

Date of Hearing: March 22, 2017

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW
Susan Talamantes Eggman, Chair
AB 92 (Bonta) – As Introduced January 9, 2017

SUBJECT: Public contracts: payment

SUMMARY: Extends from January 1, 2018, to January 1, 2023, the sunset date on existing statutes governing the amount of money a public agency can retain from a contractor prior to completion of a public works project.

EXISTING LAW:

- 1) Generally prohibits a public agency from retaining more than 5% of a contract price until final completion of a project.
- 2) Provides an exemption to the above prohibition by allowing a public agency to withhold more than 5% of the contract price if a project is deemed to be substantially complex, provided that the bid documents describe the specific project, explain why it is substantially complex, and identify the actual retention amount.
- 3) Prohibits retention proceeds from exceeding the retention percentage specified in the contract.
- 4) Sunsets these retention provisions on January 1, 2018.

FISCAL EFFECT: None

COMMENTS: Withholding a percentage of a contract allows a public agency to maintain a degree of control over a project to ensure that the contractor performs the work well, on time, and on budget. Current law limits the amount of money that public agencies can withhold prior to completion of a job to no more than 5% of the total contract. However, public agencies may retain a higher percentage if the agency, after a proper hearing, finds a project to be "substantially complex," as long as the bid documents include a description of the specific project and an explanation of why it is unique.

Existing law establishing the general 5% retention limit but allowing higher retention for substantially complex projects is due to sunset on January 1, 2018. This bill extends the sunset on these provisions for five years to January 1, 2023.

According to the author, "If the current 5% cap is not extended, public works contractors and subcontractors could be forced to complete work without full payment, forcing them to seek additional financing. This could drive up project costs and, in many cases, make it difficult for them to meet their financial obligations in a timely manner." The sponsors, representing contractors, maintain that this bill will extend a fair policy that reduces the cost of public works construction and ensures that the state's small and emerging construction businesses can continue to compete for these contracts.

PRIOR LEGISLATION:

- 1) AB 1705 (Williams), Chapter 670, Statutes of 2014, clarifies the circumstances under which a public works project is deemed substantially complex for purposes of higher retention withholding and extends existing law relating to public agencies' retention requirements to January 1, 2018.
- 2) SB 293 (Padilla), Chapter 700, Statutes of 2011, caps the maximum amount of money that public agencies can withhold from a contractor prior to completion of a public works project at 5% of the total contract, with specified exceptions for substantially complex projects; and sunsets public agencies' retention requirements on January 1, 2016.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Sheet Metal and Air Conditioning Contractors National Association (sponsor)
National Electrical Contractors Association (sponsor)
United Contractors (sponsor)
Air Conditioning & Refrigeration Contractors Association
Air Conditioning Sheet Metal Association
California Legislative Conference of the Plumbing, Heating and Piping Industry
California Precast Concrete Association
California State Association of Electrical Workers
California State Council of Laborers
California State Pipe Trades Council
Finishing Contractors Association of Southern California
Northern California Allied Trades
State Building and Construction Trades Council, AFL-CIO
Wall and Ceiling Alliance
Western States Council of Sheet Metal Workers

Opposition

None on file.

Analysis Prepared by: Cassie Royce / A. & A.R. /