



Government Code Claim Requirements – Some Sanity At Last

Attorneys representing construction contractors on public works projects almost universally advise their clients to file a Government Code claim with the public entity before filing suit, even if the contractor has previously submitted the same claims to the project owner through the parties' contractual claims process. That is because a contractor's failure to comply with the Government Code claim presentation requirement is usually fatal to the Contractor's claim. Recently, in Westcon Construction Corp. v. County of Sacramento, 152 Cal.App. 4th 183 (2007), California's Court of Appeal upheld summary judgment in favor of the defendant County on the grounds that the contractor failed to comply with the Government Code claims presentation requirement, even though the contractor had previously given written notice of the claim and submitted supporting documentation on several occasions.

For claims against local agencies, the Government Code provides an exception to the claims presentation requirement. Sections 930.2 and 930.4 authorize local agencies to include claims presentation requirements in their contracts that will exclusively govern all covered claims. Until recently, there has been little guidance to enable a contractor to determine if its compliance with a contractual claims process satisfies the Government Code requirements for alternative claims procedures.

However, the California Court of Appeal in Arntz Builders v. City of Berkeley, 2008 DJDAR 13569 (August 25, 2008), recently provided that guidance. In summary, it held that compliance with a contractual claims process, mandated to be the "exclusive" methods for claims resolution, satisfies the policy underlying section 910 of the California Government Code --- to provide notice to the public owner of the contractor's claim and an opportunity for the public entity to resolve that claim. As such, in certain circumstances, contractors may be excused from the formality of filing a Government Contract claim.

The Facts

The case involved a \$20 Million renovation of a public library. The project, beset by delays, was completed approximately a year late. The parties' contract contained a detailed claims process which required notice of claims, the submission of documentation and analysis supporting the claims and ultimately depending upon the size of the claim, either a meet and confer process or mediation to resolve the claim before litigation could be commenced. The contract provided that the claims procedure was the "exclusive" process that the

contractor was required to follow and failure to do so would result in a waiver of the contractor's claims.

Although the contractor appeared to comply with the contractual claims process, in order to force all parties to participate in a single mediation, it sought and obtained the permission from the Owner to file its complaint prior to mediation in order to consolidate its lawsuit with several pending subcontractor lawsuits arising out of the same project. However, in its answer to the complaint, the City included an affirmative defense that the contractor's complaint was untimely for its failure to comply with California Government Code sections 900 et. seq. The lawsuits were consolidated and the mediation was conducted without success. However, subsequently, the Owner filed a motion for summary adjudication asserting that the complaint was barred by the contractor's failure to comply with the Government Code. The City argued that the contractor was required to comply with both the contractual claims requirements and the separate Government Code claim submittal requirements. The trial court granted the City's motion, judgment was entered and the contractor appealed.

The Analysis

Initially, the Court looked at the legislative history of the relevant Government Code provisions and the specific language of those provisions to determine whether a contractual claims process could substitute for a Government Code claim submittal. It noted that the stated intent of the California Law Revision Commission, which was responsible for drafting the relevant provisions, was to permit public entities to waive by contract compliance the requirements of the claims statutes as to causes of action founded upon contract. Relying on this history, the Court held that the contractual claims procedure was intended by the statutes to provide an *alternative* to, rather than an *addition* to, the statutory claim.

It also reviewed the language found in sections 930.2, 930.4 and 930.6, which describe Government Code claims process, and concluded "local agencies are authorized to include in a contract claims procedures that will *exclusively* govern the claims specified in the contract, *except* the contractual claims procedures must conform to the statutory claims procedures in *three* – and only three – particulars: time for filing suit on a claim, limitations on the scope of the claim that can be sued upon, and access to late claim procedures in certain circumstances."¹ It noted that the purpose of the claims statutes was to give the public entity an opportunity to settle a claim before suit was brought and to perform an early investigation of the facts in order to defend itself and that those

¹ These limitations are intended to insure that the public agency's contract does not provide less protection to claimants than is provided in the applicable Government Code provisions.

interests were equally protected with a contractor's compliance with contractual claims procedures.²

In concluding that contractual claims procedures can serve as an alternative basis of satisfying the requirement of notice to the public entity, the court acknowledged the practical reality that currently exists in the situation where parties have detailed contractual claims procedures: "From a practical standpoint, the imposition of an obligation to present a second, statutory claim would serve only to burden claimant and protract the claims process while providing no additional benefits to the public entity."

So, the Court found that a contractor, in certain situations, can be relieved of submitting a Government Code claim. However, it also specifically noted that a public entity may still require a contractor to comply with both procedures prior to commencing suit simply by including language in the contract requiring such compliance.

Next, the Court reviewed the City's contract and the parties' conduct to determine whether the contractor had satisfied the contractual preconditions to filing its lawsuit. It noted that while mediation was a precondition to filing of a lawsuit, the parties agreed that the contractor could file its complaint before mediation for the tactical purpose of forcing all claimants under the contract to a single mediation and a consolidation of all cases. Perhaps with tongue in cheek, the court stated "unless the City was purposefully laying a trap to be sprung when the complaint was filed – a devious strategy we do not ascribe to the City's representative – the parties' conduct and communications reflect a common understanding that there was no section 910 claim requirement to be waived."

What to Take Away?

Pretty simple; If your contract contains a detailed claims procedure which is stipulated to be the exclusive means of processing the contractor's claims, and the contractor complies with those requirements, there will be no need to file a separate Government Code claim. However, it is likely that courts will look to whether the contractual claims process provides timely and meaningful information to the public entity before finding that the filing of a Government Code claim is unnecessary. In addition, a public entity can include language in its contract requiring both procedures be followed. However, because the consequences of failing to comply with either the Government Code or the contractual claims presentation require are dire – namely, loss of the right to sue

² There may be one unintended procedural advantage that comes out of this decision. In the past, with the conventional wisdom being that in all cases a Government Code claim was required to be submitted before a lawsuit was filed, it provided the public entity with the ability to file suit first. In some situations, this provides an advantage to the public owner as it could chose to be the plaintiff or to select the venue of the lawsuit. Now, if the Arntz criteria are met, that advantage is gone and the contractor has the ability to be the first to file.

– claimants must exercise great care and should consult legal counsel before deciding to do away with the submission of a claim under the Government Code.

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