

20-day preliminary notices — when is late 'too' late?



Construction Law

By PAMELA J. SCHOLEFIELD

Question: We are a tiling contractor and have never been in the habit of sending out preliminary lien notices. In the past we have been fortunate to work with people we have done business with before, but with today's shortage of projects, we are doing work with some new customers.

We started a project about a month ago, but had not done a preliminary notice.

Even though we were paid out first progress payment, which was about 20 percent of the value of our contract, we've heard through the grapevine that some of the other contractors have not been paid all of their progress payments. So, I went ahead and had a preliminary lien notice sent out through a lien service that charges a minimal amount to prepare and serve the preliminary notice.

That was the easy part.

I was at the jobsite yesterday to look over the progress of our work and ran into an owner of a plumbing company I know. We got to talking about the recent difficulties of collecting payment on some projects and I told him that I just sent out our preliminary notice and he said "you shouldn't have bothered, you're too late. You had to send a preliminary notice within 20 days of first starting your work. Why do you think they call it a '20-day' preliminary notice? Because you waited 30 days, you have no mechanics' lien rights."

I am not familiar with preliminary notices and liens because we've never had to use them to get paid, so that never occurred to me. But, it seems pretty unfair that I lose all my lien rights because I am a measly 10 days late. Is the plumber right — did I really blow it?

Answer: As usual, there are several possible answers to your question. The short answer is that the plumber is right and wrong.

He's right about the name — a 20-day

preliminary notice means it should be served within 20 days of when you first provide materials, labor, equipment or any other services to the jobsite. But, all is not lost just because you waited 30 days. A late preliminary notice does have some effect, but it only covers the work provided in the previous 20 days and forward.

For example, let's say you first provided some sort of work on February 29 (Friday). Perhaps that is when you had the first load of tile delivered to begin installation the next Monday (March 3).

Because you first provided materials on Feb. 29, the 20-day clock starts to run on that day.

Then, you wait 30 days, until March 28, to serve the preliminary notice.

Because you were late, the notice only covers work provided in the previous 20 days, plus anything after you served the preliminary notice.

So, for our example, assume you have a contract worth \$200,000. Your first load of tile was worth \$35,000, and you had four tile setters working every day,

five days a week for the last four weeks at \$37 per hour.

So, counting backwards from March 28, your lien rights only cover from March 8 forward.

This means you lose lien rights for the \$35,000 of tile and five days of labor costs for four tile setters, eight hours a day, working March 3, 4, 5, 6 and 7 - or about \$5,920. So, out of a \$200,000 contract, you would not have lien rights for \$40,920.

But, you are in luck because you said you were paid your first progress payment. So in my example, and probably in your real-life situation, you have already been paid for the materials and labor that you provided in the first 10 days.

Thus, the fact that you may not have lien rights for what you provided in those first 10 days it doesn't matter because you've been paid for that work.

I also noticed that you referred to yourself and other specialty trades as

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Engineering

Work Involving Site Improvements; Streets; Highways; Bridges; Irrigation and Landscaping; Drainage, Sewage and Water Pipelines; Disposal, Purification, Utility and Wastewater Treatment Plants; Harbors, Piers and Marine Terminal Projects; Outdoor

Electrification; Well Drilling and Underground Construction Projects. Please Check Building, Specialties, or Subcontracts for Overlapping Bids

(G) Indicates General Contractor Requesting Sub bids
(S) Indicates Subcontractor
(NA) Indicates Not Available

ufacturing an aluminum dummy stator core model with support ring segments based on winding design for factory testing, and delivering the core model to the work site, b. Designing and manufacturing a set of 13.8 kV prototype coils, and delivering the coils to the Department's designated testing facility, c. Designing, manufacturing, factory testing, and delivering one set of stator coils identical to the prototype coils to the work site, d. Designing, manufacturing, factory testing and delivering one set of production sample coils to the Department's designated testing facility, e. Designing, manufacturing, and delivering one set of insulated upper and lower surge rings with supports, insulation blocks, and materials necessary for installation to the work site, f. Designing, manufacturing, factory testing, and delivering one set of fourteen resistance temperature detectors (RTDs) made of 10-ohm/100-ohm dual element (copper/platinum); and new cables to the work site, and g. Delivering equipment and special tools necessary for installing one set of stator coils to the work site. 3. Providing liaison services. Prebid Conf. to be held on April 15, 10 a.m., Oso Pumping Plant Subcenter, Hwy 138 turnoff from I-5, East for approx. 9 miles, left, Outside Gorman, CA. Bid Documents are available from the owner, (916) 653-4867.

