

AMENDED IN ASSEMBLY JULY 5, 2011
AMENDED IN ASSEMBLY JUNE 21, 2011
AMENDED IN SENATE MAY 24, 2011
AMENDED IN SENATE MAY 2, 2011
AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 474

Introduced by Senator Evans

February 17, 2011

An act to amend Sections 2782 and 2783 of, and to add Section 2782.05 to, the Civil Code, relating to indemnity.

LEGISLATIVE COUNSEL'S DIGEST

SB 474, as amended, Evans. Commercial construction contracts: indemnity.

Existing law provides that provisions in construction contracts, as defined, that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss arising from the sole negligence or willful misconduct of the promisee or the promisee's agents who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable. Existing law provides that provisions in construction contracts with a public agency that purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable. Existing law excepts from these provisions agreements to indemnify with professional engineers, among others.

Existing law prescribes different requirements and prohibitions for residential construction contracts entered on and after January 1, 2009.

This bill would provide, for construction contracts and amendments executed on and after January 1, 2013, that are not for residential construction or *a direct contract* with a public agency or *the owner of private property*, that purport to insure or indemnify, including the cost to defend, a general contractor, construction manager, or other subcontractor, by a subcontractor against ~~actual or claimed~~ liability for claims of *death or bodily injury to persons, injury to property, or any other* loss, damage, or expense are unenforceable to the extent the claims relate to the *active* negligence or *willful* misconduct of that general contractor, construction manager, or other subcontractor, or their other agents, as specified, or for defects in design furnished by those persons, or to the extent the claims do not arise out of the scope of work of the subcontractor in the written agreement between the parties. The bill would require that California law be applied to these contracts regardless of any choice-of-law rules that might otherwise apply. The bill would except certain contractual provisions and types of insurance from these provisions, including an agreement between a subcontractor and general contractor or construction manager as to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, as specified. The bill would provide that waiver of these provisions is contrary to public policy, void, and unenforceable.

This bill would provide, for construction contracts entered into on and after January 1, 2013, with a public agency, that purport to impose on any contractor, subcontractor, or supplier of goods or services, or relieve the public agency from, liability for the active negligence of the public agency, ~~including that of its employees, agents, and other independent contractors,~~ *agency are* void and unenforceable. The bill also would provide, for construction contracts entered into on and after January 1, 2013, with the owner of privately held real property to be improved and as to which the owner is not acting as a contractor, construction manager, or supplier of materials or equipment to the work, that purport to impose on any contractor, subcontractor, or supplier of goods or services, or relieve the owner from, ~~liability for~~ *are unenforceable to the extent of* the active negligence of the owner, including that of its employees, agents, and other independent contractors, ~~are void and unenforceable.~~

This bill would expand the definition of “construction contract” for purposes of these provisions, to include agreements for renovations *but*

exclude agreements for surveying, design, and specifications, and would include agreements respecting, among other things, utility, water, sewer, oil, and gas lines.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) It is in the best interests of this state and its citizens and
4 consumers to ensure that every construction business in the state
5 is financially responsible under the tort liability system for losses
6 that it, as a business, may cause.

7 (b) ~~The~~*It is the* duty of a business to be responsible for its own
8 ~~negligence should be nondelegable, except through contracts for~~
9 ~~insurance.~~ *negligence.*

10 (c) Developers and construction businesses in recent years have
11 begun to use contract provisions to shift the financial responsibility
12 for their negligence to others, thereby circumventing one of the
13 fundamental foundations of tort law.

14 (d) If all businesses, large and small, are responsible for their
15 own actions, then construction companies will be able to obtain
16 adequate insurance, the quality of construction will be improved,
17 and workplace safety will be enhanced.

18 (e) Construction businesses must be able to obtain liability
19 insurance in order to meet their responsibilities.

20 (f) The provisions of this act will promote competition and
21 safety in the construction industry, thereby benefiting California
22 consumers.

23 (g) The intent of this act is to create an economic climate that
24 will promote safety in construction and ensure fairness among
25 businesses.

