

2023 -- H 6202

LC002578

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- CONTRACTORS BONDS

Introduced By: Representatives Cruz, Potter, Alzate, Giraldo, Kazarian, Slater, and Boylan

Date Introduced: March 24, 2023

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 37-12-1 and 37-12-10 of the General Laws in Chapter 37-12 entitled
2 "Contractors Bonds" are hereby amended to read as follows:

3 **37-12-1. Contractors required to give bond — Terms and conditions.**

4 Every person (which word for the purposes of this chapter shall include a copartnership, a
5 number of persons engaged in a joint enterprise, or a corporation), before being awarded a contract
6 by the department of transportation or by the department of administration, as the case may be, and
7 every person awarded such a contract as a general contractor or construction or project manager or
8 prime contractor for the construction, improvement, completion, or repair of any public road or
9 portion thereof or of any bridge in which the contract price shall be in excess of one hundred and
10 fifty thousand dollars (\$150,000), or for a contract for the construction, improvement, completion,
11 or repair of any public building, or portion thereof, shall be required to furnish to the respective
12 department a bond of that person to the state, with good and sufficient surety or sureties (hereafter
13 in this chapter referred to as surety), acceptable to the respective department, in a sum not less than
14 fifty percent (50%) and not more than one hundred percent (100%) of the contract price,
15 conditioned that the contractor, principal in the bond, the person's executors, administrators, or
16 successors, shall in all things, well and truly keep and perform the covenants, conditions, and
17 agreements in the contract, and in any alterations thereof made as therein provided, on the person's
18 part to be kept and performed, at the time and in the manner therein specified, and in all respects
19 according to their true intent and meaning, and shall indemnify and save harmless the state, the

1 respective department, and all of its officers, agents, and employees, as therein stipulated, and shall
2 also promptly pay for all such labor performed or furnished, together with penalties assessed
3 pursuant to § 37-13-14.1(b), and for all such materials and equipment furnished (which, as to
4 equipment, shall mean payment of the reasonable rental value, as determined by the respective
5 department, of its use during the period of its use), as shall be used in the carrying on of the work
6 covered by the contract, or shall see that they are promptly paid for, whether or not the labor is
7 directly performed for or furnished to the contractor or is even directly performed upon the work
8 covered by the contract, and whether or not the materials are furnished to the contractor or become
9 component parts of the work, and whether or not the equipment is furnished to the contractor or
10 even directly used upon the work. The bond shall contain the provisions that it is subject to all such
11 rights and powers of the respective department and such other provisions as are set forth in the
12 contract and the plans, specifications, and proposal incorporated by reference in the contract, and
13 that no extension of the time of performance of the contract or delay in the completion of the work
14 thereunder or any alterations thereof, made as therein provided, shall invalidate the bond or release
15 the liability of the surety thereunder. ~~Waiver of the bonding requirements of this section is expressly~~
16 ~~prohibited.~~ However, upon application and for good cause, the chief purchasing officer of the state
17 may waive the bonding requirement for a State of Rhode Island office of diversity, equity, and
18 opportunity certified minority business enterprise (MBE) or women owned business enterprise
19 (WBE) prime contractor or subcontractor on a public works project for up to two hundred fifty
20 thousand dollars (\$250,000).

21 **37-12-10. Retainers relating to contracts for public works, sewer, or water main**
22 **construction.**

23 (a) Upon substantial completion of the work required by a contract aggregating in amount
24 less than five hundred thousand dollars (\$500,000) for the construction, reconstruction, alteration,
25 remodeling, repair, or improvement of sewers and water mains, or any public works project defined
26 in § 37-13-1, the awarding authority may deduct from its payment a retention to secure satisfactory
27 performance of the contractual work not exceeding five percent (5%) of the contract price.

