



**Contract Management Department**

# **Subcontractors Academy**

# **Welcome to the Subcontractors Academy!**

***City of Austin – Contract Management Department***

*Rolando Fernandez, Assistant Director*

*Marisol Claudio-Ehalt, Program Consultant*

***This month's featured speakers:***

*Cynthia Gonzales, Contract Relations Division Manager*

*Rick Wilson, Program Consultant*

**March 26, 2014**



# Subcontractors Academy - Goals

1. Ensure all interested subcontractors have access to information, resources and tools they need to be successful in their City contracts.
2. Provide subcontractors an opportunity to network with, and learn alongside, government contracting officials to gain a better understanding of the City processes, roles, and responsibilities associated with City government contracting.



*The Subcontractors Academy is brought to you by:*



# Contract Management Department

In partnership with



**U.S. HISPANIC CONTRACTORS  
ASSOCIATION DE AUSTIN**





**Contract Management Department**

# **Subcontractors Academy**

# **Enforcing Your Right To Payment Payment Bond Claims**

*City of Austin – Contract Management Department*

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# Today's Class Objectives

1. Avoid costly claims
2. Support general contracting knowledge
3. Sharpen understanding of owner/contractors/subcontractors rights and relationships
4. Save time gathering the right evidence to support a claim
5. Provide working knowledge of claims' documents

**During our class last month.....**

# COA Prompt Payment Example:

March 2014						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

2) Subs submit their pay app to Prime (\*\*Confirm w/ Prime\*\*)

4) COA Inspector reviews & reconciles pay app w/ Prime

6) COA PM Pay Processing Date **03/17/2014**

7) PWD's Accounts Payable processes invoice and submits to Central A/P

8) Central A/P Issues and Mails check to contractor

1) Feb. 28. End of February work period

3) Application Submittal Date  
Prime submits pay application to COA Inspector **03/07/2014**

5) No later than noon, COA Inspector



***During our class last month.....***

# Who do I talk to if I have a problem getting paid for work performed on a COA project?

If you have any questions or have not received payment from your Prime for work performed:

## 1. Follow up with the Prime

During your conversation:

- a. Ask whether there have been any problems with the work you supplied.
- b. State you have not received payment and ask whether they had problems paying.
- c. Confirm your invoice was received in time to include in current month's pay request.
- d. Confirm Prime's pay request has been submitted to the City in time for current Prompt Pay Cycle.
- e. Ask when the payment will be made and **agree on a date**. If they don't know, state you will call the following day once they've had an opportunity to investigate.

## 2. Verify in [Austin Finance Online](#) if COA payment to the Prime has been made.

## 3. Follow up with the COA PM

Confirm:

- a. Prime's pay request was received by the City in time for current Prompt Pay Cycle.
- b. Pay request is approved or if payment is being withheld - *and why*.
- c. Payment to Prime has been made.

***[This process is not a substitute for the statutory payment bond claim process set forth in Chapter 2253 of the Texas Government Code](#)***



