

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Susan Talamantes Eggman, Chair

AB 1223 (Caballero) – As Amended March 27, 2017

SUBJECT: Construction contract payments: Internet Web site posting

SUMMARY: Requires state and local agencies to post the following information about construction contract payments on their websites within 10 days of making the payment:

- 1) The project for which the payment was made;
- 2) The name of the construction contractor or company paid;
- 3) The date the payment was made;
- 4) The payment application number or other identifying information; and,
- 5) The amount of the payment.

EXISTING LAW:

- 1) Provides for the prompt payment of contractors who perform undisputed work for public agencies.
- 2) Requires a public entity to pay a general contractor (GC) within 30 days after receipt of an undisputed payment invoice.
- 3) Directs a general contractor to pay its subcontractors within seven days after receipt of a progress payment.
- 4) Establishes an arbitration-based claims resolution process for payment disputes.

FISCAL EFFECT: Unknown

COMMENTS: Most public works projects involve a public agency paying the GC in progress payments that are usually based on stages of completion. Those payments, in turn, result in required payments to the subcontractors who have performed labor or provided materials to the job. According to the author, this bill is intended to enable construction subcontractors to verify that public project owners have paid their GCs. The sponsor, American Subcontractors Association California, Inc., states that the posting of this information will provide needed verification to allow subcontractors to enforce their right to be paid timely.

Current law generally requires a GC to pay any subcontractor within seven days of receipt of a progress payment. When a GC fails to pay the subcontractor on time, current law prescribes various remedies available to the subcontractor to collect payment. For example, provisions in the Business and Professions Code and the Public Contract Code specify that failure to pay a subcontractor in a timely manner subjects the GC to a penalty, payable to the subcontractor, of 2% of the amount due per month for every month that payment is not made and can be cause for disciplinary action by the Contractors' State License Board. The Civil Code also identifies a number of other legal remedies that a subcontractor can rely on when the GC fails to pay.

According to the sponsor, the California Department of Transportation and the City of San Diego currently post construction contract payment information on their respective websites. These agencies engage in a high volume of construction contract work. Requiring all public agencies to post similar construction contractor payment information may not be practical for those that lack resources, have little construction contract work, or are so small that they do not maintain a website.

Various subcontractor groups support this bill, stating that it will help them ascertain when GCs have been paid and provide public notice that they can refer to when requesting payment within seven days as required under current law.

Opponents, representing counties, school boards, school administrators, and healthcare districts, are concerned that this bill creates additional workloads, drains resources, confuses the relationship between a public agency and their contractor's subcontractor, and makes agencies responsible for posting their contractual payment obligations with no benefit to them. The Southern California Contractors Association also objects to this bill, arguing that it represents an enforcement problem, not a legislative one.

Contractors who perform work for public agencies are required to be paid promptly. However, it is unclear how the approach in this bill will help subcontractors actually get paid on time.

PROPOSED AMENDMENTS: The author will be presenting the following amendments at the hearing:

- 1) Change the timeframe for posting the required information from 10 days to 21 days.
- 2) Limit the provisions of this bill to construction contracts valued at \$25,000 or more.
- 3) Clarify that the requirements of this bill only apply to agencies that maintain an Internet website.

DOUBLE REFERRAL: This bill is double-referred. Should it pass this committee, it will be re-referred to the Assembly Local Government Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Subcontractors Association California, Inc. (sponsor)
Air Conditioning Sheet Metal Association
Air-conditioning & Refrigeration Contractors Association
California Legislative Conference of the Plumbing, Heating and Piping Industry
California Professional Association of Specialty Contractors
Finishing Contractors Association of Southern California
National Electrical Contractors Association
Northern California Allied Trades
Wall and Ceiling Alliance
Union Roofing Contractors Association

Opposition

Association of California Healthcare Districts
Association of California School Administrators
California School Boards Association
California State Association of Counties
Southern California Contractors Association
Urban Counties of California

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