

## Assembly Bill No. 2275

### CHAPTER 916

An act to add Chapter 4.5 (commencing with Section 927) to Part 3 of Division 3.6 of Title 1 of, and to repeal Sections 926.15, 926.17, and 926.18 of, the Government Code, relating to state contracts.

[Approved by Governor September 28, 1998. Filed  
with Secretary of State September 28, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2275, Kuykendall. State contracts: claims against the state.

Existing law provides that a state agency that fails to make any payment for goods and services to certain entities pursuant to a contract shall be subject to an interest penalty fee, according to specified criteria.

This bill would recast these provisions and specify that these provisions may not be waived, altered, or limited by the state agency with respect to a contract entered into on or after January 1, 1999, or by the person or business contracting on or after that date with the state agency.

This bill would require that in order to avoid late payment penalties, state agencies shall pay promptly submitted, undisputed invoices within 45 days, and would specify procedures and exclusions relating to that requirement.

*The people of the State of California do enact as follows:*

SECTION 1. Section 926.15 of the Government Code, as added by Section 1 of Chapter 360 of the Statutes of 1997, is repealed.

SEC. 2. Section 926.15 of the Government Code, as amended by Section 2 of Chapter 360 of the Statutes of 1997, is repealed.

SEC. 3. Section 926.17 of the Government Code is repealed.

SEC. 4. Section 926.18 of the Government Code is repealed.

SEC. 5. Chapter 4.5 (commencing with Section 927) is added to Part 3 of Division 3.6 of Title 1 of the Government Code, to read:

#### CHAPTER 4.5. PROMPT PAYMENT OF CLAIMS

927. (a) This chapter shall be known and may be cited as the California Prompt Payment Act.

(b) It is the intent of the Legislature that state agencies pay properly submitted, undisputed invoices within 45 days of receipt, or automatically calculate and pay the appropriate late payment penalties as specified in this chapter.



(c) Notwithstanding any other provision of law, this chapter shall apply to all state agencies, including, but not limited to, the Public Employees' Retirement System, the State Teachers' Retirement System, the Treasurer, and the Department of General Services.

927.1. (a) A state agency that acquires property or services pursuant to a contract with a business, including any approved change order or contract amendment, shall make payment to the person or business on the date required by the contract or be subject to a late payment penalty.

(b) Except in the event of an emergency as provided in Section 927.11, effective January 1, 1999, the late payment penalties specified in this chapter may not be waived, altered, or limited by a state agency acquiring property or services pursuant to a contract or by any person or business contracting with a state agency to provide property or services.

927.2. The following definitions apply to this chapter:

(a) "Claim schedule" means a schedule of invoices prepared and submitted by a state agency to the Controller for payment to the named claimant.

(b) "Invoice" means a bill or claim that requests payment on a contract under which a state agency acquires property or services.

(c) "Medi-Cal program" means the program established pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(d) "Nonprofit public benefit corporation" means a corporation, as defined by subdivision (b) of Section 5046 of the Corporations Code, that has registered with the Department of General Services as a small business.

(e) "Reasonable cause" means a determination by a state agency that any of the following conditions are present:

(1) There is a discrepancy between the invoice or claimed amount and the provisions of the contract.

(2) There is a discrepancy between the invoice or claimed amount and either the contractor's actual delivery of property or services to the state or the state's acceptance of those deliveries.

(3) Additional evidence supporting the validity of the invoice or claimed amount is required to be provided to the state agency by the contractor.

(4) The invoice has been improperly executed or needs to be corrected by the contractor.

(f) "Required payment approval date" means the date on which payment is due as specified in a contract or, if a specific date is not established by the contract, 30 calendar days following the date upon which an undisputed invoice is received by a state agency.

(g) "Received by a state agency" means the date an invoice is delivered to the state location or party specified in the contract or,



if a state location or party is not specified in the contract, wherever otherwise specified by the state agency.

(h) “Revolving fund” means a fund established pursuant to Article 5 (commencing with Section 16400) of Division 4 of Title 2.

(i) “Small business” means a business certified as a “small business” in accordance with subdivision (c) of Section 14837.

(j) “Small business” and “nonprofit organization” mean, in reference to providers under the Medi-Cal program, a business or organization that meets all of the following criteria:

- (1) The principal office is located in California.
- (2) The officers, if any, are domiciled in California.
- (3) If a small business, it is independently owned and operated.
- (4) The business or organization is not dominant in its field of operation.

(5) Together with any affiliates, the business or organization has gross receipts from business operations that do not exceed three million dollars (\$3,000,000) per year, except that the Director of Health Services may increase this amount if the director deems that this action would be in furtherance of the intent of this chapter.

927.3. Except where payment is made directly by a state agency pursuant to Section 927.6, any undisputed invoice received by a state agency shall be submitted to the Controller for payment by the required payment approval date. A state agency may dispute an invoice submitted by a contractor for reasonable cause if the state agency notifies the contractor within 15 working days from receipt of the invoice, or delivery of the property or services, whichever is later. No state employee shall dispute an invoice, on the basis of minor or technical defects, in order to circumvent or avoid the general intent or any of the specific provisions of this chapter.

