

AMENDED IN SENATE AUGUST 11, 2014

AMENDED IN SENATE JUNE 11, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1705

Introduced by Assembly Member Williams

February 13, 2014

An act to amend Sections 7201 and 10261 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1705, as amended, Williams. Public contracts: payment.

Existing law, until January 1, 2016, authorizes the retention proceeds withheld from any payment by an awarding entity, as described, from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor to exceed 5% on specific projects where the director of the applicable department, as specified, has made, or the governing body of the public entity or designated official of the public entity has approved, a finding prior to the bid that the project is substantially complex and requires a higher retention and the department or public entity includes both this finding and the actual retention amount in the bid documents.

This bill would extend the operation of these provisions ~~until to~~ January 1, ~~2020, 2018~~, and, instead of requiring that the finding and actual retention amount be included in the bid documents, would require that the bid documents include details explaining the basis for the finding in addition to the actual retention amount. The bill would also ~~define~~ projects that are not "substantially complex." *require any finding by a*

public entity that a project is substantially complex to describe the specific project and why it is a unique project that is not regularly, customarily, or routinely performed by the agency or licensed contractors.

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. Section 7201 of the Public Contract Code is
2 amended to read:

3 7201. (a) (1) This section shall apply with respect to all
4 contracts entered into on or after January 1, 2012, between a public
5 entity and an original contractor, between an original contractor
6 and a subcontractor, and between all subcontractors thereunder,
7 relating to the construction of any public work of improvement.

8 (2) Under no circumstances shall any provision of this section
9 be construed to limit the ability of any public entity to withhold
10 150 percent of the value of any disputed amount of work from the
11 final payment, as provided for in subdivision (c) of Section 7107.
12 In the event of a good faith dispute, nothing in this section shall
13 be construed to require a public entity to pay for work that is not
14 approved or accepted in accordance with the proper plans or
15 specifications.

16 (3) For purposes of this section, “public entity” means the state,
17 including every state agency, office, department, division, bureau,
18 board, or commission, the California State University, the
19 University of California, a city, county, city and county, including
20 charter cities and charter counties, district, special district, public
21 authority, political subdivision, public corporation, or nonprofit
22 transit corporation wholly owned by a public agency and formed
23 to carry out the purposes of the public agency.

24 (b) (1) The retention proceeds withheld from any payment by
25 a public entity from the original contractor, by the original
26 contractor from any subcontractor, and by a subcontractor from
27 any subcontractor thereunder shall not exceed 5 percent of the
28 payment. In no event shall the total retention proceeds withheld
29 exceed 5 percent of the contract price. In a contract between the
30 original contractor and a subcontractor, and in a contract between
31 a subcontractor and any subcontractor thereunder, the percentage

1 of the retention proceeds withheld shall not exceed the percentage
2 specified in the contract between the public entity and the original
3 contractor.

4 (2) This subdivision shall not apply if the contractor provides
5 written notice to the subcontractor, pursuant to subdivision (c) of
6 Section 4108, prior to, or at, the time that the bid is requested, that
7 bonds shall be required, and the subcontractor subsequently is
8 unable or refuses to furnish to the contractor a performance and
9 payment bond issued by an admitted surety insurer.

10 (3) Notwithstanding any other provision of this subdivision, the
11 retention proceeds withheld from any payment by an awarding
12 entity set forth in paragraphs (1) to (5), inclusive, of subdivision
13 (a) of Section 10106, from the original contractor, by the original
14 contractor from any subcontractor, and by a subcontractor from
15 any subcontractor thereunder, may exceed 5 percent on specific
16 projects where the director of the department has made a finding
17 prior to the bid that the project is substantially ~~complex, as defined,~~
18 *complex* and therefore requires a higher retention amount than 5
19 percent and the department includes in the bid documents details
20 explaining the basis for the finding and the actual retention amount.
21 In a contract between the original contractor and a subcontractor,
22 and in a contract between a subcontractor and any subcontractor
23 thereunder, the percentage of the retention proceeds withheld shall
24 not exceed the percentage specified in the contract between the
25 department and the original contractor.

26 (4) Notwithstanding any other provision of this subdivision, the
27 retention proceeds withheld from any payment by the awarding
28 entity of a city, county, city and county, including charter cities
29 and charter counties, district, special district, public authority,
30 political subdivision, public corporation, or nonprofit transit
31 corporation wholly owned by a public agency and formed to carry
32 out the purposes of the public agency, from the original contractor,
33 by the original contractor from any subcontractor, and by a
34 subcontractor from any subcontractor thereunder, may exceed 5
35 percent on specific projects where the governing body of the public
36 entity or designee, including, but not limited to, a general manager
37 or other director of an appropriate department, has approved a
38 finding, on a project by project basis, during a properly noticed
39 and normally scheduled public hearing and prior to bid that the
40 project is substantially ~~complex, as defined,~~ *complex* and therefore

1 requires a higher retention amount than 5 percent and the awarding
2 entity includes in the bid documents details explaining the basis
3 for the finding and the actual retention amount. In a contract
4 between the original contractor and a subcontractor, and in a
5 contract between a subcontractor and any subcontractor thereunder,
6 the percentage of the retention proceeds withheld shall not exceed
7 the percentage specified in the contract between the department
8 and the original contractor.