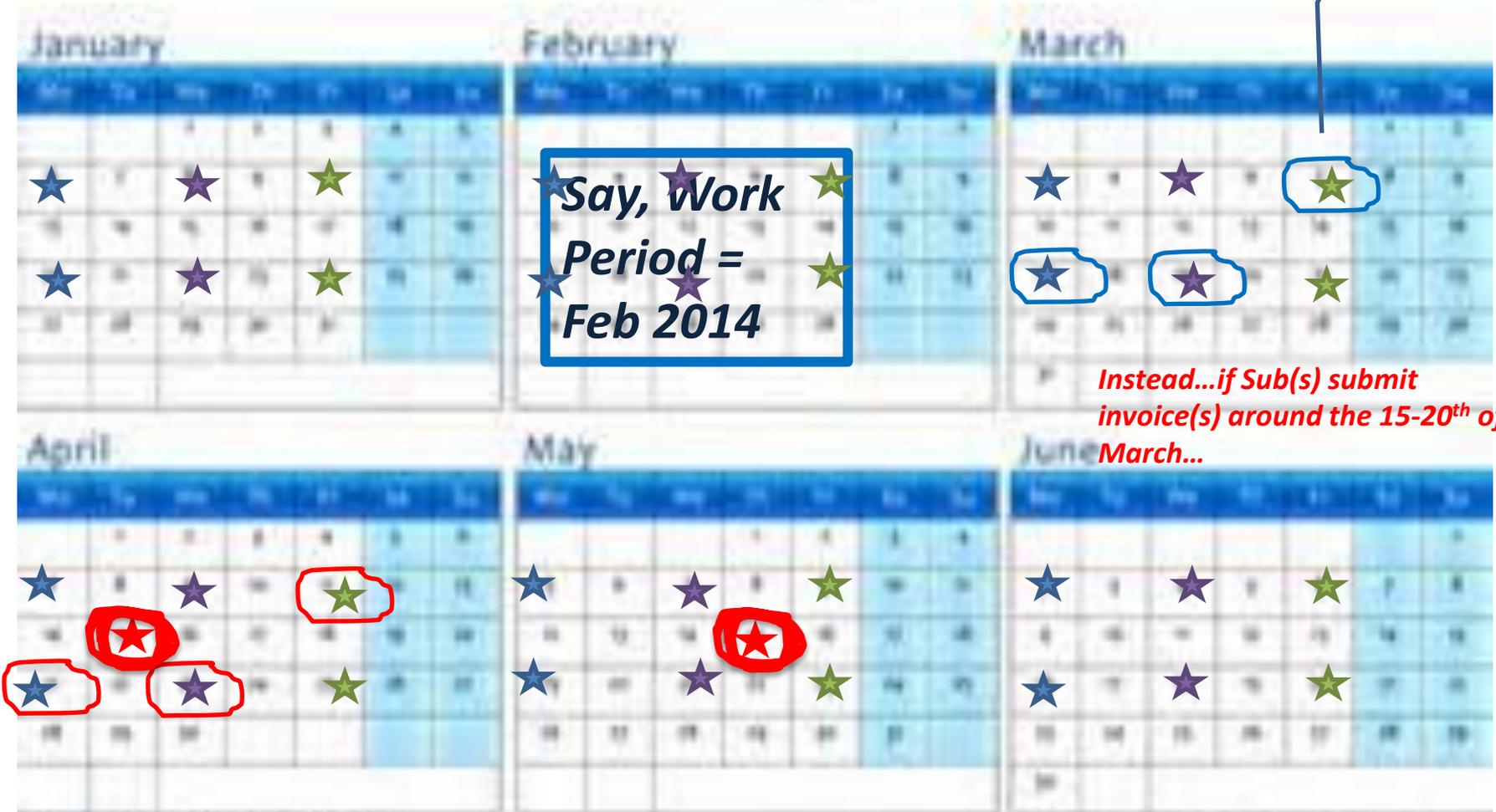
# Example:

# 2014

End of Work Period

Say, Work Period = Feb 2014

Instead...if Sub(s) submit invoice(s) around the 15-20<sup>th</sup> of March...



- ★ 3) GC Pay App submittal to COA
- ★ 6) COA PM Pay Processing Day
- ★ 8) COA cuts & mails check to GC

★ ...15<sup>th</sup> day of the second month after each month in which any of the claimed labor was performed or any of the claimed material was delivered.



On a private project, the suppliers of labor and/or materials typically have a right to perfect a mechanic's lien on the property if they are not paid. However, these same parties cannot perfect mechanic's liens on a government project in Texas if the value of the contract is greater than \$25,000. **As a result, a subcontractor on a government project is typically protected against nonpayment by way of a payment bond.**

# Texas Government Code

## CHAPTER 2253. PUBLIC WORK PERFORMANCE AND PAYMENT BONDS

Excerpt from Section 2253.021:

A governmental entity that makes a public work contract with a prime contractor **shall** require the contractor, before beginning the work, to execute to the governmental entity a **payment bond** if the contract is in excess of \$50K and the governmental entity is a municipality.

