

AMENDED IN ASSEMBLY APRIL 24, 2014

AMENDED IN ASSEMBLY APRIL 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2471

Introduced by Assembly Member Frazier

February 21, 2014

An act to add Section 7204 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2471, as amended, Frazier. Public contracts: change orders.

Existing law contains various provisions relating to contracts by a public entity for the performance of public works of improvement, including provisions for the payment of progress payments and the disbursing and withholding of retention proceeds. Existing law, until January 1, 2016, prohibits progress payments upon state contracts from being made in excess of 100% of the percentage of actual work completed, and authorizes the Department of General Services to withhold not more than 5% of the contract price until final completion and acceptance of the project, except as specified.

This bill would require a public entity, as defined, when authorized to order changes or additions in the work in a public works contract awarded to the lowest bidder, to issue a change order promptly, and in no event later than ~~30~~ 60 days after the changes or additions are required. *extra work is performed.* The bill would, if this requirement is not met, make the public entity liable to the original contractor for ~~payment of the contractor's invoice for the change order or additional work.~~ *the work that has already been performed.* The bill would require

prejudgment interest to accrue on any amount for which the public entity fails to issue a change order promptly or make a payment due pursuant to this bill. The bill would also authorize an original contractor to present to the public entity a request for a change order for extra work performed by a subcontractor, including a lower tier subcontractor. It would also authorize a subcontractor to request that an original contractor present a change order request for extra work directed by the public entity that was performed by the subcontractor or lower tier subcontractor. The bill would require the original contractor to notify the subcontractor as to whether the original contractor presented the request to the public entity, as specified.

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 7204 is added to the Public Contract
2 Code, to read:

3 7204. (a) (1) A public entity, when authorized to order changes
4 or additions to the work in a public works contract awarded to the
5 lowest bidder, shall, for extra work required of the original
6 contractor, issue a change order promptly, and in no event later
7 than ~~30~~ 60 days after the extra work is ~~required~~. *performed*. For
8 purposes of this section, extra work includes extra work performed
9 by the original contractor, a subcontractor, or a lower tier
10 subcontractor.

11 (2) An original contractor may present to the public entity a
12 request for a change order for extra work performed by a
13 subcontractor or a lower tier subcontractor. A subcontractor may
14 request in writing that an original contractor present a change order
15 request for extra work, directed by the public entity, that was
16 performed by the subcontractor or by a lower tier subcontractor
17 on behalf of the subcontractor. Within 45 days of receipt of this
18 written request, the original contractor shall notify the
19 subcontractor in writing as to whether the original contractor
20 presented the request to the public entity and, if the original
21 contractor did not present the request, provide the subcontractor
22 with a statement of the reasons for not doing so.

23 (b) Upon the failure of the public entity to promptly issue a
24 change order, the original contractor may bill for the ~~work~~, *work*

1 *that has already been performed*, and the public entity shall be
2 liable for ~~the~~ *that* work.

3 (c) If there is a dispute concerning the need for a change order
4 for extra work, the public entity shall pay a reasonable amount for
5 the portion of the extra work that is not in dispute.

6 (d) When the dispute concerning the extra work relates only to
7 the amount that the original contractor shall be paid, the public
8 entity shall promptly pay the reasonable value of the work or the
9 amount that the public entity does not dispute, whichever is greater.

10 (e) The public entity, and the original contractor, may reserve
11 their respective rights as to any amount paid or unpaid that remains
12 in dispute.

13 (f) Prejudgment interest shall accrue on any amount for which
14 the public entity fails to issue a change order or fails to pay in
15 accordance with this section at the legal rate described in
16 subdivision (a) of Section 685.010 of the Code of Civil Procedure.

17 (g) In addition to any other remedies that may be available to
18 it, an original contractor may enforce this section through a writ
19 of mandate.

20 (h) The public entity shall not require the original contractor to
21 waive any provision of this section.

22 (i) For purposes of this section, “public entity” means the state,
23 including a state agency, department, office, division, bureau,
24 board, or commission, the California State University, the
25 University of California, a city, county, city and county, including
26 a charter county, district, special district, public authority, political
27 subdivision, public corporation, or nonprofit transit corporation
28 wholly owned by a public agency and formed to carry out the
29 purposes of the public agency.