

NOTICE TO PUBLIC AGENCIES & PRIME CONTRACTORS

PUBLIC CONTRACT CODE § 9204

The claim accompanying this notice is subject to the provisions of AB 626 (Chapter Number 810, 2016), now Public Contract Code § 9204.

PCC § 9204 Requirements for Owners on Public Works of Improvement:

- Conduct a reasonable review of a contractor's claim for payment, time extensions, relief from liquidated damages, or other back charges.
- Within 45 days of receiving claim, issue a written statement identifying portions of the claim which the agency agrees or disagrees. (If response to the claim requires approval by a governing board, and the board does not meet during the 45-day period, the written statement is due 3 days after the next publicly noticed board meeting).
- Pay the undisputed portion of the claim no later than 60 days after issuing the written statement responding to the claim.
- Hold a meet and confer session within 30 days after the contractor requests such a session following denial to a claim, in whole or in part.
- Within 10 days after the meet and confer session, issue a written statement identifying any portions of the claim no longer disputed and those that continue to be disputed.
- Pay all undisputed amounts no later than 60 days after the written statement is issued following the meet and confer session.
- Submit unresolved disputes regarding claims to mediation. The mediator must be selected within 10 business days after the meet and confer session.
- Include the text of Public Contracts Code § 9204 in their contracts.

PCC § 9204 Processes for Prime Contractors and Subcontractors on Public Works of Improvement:

- Prime contractors are authorized to submit pass-through claims on behalf of their subcontractors.
- Subcontractors without privity of contract are authorized to request in writing that their claim be passed through to the project owner by the prime contractor.
- Lower-tier subcontractors may present pass-through claims through the subcontractor that hired them.
- Subcontractors requesting a pass-through claim should furnish reasonable documentation to support the claim.
- Within 45 days of receipt of a subcontractor's written request to pass through a claim, the party to whom the request was made shall notify the subcontractor in writing as to whether the claim was presented to the public entity and, if the claim was not presented, shall provide the subcontractor with a statement of the reasons why the claim was not presented to the public entity.

** Prompt payment penalties and laws continue to apply to amounts owed by public entities. In addition, any amounts that are not paid within the time periods set forth above shall bear interest at seven percent (7%) per annum.*

** Section 9204 applies to construction contracts entered into on or after January 1, 2017, on projects with local public agencies, cities, counties, public corporations, charter cities and counties, districts (including school and community college districts), the University of California, California State University, and state departments and agencies.*