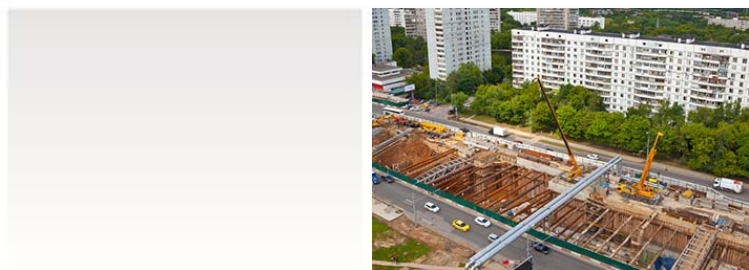


AB 626: What It Means and How to Comply

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Overview

- Nuts and bolts of AB 626
- Compliance with AB 626
- Next Steps



Nuts and Bolts of AB 626

AB 626 (Chiu):

- Adds Section 9204 to the Public Contract Code
- Applies to “any claim by a contractor in connection with a public works project”
- Applies to public works contracts entered into after January 1, 2017; sunsets January 1, 2020
- Is intended to provide a prescribed claims resolution process to ensure uniform and equitable procurement practices

Nuts and Bolts of AB 626

“Claim” is defined as a separate demand by a contractor sent by registered or certified mail with return receipt requested, for one or more of the following:



➤ A time extension, including a claim for relief from damages or penalties for delay assessed by a public entity



➤ Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled



➤ Payment of an amount that is disputed by the public entity

Nuts and Bolts of AB 626

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



Nuts and Bolts of AB 626

“Public entity” is defined as a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

Nuts and Bolts of AB 626

“Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.



Compliance with AB 626

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

- » Subcontractor must present reasonable documentation to support claim through contractor.
- » Within 45 days of receipt of claim, contractor shall notify the subcontractor whether the claim was presented to public agency, or reasons why claim was not presented.

Compliance with AB 626

1

Upon receipt of claim, public entity must conduct reasonable review. The parties may, by mutual agreement extend the time periods required by AB 626.

2

Within a period not to exceed 45 days, public entity must provide written statement identifying what portion of claim is disputed and what portion is undisputed.

3

The claimant shall furnish reasonable documentation to support claim.

4

If the public agency needs approval from governing body, and the governing body doesn't meet for 45 days or within mutually agreed extension, the public entity shall have up to 3 days following next publicly noticed meeting to provide written statement.

5

Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after written statement.

Compliance with AB 626

6

A failure to issue a timely written statement shall result in the claim being deemed rejected in its entirety.

7

If the claimant disputes the written response, or if the public entity fails to respond to a claim within the time prescribed, the claimant may demand, in writing, an informal conference.

8

Upon receipt of a demand, in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days.

9

Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide a written statement identifying the portion of the claim that remains in dispute and the portion that remains undisputed.

10

Any payment on the undisputed portion shall be processed and made within 60 days after the public entity issues its written statement.

Compliance with AB 626

11

Any disputed portion of the claim, identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the costs equally.

12

Within 10 business days after the disputed portion of the claim has been identified in writing, the public entity and claimant shall mutually agree to a mediator.

13

If the parties cannot agree upon a mediator, then each party will select their own mediator and those mediators will select a qualified neutral third party to mediate.

14

If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside of AB 626, *ie* litigation, arbitration.

Compliance with AB 626

- Text of bill or summary must be included in plans or specifications for any public works projects
- Cannot waive the rights granted in AB 626 but parties can:



- » Mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration and
- » Public entity can prescribe reasonable change order, claim and dispute resolution procedures and requirements in addition to AB 626 so long as there is no conflict with the timeframes contained in AB 626

Compliance with AB 626

What if public agencies do not comply with timeline?

- Claim deemed rejected
- Amounts not paid in a timely manner shall bear interest at 7% per annum



Next Steps

Public Agencies should:

1

For all public works contracts entered into after January 1, 2017, update specifications to incorporate Public Contract Code Section 9204 (AB 626);

2

Develop internal procedures for claim process; identify who will respond to claimant; who will decide if documentation submitted sufficient; who will review claim to identify disputed v. undisputed;

3

Determine what, if any, other claims processes the public agency will have to comply with, *i.e.*, CalTrans Standard Specifications, Public Contract Code Sections 20104-20104.6 and 10240.1;

4

Prepare list of local mediators or arbitrators to be ready in short order.

Questions



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