AB 216 (Beall)
Claims and Disputes

PROBLEM

Many public entities take years to resolve building contractor payment claims, often times long after work has ceased and projects are occupied. Although in some instances the delayed resolution is the result of a legitimate dispute, it is all too common for public entities to delay resolution in order to try and renegotiate previously agreed to contract terms. Because there are no lien rights on public projects, building contractors have little recourse other than to take costly legal action or agree to renegotiate terms and take a loss. Failure to resolve legitimate construction claims in a timely manner jeopardizes the financial well being of contractors and subcontractors. Delaying claims resolution may also increase future project costs for public entities because contractors may factor a public entities' claims resolution history when submitting future bids.

EXISTING LAW

California Public Contract Code Sections 10261.5 and 20104.50 stipulate that state and local public entities, respectively, shall pay a contractor within 30 days of submitting an undisputed claim. If the public entity fails to pay the claim, the public entity is liable for interest on the claim. The statutes do not specify what happens if a public entity simply fails to pay a claim, or, how disputed claims shall be resolved.

California Public Contract Code Sections 20104 through 20104.6 establishes a claims resolution process for construction claims that are less than $375,000 in value. However, 20104.2 (d) stipulates that only the local public entity may call for a hearing and does not provide recourse to a contractor if a public entity simply fails or refuses to call for a hearing.

California Public Contract Code Sections 10204 establishes an arbitration process for state projects. Although statute provides that a claimant may initiate arbitration upon final written notice of the decision by the agency, the statute does not establish any parameters for how long a state agency has to issue a decision in a claims dispute. There is no statutorily mandated arbitration process for local public projects.

THIS BILL

This bill would create a mandatory claims resolution process if a payment claim on a public works project goes unresolved for 30 days. This process would include mediation and if that is unsuccessful, binding arbitration, and the prevailing party shall be entitled to reasonable attorney's fees and costs.

QUESTIONS & ANSWERS

Q. Why is this bill necessary?

Failure of public entities to resolve payment claims in a timely manner is jeopardizing the financial well being of contractors and subcontractors. This measure is designed to

expedite claims resolution in an equitable manner.

Q. Isn't it in the public's best interest for public entities to thoroughly review claims?

A: Yes, however, when public entities fail or refuse to resolve claims for a protracted period of time, contractors will ultimately factor this history in to future bids and costs to public entities will ultimately rise. It is also harmful to the economy at large if public entities adopt abusive payment practices towards entities they contract with.

SUPPORT

Construction Employers' Association (Sponsor)

TBD

OPPOSITION

None on file.