28 (b) There shall also be deducted and retained from the contract price an additional sum
29 sufficient to pay the estimated cost of municipal police traffic control on any public works project.
30 Municipalities shall directly pay the officers working traffic details and shall bill and be reimbursed
31 by the withholding authority for which the contract is being performed every thirty (30) days until
32 the project is complete.

33 (c) Notwithstanding the foregoing, with respect to projects located within the town of
34 Warren, the withholding authority shall hold an amount from the contract price that shall be

1 reasonably sufficient to pay the estimated cost of municipal police traffic control. The withholding
2 authority shall pay to the town of Warren within seventy-two (72) hours of written demand the
3 actual costs of police traffic control associated with said project on an ongoing basis.

4 (d) The director of the department of administration shall establish, by rule and regulation
5 adopted in accordance with chapter 35 of title 42 ("administrative procedures"), methods for the
6 interim release of retainage of State of Rhode Island office of diversity, equity, and opportunity
7 minority business enterprises (MBEs).

8 SECTION 2. Section 42-11.1-3 of the General Laws in Chapter 42-11.1 entitled "Prompt
9 Payment by Department of Administration" is hereby amended to read as follows:

10 **42-11.1-3. Time period for payment.**

11 (a) All bills shall be paid within thirty (30) ~~working~~ calendar days of receipt of a proper
12 invoice or other contractual dates for periodic payments, except when a contractor has failed to
13 submit a bill in accordance with contractually imposed time frames.

14 (b) Each contractor shall make payment to subcontractors within ~~ten (10)~~ seven (7) days of
15 receipt of payment by the state; provided, however, that the contractor may setoff a payment due
16 to a subcontractor by an amount equal to the amount of an unpaid legally enforceable debt owed
17 by the subcontractor to the contractor or any amount which the contractor is entitled to withhold
18 under the terms of the contract entered into by the contractor and subcontractor, or any amount
19 owed by the subcontractor to the contractor by way of a statutory obligation, or enforceable lien,
20 of which the contractor or subcontractor had previous knowledge or notice, or has reason to believe
21 exists.

22 (c) ~~This section shall not apply to contractors or subcontractors performing work pursuant~~
23 ~~to a contract awarded by the department of transportation unless the subcontractor provides a~~
24 ~~payment and performance bond in an amount equal to the contract between the contractor and~~
25 ~~subcontractor.~~ Each subcontractor shall make payments to its lower tier subcontractor within seven
26 (7) days of receipt of payment by the prime contractor.

27 (d) The state shall pay a deposit to prime contractors in a sufficient period prior to the
28 commencement of the scope of the work of a minority business enterprise (MBE) as defined in §
29 37-14.1-3, subcontractors solely for the purposes of the prime contractor making prearranged
30 scheduled payments, pursuant to a written contract between the prime contractor and the MBE
31 subcontractors, to MBE subcontractors for the scope of the MBE subcontractors' work. Upon
32 receipt of deposit, the prime contractor shall pay the MBE subcontractors within seven (7) calendar
33 days, pursuant to the prearranged scheduled payments based upon a percentage of the work
34 completed. Upon failure of the prime contractor to timely pay the MBE subcontractors, the state

1 shall pay the MBE subcontractors directly and seek reimbursement from the prime contractor with
2 any administrative costs incurred by the state. This payment schedule shall be attached as an exhibit
3 to the prime contractor contract and approved by the state.

4 (f) The director of administration shall adopt rules and regulations in accordance with
5 chapter 35 of title 42 ("administrative procedures"), which are consistent with this chapter and
6 chapter 2 of title 37 ("state purchases") governing the prompt payment by contractors and
7 subcontractors and in the instance of payments to MBE subcontractors, deposits to contractors to
8 allow weekly payments the MBE subcontractors.

9 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would provide that upon application, and good cause, the state may waive the
2 bonding requirement for certified minority business enterprises or women owned businesses and
3 would amend the time frame and procedure for payment by prime contractors to minority business
4 enterprise subcontractors.

5 This act would take effect upon passage.

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