

AMENDED IN ASSEMBLY JUNE 1, 2015

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1347

Introduced by Assembly Member Chiu
(Coauthor: Assembly Member Frazier)
(Coauthors: Senators Cannella and Galgiani)

February 27, 2015

An act to add Section 9204 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1347, as amended, Chiu. Public contracts: claims.

(1) Existing law prescribes various requirements regarding the formation, content, and enforcement of state and local public contracts. Existing law applicable to state public contracts generally requires that the resolution of claims related to those contracts be subject to arbitration. Existing law applicable to local agency contracts prescribes a process for the resolution of claims related to those contracts of \$375,000 or less.

This bill would establish, for contracts entered into on or after January 1, 2016, a claim resolution process applicable to all ~~public entity contracts~~; *claims by contractors in connection with public works*. The bill would define a claim as a separate demand by the contractor for one or more of: a time extension for relief from damages or penalties for delay, payment of money or damages arising from work done pursuant to the contract for a public work, or payment of an amount disputed by the ~~local agency~~; *public entity*, as specified.

The bill would require a public entity, upon receipt of a claim sent by registered mail, to review it and, within 30 days, provide a written statement addressing what parts of the claim are disputed and what parts are undisputed. The bill would require any payment due on an undisputed portion of the claim to be processed within 30 days, as specified. ~~The bill would provide an alternative procedure~~ *The bill, if the public entity fails to issue the written statement and statement, would require that the claim be deemed ~~approved~~ rejected in its entirety. The bill would authorize, if the claimant disputes the public entity's written response or if the public entity fails to respond to a claim within the time prescribed, the claimant to demand to meet and confer for settlement of the issues in dispute.* The bill would require ~~disputed parts~~ *any disputed portion of the claim that remains in dispute after the meet and confer conference* to be subject to nonbinding mediation, as specified. The bill would provide that unpaid claim amounts accrue interest at a ~~statutorily prescribed rate: 7% per annum.~~ The bill would prescribe a procedure by which a subcontractor or lower tier contractor may make a claim through the contractor. The bill would require ~~that~~ the text of these provisions or a summary of them to be set forth in the plans or specifications for any public work which may give rise to a claim. The bill would specify that a waiver of the rights granted by its provisions is void and contrary to public policy. By increasing the duties of local agencies and officials, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. Section 9204 is added to the Public Contract
- 2 Code, to read:
- 3 9204. (a) The Legislature finds and declares that it is in the
- 4 best interests of the state and its citizens to ensure that all

1 construction business performed on public works in the state that
2 is complete and not in dispute is paid in full and in a timely manner.

3 (b) Notwithstanding any other law, including, but not limited
4 to, Article 7.1 (commencing with Section 10240) of Chapter 1 of
5 Part 2, Chapter 10 (commencing with Section 19100) of Part 2,
6 and Article 1.5 (commencing with Section 20104) of Chapter 1 of
7 Part 3, this section shall apply to all claims by contractors in
8 connection with public works.

9 (c) For purposes of this section:

10 (1) "Claim" means a separate demand by the contractor for one
11 or more of the following:

12 (A) A time extension, ~~including~~ *including*, without limitation,
13 for relief from damages or penalties for delay.

14 (B) Payment of money or damages arising from work done by,
15 or on behalf of, the contractor pursuant to the contract for a public
16 work and payment for which is not otherwise expressly provided
17 or to which the claimant is not otherwise entitled.

18 (C) Payment of an amount that is disputed by the ~~local agency.~~
19 *public entity.*

20 (2) "Contractor" means any type of contractor within the
21 meaning of Chapter 9 (commencing with Section 7000) of Division
22 3 of the Business and Professions Code who has entered into a
23 direct contract with a public entity for public works.

24 (3) "Public entity" means, without limitation, a state agency,
25 department, office, division, bureau, board, or commission, the
26 California State University, the University of California, a city,
27 including a charter city, county, including a charter county, city
28 and county, including a charter city and county, district, special
29 district, public authority, political subdivision, public corporation,
30 or nonprofit transit corporation wholly owned by a public agency
31 and formed to carry out the purposes of the public agency.

32 (4) "Public work" means "public works contract" as defined in
33 Section 1101.

34 (5) "Subcontractor" means any type of contractor within the
35 meaning of Chapter 9 (commencing with Section 7000) of Division
36 3 of the Business and Professions Code who either is in direct
37 contract with a contractor or is a lower tier subcontractor.

38 (d) (1) (A) Upon receipt of a claim sent by registered mail, the
39 public entity to which the claim applies shall conduct a reasonable
40 review of the claim and, within a period not to exceed 30 days,

1 shall provide the claimant a written statement identifying what
2 portion of the claim is disputed and what portion is undisputed.