927.4. Except as otherwise provided in this chapter, to avoid late payment penalties, the maximum time from state agency receipt of an undisputed invoice to issuance of a warrant for payment is 45 calendar days, including not more than 30 calendar days from the state agency to submit a correct claim schedule to the Controller, and not more than 15 calendar days for the Controller to issue the warrant.

927.5. This chapter shall not apply to claims for reimbursement for health care services provided under the Medi-Cal program, unless the Medi-Cal health care services provider is a small business or nonprofit organization. In applying this section to claims submitted to the state, or its fiscal intermediary, by providers of services or equipment under the Medi-Cal program, payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists. With regard to Medi-Cal claims, reasonable cause shall include review of claims to determine medical necessity, review of claims for providers subject to special prepayment fraud and abuse controls, and claims



that require review by the fiscal intermediary or State Department of Health Services due to special circumstances. Claims requiring special review as specified above shall not be eligible for a late payment penalty.

927.6. (a) State agencies shall pay applicable penalties, without requiring that the contractor submit an additional invoice for these amounts, whenever the state agency fails to submit a correct claim schedule to the Controller by the required payment approval date. The penalty shall cease to accrue on the date the state agency submits the claim schedule to the Controller for payment, and shall be paid for out of the state agency's funds. If the contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the state agency shall pay to the contractor a penalty of 0.25 percent of the amount due, per calendar day, from the required payment date. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars (\$500,000).

(b) For all other businesses, the state agency shall pay a penalty at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) or less, the penalty shall be waived and not paid by the state agency. On an exception basis, state agencies may avoid payment of penalties, for failure to submit a correct claim schedule to the Controller by the required payment approval date, by paying the contractor directly, from the state agency's revolving fund within 45 calendar days following the date upon which an undisputed invoice is received by the state agency.

927.7. The Controller shall pay contractors within 15 calendar days of receipt of a correct claim schedule from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim schedule from a state agency, the Controller shall pay applicable penalties to the contractor without requiring that the contractor submit an invoice for these amounts. Penalties shall cease to accrue on the date full payment is made, and shall be paid for out of the Controller's funds. If the contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the Controller shall pay to the contractor a penalty of 0.25 percent of the amount due, per calendar day, from the 16th calendar day following receipt of the claim schedule from the state agency. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars (\$500,000). For all other businesses, the Controller



shall pay penalties at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) or less, the penalty shall be waived and not paid by the Controller.

927.8. State agencies shall avoid seeking any additional appropriation to pay penalties that accrue as a result of the agency's failure to make timely payments as required by this chapter. Any state agency that requests that the Legislature make a deficiency appropriation for the agency shall identify what portion, if any, of the requested amount is required because of any penalties imposed by this chapter.

927.9. (a) On an annual basis, within 90 calendar days following the end of each fiscal year, state agencies shall provide the Director of General Services with a report on late payment penalties that were paid by the state agency in accordance with this chapter during the preceding fiscal year.

(b) At a minimum, the report shall identify the total number and dollar amount of late payment penalties paid. State agencies may, at their own initiative, provide the director with other relevant performance measures. The director shall prepare a report listing the number and total dollar amount of all late payment penalties paid by each state agency during the preceding fiscal year, together with other relevant performance measures, and shall make the information available to the public.

927.10. State agencies shall encourage contractors to promptly pay their subcontractors and suppliers, especially those that are small businesses. In furtherance of this policy, state agencies shall utilize expedited payment processes to enable faster payment by prime contractors to their subcontractors and suppliers, and shall promptly respond to any subcontractor or supplier inquiries regarding the status of payments made to prime contractors.

927.11. (a) Except in the case of a contract with a certified small business, a nonprofit organization or a nonprofit public benefit corporation, if an invoice from a business under a contract with the Department of Forestry and Fire Protection would become subject to late payment penalties during the annually declared fire season, as declared by the Director of Forestry and Fire Protection, then the required payment approval date shall be extended by 30 calendar days.

(b) No nonprofit public benefit corporation shall be eligible for a late payment penalty if a state agency fails to make timely payment because no Budget Act has been enacted.

(c) If the Director of Finance determines that a state agency or the Controller is unable to promptly pay an invoice as provided for by this chapter due to a major calamity, disaster, or criminal act, then otherwise applicable late payment penalty provisions contained in



Section 927.7 shall be suspended except as they apply to a contractor which is either a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program. The suspension shall remain in effect until the Director of Finance determines that the suspended late payment penalty provisions of this section should be reinstated.

(d) Except as provided in subdivision (b), in the event a state agency fails to make timely payment because no Budget Act has been enacted, penalties shall continue to accrue until the time that the invoice is paid.

927.12. Section 926.10 shall not apply to any contract covered by this chapter.

