

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)**

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. The bill would define a claim as ~~a contractor's written demand or assertion, including a request for a modification, contract amendment, or change order, seeking an adjustment or interpretation of the terms of the contract documents, payment of money, extension of time, or other relief, including a determination of disputes or matters arising out of, or related to, the contract documents or the performance of work on a public work.~~ *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, 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 ~~7~~ 30 days, as specified. The bill would provide an alternative procedure if the public entity fails to issue the written statement and would require that the claim be deemed approved in its entirety. The bill would require disputed parts of the claim to be subject to nonbinding mediation, *as specified*. The bill would provide that unpaid claim amounts accrue interest at a statutorily prescribed rate. The bill would ~~proscribe~~ *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 except these provisions from laws relating to false claims.~~ 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
- 5 construction business performed on public works in the state that
- 6 is complete and not in dispute is paid in full and in a timely manner.

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

7 (c) For purposes of this section:

8 ~~(1) “Claim” means a written demand or assertion by a contractor,~~
9 ~~including a request for a modification, contract amendment, or~~
10 ~~change order, seeking an adjustment or interpretation of the terms~~
11 ~~of the contract documents, payment of money, extension of time,~~
12 ~~or other relief, including a determination of disputes or matters~~
13 ~~arising out of, or related to, the contract documents or the~~
14 ~~performance of work on a public work.~~

15 *(1) “Claim” means a separate demand by the contractor for*
16 *one or more of the following:*

17 *(A) A time extension, including without limitation, for relief*
18 *from damages or penalties for delay.*

19 *(B) Payment of money or damages arising from work done by,*
20 *or on behalf of, the contractor pursuant to the contract for a public*
21 *work and payment for which is not otherwise expressly provided*
22 *or to which the claimant is not otherwise entitled.*

23 *(C) Payment of an amount that is disputed by the local agency.*

24 (2) “Contractor” means any type of contractor within the
25 meaning of Chapter 9 (commencing with Section 7000) of Division
26 3 of the Business and Professions Code who has entered into a
27 direct contract with a public entity for public works.

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

36 ~~(4) “Public works” has the meaning provided in Section 1720~~
37 ~~of the Labor Code.~~

38 *(4) “Public work” means “public works contract” as defined*
39 *in Section 1101.*

1 (5) “Subcontractor” means any type of contractor within the
2 meaning of Chapter 9 (commencing with Section 7000) of Division
3 3 of the Business and Professions Code who either is in direct
4 contract with a contractor or is a lower tier subcontractor.

5 (d) (1) (A) Upon receipt of a claim sent by registered mail,
6 the public entity to which the claim applies shall conduct a
7 reasonable review of the claim and, within a period not to exceed
8 30 days, shall provide the claimant a written statement identifying
9 what portion of the claim is disputed and what portion is
10 undisputed. ~~Any~~

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

19 (C) Any payment due on an undisputed portion of the claim
20 shall be processed and made within ~~seven~~ 30 days after the public
21 entity issues its written statement. If the public entity fails to issue
22 a written statement, paragraph (3) shall apply.

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

34 (B) *For purposes of this section, mediation includes any*
35 *nonbinding process, such as neutral evaluation or a dispute review*
36 *board, in which an independent third party or board assists the*
37 *parties in dispute resolution through negotiation or by issuance*
38 *of an evaluation. Any mediation utilized must conform to the time*
39 *frames in this section.*

1 (C) *The mediation conducted pursuant to this section shall*
2 *excuse any further obligation under Section 20104.4 to mediate*
3 *(meet and confer) after litigation has been commenced.*

4 (D) *This section does not preclude an agency from requiring*
5 *arbitration of disputes under private arbitration or the Public*
6 *Works Contract Arbitration Program, if mediation does not resolve*
7 *the parties' dispute.*

8 (3) Failure by the public entity to respond to a claim from a
9 contractor within the ~~30-day time~~ period described in ~~paragraph~~
10 ~~(4)~~ *this subdivision* shall result in the claim being deemed approved
11 in its entirety, with the claim to be processed and paid within ~~seven~~
12 ~~30 days~~ from the expiration of the ~~30-day time~~ period *described*
13 ~~in paragraph (1)~~ *this subdivision* or as mutually extended by the
14 parties.

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

18 (5) If a subcontractor or a lower tier subcontractor lacks legal
19 standings to assert a claim against a public entity because privity
20 of contract does not exist, the contractor may present to the public
21 entity a claim on behalf of a subcontractor or lower tier
22 subcontractor. A subcontractor may request in writing, either on
23 his or her own behalf or on behalf of a lower tier subcontractor,
24 that the contractor present a claim for work which was performed
25 by the subcontractor or by a lower tier subcontractor on behalf of
26 the subcontractor. The subcontractor requesting that the claim be
27 presented to the public entity shall furnish reasonable
28 documentation to support the claim. Within 45 days of receipt of
29 this written request, the contractor shall notify the subcontractor
30 in writing as to whether the contractor presented the claim to the
31 public entity and, if the original contractor did not present the
32 claim, provide the subcontractor with a statement of the reasons
33 for not having done so.

34 ~~(e) The provisions of the California False Claims Act (Article~~
35 ~~9 (commencing with Section 12650) of Chapter 6 or Part 2 of~~
36 ~~Division 3 of Title 2 of Government Code) shall not apply to claims~~
37 ~~made under this section.~~

38 (f)

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

4 ~~(g)~~

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

7 ~~(h)~~

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

10 SEC. 2. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.