



Welcome to the Subcontractors Academy!

Brought To You By:

City of Austin
Contract Management Department

In partnership with



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.



Contract Management Department

Subcontractors Academy

Payment Bonds: Protection for Subcontractors

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City of Austin – Contract Management Department*

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This is a test...



True or False?

1. Payment is considered as the lifeblood of the construction industry because constructions often involve very large capital outlay and take a considerable time to complete.
2. A regular disbursement of interim payment is a critical point for a contractor, subcontractor and supplier to help them survive in the construction field.
3. Keeping on top of your cashflow is an essential task for all contractors, subcontractors and suppliers.

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**: In the event of contractor defaults, 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.

Payment bonds protect subcontractors right to get paid but few truly understand their value.



Texas Government Code

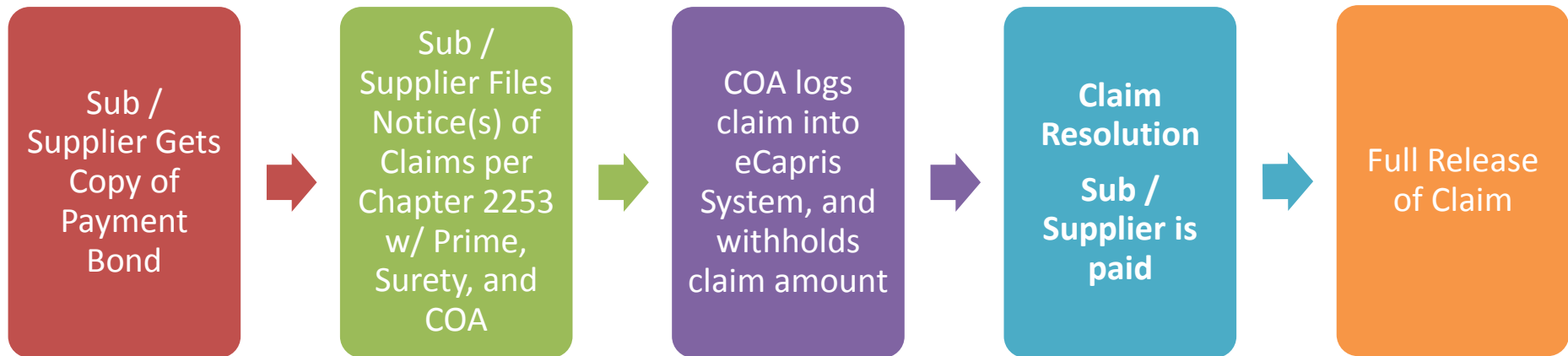
CHAPTER 2253 PUBLIC WORK PERFORMANCE AND PAYMENT BONDS

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2253.htm>

Excerpt from Chapter 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. *(or in excess of \$25K if entity is not 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

Typical Payment Bond Claim Process



How to get a copy of the payment bond

1. From Prime *contractor or subcontractor* (*Per Chapter 2253, info shall be provided within a reasonable time but no later than the 10th day after the receipt of the written request*)
2. From City Staff
 - a. Project Manager, or
 - b. Contract Management Department***

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

Notice Requirements

(Source Chapter 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 Chapter 2253.041 & 048)

1. A payment bond beneficiary (sub or supplier) must mail **to the prime and surety** written notice of the claim. *(...and please copy COA)*
2. The notice must be mailed **on or before the 15th 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 Requirements Example

1) Say, Feb 28th is the end of the monthly work period

2) The Notice of Claim must be mailed on or before the 15th 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)

2014

1

2

3

JANUARY

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28	29	30				

OCTOBER

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26	27	28	29	30	31	

NOVEMBER

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16	17	18	19	20	21	22
23	24	25	26	27	28	29
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DECEMBER

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28	29	30	31			

COA Prompt Payment Example:

March 2014						
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23	24	25	26	27	28	29
30	31					