Robert B. Diemer WTP Oxidation Retrofit Yorba Linda

Submit bids to Metropolitan Water District of Southern California. 1500. Questions regarding this project shall be faxed to Metropolitan @ (213)576-5420 or Email: SpecsDesk@mwdh2o.com. Estimate: \$200,000,000 - \$260,000,000.

Documents Not On File

Work Involves: Robert B. Diemer Water Treatment Plant Oxidation Retrofit: The work consists of performing all necessary work to retrofit the existing Diemer Water Treatment Plant to treat water with an oxygen/ozone system. The work includes: constructing ozone generation building, ozone contactors, contactor influent and effluent conduits, contactor rejection tunnel, liquid oxygen (LOX) storage and feed system, chemical feed facilities, unit substation (UPC), switchgear building, emergency generator building, large diameter yard conduits and piping; grading; paving; demolition; adding and modifying plant utilities and controls; connections to existing facilities, landscaping; commissioning, training; installation of meter vaults, oxygen/ozone system equipment, gates, valves, RTUs; and performing all other appurtenant work. License Required: A. Mandatory Prebid Conf. will be held on Mar. 25, 10 a.m. Will convene at 3972 Valley View Ave., Yorba Linda, CA 92886 [Thomas Guide, Orange County, Pg. 740, Grid A-1] Attendance by subcontractors not required. Plans/Specs (NR) \$450/Hard Copy (includes a free CD of the documents) or \$20/CD only, available from owner, (213)217-6515.

Pier G Admin. & Operations Bldgs. Long Beach

Submit bids to Port of Long Beach. HD-S2222. Ed Lazcano (562) 590-4146 Fax (562) 901-1763. Estimate: \$43,000,000.

Bid Deadline May 13, 10 am

Work Involves: Pier G Administration & Operations Buildings, License Required: A. Pre-Bid Mtg. will be held on April 17, 9 a.m., in the Board Room, 6th floor, of the Harbor Department Administration Building. Copies of plans/specs may be obtained in CD format at no cost from: Plans and Specifications office, 4th floor, Harbor Dept. Admin. Bldg. 925 Harbor Plaza, Long Beach, CA (562) 437-0041.

Joseph Jensen WTP Solids Thickeners 5 & 6 Granada Hills

Submit bids to Metropolitan Water District of Southern California. 1557. Questions regarding this project shall be faxed to Metropolitan at (213) 576-5420 or emailed to: SpecsDesk@mwdh2o.com. Estimate: \$5,500,000 - \$7,000,000.

Bid Deadline May 13, 2 pm

Documents Not On File

Work Involves: Joseph Jensen Water Treatment Plant Solids Thickeners 5 & 6: The project consists of constructing two gravity sludge thickeners, constructing a sludge vault, replacing three centrifugal pumps, replacing two rotary lobe pumps, adding one rotary lobe pump, installing four annular feed rings on four existing gravity sludge thickeners, replacing two sludge scraper rake gearboxes, reconfiguring piping systems, and performing sitework and other appurtenances. Mandatory Prebid Conf. to be held on April 10, 10 a.m., at the Joseph Jensen Water Treatment Plant, 14331-1/2 San Fernando Road, Granada Hills, CA 91344 [Thomas Guide, Los Angeles & Orange Counties, Page 481, Grid D-3]. Plans/Specs (NR) \$90 (includes a free cd containing bid documents) or \$20/CD Only, available from MWDC, (213) 217-6515.

Compressed Natural Gas & Above Ground Fuel Tank Rancho Cucamonga

Submit bids to City of Rancho Cucamonga-Engineering. Craig Cruz, (909) 477-2740 x4057 Fax:(909) 477-2746 Email: craig.cruz@cityofrc.us. Estimate: \$974,091.