The **payment bond** is:

- (1) solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material; and
- (2) in the amount of the contract.

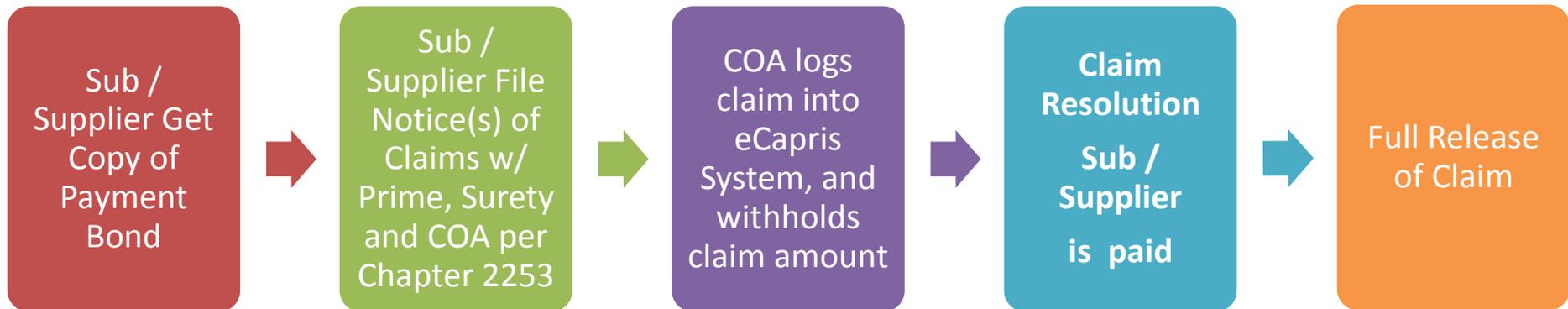


A payment bond guarantees the owner that subcontractors and suppliers will be paid the monies that they are due; and will continue performance.

# What is the difference between the payment bond and other types of bonds?

- **Bid Bond**: Ensures the bidder on a contract will enter into the contract and furnish the required payment and performance bonds if awarded the contract.
- **Performance Bond**: Ensures the contract will be completed in accordance with the terms and conditions of the contract.
- **Payment Bond**: Ensures suppliers and subcontractors are paid for work performed under the contract.

# Typical Payment Bond Claim Process



# How to get a copy of the payment bond

1. Prime *contractor or subcontractor* (*Info shall be provided within a reasonable time but no later than the 10<sup>th</sup> day after the receipt of the written request*)
2. City Staff
  - a. Project Manager, or
  - b. Contract Management Department\*\*\*

**\*\*\* Rick Wilson (512) 974-7261 or  
Rick.Wilson@AustinTexas.gov**

# Notice Requirements

*(Source 2253.041)*

The main prerequisite before the bond company will pay you is a proper notice of claim. A claim by a "subcontractor" MUST meet the [requirements of Chapter 2253 of the Texas Government Code.](#)

The notice of claim must contain certain content and be sent to the proper parties within **strict** deadlines. You may lose your claim against the bond if you fail to meet ALL of the notice requirements.



# Notice Requirements

(Source 2253.041 & 048)

1. A payment bond beneficiary (sub or supplier) must mail **to the prime and surety** written notice of the claim. *(and COA)?*
2. The notice must be mailed **on or before the 15<sup>th</sup> day of the third\*\* month** after each month in which any of the claimed labor was performed or any of the claimed materials was delivered. *(\*\* second month , if no direct contractual relationship with prime contractor)*
3. A notice required by Chapter 2253 **must** be sent by **certified or registered mail.**

# Notice of Claim on Prime Contractor and Subcontractor

## TO WHOM IT MAY CONCERN:

\_\_\_\_\_, has a claim in the sum of \$ \_\_\_\_\_ against \_\_\_\_\_  
*(Name of Your Firm)* *(Subcontractor's Name)*  
for labor performed and materials delivered for services during the month of \_\_\_\_\_, on the above  
*(Month, Year)*

referenced project. A copy of the written sub-contract agreement and invoices are attached, along with a Sworn Statement of Account.