26 SEC. 2. Section 2782 of the Civil Code is amended to read:

27 2782. (a) Except as provided in Sections 2782.1, 2782.2,
28 2782.5, and 2782.6, provisions, clauses, covenants, or agreements
29 contained in, collateral to, or affecting any construction contract
30 and that purport to indemnify the promisee against liability for
31 damages for death or bodily injury to persons, injury to property,
32 or any other loss, damage or expense arising from the sole

1 negligence or willful misconduct of the promisee or the promisee's
2 agents, servants, or independent contractors who are directly
3 responsible to the promisee, or for defects in design furnished by
4 those persons, are against public policy and are void and
5 unenforceable; provided, however, that this section shall not affect
6 the validity of any insurance contract, workers' compensation, or
7 agreement issued by an admitted insurer as defined by the
8 Insurance Code.

9 (b) (1) Except as provided in Sections 2782.1, 2782.2, and
10 2782.5, provisions, clauses, covenants, or agreements contained
11 in, collateral to, or affecting any construction contract with a public
12 agency entered into before January 1, 2013, that purport to impose
13 on the contractor, or relieve the public agency from, liability for
14 the active negligence of the public agency are void and
15 unenforceable.

16 (2) Except as provided in Sections 2782.1, 2782.2, and 2782.5,
17 provisions, clauses, covenants, or agreements contained in,
18 collateral to, or affecting any construction contract with a public
19 agency entered into on or after January 1, 2013, that purport to
20 impose on any contractor, subcontractor, or supplier of goods or
21 services, or relieve the public agency from, liability for the active
22 negligence of the public agency, including that of its employees,
23 agents, and other independent contractors, are void and negligence
24 of the public agency are void and unenforceable.

25 (3) *The following shall not constitute active negligence of the*
26 *public agency:*

27 (A) *Except as provided in Section 2782.8, accepting or utilizing*
28 *plans or designs provided by a licensed design professional.*

29 (B) *The hiring of a design professional, contractor,*
30 *subcontractor, or supplier of goods or services, or other*
31 *independent contractor.*

32 (C) *To the extent the public agency is not managing the public*
33 *works project, the failure to supervise the work of a design*
34 *professional, contractor, subcontractor, or other independent*
35 *contractor.*

36 (c) Except as provided in subdivision (d) and Sections ~~2781.1~~
37 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or
38 agreements contained in, collateral to, or affecting any construction
39 contract entered into on or after January 1, 2013, with the owner
40 of privately held real property to be improved and as to which the

1 owner is not acting as a contractor, construction manager, or
2 supplier of materials or equipment to the work, that purport to
3 impose on any contractor, subcontractor, or supplier of goods or
4 services, or relieve the owner from, liability ~~for~~ *are unenforceable*
5 *to the extent of* the active negligence of the owner, including that
6 of its ~~employees, agents, and other independent contractors, are~~
7 ~~void and unenforceable.~~ *employees. For purposes of this*
8 *subdivision, the following shall not constitute active negligence*
9 *of the owner or developer:*

10 (1) *Accepting or utilizing plans or designs approved by a*
11 *licensed design professional.*

12 (2) *The hiring of a design professional, contractor, construction*
13 *manager, or supplier of materials or equipment.*

14 (3) *The failure to supervise the work of a contractor or*
15 *subcontractor.*

16 (d) For all construction contracts, and amendments thereto,
17 entered into after January 1, 2009, for residential construction, as
18 used in Title 7 (commencing with Section 895) of Part 2 of
19 Division 2, all provisions, clauses, covenants, and agreements
20 contained in, collateral to, or affecting any construction contract,
21 and amendments thereto, that purport to insure or indemnify,
22 including the cost to defend, the builder, as defined in Section 911,
23 or the general contractor or contractor not affiliated with the
24 builder, as described in subdivision (b) of Section 911, by a
25 subcontractor against liability for claims of construction defects
26 are unenforceable to the extent the claims arise out of, pertain to,
27 or relate to the negligence of the builder or contractor or the
28 builder's or contractor's other agents, other servants, or other
29 independent contractors who are directly responsible to the builder,
30 or for defects in design furnished by those persons, or to the extent
31 the claims do not arise out of, pertain to, or relate to the scope of
32 work in the written agreement between the parties. This section
33 shall not be waived or modified by contractual agreement, act, or
34 omission of the parties. Contractual provisions, clauses, covenants,
35 or agreements not expressly prohibited herein are reserved to the
36 agreement of the parties. Nothing in this subdivision shall prevent
37 any party from exercising its rights under subdivision (a) of Section
38 910. This subdivision shall not affect the obligations of an
39 insurance carrier under the holding of *Presley Homes, Inc. v.*
40 *American States Insurance Company* (2001) 90 Cal.App.4th 571.

