. The bill also would provide for specified procedures allowing arbitration between the Regents of the University of California and contractors.

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. Article 1.6 (commencing with Section 10507.1)
- 2 is added to Chapter 2.1 of Part 2 of Division 2 of the Public
- 3 Contract Code, to read:

Article 1.6. Approval of Contracts

10507.1. (a) Notwithstanding any other law, this article applies to all public works contracts awarded under this chapter by the Regents of the University of California to a contractor.

(b) For purposes of this article:

(1) “Claim” means a demand for monetary compensation or damages arising under or relating to the performance of a public works contract.

(2) “Contractor” means a contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(3) “Prime contractor” means the contractor who contracts directly with the Regents of the University of California.

(4) “Subcontractor” means a contractor who contracts directly with the prime contractor.

(5) “Public works contract” means a public works contract as defined by Section 1101.

(6) “University” means the Regents of the University of California.

(c) The provisions of this article, or a summary thereof, shall be set forth in the plans or specifications for any public works that may give rise to a claim under this article.

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

10507.2. (a) The university may, without affecting the validity of the public works contract, order changes, modifications, deletions, and extra work pursuant to a written proposed change order.

(b) Within 20 days of the issuance of the change order request, the contractor shall provide to the university, in writing, the price of the change, with supporting documentation.

(1) If the university agrees to the proposed price, it shall issue to the contractor a written change order within 10 days. The change order shall be incorporated into, and become part of, the public works contract.

(2) If the university does not agree to the proposed price, it may issue a written change order with an alternative price, with supporting documentation, within 10 days. If the parties cannot

1 reach agreement upon the amount to be charged or credited, they
2 shall proceed to arbitration as provided in this article.

3 (3) If the university fails to approve or reject the scope and
4 pricing within 30 days after receipt thereof, there shall exist a
5 rebuttable presumption that the university has approved the change
6 order.

7 (c) If there is a dispute concerning whether work to be performed
8 by the contractor is outside the scope of work required by the
9 public works base contract, the contractor shall immediately notify
10 the university, in writing, of its position, with supporting
11 documentation. If the university rejects the contractor's claim for
12 extra work, the university shall, within 20 days, provide a written
13 response, with supporting documentation relating to defenses to
14 the claim the university may have against the contractor. If the
15 parties cannot resolve their dispute by negotiation, they shall
16 proceed to arbitration as provided in this article.

17 (d) Payments to the contractor for extra work performed by the
18 contractor shall be made as the extra work progresses concurrently
19 with payments made under the payment schedule. The contractor
20 may stop work if any payment, including payment for extra work,
21 is not made to the contractor as provided in this article.

22 (e) Requests for extra work shall be made in writing.

23 (f) Failure to adhere to the provisions of this article does not
24 preclude recovery of compensation for work performed by the
25 contractor based on quasi-contract, quantum meruit, restitution,
26 or a similar remedy designed to prevent unjust enrichment.

27 10507.3. The following procedures are established for all claims
28 arising under public works contracts made under the provisions
29 of this chapter.

30 (a) If the university fails to respond within the time prescribed
31 for change orders, or if the contractor disputes the university's
32 written response to a claim for extra work, or if the parties are
33 otherwise unable to resolve any claim arising under a public works
34 contract, the contractor may notify the university and demand an
35 informal conference to settle the issues in controversy. Upon a
36 demand by the contractor, the university shall schedule an informal
37 conference within 30 days of the contractor's written demand for
38 settlement of the issues in controversy.

39 (b) If any claim remains unresolved following the informal
40 conference, or if the informal conference does not proceed within

1 30 days of the contractor's written demand, the contractor may
2 immediately initiate arbitration proceedings. The contractor shall
3 not be required to exhaust any administrative procedure or to
4 pursue any contractual dispute resolution procedure contained in
5 the public works contract, or otherwise, as a condition precedent
6 to initiating arbitration.

7 (c) Unless otherwise agreed to by the parties, all of the following
8 apply:

9 (1) For claims of less than fifty thousand dollars (\$50,000), the
10 arbitration shall be conducted by a single arbitrator selected by the
11 parties. If the parties cannot agree on the arbitrator, either party
12 may petition the superior court to appoint an arbitrator.

13 (2) For claims in excess of fifty thousand dollars (\$50,000), the
14 arbitration shall be conducted by a three-member arbitration panel
15 composed of one representative chosen by each of the parties and
16 one representative chosen jointly.

17 (d) Except as provided in this chapter, the procedure governing
18 the arbitrations shall be as set forth in Title 9 (commencing with
19 Section 1280) of Part 3 of the Code of Civil Procedure. For claims
20 in excess of fifty thousand dollars (\$50,000), the provisions of
21 Section 1283.05 of the Code of Civil Procedure, except subdivision
22 (e) of that section, apply to the conduct of discovery for any
23 arbitration conducted pursuant to this section.

24 (e) Unless the parties to the contract otherwise agree, the
25 arbitration decision shall be decided under, and in accordance with,
26 the laws of this state, shall be supported by substantial evidence,
27 and shall set forth, in writing, the basis for the decision, findings
28 of fact, and conclusions of law.

29 (f) The cost of conducting the arbitration shall be borne equally
30 by the parties, except that the arbitrator shall award to the
31 prevailing party reasonable attorneys' fees and costs.

32 (g) Interest may be recovered as part of the award as in a civil
33 action. The arbitrator shall have the same authority as a court in
34 awarding interest and the commencement of the arbitration is
35 equivalent to the filing of an action under subdivision (b) of Section
36 3287 of the Civil Code for the purpose of an award of interest.

37 (h) A party may petition, within the applicable time periods and
38 upon the grounds specified in this section and in Article 1
39 (commencing with Section 1285) of Chapter 4 of Title 9 of Part

- 1 3 of the Code of Civil Procedure, the court to confirm, correct, or
- 2 vacate the award rendered by the arbitrator.

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