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AB-1649 Local Agency Public Construction Act: change orders: County of Santa Clara. (2023-2024)

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Assembly Bill No. 1649

CHAPTER 281

An act to amend Sections 20142 and 20395 of the Public Contracts Code, relating to public contracts.

[Approved by Governor September 30, 2023. Filed with Secretary of State September 30, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1649, Kalra. Local Agency Public Construction Act: change orders: County of Santa Clara.

Existing law, the Local Agency Public Construction Act, regulates contracting by local agencies, including counties and special districts. The act includes specific provisions for contracting by counties and contracting for county highways. Those provisions include change order authorization for construction contracts, as prescribed, and impose specified caps on the extra cost of any change order, varying with the value of the original contract. The act prohibits a change or alteration cost from exceeding \$210,000.

The act, until January 1, 2027, authorizes the County of Los Angeles to be subject to a change order cap of \$400,000 for construction contracts whose original cost exceeds \$25,000,000 and of \$750,000 for those contracts whose original cost exceeds \$50,000,000, both of which are adjusted annually to reflect the percentage change in the California Consumer Price Index. The act provides a similar authorization for the County of Los Angeles with regard to county highways. The act requires the County of Los Angeles to modify no more than 7 contracts pursuant to these provisions and requires the County of Los Angeles to provide a review report to the Assembly Committee on Local Government and the Senate Committee on Governance and Finance no later than July 1, 2026.

This bill would authorize the County of Santa Clara to be subject to a change order of \$400,000 for contracts whose original cost exceeds \$25,000,000 and of \$750,000 for contracts whose original cost exceeds \$50,000,000, adjusted annually to reflect the percentage change in the California Consumer Price Index. These change order caps would apply to construction contracting by the county and contracting for county highways. The bill would require the County of Santa Clara to modify no more than 7 contracts pursuant to these provisions and would require the County of Santa Clara provide a review report to the Assembly Committee on Local Government and the Senate Committee on Governance and Finance no later than July 1, 2026.

This bill would make legislative findings and declarations as to the necessity of a special statute for the County of Santa Clara.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 20142 of the Public Contract Code, as amended by Section 1 of Chapter 95 of the Statutes of 2021, is amended to read:

20142. (a) The board of supervisors may, by ordinance, resolution, or board order, authorize the county engineer, or other county officer, to order changes or additions in the work being performed under construction contracts. When so authorized, any change or addition in the work shall be ordered in writing by the county engineer, or other designated officer, and the extra cost to the county for any change or addition to the work so ordered shall not exceed five thousand dollars (\$5,000) when the total amount of the original contract does not exceed fifty thousand dollars (\$50,000), nor 10 percent of the amount of any original contract that exceeds fifty thousand dollars (\$50,000), but does not exceed two hundred fifty thousand dollars (\$250,000).

(b) For contracts whose original cost exceeds two hundred fifty thousand dollars (\$250,000), the extra cost for any change or addition to the work so ordered shall not exceed twenty-five thousand dollars (\$25,000), plus 5 percent of the amount of the original contract cost in excess of two hundred fifty thousand dollars (\$250,000). Notwithstanding subdivisions (c) and (d), no change or alteration shall exceed two hundred ten thousand dollars (\$210,000).

(c) The County of Los Angeles may elect to be subject to all of the following provisions:

(1) For contracts whose original cost exceeds twenty-five million dollars (\$25,000,000), the extra cost for any change or addition to the work so ordered shall not exceed four hundred thousand dollars (\$400,000), adjusted annually to reflect the percentage change in the California Consumer Price Index.

(2) For contracts whose original cost exceeds fifty million dollars (\$50,000,000), the extra cost for any change or addition to the work so ordered shall not exceed seven hundred fifty thousand dollars (\$750,000), adjusted annually to reflect the percentage change in the California Consumer Price Index.

(3) If the board of supervisors delegates authority in the manner specified in subdivision (a) with regard to the contract costs specified in this subdivision, the decision by the county engineer or other county officer whom authority was delegated to shall be binding on the County of Los Angeles, and all existing protest and grievance procedures regarding that decision remain valid.

(4) At the time the board of supervisors delegates authority in the manner specified in subdivision (a) with regard to the contract costs specified in this subdivision, the board shall implement appropriate measures to prevent fraud and ensure accountability for that delegated authority.

(5) This subdivision does not apply if the sum of the contracts modified under this subdivision, subdivision (b) of Section 20395, subdivision (e) of Section 20405, subdivision (b) of Section 20614, and subdivision (b) of Section 20998, exceeds seven contracts.

(6) If a contract is modified under this subdivision, the County of Los Angeles shall provide a review report to the Assembly Committee on Local Government and the Senate Committee on Governance and Finance no later than July 1, 2026.

(d) The County of Santa Clara may elect to be subject to all of the following provisions:

(1) For contracts whose original cost exceeds twenty-five million dollars (\$25,000,000), the extra cost for any change or addition to the work so ordered shall not exceed four hundred thousand dollars (\$400,000), adjusted annually to reflect the percentage change in the California Consumer Price Index.

(2) For contracts whose original cost exceeds fifty million dollars (\$50,000,000), the extra cost for any change or addition to the work so ordered shall not exceed seven hundred fifty thousand dollars (\$750,000), adjusted annually to reflect the percentage change in the California Consumer Price Index.

(3) If the board of supervisors delegates authority in the manner specified in subdivision (a) with regard to the contract costs specified in this subdivision, the decision by the county engineer or other county officer whom authority was delegated to shall be binding on the County of Santa Clara, and all existing protest and grievance procedures regarding that decision remain valid.