1 Nor shall this subdivision affect the obligations of a builder or
2 subcontractor pursuant to Title 7 (commencing with Section 895)
3 of Part 2 of Division 2.

4 (e) Subdivision (d) does not prohibit a subcontractor and builder
5 or general contractor from mutually agreeing to the timing or
6 immediacy of the defense and provisions for reimbursement of
7 defense fees and costs, so long as that agreement does not waive
8 or modify the provisions of subdivision (d) subject, however, to
9 paragraphs (1) and (2). A subcontractor shall owe no defense or
10 indemnity obligation to a builder or general contractor for a
11 construction defect claim unless and until the builder or general
12 contractor provides a written tender of the claim, or portion thereof,
13 to the subcontractor which includes all of the information provided
14 to the builder or general contractor by the claimant or claimants,
15 including, but not limited to, information provided pursuant to
16 subdivision (a) of Section 910, relating to claims caused by that
17 subcontractor's scope of work. This written tender shall have the
18 same force and effect as a notice of commencement of a legal
19 proceeding. If a builder or general contractor tenders a claim for
20 construction defects, or a portion thereof, to a subcontractor in the
21 manner specified by this provision, the subcontractor shall elect
22 to perform either of the following, the performance of which shall
23 be deemed to satisfy the subcontractor's defense obligation to the
24 builder or general contractor:

25 (1) Defend the claim with counsel of its choice, and the
26 subcontractor shall maintain control of the defense for any claim
27 or portion of claim to which the defense obligation applies. If a
28 subcontractor elects to defend under this paragraph, the
29 subcontractor shall provide written notice of the election to the
30 builder or general contractor within a reasonable time period
31 following receipt of the written tender, and in no event later than
32 90 days following that receipt. Consistent with subdivision (d),
33 the defense by the subcontractor shall be a complete defense of
34 the builder or general contractor of all claims or portions thereof
35 to the extent alleged to be caused by the subcontractor, including
36 any vicarious liability claims against the builder or general
37 contractor resulting from the subcontractor's scope of work, but
38 not including claims resulting from the scope of work, actions, or
39 omissions of the builder, general contractor, or any other party.
40 Any vicarious liability imposed upon a builder or general contractor

1 for claims caused by the subcontractor electing to defend under
2 this paragraph shall be directly enforceable against the
3 subcontractor by the builder, general contractor, or claimant.

4 (2) Pay, within 30 days of receipt of an invoice from the builder
5 or general contractor, no more than a reasonable allocated share
6 of the builder's or general contractor's defense fees and costs, on
7 an ongoing basis during the pendency of the claim, subject to
8 reallocation consistent with subdivision (d), and including any
9 amounts reallocated upon final resolution of the claim, either by
10 settlement or judgment. The builder or general contractor shall
11 allocate a share to itself to the extent a claim or claims are alleged
12 to be caused by its work, actions, or omissions, and a share to each
13 subcontractor to the extent a claim or claims are alleged to be
14 caused by the subcontractor's work, actions, or omissions,
15 regardless of whether the builder or general contractor actually
16 tenders the claim to any particular subcontractor, and regardless
17 of whether that subcontractor is participating in the defense. Any
18 amounts not collected from any particular subcontractor may not
19 be collected from any other subcontractor.