This notice is sent in compliance with Chapter 2253, Texas Government Code, and is NOT to be construed as a reflection upon the credit practices or paying habits of \_\_\_\_\_. This notice is required  
*(Name of General Contractor)*

by law and it is generally welcomed by all responsible firms who uphold sound methods of conducting their businesses.

If you need any additional information to process this claim or if you believe that this claim is defective in any way, please notify us at once.

Dated this \_\_\_\_\_ .  
*(Day, Month, Year)*

By: \_\_\_\_\_  
*(Name of Owner or Representative Subcontractor)*

**NOTE: The notice must be mailed on or before the 15<sup>th</sup> day of the second month after each month in which any of the claimed labor was performed or any of the claimed material was delivered.**

# Sworn Statement of Account

The notice must be accompanied by a sworn statement of account that states in substance:

1. The amount claimed is just and correct; and
2. All just and lawful offsets, payments and credits known to the affiant have been allowed
3. The statement shall include the amount of any retainage applicable to the account that has not become due under the terms of the public work contract

**SWORN STATEMENT OF ACCOUNT**

Before me the undersigned authority on this day personally appeared \_\_\_\_\_, whom after being by me duly sworn did depose and say: *(Name of Owner of Subcontractor)*

1) My name is \_\_\_\_\_, I am the Owner of \_\_\_\_\_  
*(Name of Owner of Sub-Contractor or Representative)* *(Name of your firm)*  
and am authorized to make this affidavit.

2) \_\_\_\_\_ has a claim in the amount of \$ \_\_\_\_\_ for labor performed  
*(Name of your firm)*  
and/or materials delivered to \_\_\_\_\_ for work performed and or materials delivered  
*(Name of Subcontractor)*  
during the month of \_\_\_\_\_. The labor performed and materials delivered included:  
*(Month, Year)*  
\_\_\_\_\_, for the \_\_\_\_\_ in Travis County,  
*(describe activities)* *(Name of the Project)*

Texas. These activities are itemized on the attached contract invoices.

3) The amount of the claim as shown on the attached invoices is just and correct, and all lawful offsets, payments and credits known to the undersigned claimant have been allowed.

4) This claim includes total contract amount claimed, plus retainage.

By: \_\_\_\_\_

*Owner's Name or Representative*

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ .  
*(Day, Month, Year)*

\_\_\_\_\_  
Notary Public, State of Texas

# Protecting Your Payment Bond Claim Rights

It's smart business, and it's the best collections strategy you can have.

1. First, by sending preliminary payment bond claim notices and protecting your bond claim rights, you'll notice that your invoices get paid more often and faster. That's because sending a preliminary notice actually prioritizes your debt with the property owner and the general contractor.
  2. Second, when an account does slip through the cracks and you go unpaid, filing a notice is the fastest and most effective way to grab people's attention on the project and assert leverage to get your debt paid.
- If you're afraid that asserting your rights will jeopardize relationships with your customers. Millions of preliminary notices are sent every month across the country.
  - Don't be afraid of your own rights — those rights are there for you, everyone else is using them, and it could be the collections solution you've been looking for.

# When Suit is Required

If the surety refuses to pay the bond claim, a lawsuit against the surety and the prime contractor must be initiated no sooner than 61 days after the notice of claim and no later than 1 year after the date of mailing the notice of claim. *(Source 2253.073 & 078)*

Let's  
Recap

## Recommendations to Improve Payment Issues:

1. Read contracts carefully and ensure you are content with payment terms and conditions before signing.
2. Provide security and remedies for recovering the payment in the construction contract.
3. Adopt proactive strategies to avoid delinquency before it starts.
4. Address customer-service complaints quickly.
5. Establish a speedy dispute resolution process.
6. **Protect your rights to payment.**

# Questions? Comments?



## For additional Information:

[http://austintexas.gov/  
department/contract-  
management](http://austintexas.gov/department/contract-management)

## Next Class:

April 26, 2014

6 – 7 pm

One Texas Center

Room 325