



Santa Clara County Office of Education

Charles Weis, Ph.D.
County Superintendent of Schools

Informational Bulletin

For Santa Clara County Districts

District Business & Advisory Services

Nimrat Johal, Director- DBAS: 408-453-6599

Cathy McKim, Manager-DBAS: 408-453-6588

Bulletin: 12-093

Date: January 19, 2012

To: District Fiscal Directors

From: Cathy McKim

Re: Public Contract Code Provisions Limit Public Works Project Retention Amounts

The purpose of this bulletin is to notify you of the changes signed into law Senate Bill ("SB") 293, restricting retention amounts for public works construction contracts to five percent (5%) of the total contract price. This new law amends Public Contract Code section 7201 and, subject to limited exceptions, applies to all contracts entered into on or after January 1, 2012.

This law is significant to public entities, including cities, counties, boards and special districts, as they are presently required to withhold at least 5% of the contract price until final completion and acceptance of a construction project. Because they must accept the lowest responsive responsible bidder for qualifying public works construction projects, public entities often use retention proceeds on progress payments to ensure that projects are completed satisfactorily.

With the implementation of SB 293's amendments to section 7201, the 5% cap on retention reduces the flexibility and leverage that a public entity has in withholding payments to ensure satisfactory and timely completion. The revised Public Contract Code section 7201(b)(4) provides that retention proceeds on a project may exceed 5% on specific projects only where, before putting a project out to bid: (1) the governing board of the agency approves a finding during a regular and properly noticed governing board meeting that the proposed project is "substantially complex" and requires a retention amount greater than 5%; and (2) the public entity includes both the finding and the designated retention amount set by the governing board during the meeting in the bid documents. However, neither SB 293 nor any existing provision of the Public Contract Code define the characteristics of a project that should be considered "substantially complex."

In addition to reducing the retention cap on public projects, the law decreases from 10 to 7, the number of days by which a prime contractor or subcontractor must pay a subcontractor after receiving a progress payment, unless otherwise agreed to in writing. A subcontractor must now give written notice to the surety and bond principal that he or she is enforcing a claim prior to completion or recordation of the Notice of Completion of a project, which may extend project completion times.

These regulations take effect January 1, 2012, and sunsets January 1, 2016.

Please share this information as deemed appropriate.

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