20 (f) Notwithstanding any other provision of law, if a
21 subcontractor fails to timely and adequately perform its obligations
22 under paragraph (1) of subdivision (e), the builder or general
23 contractor shall have the right to pursue a claim against the
24 subcontractor for any resulting compensatory damages,
25 consequential damages, and reasonable attorney's fees. If a
26 subcontractor fails to timely perform its obligations under
27 paragraph (2) of subdivision (e), the builder or general contractor
28 shall have the right to pursue a claim against the subcontractor for
29 any resulting compensatory and consequential damages, as well
30 as for interest on defense and indemnity costs, from the date
31 incurred, at the rate set forth in subdivision (g) of Section 3260,
32 and for the builder's or general contractor's reasonable attorney's
33 fees incurred to recover these amounts. The builder or general
34 contractor shall bear the burden of proof to establish both the
35 subcontractor's failure to perform under either paragraph (1) or
36 (2) of subdivision (e) and any resulting damages. If, upon request
37 by a subcontractor, a builder or general contractor does not
38 reallocate defense fees to subcontractors within 30 days following
39 final resolution of the claim as described above, the subcontractor
40 shall have the right to pursue a claim against the builder or general

1 contractor for any resulting compensatory and consequential
 2 damages, as well as for interest on the fees, from the date of final
 3 resolution of the claim, at the rate set forth in subdivision (g) of
 4 Section 3260, and the subcontractor’s reasonable attorney’s fees
 5 incurred in connection therewith. The subcontractor shall bear the
 6 burden of proof to establish both the failure to reallocate the fees
 7 and any resulting damages. Nothing in this section shall prohibit
 8 the parties from mutually agreeing to reasonable contractual
 9 provisions for damages if any party fails to elect for or perform
 10 its obligations as stated in this section.

11 (g) A builder, general contractor, or subcontractor shall have
 12 the right to seek equitable indemnity for any claim governed by
 13 this section.

14 (h) Nothing in this section limits, restricts, or prohibits the right
 15 of a builder, general contractor, or subcontractor to seek equitable
 16 indemnity against any supplier, design professional, or product
 17 manufacturer.

18 (i) As used in this section, “construction defect” means a
 19 violation of the standards set forth in Sections 896 and 897.

20 SEC. 3. Section 2782.05 is added to the Civil Code, to read:

21 2782.05. (a) Except as provided in subdivision (b), provisions,
 22 clauses, covenants, and agreements contained in, collateral to, or
 23 affecting any construction contract and amendments thereto entered
 24 into on or after January 1, 2013, that purport to insure or indemnify,
 25 including the cost to defend, a general contractor, construction
 26 manager, or other subcontractor, by a subcontractor against ~~actual~~
 27 ~~or claimed~~ liability for claims of *death or bodily injury to persons,*
 28 *injury to property, or any other loss, damage, or expense* are
 29 unenforceable to the extent the claims arise out of, pertain to, or
 30 relate to the *active* negligence or *willful* misconduct of that general
 31 contractor, construction manager, or other subcontractor, or their
 32 other agents, other servants, or other independent contractors who
 33 are responsible to the general contractor, construction manager,
 34 or other subcontractor, or for defects in design furnished by those
 35 persons, or to the extent the claims do not arise out of the scope
 36 of work of the subcontractor in the written agreement between the
 37 parties. This section shall not be waived or modified by contractual
 38 agreement, act, or omission of the parties. Contractual provisions,
 39 clauses, covenants, or agreements not expressly prohibited herein
 40 are reserved to the agreement of the parties. This subdivision shall

1 not affect the obligations of an insurance carrier under the holding
2 of *Presley Homes, Inc. v. American States Insurance Company*
3 (2001) 90 Cal.App.4th 571, nor the rights of an insurance carrier
4 under the holding of *Buss v. Superior Court* (1997) 16 Cal.4th 35.

5 (b) This section does not apply to:

6 (1) ~~Contracts for residential construction, as used in that are~~
7 *subject to any part of Title 7 (commencing with Section 895) of*
8 *Part 2 of Division 2.*

9 ~~(2) Contracts~~ *Direct contracts with a public agency and that*
10 *are governed by subdivision (b) of Section 2782.*

11 ~~(3) Contracts~~ *Direct contracts with the owner of private property*
12 *and that are governed by subdivision (c) of Section 2782.*

13 (4) Any wrap-up insurance policy or program, ~~except as~~
14 ~~provided by this section.~~

15 (5) A cause of action for breach of contract or warranty that
16 exists independently of an indemnity obligation.

17 (6) A provision in a construction contract that requires the
18 promisor to purchase or maintain insurance ~~covering the acts or~~
19 ~~omissions of the promisor.~~

20 (7) Indemnity provisions contained in loan and financing
21 documents, other than construction contracts to which the
22 contractor and a contracting project owner's lender are parties.