Bid Deadline May 20, 2 pm

Transcript Plan No. 88

Work Involves: Compressed Natural Gas and Above Ground Fuel Tank Improvement Project at the City Corporate Yard: The scope of work to be performed in general consists of, but is not limited to, the removal of pcc slabs, fuel tanks and dispensers and appurtenances, purging and cleaning of fuel lines, disposal of residual fuel, constructing structural pcc slabs, offloading AST's and CNG equipment, trenching, obtaining multi agency permits, plans preparation, CNG facility installation, and other such items or details not mentioned above, but are required by the plans and specifications, shall be placed, constructed, or installed. License Required: A. Mandatory Prebid Job Walk to be held on May 1, 10 a.m., City Corporate Yard, 9153 Ninth St., Rancho Cucamonga, CA 91730. Plans/Specs (NR) \$35 available from owner, (909)477-2740.

Planholders INCLUDE:
G #Sodaris Contracting 7437 Lowell Ct., La Mesa(619)465-3438/FAX (619)374-7138

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“contractors” instead of “subcontractors.”

Does this mean that the property owner acted as an owner-builder and hired each of the trades directly? If that is the case, then a contractor who has entered into a contract directly with an owner (called an “original contractor” under the mechanics’ lien laws) does not have to serve a preliminary notice at all in order to have lien rights.

This is because the purpose of the 20-day preliminary notice is to alert the owner that you are out there providing a certain value of work and if you don’t get paid, you can lien the property. The the-

ory is if the owner enters into the contract directly, the owner already has notice of the value of the work you are providing.

Another assumption I made was that you are talking about a private works project. For public works, a subcontractor with a direct contract with the prime or general contractor generally does not have to serve a preliminary notice in order to have “lien” rights.

But, the “lien” rights referred to involve stop notices and payment bonds — which are better left subjects of future articles.

In order to not have to worry about

when you do or do not have to serve a preliminary notice, it is much better to just serve a preliminary notice for every project you work on. The lien service you mentioned that you used is a perfect low-cost way to preserve your lien rights.

If you have a construction question, submit it to: info@construction-laws.com

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Disclaimer

The information in this article is based upon California law and is for general information only. Any information or analysis presented here is

intended solely to inform and educate the reader on general issues. Nothing presented or referenced to, regarding facts, documents or applicable laws, constitutes legal advice. Before acting or relying on any information, including any information presented here, consult with a qualified attorney for your specific situation.

Scholefield holds an active PE license in Colorado, an undergraduate engineering degree from the University of Florida, and received her JD from the University of San Diego.

Source Code: 20080328tea

CONSTRUCTION CALENDAR

OTHER EVENTS

MONDAY, MAR 31 - CLASSES

COLLATERAL DUTY COURSE FOR FEDERAL AGENCIES

This course introduces federal agency collateral duty safety and health personnel to the OSH Act and enables them to recognize basic safety and health hazards in their own workplaces. **Organization:** OSHA Training Institute/UCSD Extension **Information:** (800)358-9206 **Cost:** \$725.00 **When:** Hours: 8:00 AM - 4:30 PM **Where:** OSHA Training Institute, 404 Camino del Rio South #102, San Diego

WEDNESDAY, APR 2 - MEETING

REGIONAL CONSTRUCTION PROCUREMENT COMMITTEE

This morning’s meeting will include discussions on Construction Contract Bidding Calendar Options, Legislative updates and issues and more. **Organization:** Regional Construction Procurement Committee **Cost:** No Details Available **When:** Hours: 9:00 AM - 11:00 AM **Where:** Comerica Bank Building, 600 B St., 8th Floor, San Diego

THURSDAY, APR 3 - PANEL DISCUSSION

CMAA MORNING SEMINAR: WHAT’S NOT WORKING?

In this fast paced panel discussion, we will let the owners and contractors offer their viewpoints with plenty of audience participation. **Organization:** CMAA, San Diego Chapter **Information:** 562-434-8409 sdcmca@pavenet.net **Cost:** No Details Available **When:** Hours: 8:30 AM - 10:30 AM **Where:** Town & Country Convention Center, 500 Hotel Circle N., San Diego, 92108, Venue Phone - (800) 854-2608

SATURDAY, APR 5 - CLASSES

FIRST AID/CPR TRAINING

This 4-hour program meets CAL-OSHA requirements for First Aid and CPR. Register today; this class is limited to 24 people. **Organization:** EGCA **Information:** 619-692-0760 www.egca.org **Cost:** \$100.00- \$125.00 **When:** Hours: 8:00 AM - 12:00 PM **Where:** National University, 9388 Lightwave Ave., San Diego, 92123