(4) At the time the board of supervisors delegates authority in the manner specified in subdivision (a) with regard to the contract costs specified in this subdivision, the board shall implement appropriate measures to prevent fraud and ensure accountability for that delegated authority.

(5) This subdivision does not apply if the sum of the contracts modified under this subdivision and subdivision (c) of Section 20395 exceeds seven contracts.

(6) If a contract is modified under this subdivision, the County of Santa Clara shall provide a review report to the Assembly Committee on Local Government and the Senate Committee on Governance and Finance no later than July 1, 2026.

(e) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

SEC. 2. Section 20395 of the Public Contract Code, as amended by Section 3 of Chapter 95 of the Statutes of 2021, is amended to read:

20395. (a) In any county that has appointed a road commissioner pursuant to Section 2006 of the Streets and Highways Code, or in any county that has abolished the office of road commissioner and complied with Section 2006.1 of the Streets and Highways Code, the board of supervisors may authorize the road commissioner, or a registered civil engineer under the direction of the county director of transportation, to have any work upon county highways done under their supervision and direction. The work may be done in any of the following ways:

(1) By letting a contract covering both work and material. In that event, the contract shall be let to the lowest responsible bidder as provided in this article.

(2) By purchasing the material and letting a contract for the performance of the work. In that event, the material shall be bought at the lowest possible cost and the contract let to the lowest responsible bidder as provided in this article.

(3) By purchasing the material and having the work done by day labor, in which case advertising for bids is not required.

(4) (A) By authorizing the county road commissioner or a registered civil engineer under the direction of the county director of transportation to execute changes or additions to the work for any contract pursuant to this section in an amount not to exceed five thousand dollars (\$5,000) for contracts of fifty thousand dollars (\$50,000) or less, or 10 percent for contracts over fifty thousand dollars (\$50,000) but not to exceed two hundred fifty thousand dollars (\$250,000). In no event shall any change or addition to the work exceed a net total addition of twenty-five thousand dollars (\$25,000).

(B) For contracts whose original cost exceeds two hundred fifty thousand dollars (\$250,000), the extra cost for any change or addition to the work so ordered shall not exceed twenty-five thousand dollars (\$25,000), plus 5 percent of the amount of the original contract cost in excess of two hundred fifty thousand dollars (\$250,000). Notwithstanding subdivisions (b) and (c), no change or alteration shall exceed two hundred ten thousand dollars (\$210,000).

(b) The County of Los Angeles may elect to be subject to all of the following provisions:

(1) For contracts whose original cost exceeds twenty-five million dollars (\$25,000,000), the extra cost for any change or addition to the work so ordered shall not exceed four hundred thousand dollars (\$400,000), adjusted annually to reflect the percentage change in the California Consumer Price Index.

(2) For contracts whose original cost exceeds fifty million dollars (\$50,000,000), the extra cost for any change or addition to the work so ordered shall not exceed seven hundred fifty thousand dollars (\$750,000), adjusted annually to reflect the percentage change in the California Consumer Price Index.

(3) If the board of supervisors delegates authority in the manner specified in subdivision (a) with regard to the contract costs specified in this subdivision, the decision by the county engineer or other county officer whom authority was delegated to shall be binding on the County of Los Angeles, and all existing protest and grievance procedures regarding that decision remain valid.

(4) At the time the board of supervisors delegates authority in the manner specified in subdivision (a) with regard to the contract costs specified in this subdivision, the board shall implement appropriate measures to prevent fraud and ensure accountability for that delegated authority.

(5) This subdivision does not apply if the sum of the contracts modified under this subdivision, subdivision (c) of Section 20142, subdivision (e) of Section 20405, subdivision (b) of Section 20614, and subdivision (b) of Section 20998, exceeds seven contracts.

(6) If a contract is modified under this subdivision, the County of Los Angeles shall provide a review report to the Assembly Committee on Local Government and the Senate Committee on Governance and Finance no later than July 1, 2026.

(c) The County of Santa Clara may elect to be subject to all of the following provisions:

(1) For contracts whose original cost exceeds twenty-five million dollars (\$25,000,000), the extra cost for any change or addition to the work so ordered shall not exceed four hundred thousand dollars (\$400,000), adjusted annually to reflect the percentage change in the California Consumer Price Index.

(2) For contracts whose original cost exceeds fifty million dollars (\$50,000,000), the extra cost for any change or addition to the work so ordered shall not exceed seven hundred fifty thousand dollars (\$750,000), adjusted annually to reflect the percentage change in the California Consumer Price Index.

(3) If the board of supervisors delegates authority in the manner specified in subdivision (a) with regard to the contract costs specified in this subdivision, the decision by the county engineer or other county officer whom authority was delegated to shall be binding on the County of Santa Clara, and all existing protest and grievance procedures regarding that decision remain valid.

(4) At the time the board of supervisors delegates authority in the manner specified in subdivision (a) with regard to the contract costs specified in this subdivision, the board shall implement appropriate measures to prevent fraud and ensure accountability for that delegated authority.

(5) This subdivision does not apply if the sum of the contracts modified under this subdivision and subdivision (d) of Section 20142 exceeds seven contracts.

(6) If a contract is modified under this subdivision, the County of Santa Clara shall provide a review report to the Assembly Committee on Local Government and the Senate Committee on Governance and Finance no later than July 1, 2026.

(d) By purchasing the material and letting a contract for the work or by letting a contract covering both work and material without advertising for bids when the estimated cost of emergency work necessitated by the imminence or occurrence of a landslide, flood, storm damage, or other emergency exceeds twenty-five thousand dollars (\$25,000) and the public interest and necessity demand immediate action to safeguard life, health, or property.

(e) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

SEC. 3. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique need for flexibility given the contract costs of public contracts within the County of Santa Clara.