23 (8) General agreements of indemnity required by sureties as a
24 condition of execution of bonds for construction contracts.

25 (9) The benefits and protections provided by the workers'
26 compensation laws.

27 (10) The benefits or protections provided by the governmental
28 immunity laws.

29 (11) Provisions that require the purchase of any of the following:

30 (A) Owners and contractors protective liability insurance.

31 (B) Railroad protective liability insurance.

32 (C) Contractors all-risk insurance.

33 (D) Builders all-risk or named perils property insurance.

34 (12) *Contracts with design professionals.*

35 (c) Notwithstanding any choice-of-law rules that would apply
36 the laws of another jurisdiction, the law of California shall apply
37 to every contract to which this section applies.

38 (d) Any waiver of the provisions of this section is contrary to
39 public policy and is void and unenforceable.

1 (e) Subdivision (a) does not prohibit a subcontractor and a
2 general contractor or construction manager from mutually agreeing
3 to the timing or immediacy of the defense and provisions for
4 reimbursement of defense fees and costs, so long as that agreement
5 does not waive or modify the provisions of subdivision (a) subject,
6 however, to paragraphs (1) and (2). A subcontractor shall owe no
7 defense or indemnity obligation to a general contractor or
8 construction manager for a claim unless and until the general
9 contractor or construction manager provides a written tender of
10 the claim, or portion thereof, to the subcontractor that includes ~~all~~
11 ~~of~~ the information provided by the claimant or claimants relating
12 to claims caused by that subcontractor's scope of work. *In addition,*
13 *the general contractor or construction manager shall provide a*
14 *written statement regarding how the reasonable allocated share*
15 *of fees and costs was determined. The written tender shall have*
16 *the same force and effect as a notice of commencement of a legal*
17 *proceeding.* If a general contractor or construction manager tenders
18 a claim, or portion thereof, to a subcontractor in the manner
19 specified by this subdivision, the subcontractor shall elect to
20 perform either of the following, the performance of which shall
21 be deemed to satisfy the subcontractor's defense obligation to the
22 general contractor or construction manager:

23 (1) Defend the claim with counsel of its choice, and the
24 subcontractor shall maintain control of the defense for any claim
25 or portion of claim to which the defense obligation applies. If a
26 subcontractor elects to defend under this paragraph, the
27 subcontractor shall provide written notice of the election to the
28 general contractor or construction manager within a reasonable
29 time period following receipt of the written tender, and in no event
30 later than 30 days following that receipt. Consistent with
31 subdivision (a), the defense by the subcontractor shall be a
32 complete defense of the general contractor or construction manager
33 of all claims or portions thereof to the extent alleged to be caused
34 by the subcontractor, including any vicarious liability claims
35 against the general contractor or construction manager resulting
36 from the subcontractor's scope of work, but not including claims
37 resulting from the scope of work, actions, or omissions of the
38 general contractor or construction manager, or any other party.
39 Any vicarious liability imposed upon a general contractor or
40 construction manager for claims caused by the subcontractor

1 electing to defend under this paragraph shall be directly enforceable
2 against the subcontractor by the owner, general contractor,
3 construction manager, or claimant.

4 (2) Pay, within 30 days of receipt of an invoice from the general
5 contractor or construction manager, no more than a reasonable
6 allocated share of the general contractor's or construction
7 manager's defense fees and costs, on an ongoing basis during the
8 pendency of the claim, subject to reallocation consistent with
9 subdivision (a), and including any amounts reallocated upon final
10 resolution of the claim, either by settlement or judgment. The
11 general contractor or construction manager shall allocate a share
12 to itself to the extent a claim or claims are alleged to be caused by
13 its work, actions, or omissions, and a share to each subcontractor
14 to the extent a claim or claims are alleged to be caused by the
15 subcontractor's work, actions, or omissions, regardless of whether
16 the general contractor or construction manager actually tenders
17 the claim to any particular subcontractor, and regardless of whether
18 that subcontractor is participating in the defense. Any amounts not
19 collected from any particular subcontractor may not be collected
20 from any other subcontractor.

