

AMENDED IN SENATE SEPTEMBER 12, 2001

SENATE BILL

No. 937

Introduced by Senator Margett

February 23, 2001

An act to amend ~~Section 4104.5 of, to add Sections 9204 and 9205 to, and to repeal Chapter 10 (commencing with Section 19100) of Part 2 of Division 2 of Sections 4104.5 and 19100 of, and to add Section 9204 and Article 1.4 (commencing with Section 20103.9) of Chapter 1 of Part 3 of Division 2 to,~~ the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 937, as amended, Margett. Public contracts: bids and disputes.

The Subletting and Subcontracting Fair Practices Act requires a public entity taking bids for construction of a public work or improvement to establish a date for submission of bids by prime contractors. Existing law applicable to local agencies requires that any bids that are submitted after the bid submittal deadline must be returned unopened to the bidder.

This bill would recast the provisions governing notice of bid submittal deadlines, and would also apply to state agencies the requirement that postdeadline bids be returned unopened.

The State Contract Act contains provisions governing the resolution of disputes between contractors and state agencies, including establishing a statute of limitations for damages on a contract with the state and recognizing a cause for the 2nd lowest bidder on a contract, if the successful bidder violated provisions governing workers' compensation and unemployment insurance.

This bill would ~~revise these provisions so that they are applicable~~ *apply similar cause of action provisions* to all contracts subject to the Public Contract Code, ~~including those and would establish separate statutes of limitations for claims~~ involving local agencies. *The bill would also make technical and clarifying changes.*

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 4104.5 of the Public Contract Code is
2 amended to read:

3 4104.5. (a) The officer, department, board, or commission
4 taking bids for construction of any public work or improvement
5 shall specify in the bid invitation and public notice the place the
6 bids of the prime contractors are to be received and the time by
7 which they shall be received. The date and time shall be extended
8 by no less than 72 hours if the officer, department, board, or
9 commission issues any material changes, additions, or deletions to
10 the invitation later than 72 hours prior to the bid closing. Any bids
11 received after the time specified in the notice or any extension due
12 to material changes shall be returned unopened.

13 (b) As used in this section, the term “material change” means
14 a change with a substantial cost impact on the total bid as
15 determined by the awarding agency.

16 (c) As used in this section, the term “bid invitation” shall
17 include any documents issued to prime contractors that contain
18 descriptions of the work to be bid or the content, form, or manner
19 of submission of bids by bidders.

20 SEC. 2. Section 9204 is added to the Public Contract Code, to
21 read:

22 ~~9204. (a) Presentation of a claim pursuant to Part 3~~
23 ~~(commencing with Section 900) of Division 3.6 of Title 1 of the~~
24 ~~Government Code is not required to commence a legal action or~~
25 ~~arbitration proceeding for money or damages on a contract with a~~
26 ~~public entity, but any action or proceeding shall be commenced not~~
27 ~~later than six months after either of the following:~~

28 ~~(1) The contracting public entity’s final written decision under~~
29 ~~contract claim provisions.~~

1 ~~(2) The accrual of the cause of action, if there are no contract~~
2 ~~claim provisions.~~

3 ~~(b) Nothing contained in this section may be construed as~~
4 ~~modifying or affecting the provisions of Article 8.1 (commencing~~
5 ~~with Section 14410) of Chapter 3 of Part 5 of Division 3 of Title~~
6 ~~2 of the Government Code.~~

7 ~~SEC. 3.—Section 9205 is added to the Public Contract Code, to~~
8 ~~read:~~

9 ~~9205.—~~

10 9204. (a) (1) The second lowest *responsible* bidder, and any
11 person, firm, association, trust, partnership, labor organization,
12 corporation, or other legal entity that has, prior to the letting of the
13 bids on the public works project in question, entered into a contract
14 with the second lowest *responsible* bidder, may bring an action in
15 superior court *against the successful bidder* if that entity suffers
16 damages as a result of the bid of the second lowest *responsible*
17 bidder for any contract subject to this part not being accepted due
18 to the successful bidder's violation, as evidenced by the conviction
19 of the successful bidder therefor, of any provision of Division 4
20 (commencing with Section 3200) of the Labor Code or of the
21 Unemployment Insurance Code, or of both.