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

1) Feb. 28. End of February work period

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

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

5) No later than noon, COA Inspector delivers approved pay app to COA PM

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



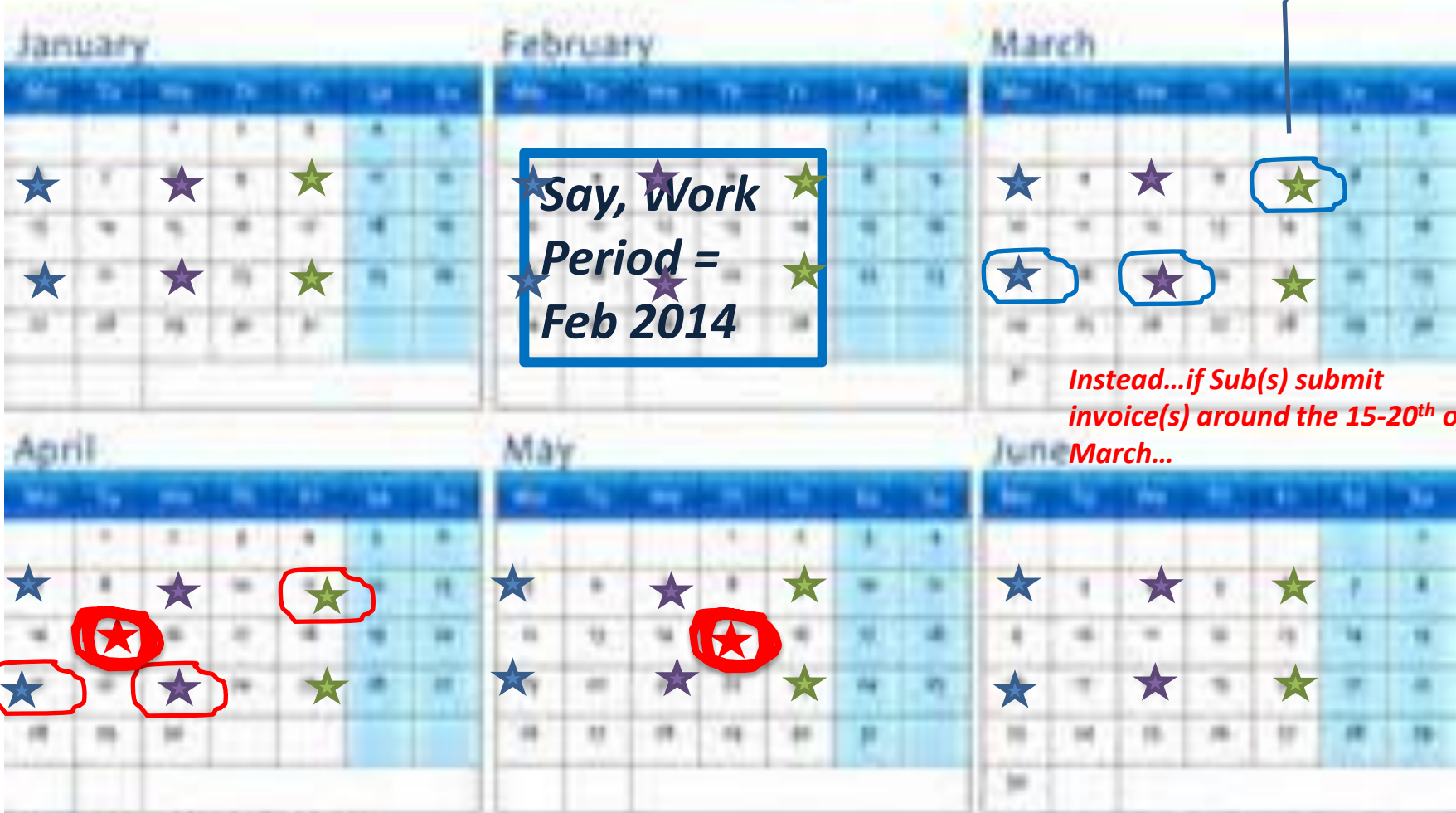
Example:

2014

End of Work Period

Say, Work Period = Feb 2014

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



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

★ ...15th 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.

Notice of Claim on Prime Contractor

TO WHOM IT MAY CONCERN:

_____, has a claim in the sum of \$ _____ against _____

(Sub-Contractor's Name of Firm)

(General Contractor'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 subcontract 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)

(continued on next page)

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

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 15th 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

Sec. 2253.046. NOTICE REQUIRED FOR CLAIM FOR PAYMENT OF RETAINAGE.

(a) To recover in a suit under Section [2253.073](#) on a payment bond for a claim for payment of retainage, a payment bond beneficiary whose contract with a prime contractor or subcontractor provides for retainage must mail written notice of the claim to the prime contractor and the surety **on or before the 90th day after the date of final completion of the public work contract.**

(b) The notice shall consist of a statement of:

- (1) the amount of the contract;
- (2) any amount paid; and
- (3) the outstanding balance.

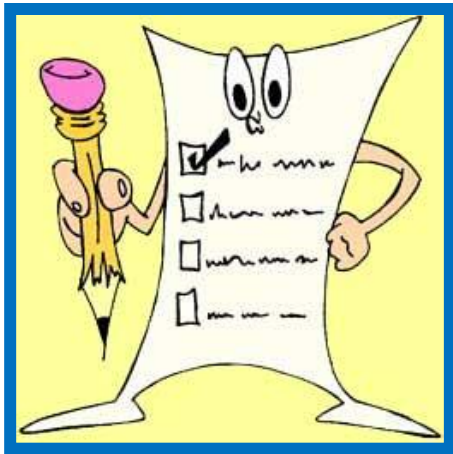
(c) Notice of a claim for payment of retainage is not required if the amount claimed is part of a prior claim made under this subchapter.



Statute of Limitations

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 Chapter 2253.073 & 078)*

Let's Recap



1. You can get a copy of the payment bond from your general contractor, subcontractor, or City staff.
2. The main prerequisite before the bond company will pay you is a proper notice of claim.
3. A claim by a subcontractor or supplier **MUST** meet the requirements of Chapter 2253 of the Texas Government Code.
4. If you're afraid that asserting your rights will jeopardize relationships with your customers please keep in mind that millions of preliminary notices are sent every month across the country.
5. **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.
6. **Payment bonds protect subcontractors right to get paid.**



Questions? Comments?



For additional Information:

<http://austintexas.gov/department/contract-management>

Upcoming classes:

- Wednesday February 18, 2015
9 – 10 am
One Texas Center
8th floor Large conference room
- Monday March 23, 2015
Safety, Insurance & ROCIP
9 – 10 am
One Texas Center Suite 1045