21 (f) Notwithstanding any other provision of law, if a
22 subcontractor fails to timely and adequately perform its obligations
23 under paragraph (1) of subdivision (e), the general contractor or
24 construction manager shall have the right to pursue a claim against
25 the subcontractor for any resulting compensatory damages,
26 *consequential damages, and reasonable attorney's fees*. If a
27 subcontractor fails to timely perform its obligations under
28 paragraph (2) of subdivision (e), the general contractor or
29 construction manager shall have the right to pursue a claim against
30 the subcontractor for any resulting compensatory damages ~~and~~
31 ~~for~~, interest on defense and indemnity costs, from the date incurred,
32 at the rate set forth in subdivision (g) of Section 3260,
33 *consequential damages, and reasonable attorney's fees incurred*
34 *to recover these amounts*. The general contractor or construction
35 manager shall bear the burden of proof to establish both the
36 subcontractor's failure to perform under either paragraph (1) or
37 (2) of subdivision (e) and any resulting damages. If, upon request
38 by a subcontractor, a general contractor or construction manager
39 does not reallocate defense fees to subcontractors within 30 days
40 following final resolution of the claim, the subcontractor shall have

1 the right to pursue a claim against the general contractor or
2 construction manager for any resulting compensatory damages
3 with interest, from the date of final resolution of the claim, at the
4 rate set forth in subdivision (g) of Section 3260. The subcontractor
5 shall bear the burden of proof to establish both the failure to
6 reallocate the fees and any resulting damages. Nothing in this
7 section shall prohibit the parties from mutually agreeing to
8 reasonable contractual provisions for damages if any party fails
9 to elect for or perform its obligations ~~as stated in this section. In~~
10 ~~any action under this subdivision, the court shall award reasonable~~
11 ~~attorney's fees and costs to the prevailing party, if any. as stated~~
12 ~~in this section.~~

13 (g) For purposes of this section, “construction manager” means
14 a person, *other than a public agency or owner*, who directs,
15 schedules, or coordinates the work of contractors for a work of
16 improvement, but does not itself perform the work.

17 (h) For purposes of this section, “general contractor,” in relation
18 to a given subcontractor, means a person who has entered into a
19 construction contract and who has entered into a subcontract with
20 that subcontractor under which the subcontractor agrees to perform
21 a portion of that scope of work. Where a subcontractor has itself
22 subcontracted a portion of its work, that subcontractor, along with
23 its general contractor, shall be considered a general contractor as
24 to its subcontractors.

25 (i) For purposes of this section, “subcontractor” means a person
26 who has entered into a construction contract either with a contractor
27 to perform a portion of that contractor’s work under a construction
28 contract or with any person to perform a construction contract
29 subject to the direction or control of a general contractor or
30 construction manager.

31 (j) A general contractor, construction manager, or subcontractor
32 shall have the right to seek equitable indemnity for any claim
33 governed by this section.

34 (k) Nothing in this section limits, restricts, or prohibits the right
35 of a general contractor, construction manager, or subcontractor to
36 seek equitable indemnity against any supplier, design professional,
37 or product manufacturer.

38 (l) *This section shall not affect the validity of any existing*
39 *insurance contract, workers’ compensation, or agreement issued*

1 *on or before January 1, 2012, by an admitted insurer, as defined*
2 *in the Insurance Code.*

3 SEC. 4. Section 2783 of the Civil Code is amended to read:

4 2783. As used in Sections 2782 and 2782.5, “construction
5 contract” is defined as any agreement or understanding, written
6 or oral, respecting the construction, ~~surveying, design,~~
7 ~~specifications,~~ alteration, repair, improvement, renovation,
8 maintenance, removal of or demolition of any building, highway,
9 road, parking facility, bridge, water line, sewer line, oil line, gas
10 line, *electric utility transmission or distribution line*, railroad,
11 airport, pier or dock, excavation or other structure, appurtenance,
12 development or other improvement to real or personal property,
13 or an agreement to perform any portion thereof or any act collateral
14 thereto, or to perform any service reasonably related thereto,
15 including, but not limited to, the erection of all structures or
16 performance of work in connection therewith, the rental of all
17 equipment, all incidental transportation, moving, lifting, crane and
18 rigging service and other goods and services furnished in
19 connection therewith.

O