22 (2) There is a rebuttable presumption that a successful bidder
23 who has been convicted of a violation of any provision of Division
24 4 (commencing with Section 3200) of the Labor Code or of the
25 Unemployment Insurance Code, or of both, was awarded the bid
26 because that successful bidder was able to lower the bid due to this
27 violation or these violations occurring on the contract for public
28 work awarded by the public entity.

29 (b) In an action brought pursuant to this section, the court may
30 award costs and reasonable attorney's fees, in an amount to be
31 determined in the court's discretion, to the prevailing party.

32 (c) For purposes of an action brought pursuant to this section:

33 (1) Employee status shall be determined pursuant to Division
34 4 (commencing with Section 3200) of the Labor Code with respect
35 to alleged violations of that division, pursuant to the
36 Unemployment Insurance Code with respect to alleged violations
37 of that code, or pursuant to Section 2750.5 of the Labor Code with
38 respect to alleged violations of either Division 4 (commencing
39 with Section 3200) or of the Unemployment Insurance Code, or
40 of both.

1 (2) ~~“Second lowest bidder” means the second lowest qualified~~
2 ~~bidder deemed responsive by the public entity awarding the~~
3 ~~contract for public work.~~

4 (3) ~~The “second lowest responsible bidder” and the~~
5 ~~“successful bidder” may include any person, firm, association,~~
6 ~~corporation, or other legal entity.~~

7 (d) A second lowest *responsible* bidder who has been convicted
8 of a violation of any provision of Division 4 (commencing with
9 Section 3200) of the Labor Code or of the Unemployment
10 Insurance Code, or both, within one year prior to filing the bid for
11 public work, and who has failed to take affirmative steps to correct
12 that violation or those violations, is prohibited from bringing any
13 action authorized by this section.

14 ~~SEC. 4. Chapter 10 (commencing with Section 19100) of Part~~
15 ~~2 of Division 2 of the Public Contract Code is repealed.~~

16 *SEC. 3. Section 19100 of the Public Contract Code is*
17 *amended to read:*

18 19100. (a) Presentation of a claim pursuant to Part 3
19 (commencing with Section 900) of Division 3.6 of Title 1 of the
20 Government Code is not required to commence a legal action or
21 arbitration proceeding for money or damages on a contract with
22 the state, but any action or proceeding shall be commenced not
23 later than six months after either of the following:

24 (1) The contracting agency’s final written decision under
25 contract claim provisions.

26 (2) The accrual of the cause of action, if there are no contract
27 claim provisions.

28 (b) ~~Nothing contained in this section shall be construed as~~
29 ~~modifying or affecting the provisions of Article 8.1 (commencing~~
30 ~~with Section 14410) of Chapter 3 of Part 5 of Division 3 of Title~~
31 ~~2 of the Government Code This section does not modify or affect~~
32 ~~any of the provisions of Article 7.1 (commencing with Section~~
33 ~~10240) of Chapter 1.~~

34 *SEC. 4. Article 1.4 (commencing with Section 20103.9) is*
35 *added to Chapter 1 of Part 3 of Division 2 of the Public Contract*
36 *Code, to read:*
37

Article 1.4. *Presentation of Claims*

20103.9. (a) *Presentation of a claim pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code is not required to commence a legal action or arbitration proceeding for money or damages on a contract with a public entity other than the state. An action or proceeding against a public entity other than the state shall be commenced within the following time periods:*

(1) *If the contract requires any claim of the contractor to be considered under a claims presentation or dispute resolution procedure that results in a written decision on the merits of the claim after the last work under the contract has been performed, then six months after the last written decision under the claims presentation or dispute resolution procedure.*

(2) *If the contract contains no claims presentation or dispute resolution procedure that results in a written decision on the merits of the claim after the last work under the contract has been performed, then 12 months after the accrual of the cause of action.*

(b) *This section does not modify or affect any of the provisions of Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.*

(c) *All actions or proceedings against the state are subject to the provisions of Chapter 10 (commencing with Section 19100) of Part 2.*