

AMENDED IN SENATE JUNE 30, 2014
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
(Coauthors: Senators Cannella and Galgiani)

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 to the work in a public works contract awarded to the lowest bidder, to issue a change order promptly, and no later than 60 days after the extra work is ~~performed and reasonable~~

~~documentation has been submitted, except as specified~~ *complete and a specified agreement is reached*. The bill would, if this requirement is not met, make the public entity liable to the original contractor for the ~~completed~~ *extra work that has already been performed in accordance with any provisions for change order work that may be contained in the public works contract*. 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 (2),
4 a public entity, when authorized to order changes or additions to
5 the work in a public works contract awarded to the lowest bidder,
6 shall, for extra work required of the original contractor *ordered*
7 *by the duly authorized representative of the public entity, and*
8 *subject to any limitations on that authorization, issue a change*
9 *order for the authorized work promptly, and in no event later than*
10 ~~60 days after the extra work is performed and the original~~
11 ~~contractor has submitted reasonable documentation to support the~~
12 ~~request for a change order. For purposes of this section, extra work~~
13 ~~includes extra work performed by the original contractor, a~~
14 ~~subcontractor, or a lower tier subcontractor. Extra work also~~
15 ~~includes work or requirements that differ from those under the~~
16 ~~public works contract with the public entity before the amendment~~
17 ~~of the contract by the change order~~ *complete and an agreement is*
18 *reached concerning the merit, conditions, costs, and time for*

1 *performance. An original contractor shall respond promptly to a*
2 *request from the duly authorized representative of the public entity*
3 *for documentation to support a request for a change order. Each*
4 *public entity shall specify in the public works contract the*
5 *information that shall be required from the contractor to support*
6 *any requested change order.*

7 (2) (A) When a change order is subject to approval by the
8 governing body of a public entity, but the governing body is not
9 scheduled to meet in the 60 days following the performance of
10 extra work, and reasonable documentation to support the request
11 for a change order for extra work has been submitted, the public
12 entity shall have ~~three~~ *five* days following the next scheduled
13 meeting of the governing body to issue a change order for extra
14 work performed.

15 (B) When a change order for extra work by a school district or
16 community college district is subject to approval by the Division
17 of the State Architect, the school district or community college
18 district shall submit the change order to the division no later than
19 30 days following receipt of reasonable documentation to support
20 the change order for extra work. The Division of the State Architect
21 shall respond to the request for the change order no later than 30
22 days from receipt of the documentation.

23 (3) Nothing in this section shall be construed to prohibit a public
24 entity from issuing a change order in less than 60 days following
25 the ~~performance~~ *completion* of extra work, prior to the work being
26 performed, or during the course of the work being performed.

27 (4) An original contractor may present to the public entity a
28 request for a change order for extra work performed by a
29 subcontractor or a lower tier subcontractor. A subcontractor may
30 request in writing that an original contractor present a change order
31 request for extra work, directed by the public entity, that was
32 performed by the subcontractor or by a lower tier subcontractor
33 on behalf of the subcontractor. This subcontractor shall furnish
34 reasonable documentation to support the change order. Within 45
35 days of receipt of this written request, the original contractor shall
36 notify the subcontractor in writing as to whether the original
37 contractor presented the request to the public entity and, if the
38 original contractor did not present the request, provide the
39 subcontractor with a statement of the reasons for not doing so.

- 1 (b) Upon the failure of the public entity to issue a change order
2 *for authorized work* within the time limits prescribed in subdivision
3 (a), the original contractor may bill for the ~~extra work that has~~
4 ~~already been performed, and the public entity shall be liable for~~
5 ~~that extra work completed extra work in accordance with any~~
6 ~~provisions for change order work that may be contained in the~~
7 ~~public works contract.~~
- 8 (c) If there is a dispute concerning the need for a change order
9 *for a portion of the extra work*, the public entity shall ~~pay a~~
10 ~~reasonable amount promptly pay~~ for the portion of the extra work
11 that is not in dispute.
- 12 (d) When the dispute concerning the extra work relates only to
13 the amount that the original contractor shall be paid, the public
14 entity shall promptly pay the ~~reasonable~~ value of the work or the
15 amount that the public entity does not dispute, whichever is greater.
- 16 (e) The public entity, and the original contractor, may reserve
17 their respective rights as to any amount paid or unpaid that remains
18 in dispute.
- 19 (f) Prejudgment interest shall accrue on any amount for which
20 the public entity fails to issue a change order or fails to pay in
21 accordance with this section at 7 percent per annum. *This*
22 *subdivision shall only apply to any amount that is not in dispute.*
- 23 (g) In addition to any other remedies that may be available to
24 it, an original contractor may enforce this section ~~through a writ~~
25 ~~of mandate by way of mediation or other alternative dispute~~
26 ~~resolution process.~~
- 27 (h) The public entity shall not require the original contractor to
28 waive any provision of this section.
- 29 (i) ~~For purposes of this section, “public entity” means the state,~~
30 ~~including a state agency, department, office, division, bureau,~~
31 ~~board, or commission, the California State University, the~~
32 ~~University of California, a city, including a charter city, county,~~
33 ~~including a charter county, city and county, including a charter~~
34 ~~city and county, district, special district, public authority, political~~
35 ~~subdivision, public corporation, or nonprofit transit corporation~~
36 ~~wholly owned by a public agency and formed to carry out the~~
37 ~~purposes of the public agency.~~
- 38 (i) *For purposes of this section:*

1 (1) “Alternative dispute resolution process” means a process
2 in which parties meet with a neutral third party to assist them in
3 resolving their dispute outside of formal litigation.

4 (2) “Duly authorized representative of the public entity” means
5 an officer or employee of the public entity authorized to order
6 extra work.

7 (3) “Extra work” includes extra work performed by the original
8 contractor, a subcontractor, or a lower tier subcontractor. “Extra
9 work” also includes work or requirements that differ from those
10 under the public works contract with the public entity before the
11 amendment of the contract by the change order.

12 (4) “Mediation” means a process in which a neutral person or
13 persons facilitate communication between disputants to assist them
14 in reaching a mutually acceptable agreement.

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

23 (j) This section shall not prevent a public entity from prohibiting
24 a contractor from performing extra work until after the public
25 entity issues a change order.