TUESDAY, APR 8 - AWARDS

49TH ANNUAL ANNIVERSARY AND AWARDS NIGHT

Join us for The Best Show in Town! **Organization:** National Association of Women in Construction **Information:** Pam Gibbs pgibbs@umec.com **Cost:** No Details Available **When:** Starts: 5:30 PM **Where:** Double Tree Club Hotel, 1515 Hotel Circle South, San Diego, 92108

WEDNESDAY, APR 9 - MEETING

AMERICAN SUBCONTRACTOR’S ASSOCIATION’S MEETING

Guest speaker: San Diego Economist, Alan Nevin. **Organization:** American Subcontractor’s Association **Information:** Asa (619) 852-9552 **Cost:** No Details Available **When:** Starts: 4:30 PM **Where:** The Butcher Shop Steakhouse, 5255 Kearny Villa Rd., San Diego, 92123, Venue Phone - (858) 565-2272

MONDAY, APR 14 - SEMINAR

DESIGN OF REINFORCED MASONRY STRUCTURES

This seminar will discuss the general changes from the 1997 UBC to the 2006 IBC in regard to materials, construction, and design of concrete masonry structures. **Organization:** Construction Specifications Institute (CSI) **Information:** (619) 401-6733, (877) 401-6733 sdcsi@cox.net **Cost:** \$250.00- \$275.00 **When:** Hours: 9:00 AM - 4:00 PM **Where:** City of S.D. Environmental Services Office, 9601 Ridgehaven Court, San Diego, 92123

TUESDAY, APR 15 - DINNER MEETING

GENERAL MEMBERSHIP MEETING

For more information, contact the ASPE. **Organization:** American Society of Professional Estimators **Information:** (619) 749-1890 asped4@cox.net **Cost:** No Details Available **When:** Starts: 5:30 PM **Where:** The Butcher Shop Steakhouse, 5255 Kearny Villa Rd., San Diego, 92123, Venue Phone - (858) 565-2272

TUESDAY, APR 15 - SEMINAR

SYSTEM DUCT DESIGNS: ADVANCED

This seminar will teach participants how to recognize, analyze and overcome advanced air distribution problems that most HVAC contractors either miss or simply don’t understand. **Organization:** SDGE Seminars **Information:** (800) 613-8970 www.sdge.com/training **Cost:** No Cost **When:** Hours: 6:00 PM - 9:00 PM **Where:** San Diego Energy Resource Center (SDERC), 8690 Balboa Ave., Suite 100, San Diego, 92123

FRIDAY, APR 18 - SPECIAL EVENTS

EGCA AFFILIATES GOLF TOURNAMENT

Come out to the EGCA Affiliates Golf Tournament and enjoy a day of golf and networking with other construction and contracting professionals. **Organization:** EGCA **Information:** 619-692-0760 www.egca.org **Cost:** \$160.00 **When:** Starts: 11:00 AM **Where:** Pala Mesa Golf Resort, 2001 Old Highway 395, Fallbrook, 92028, Venue Phone - 760-728-5881

SATURDAY, APR 19 - ANNUAL EVENTS

BLACK CONTRACTORS ASSOCIATIONS 26TH ANNIVERSARY

Save the date... for the Black Contractors Association’s Platinum Plus Anniversary Gala. Featuring surprise speakers, sports stars and political personalities. **Organization:** Black Contractors Association Inc. **Information:** Janiece Hammed (619) 263-9791 **Cost:** No Details Available **Where:** Anthology, 1337 India St., San Diego, 92101, Venue Phone - (619) 595-0300

WEDNESDAY, APR 23 - MEETING

DELEGATES MEETING

The San Diego-Imperial Counties Labor Council will meet tonight. **Organization:** Imperial Counties Labor Council **Information:** www.unionyes.org **Cost:** No Details Available **When:** Starts: 5:30 PM **Where:** Machinists Hall, 5150 Kearny Mesa Road, San Diego

THURSDAY, APR 24 - MEETING

CFMA 2ND ANNUAL MEETING

Join us for Construction Financial Management Association Meeting and 2nd Annual CFMA Mixer. **Organization:** Construction Financial Management Assoc. **Information:** Mandy Parent (760) 466-1200 **Cost:** No Details Available **When:** Hours: 4:30 PM - 6:30 PM **Where:** Call for location, to be determined, San Diego



A complete listing of the Construction Calendar is available at San Diego Source — www.sddt.com/realestate. Send notices about upcoming events to robin.scott@sddt.com for a free listing. —Compiled by Robin Scott