

**Re: AB 1347 (Chiu): Public Contracts: Claims Resolution Process
As introduced on February 27, 2015**

Dear Assembly Member Chiu:

Contra Costa County regrets to inform you of our opposition to your Assembly Bill 1347 related to claims resolution for public contracts.

Contra Costa County already includes a clearly defined claims resolution process in our public contracts. In the case of road projects, we use the California Department of Transportation's Standard Specifications, which includes a claims resolution process that has been refined and improved over decades and used countless times. In our building projects we include a claims resolution process in our General Conditions on all contracts. Our contracts also define how and when a public agency will respond to requests for information. A dispute resolution process agreed to by both parties through the execution of a mutually agreed-upon contract inherently results in a process that is fair to both parties.

AB 1347 would require public agencies to complete certain actions within rigid timelines. An agency would have respond to a written demand within 30 days addressing what portions of the claim are disputed or undisputed. This is problematic because public contracts vary in terms of size, scope and complexity. The time needed to address a claim depends on the complexity of the claim, type of project, completion time, financial impacts, etc. During the course of a project there is generally an on-going discussion for any potential claim issues. Resolution is mutually negotiated between the agency and the contractor. This process has worked well for Contra Costa County in delivering projects.

AB 1347 would also require payment due on any undisputed portion of the claim to be made within seven days after the public agency issues its written response to a written demand or assertion. This timeline is much shorter than current prompt payment law which requires public agencies to make a progress payments within 30 days after receipt of an undisputed and properly submitted payment request (Government Code §20104.50). We have procedures in place in our department finance systems and the County's Auditor's Office to ensure that payments are made and accounted for properly. It is not possible to process a payment within seven days. Once a claim is deemed to be payable, it is then written as a contract change order in same billing cycle (30 day) and paid accordingly in that billing cycle.

The interest provision of AB 1347 is also concerning. If a public agency failed to respond to a written demand, AB 1347 would apply interest at the legal rate prescribed by the Code of Civil Procedure which is 10 percent per annum. This rate is inflated above current rates than can be obtained in interest-bearing accounts, especially considering the well-warranted limitations on types of accounts in which county treasurers may deposit public funds. Public agencies define the amount of interest to be paid and how it will be calculated in existing contract specifications. These provisions are tied to the requirement of timely payments to the contractor.

Deeming a claim approved in its entirety because the Public Agency failed to meet the proscribed timelines is unreasonable. Some claims are not easy to resolve per proposed timelines since the issues may be very complex and involve many entities such as design professionals, sub-contractors, building officials and at times County Counsel for their input. Complex situations will require meetings and conferences to fully understand the issues involved which could take more time.

Nonbinding mediation is a mechanism that is appropriate for resolving some claim disputes. However, requiring nonbinding mediation on any disputed portion of a claim is not reasonable and has the potential to add additional time and cost to the public contracting process. Contra Costa appreciates efforts to find resolution of disputes outside of the court system. However mediation is nonbinding and one party can always object to the outcome. For intractable disputes a final decision would be made in court.

AB 1347 would exempt claims made under this act from the False Claims Act (Government Code §12650). The False Claims Act is a public agency's primary tool to address fraud against government and one of the most important tools local governments have to protect the public's money against false claims.

Overall, we are very concerned with the new claims resolution process envisioned by AB 1347. The existing claims process within public contracts works well: contractors have the obligation to substantiate their claims, while public agencies are bound to be fair.

For these reasons, we must oppose AB 1347. Please do not hesitate to contact Julie Bueren, Public Works Director if you would like to discuss our position on this measure. She can be reached at 925-313-2000 or by e-mail at jbuer@pw.cccounty.us