

SAN BERNARDINO COMMUNITY COLLEGE DISTRICT
CITIZENS BOND OVERSIGHT COMMITTEE
April 20, 2016

Why subs are not paid?

There could be a variety of reasons why a subcontractor is not being paid by the General or Prime Contractor (Prime). There are too many reasons to list. Without knowing what the Prime and Subcontractor agreement for services are, it is difficult at best to be determined. Meet as necessary with each respective General or Prime to discuss the issue and address the concerns that exist with Subcontractor payments and learn what if anything the District can do to help mitigate the problem.

When will subs be paid?

Without knowledge as to why a General or Prime Contractor is not paying a Subcontractor there is no way of knowing when payment could be made. However, California Public Contract Code requires that a Prime Contractor or Subcontractor pay to any subcontractor, not later than seven days after receipt of each progress payment, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest in the progress of the work.

What remedies does an unpaid have?

Any authorized unpaid Subcontractors who are entitled to payment from a General or Prime Contractor may serve a Stop Notice to the Owner at any time during the course of a project. It tells the Owner to hold payments from the General or Prime Contractor. All Stop Notices are presumed valid when received by the Owner unless the General or Prime contests it (In public works there is a statutory mechanism to protest a Stop Notice). The Subcontractor can serve a Preliminary Lien on the public owner in order to secure their Stop Notice rights and to assure that they can pursue their payment bond remedies.

What can the district do?

Because the District has no direct contractual relationship with a Subcontractor of a General or Prime Contractor the District is only obligated by statute to hold the funds upon receipt of a valid Stop Notice. The District is permitted to hold 125% of the Stop Notice amount. However the District can implement or ensure the following:

- Meet with each respective General or Prime Contractor to express their concerns with the lack of payments to the Subcontractors, (K/B has made each General Contractor aware of the concern the District has with payment of their Subcontractors).
- Expedite and process payment application in a timely manner (something that is already being addressed)
- Evaluation of rejected Change Order Request for accuracy and validity of the change (which may be a reason Subs are not being paid due to additional work they feel they are entitled to but the General Contractor is not in agreement with)
- Address and expedite resolution of General or Prime Contractor claims against the project
- Provide a written notification to inform the General or Prime Contractor's Surety of the issue and concerns that exist with payment of Subcontractors.