

# CLIENT NEWS BRIEF

## New Claims Resolution Process Will Apply to All Public Contracts Effective January 1, 2017

Effective January 1, 2017, a new claims resolution process will be required for all public works projects. On September 29, 2016, Governor Jerry Brown approved Assembly Bill (AB) 626, which adds section 9204 to the Public Contract Code. The law is aimed at assisting contractors in enforcing claims against public agencies. Currently, the law requires public agencies to follow a certain claims process for claims that are \$375,000 or less. Section 9204 will apply to all claims related to any public works contract entered into on or after January 1, 2017. A "claim" is defined in the statute to mean a "separate demand by a contractor" for one or more of the following: (1) a time extension, including for relief from damages or penalties for delay asserted by a public entity under a contract for a public works project; (2) 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 the public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled; or (3) payment of an amount that is disputed by the public entity. (Pub. Contract Code, § 9204(c)(1).) Upon receipt of any such claim, the public entity will be required to comply with the following process:

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1. Review and Provide a Written Response. The public entity must conduct a reasonable review of the claim and provide a written response within 45 days of receiving it, identifying the portion of the claim that is disputed and the portion that is undisputed. The 45-day timeline can be extended by mutual agreement of the public entity and the claimant. If the public entity needs approval from its governing body before it can provide the written response, and the governing body does not meet within the 45-day period or a mutually agreed-upon extension of that period, the public entity will have up to three days following the next public meeting of the governing body after the period expires to provide the written statement to the claimant. If the public entity fails to respond within the prescribed timelines, the entity will be deemed to have denied the claim in its entirety.
2. Pay Any Undisputed Amount. Within 60 days after receipt of the claim, the public entity is required to process and make payment on any undisputed amount.
3. Meet and Confer with the Contractor on Any Disputed Amount, if Demanded. If the claimant disputes the public entity's written response, or if the public entity fails to respond to the claim within the prescribed time frame, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of such a demand, the public entity is required to schedule a meet and confer conference within 30 days.
4. Provide a Second Written Response Following Informal Meet and Confer Conference. Within 10 business days after the meet and confer conference is concluded, if the claim or any portion of it remains in dispute, the public entity is required to provide the claimant with



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another written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any undisputed amount must be processed and paid within 60 days after the public entity issues the written statement.

5. Submit Any Remaining Dispute to Mediation. If any amount remains in dispute after the completion of the meet and confer conference, as identified by the contractor in writing, the parties must submit the dispute to nonbinding mediation in which the public entity and the claimant will share the associated costs equally. Within 10 business days after the disputed portion of the claim has been identified in writing, the public entity and the claimant must agree to a mediator. If they are unable to do so, each party must select a mediator and those mediators will select a qualified neutral third party to mediate regarding the disputed portion of the claim. Each party is responsible for the fees and costs charged by its respective mediator in connection with selecting the neutral mediator. If mediation is unsuccessful, the portion of the claim remaining in dispute will be subject to any applicable procedures outside of Public Contract Code section 9204.

Effective January 1, 2017, the text of section 9204, or a summary thereof, must be set forth in the plans and specifications for any public works project that may give rise to a claim defined by the section. Public agencies will need to update their construction contracts' claim procedures moving forward to ensure compliance. Also, a waiver of the rights granted to contractors under section 9204 will be void and contrary to public policy, provided that the parties may agree, in writing, to waive such rights once a claim is actually received by the public entity. Notwithstanding the new law, public entities will still be able to prescribe reasonable change order, claim and dispute resolution procedures and requirements in addition to the provisions of section 9204, as long as such contractual provisions do not conflict with or impair section 9204's time frames and procedures.

Under existing law, sections 20104, et seq., of the Public Contract Code also prescribe a specific process for resolution of claims that are \$375,000 or less. Section 9204 applies "notwithstanding" the provisions of section 20104, but it does not replace the existing requirements. Thus, claims under \$375,000 that are not resolved pursuant to the requirements of section 9204 may also be subject to the requirements of section 20104, which could mean a further meet and confer process, mediation and non-binding arbitration before any litigation.

If you have any questions regarding AB 626 or public project issues in general, please contact the authors of this Client News Brief or an attorney at one of our [10 offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).