

AMENDED IN ASSEMBLY MAY 23, 2014

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~~ to the work in a public works contract awarded to the lowest bidder, to issue a change order promptly, and ~~in~~ ~~no-event~~ later than 60 days after the extra work is performed *and reasonable documentation has been submitted, except as specified*. The bill would, if this requirement is not met, make the public entity liable to the original contractor for the *extra* 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) ~~Except as otherwise provided in paragraph~~
 4 (2), a public entity, when authorized to order changes or additions
 5 to the work in a public works contract awarded to the lowest bidder,
 6 shall, for extra work required of the original contractor, issue a
 7 change order promptly, and in no event later than 60 days after
 8 the extra work is performed *and the original contractor has*
 9 *submitted reasonable documentation to support the request for a*
 10 *change order.* For purposes of this section, extra work includes
 11 extra work performed by the original contractor, a subcontractor,
 12 or a lower tier subcontractor. *Extra work also includes work or*
 13 *requirements that differ from those under the public works contract*
 14 *with the public entity before the amendment of the contract by the*
 15 *change order.*
 16 (2) (A) *When a change order is subject to approval by the*
 17 *governing body of a public entity, but the governing body is not*
 18 *scheduled to meet in the 60 days following the performance of*
 19 *extra work, and reasonable documentation to support the request*
 20 *for a change order for extra work has been submitted, the public*
 21 *entity shall have three days following the next scheduled meeting*
 22 *of the governing body to issue a change order for extra work*
 23 *performed.*

1 (B) When a change order for extra work by a school district or
2 community college district is subject to approval by the Division
3 of the State Architect, the school district or community college
4 district shall submit the change order to the division no later than
5 30 days following receipt of reasonable documentation to support
6 the change order for extra work. The Division of the State Architect
7 shall respond to the request for the change order no later than 30
8 days from receipt of the documentation.

9 (3) Nothing in this section shall be construed to prohibit a public
10 entity from issuing a change order in less than 60 days following
11 the performance of extra work, prior to the work being performed,
12 or during the course of the work being performed.

13 (2)

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

27 (b) Upon the failure of the public entity to ~~promptly~~ issue a
28 change order *within the time limits prescribed in subdivision (a)*,
29 the original contractor may bill for the *extra* work that has already
30 been performed, and the public entity shall be liable for that *extra*
31 work.

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

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

- 1 (e) The public entity, and the original contractor, may reserve
- 2 their respective rights as to any amount paid or unpaid that remains
- 3 in dispute.
- 4 (f) Prejudgment interest shall accrue on any amount for which
- 5 the public entity fails to issue a change order or fails to pay in
- 6 accordance with this section at ~~the legal rate described in~~
- 7 ~~subdivision (a) of Section 685.010 of the Code of Civil Procedure.~~
- 8 *7 percent per annum.*
- 9 (g) In addition to any other remedies that may be available to
- 10 it, an original contractor may enforce this section through a writ
- 11 of mandate.
- 12 (h) The public entity shall not require the original contractor to
- 13 waive any provision of this section.
- 14 (i) For purposes of this section, “public entity” means the state,
- 15 including a state agency, department, office, division, bureau,
- 16 board, or commission, the California State University, the
- 17 University of California, a city, *including a charter city*, county,
- 18 *including a charter county*, city and county, including a charter
- 19 *city and county*, district, special district, public authority, political
- 20 subdivision, public corporation, or nonprofit transit corporation
- 21 wholly owned by a public agency and formed to carry out the
- 22 purposes of the public agency.