3 *(B) The claimant shall furnish reasonable documentation to*
4 *support the claim.*

5 ~~(B)~~

6 *(C) If the public entity needs approval from its governing body*
7 *to provide the claimant a written statement identifying the disputed*
8 *portion and the undisputed portion of the claim, and the governing*
9 *body does not meet within the 30 days following receipt of a claim*
10 *sent by registered mail, the public agency shall have up to three*
11 *days following the next duly publicly noticed meeting of the*
12 *governing body to provide the claimant a written statement*
13 *identifying the disputed portion and the undisputed portion.*

14 ~~(C)~~

15 *(D) Any payment due on an undisputed portion of the claim*
16 *shall be processed and made within 30 days after the public entity*
17 *issues its written statement. If the public entity fails to issue a*
18 *written statement, paragraph (3) shall apply.*

19 ~~(2) (A) Any disputed portion of the claim, as identified in~~
20 ~~writing, shall be submitted to nonbinding mediation. The public~~
21 ~~entity and contractor shall mutually agree to a mediator within 10~~
22 ~~days after the disputed portion of the claim has been identified in~~
23 ~~writing. If the parties cannot agree upon a mediator, each party~~
24 ~~shall select a mediator and those mediators shall select a qualified~~
25 ~~neutral third party to mediate with regard to the disputed portion~~
26 ~~of the claim. If either of the parties reject the mediator's decision~~
27 ~~regarding all or part of the disputed portion of the claim, the parts~~
28 ~~of the claim remaining in dispute shall be subject to applicable~~
29 ~~procedures outside this section.~~

30 *(2) (A) If the claimant disputes the public entity's written*
31 *response, or if the public entity fails to respond to a claim issued*
32 *pursuant to this section within the time prescribed, the claimant*
33 *may demand in writing an informal conference to meet and confer*
34 *for settlement of the issues in dispute. Upon receipt of a demand*
35 *in writing sent by registered mail, the public entity shall schedule*
36 *a meet and confer conference within 30 days for settlement of the*
37 *dispute.*

38 *(B) Within five days following the conclusion of the meet and*
39 *confer conference, if the claim or any portion of the claim remains*
40 *in dispute, the public entity shall provide the claimant a written*

1 *statement identifying the portion of the claim that remains in*
2 *dispute and the portion that is undisputed. Any payment due on*
3 *an undisputed portion of the claim shall be processed and made*
4 *within 30 days after the public entity issues its written statement.*
5 *Any disputed portion of the claim, as identified in writing, shall*
6 *be submitted to nonbinding mediation, with the public entity and*
7 *the claimant sharing the associated costs equally. The public entity*
8 *and claimant shall mutually agree to a mediator within 10 days*
9 *after the disputed portion of the claim has been identified in*
10 *writing. If the parties cannot agree upon a mediator, each party*
11 *shall select a mediator and those mediators shall select a qualified*
12 *neutral third party to mediate with regard to the disputed portion*
13 *of the claim. If either of the parties rejects the mediator's decision*
14 *regarding all or part of the disputed portion of the claim, the parts*
15 *of the claim remaining in dispute shall be subject to applicable*
16 *procedures outside this section.*

17 ~~(B)~~

18 (C) For purposes of this section, mediation includes any
19 nonbinding process, such as neutral evaluation or a dispute review
20 board, in which an independent third party or board assists the
21 parties in dispute resolution through negotiation or by issuance of
22 an evaluation. Any mediation utilized must conform to the time
23 frames in this section.

24 ~~(C)~~

25 (D) The mediation conducted pursuant to this section shall
26 excuse any further obligation under Section 20104.4 to mediate
27 (meet and confer) after litigation has been commenced.

28 ~~(D)~~

29 (E) This section does not preclude an agency from requiring
30 arbitration of disputes under private arbitration or the Public Works
31 Contract Arbitration Program, if mediation does not resolve the
32 parties' dispute.

33 (3) Failure by the public entity to respond to a claim from a
34 contractor within the time period described in this subdivision
35 shall result in the claim being deemed ~~approved in its entirety,~~
36 ~~with the claim to be processed and paid within 30 days from the~~
37 ~~expiration of the time period described in this subdivision or as~~
38 ~~mutually extended by the parties. rejected in its entirety.~~

1 ~~(4) Amounts not paid in a timely manner as required by this~~
2 ~~section shall bear interest at the legal rate prescribed by subdivision~~
3 ~~(a) of Section 685.010 of the Code of Civil Procedure.~~

4 *(4) Amounts not paid in a timely manner as required by this*
5 *section shall bear interest at 7 percent per annum.*

6 (5) If a subcontractor or a lower tier subcontractor lacks legal
7 ~~standings~~ *standing* to assert a claim against a public entity because
8 privity of contract does not exist, the contractor may present to the
9 public entity a claim on behalf of a subcontractor or lower tier
10 subcontractor. A subcontractor may request in writing, either on
11 his or her own behalf or on behalf of a lower tier subcontractor,
12 that the contractor present a claim for work which was performed
13 by the subcontractor or by a lower tier subcontractor on behalf of
14 the subcontractor. The subcontractor requesting that the claim be
15 presented to the public entity shall furnish reasonable
16 documentation to support the claim. Within 45 days of receipt of
17 this written request, the contractor shall notify the subcontractor
18 in writing as to whether the contractor presented the claim to the
19 public entity and, if the original contractor did not present the
20 claim, provide the subcontractor with a statement of the reasons
21 for not having done so.

22 (e) The text of this section or a summary of it shall be set forth
23 in the plans or specifications for any public works that may give
24 rise to a claim under this section.

25 (f) A waiver of the rights granted by this section is void and
26 contrary to public policy.

27 (g) This section applies to contracts entered into on or after
28 January 1, 2016.

29 SEC. 2. If the Commission on State Mandates determines that
30 this act contains costs mandated by the state, reimbursement to
31 local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.

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