

AMENDED IN SENATE AUGUST 4, 2014

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**

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**Introduced by Assembly Member Frazier**  
(Coauthors: Senators Cannella and Galgiani)

February 21, 2014

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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 ~~complete and a specified agreement is reached.~~ *performed and documentation has been submitted, as specified.* The bill would, if this requirement is not met, make the public entity liable to the original contractor for the completed extra work ~~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.~~ *that this bill would require to be paid that the public entity fails to pay.* 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 by~~  
 7 ~~the duty by an~~ authorized representative of the public entity, ~~and~~  
 8 ~~subject to any limitations on that authorization,~~ issue a change  
 9 order for the ~~authorized~~ extra work promptly, and in no event later  
 10 than 60 days after the extra work is ~~complete and an agreement is~~  
 11 ~~reached concerning the merit, conditions, costs, and time for~~  
 12 ~~performance.~~ *performed and the original contractor has submitted*  
 13 *documentation setting forth the reasons and providing sufficient*  
 14 *support that a fair and equitable adjustment in the contractor's*  
 15 *compensation or time for performance, or both is warranted. For*  
 16 *purposes of this section, extra work includes extra work performed*

1 *by the original contractor, a subcontractor, or a lower tier*  
2 *subcontractor. Extra work also includes work or requirements*  
3 *that differ from those under the public works contract with the*  
4 *public entity before the amendment of the contract by the change*  
5 *order. An original contractor shall respond promptly to a request*  
6 *from the ~~duly~~ authorized representative of the public entity for*  
7 *documentation to support a request for a necessary to warrant the*  
8 *change order. Each public entity shall specify in the public works*  
9 *contract the information that shall be required from the contractor*  
10 *to support any requested change order.*

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

19 ~~(B)~~—When a change order for extra work by a school district or  
20 community college district is subject to approval by the Division  
21 of the State Architect, the school district or community college  
22 district shall submit the change order to the division no later than  
23 30 days following receipt of reasonable documentation to support  
24 the change order for extra work. The Division of the State Architect  
25 shall respond to the request for the change order no later than 30  
26 days from receipt of the documentation.

27 (3) Nothing in this section shall be construed to prohibit a public  
28 entity from issuing a change order in less than 60 days following  
29 the completion of extra work, prior to the work being performed,  
30 or during the course of the work being performed.

31 (4) An original contractor may present to the public entity a  
32 request for a change order for extra work performed by a  
33 subcontractor or a lower tier subcontractor. A subcontractor may  
34 request in writing that an original contractor present a change order  
35 request for extra work, directed by the public entity, that was  
36 performed by the subcontractor or by a lower tier subcontractor  
37 on behalf of the subcontractor. This subcontractor shall furnish  
38 reasonable documentation to support the change order. *setting*  
39 *forth the reasons and providing sufficient support to warrant that*  
40 *the change order be issued. Within 45 days of receipt of this*

1 written request, the original contractor shall notify the  
2 subcontractor in writing as to whether the original contractor  
3 presented the request to the public entity and, if the original  
4 contractor did not present the request, provide the subcontractor  
5 with a statement of the reasons for not doing so.

6 (b) Upon the failure of the public entity to issue a change  
7 order ~~for authorized work for extra work required by an authorized~~  
8 ~~representative of the public entity~~ within the time limits prescribed  
9 in subdivision (a), the original contractor may bill for the ~~completed~~  
10 ~~extra work in accordance with any provisions for change order~~  
11 ~~work that may be contained in the public works contract. that has~~  
12 ~~already been performed, and the public entity shall be liable for~~  
13 ~~fair and equitable adjustments in the compensation or time for~~  
14 ~~performance for the completed extra work.~~

15 (e) ~~If there is a dispute concerning the need for a change order~~  
16 ~~for a portion of the extra work, the public entity shall promptly~~  
17 ~~pay for the portion of the extra work that is not in dispute.~~

18 (d)

19 (c) When the dispute concerning the extra work relates only to  
20 the amount that the original contractor shall be paid, the public  
21 entity shall promptly pay the *reasonable* value of the work or the  
22 amount that the public entity does not dispute, whichever is greater.

23 (e)

24 (d) The public entity, and the original contractor, may reserve  
25 their respective rights as to any amount paid or unpaid that remains  
26 in dispute.

27 (f)

28 (e) Prejudgment interest *in accordance with applicable law*  
29 shall accrue on any amount ~~for which the public entity fails to~~  
30 ~~issue a change order or fails to pay in accordance with this section~~  
31 ~~at 7 percent per annum. This subdivision shall only apply to any~~  
32 ~~amount that is not in dispute. this section requires to be paid that~~  
33 ~~the public entity fails to pay.~~

34 (g) ~~In addition to any other remedies that may be available to~~  
35 ~~it, an original contractor may enforce this section by way of~~  
36 ~~mediation or other alternative dispute resolution process.~~

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

39 (i)

40 (f) For purposes of this section:

- 1     ~~(1) “Alternative dispute resolution process” means a process in~~  
2 ~~which parties meet with a neutral third party to assist them in~~  
3 ~~resolving their dispute outside of formal litigation.~~  
4     ~~(2) “Duly authorized~~  
5     ~~(1) “Authorized representative of the public entity” means an~~  
6 ~~officer or employee of the public entity authorized to order extra~~  
7 ~~work.~~  
8     ~~(3)~~  
9     ~~(2) “Extra work” includes extra work performed by the original~~  
10 ~~contractor, a subcontractor, or a lower tier subcontractor. “Extra~~  
11 ~~work” also includes work or requirements that differ from those~~  
12 ~~under the public works contract with the public entity before the~~  
13 ~~amendment of the contract by the change order.~~  
14     ~~(4) “Mediation” means a process in which a neutral person or~~  
15 ~~persons facilitate communication between disputants to assist them~~  
16 ~~in reaching a mutually acceptable agreement.~~  
17     ~~(5)~~  
18     ~~(3) “Public entity” means the state, including a state agency,~~  
19 ~~department, office, division, bureau, board, or commission, the~~  
20 ~~California State University, the University of California, a city,~~  
21 ~~including a charter city, county, including a charter county, city~~  
22 ~~and county, including a charter city and county, district, special~~  
23 ~~district, public authority, political subdivision, public corporation,~~  
24 ~~or nonprofit transit corporation wholly owned by a public agency~~  
25 ~~and formed to carry out the purposes of the public agency.~~  
26     ~~(j)~~  
27     ~~(g) This section shall not prevent a public entity from prohibiting~~  
28 ~~a contractor from performing extra work until after the public~~  
29 ~~entity issues a change order.~~