

AMENDED IN ASSEMBLY MAY 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1410

Introduced by Assembly Member Margett

February 26, 1999

An act to amend ~~Sections 20150.9, 20150.10, and 20166~~ *Section 20104.50* of the Public Contract Code, relating to local government contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1410, as amended, Margett. Public government contracts: ~~rejection of bids~~ *late payments*.

Under the Local Agency Public Construction Act, a local agency that fails to make a progress payment within 30 days of an undisputed request for payment must pay interest at an annual rate of 10% of the unpaid amount.

This bill would instead require the local agency to pay a penalty of 2% per 30-day period that the undisputed amount remains unpaid. The bill would also provide that the contractor is entitled to costs and attorney's fees incurred in collecting payment.

~~Under the Local Agency Public Construction Act, counties of under 500,000 persons must comply with specified procedures for contracting for public projects. Cities must comply with a separate set of requirements. Counties and cities governed by these provisions may reject any bids presented and readvertise the project.~~

~~This bill would allow these counties and cities to reject bids for cause, as defined, and would make related changes.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 ~~SECTION 1. — Section 20150.9 of the Public Contract~~
2 *SECTION 1. Section 20104.50 of the Public Contract*
3 *Code is amended to read:*

4 20104.50. (a) (1) It is the intent of the Legislature in
5 enacting this section to require all local governments to
6 pay their contractors on time so that these contractors can
7 meet their own obligations. In requiring prompt
8 payment by all local governments, the Legislature
9 hereby finds and declares that the prompt payment of
10 outstanding receipts is not merely a municipal affair, but
11 is, instead, a matter of statewide concern.

12 (2) It is the intent of the Legislature in enacting this
13 article to fully occupy the field of public policy relating to
14 the prompt payment of local governments' outstanding
15 receipts. The Legislature finds and declares that all
16 government officials, including those in local
17 government, must set a standard of prompt payment that
18 any business in the private sector ~~which that~~ may contract
19 for services should look towards for guidance.

20 (b) Any local agency ~~which that~~ fails to make any
21 progress payment within 30 days after receipt of an
22 undisputed and properly submitted payment request
23 from a contractor on a construction contract shall pay
24 ~~interest to the contractor equivalent to the legal rate set~~
25 ~~forth in subdivision (a) of Section 685.010 of the Code of~~
26 ~~Civil Procedure~~ *a penalty of 2 percent per 30-day period.*
27 *The contractor shall be entitled to all costs and attorney's*
28 *fees incurred in the collection of payment under this*
29 *section.*

30 (c) Upon receipt of a payment request, each local
31 agency shall act in accordance with both of the following:

32 (1) Each payment request shall be reviewed by the
33 local agency as soon as practicable after receipt for the



1 purpose of determining that the payment request is a
2 proper payment request.

3 (2) Any payment request determined not to be a
4 proper payment request suitable for payment shall be
5 returned to the contractor as soon as practicable, but not
6 later than seven days, after receipt. A request returned
7 pursuant to this paragraph shall be accompanied by a
8 document setting forth in writing the reasons why the
9 payment request is not proper.

10 (d) The number of days available to a local agency to
11 make a payment without incurring interest pursuant to
12 this section shall be reduced by the number of days by
13 which a local agency exceeds the seven-day return
14 requirement set forth in paragraph (2) of subdivision (c).

15 (e) For purposes of this article:

16 (1) A “local agency” includes, but is not limited to, a
17 city, including a charter city, a county, and a city and
18 county, and is any public entity subject to this part.

19 (2) A “progress payment” includes all payments due
20 contractors, except that portion of the final payment
21 designated by the contract as retention earnings.

22 (3) A payment request shall be considered properly
23 executed if funds are available for payment of the
24 payment request, and payment is not delayed due to an
25 audit inquiry by the financial officer of the local agency.

26 (f) Each local agency shall require that this article, or
27 a summary thereof, be set forth in the terms of any
28 contract subject to this article.

29 Code is amended to read:

30 ~~20150.9. (a) In its discretion, the county may reject~~
31 ~~for cause any bids presented. For purposes of this section,~~
32 ~~“cause” means any of the following:~~

33 ~~(1) The bid exceeds the engineer’s estimate by 10~~
34 ~~percent.~~

35 ~~(2) The bid is shown to be nonresponsive.~~

36 ~~(3) There is an apparent breach of law in the~~
37 ~~submission of the bid.~~

38 ~~(b) If, after the first invitation for bids, all bids are~~
39 ~~rejected, after reevaluating its cost estimates of the~~
40 ~~project, the county shall abandon the project for a period~~



1 of one year or shall readvertise for bids in the manner
2 prescribed by this article. If after readvertising, the
3 county rejects all bids presented, the county may proceed
4 with the project by use of county personnel in compliance
5 with Section 20150.10 or may readvertise. If two or more
6 bids are the same and the lowest, the county may accept
7 the one it chooses. If no bids are received, the county may
8 have the project done without further complying with
9 this article.

10 SEC. 2. Section 20150.10 of the Public Contract Code
11 is amended to read:

12 20150.10. Notwithstanding the provisions of Section
13 20150.9, on any project which is less than seventy five
14 thousand dollars (\$75,000), if, after the first invitation for
15 bids, all bids are rejected, the county may, after
16 reevaluating its cost estimates of the project, pass a
17 resolution by a four-fifths vote of its board of supervisors
18 declaring that the project can be performed more
19 economically by county personnel, or that in its opinion
20 a contract to perform the project can be negotiated with
21 the original low bidder at a lower price than that in any
22 of the bids, or the materials or supplies furnished at a
23 lower price in the open market. Upon adoption of the
24 resolution, it may have the project done in the manner
25 stated without further complying with this article.

26 SEC. 3. Section 20166 of the Public Contract Code is
27 amended to read:

28 20166. (a) In its discretion, the legislative body may
29 reject for cause any bids presented and readvertise. For
30 purposes of this section, "cause" means any of the
31 following:

32 (1) The bid exceeds the engineer's estimate by 10
33 percent.

34 (2) The bid is shown to be nonresponsive.

35 (3) There is an apparent breach of law in the
36 submission of the bid.

37 (b) If two or more bids are the same and the lowest,
38 the legislative body may accept the one it chooses. If no
39 bids are received, the legislative body may have the



1 ~~project done without further complying with this~~
2 ~~chapter.~~

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