9 ~~(5) As used in this subdivision, projects are not “substantially~~
10 ~~complex” if they are regularly, customarily, or routinely performed~~
11 ~~by the agency or by licensed contractors.~~

12 *(5) Any finding by a public entity that a project is substantially*
13 *complex shall include a description of the specific project and why*
14 *it is a unique project that is not regularly, customarily, or routinely*
15 *performed by the agency or licensed contractors.*

16 (c) A party identified in subdivision (a) shall not require any
17 other party to waive any provision of this section.

18 (d) This section shall remain in effect only until January 1, ~~2020,~~
19 ~~2018,~~ and as of that date is repealed, unless a later enacted statute,
20 that is enacted before January 1, ~~2020,~~ ~~2018,~~ deletes or extends
21 that date.

22 SEC. 2. Section 10261 of the Public Contract Code, as amended
23 by Section 6 of Chapter 700 of the Statutes of 2011, is amended
24 to read:

25 10261. (a) Payments upon contracts shall be made as the
26 department prescribes upon estimates made and approved by the
27 department, but progress payments shall not be made in excess of
28 100 percent of the percentage of actual work completed plus a like
29 percentage of the value of material delivered on the ground or
30 stored subject to or under the control of the state, and unused,
31 except as otherwise provided in this section. The department shall
32 withhold not more than 5 percent of the contract price until final
33 completion and acceptance of the project. However, at any time
34 after 95 percent of the work has been completed, the department
35 may reduce the funds withheld to an amount not less than 125
36 percent of the estimated value of the work yet to be completed, as
37 determined by the department, if the reduction has been approved,
38 in writing, by the surety on the performance bond and by the surety
39 on the payment bond. The Controller shall draw his or her warrants
40 upon estimates so made and approved by the department and the

1 Treasurer shall pay them. The funds may be released by electronic
2 transfer if that procedure is requested by the contractor, in writing,
3 and if the ~~public entity~~ *department* has, in place at the time of the
4 request, the mechanism for the transfer.

5 (b) (1) Notwithstanding ~~this section~~ *subdivision (a)*, when the
6 director of the department has made a finding prior to the bid that
7 a specified project is substantially complex, ~~as defined~~, and
8 therefore requires a higher retention amount than 5 percent, and
9 the department includes in the bid documents details explaining
10 the basis for the finding and the actual retention amount, then
11 payments upon contracts by the department shall be made as the
12 department prescribes upon estimates made and approved by the
13 department. However, progress payments shall not be made in
14 excess of 95 percent of the percentage of actual work completed,
15 plus a like percentage of the value of material delivered on the
16 ground or stored, subject to, or under the control of the state, and
17 unused, except as otherwise provided in this section. At any time
18 after 95 percent of the work has been completed, the department
19 may reduce the funds withheld to an amount not less than 125
20 percent of the estimated value of the work yet to be completed, as
21 determined by the department, if the reduction has been approved,
22 in writing, by the surety on the performance bond and by the surety
23 on the payment bond. The Controller shall draw his or her warrants
24 upon estimates so made and approved by the department and the
25 Treasurer shall pay them with funds appropriated therefor. The
26 funds may be released by electronic transfer if that procedure is
27 requested by the contractor, in writing, and if the ~~public entity~~
28 *department* has, in place at the time of the request, the mechanism
29 for the transfer.

30 (2) ~~As used in this subdivision, projects are not “substantially~~
31 ~~complex” if they are regularly, customarily, or routinely performed~~
32 ~~by the agency or by licensed contractors. Any finding by the~~
33 ~~director of a department that a project is substantially complex~~
34 ~~shall include a description of the specific project and why it is a~~
35 ~~unique project that is not regularly, customarily, or routinely~~
36 ~~performed by the agency or licensed contractors.~~

37 (c) This section shall remain in effect only until January 1, ~~2020~~,
38 ~~2018~~, and as of that date is repealed, unless a later enacted statute,
39 that is enacted before January 1, ~~2020~~, ~~2018~~, deletes or extends
40 that date.

1 *SEC. 3. Section 10261 of the Public Contract Code, as added*
2 *by Section 7 of Chapter 700 of the Statutes of 2011, is amended*
3 *to read:*

4 10261. (a) On and after January 1, ~~2016~~, 2018, payments upon
5 contracts shall be made as the department prescribes upon estimates
6 made and approved by the department, but progress payments shall
7 not be made in excess of 95 percent of the percentage of actual
8 work completed plus a like percentage of the value of material
9 delivered on the ground or stored subject to or under the control
10 of the state, and unused, except as otherwise provided in this
11 section. The department shall withhold not less than 5 percent of
12 the contract price until final completion and acceptance of the
13 project. However, at any time after 95 percent of the work has
14 been completed, the department may reduce the funds withheld to
15 an amount not less than 125 percent of the estimated value of the
16 work yet to be completed, as determined by the department, if the
17 reduction has been approved, in writing, by the surety on the
18 performance bond and by the surety on the payment bond. The
19 Controller shall draw his or her warrants upon estimates so made
20 and approved by the department and the Treasurer shall pay them.
21 The funds may be released by electronic transfer if that procedure
22 is requested by the contractor, in writing, and if the public entity
23 has, in place at the time of the request, the mechanism for the
24 transfer.

25 (b) This section shall become operative on January 1, ~~2016~~.
26 2018.