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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- LABOR AND PAYMENT OF DEBTS
BY CONTRACTORS

Introduced By: Senators Picard, Ciccone, and Lombardo

Date Introduced: March 14, 2019

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 37-13-1 and 37-13-2 of the General Laws in Chapter 37-13
2 entitled "Labor and Payment of Debts by Contractors" are hereby amended to read as follows:

3 **37-13-1. "~~Public works~~" defined Definitions.**

4 As used in this chapter:

5 (1) "Awarding authority" means any entity or authorized agency other than the
6 department of transportation who awards contracts for construction on public works.

7 (2) "Contractor" means the bidder whose bid has been accepted by an authorized agency
8 or awarding authority as the bidder possessing the skills, ability, and integrity necessary to the
9 faithful performance of the contract or work, and who shall certify that he or she is able to furnish
10 labor that can work in harmony with all other elements of labor employed or to be employed on
11 the contract or work.

12 (3) "Public works" ~~as used in this chapter shall mean~~ means any public work consisting
13 of grading, clearing, demolition, improvement, completion, repair, alteration, or construction of
14 any public road or any bridge, or portion thereof, or any public building, or portion thereof, or
15 any heavy construction, or any public works projects of any nature or kind whatsoever.

16 (4) "Subcontractor" means a person or entity that has entered into a contract with a
17 contractor to provide a portion of the work or service on a project which the contractor has agreed
18 to perform, and who has been approved by the awarding authority in writing as a person or entity

1 performing labor or furnishing of materials on a public works project as defined in this section.

2 (5) "Substantial performance" means an honest endeavor in good faith by one party to
3 perform that party's obligations under a contract, when the results of that party's endeavor are
4 beneficial to and are retained by the other party.

5 **37-13-2. "Contractor" defined --- Information required Contractor information**
6 **required.**

7 ~~The term "contractor" as used in this chapter shall mean the bidder whose bid has been~~
8 ~~accepted by an authorized agency or awarding authority as the bidder possessing the skills,~~
9 ~~ability, and integrity necessary to the faithful performance of the contract or work, and who shall~~
10 ~~certify that he or she is able to furnish labor that can work in harmony with all other elements of~~
11 ~~labor employed or to be employed on the contract or work.~~ Essential information in regard to
12 contractor qualifications shall be submitted in such form to the awarding authority and the
13 director of labor and training as the director of labor and training shall require. The authorized
14 agency or awarding authority shall reserve the right to reject all bids, if it be in the public interest
15 to do so.

16 SECTION 2. Chapter 37-13 of the General Laws entitled "Labor and Payment of Debts
17 by Contractors" is hereby amended by adding thereto the following section:

18 **37-13-5.1. Payments to subcontractors.**

19 (a) Upon receipt of a periodic payment from an awarding authority, a contractor shall pay
20 to each subcontractor any amount owed to the subcontractor for labor performed or materials
21 provided, less any amount specified in any court proceeding barring such payment or any amount
22 claimed due from the subcontractor to the contractor.

23 (b) Not later than ninety (90) days after each subcontractor substantially completes its
24 work in accordance with the plans and specifications, the entire balance due under the
25 subcontract, less amounts retained by the awarding authority as the estimated cost of completing
26 any incomplete or unsatisfactory items of the subcontractor's work, shall be due to the
27 subcontractor; and the awarding authority shall pay that amount to the contractor. Upon receipt of
28 payments for labor or materials provided by a subcontractor, the contractor, shall pay to that
29 subcontractor the full amount received from the awarding authority, less any amount specified in
30 any court proceedings barring such payment or any amount claimed due from the subcontractor
31 by the contractor. Upon project completion and acceptance by the owner, any amounts retained
32 shall be reduced to no more than five percent (5%) of the total sum owed to the subcontractor
33 which shall be payable to the subcontractor within one year of project completion, if no claim is
34 pending related to the amount retained.

1 (c) If, sixty-one (61) days after the subcontractor has substantially completed the
2 subcontract work, the subcontractor has not received from the contractor the balance due under
3 the subcontract, including any amount due for extra labor and materials furnished to the
4 contractor pursuant to a change order, less any amount retained pursuant to subsection (c) of this
5 section or by the awarding authority as the estimated cost of completing any incomplete and
6 unsatisfactory items of the subcontractor's work, the subcontractor may demand direct payment of
7 that balance from the awarding authority. The demand shall be by a sworn statement sent by
8 certified mail to the awarding authority, and a copy shall be sent by certified mail to the
9 contractor at the same time. The demand shall contain an itemized accounting of the balance due
10 under the subcontract and a statement of the status of completion of the subcontract work. Within
11 ten (10) days after receipt of the demand for direct payment, the contractor shall submit a reply to
12 the demand by sworn statement to the awarding authority by certified mail and a copy shall be
13 sent by certified mail to the subcontractor. The reply shall contain an itemized accounting of
14 payments made to the subcontractor, amounts owed to the subcontractor, including any amount
15 due for extra labor and materials furnished to the contractor, and the amount due for each claim
16 made by the contractor against the subcontractor.

17 (d) Within thirty (30) days after receipt of the demand from a subcontractor to the
18 awarding authority, but in no event prior to seventy (70) days after substantial completion of the
19 subcontract work, the awarding authority shall make direct payment to the subcontractor of the
20 balance due under the subcontract including any amount due for extra labor and materials
21 furnished to the contractor pursuant to a change order, less any amount:

22 (1) Retained by the awarding authority as the estimated cost of completing any
23 outstanding work or unsatisfactory items of work;

24 (2) Specified in any court proceedings barring such payment; or

25 (3) Disputed by the contractor in the sworn reply; provided, however, that the awarding
26 authority shall not deduct from a direct payment any amount as provided in this section if the
27 contractor's sworn reply is for work not related to the work described by the subcontractor's
28 demand in accordance with this section or for which the contractor's sworn reply does not contain
29 an itemized accounting. The awarding authority shall make further direct payments to the
30 subcontractor after resolution of the grounds for withholding payment.

31 (e) The awarding authority shall withhold an amount equal to any disputed amount unless
32 both the contractor and subcontractor agree to release the disputed amount to a mutually agreed
33 escrow agent. The disputed amount shall be all direct payments and all of the deductions from the
34 demands for direct payments made. If the monies are released to an escrow agent, the agent shall

1 keep an accounting of said monies in an interest bearing account and shall not release the monies
2 to either the contractor or subcontractor until directed by a court of competent jurisdiction or until
3 a signed settlement agreement is provided to the agent including a release from liability from all
4 parties. The agent shall send a copy of the court order or the settlement agreement to the awarding
5 authority.

6 (f) The disputed amount deposited in an interest bearing account of an escrow agent shall
7 be deducted from amounts payable to the contractor at the time of receipt of a demand for direct
8 payment from a subcontractor and from amounts which shall later become payable to the
9 contractor. Demands for direct payments shall be made in the order of receipt of such demands
10 from subcontractors. All direct payments shall discharge the obligation of the awarding authority
11 to the contractor to the extent of such payment.

12 (g) The awarding authority shall deduct from payments to a contractor amounts which,
13 together with the disputed amount, are sufficient to satisfy all unpaid balances of demands for
14 direct payment received from subcontractors. All such amounts shall be earmarked for such direct
15 payments, and the subcontractors shall have a right in such deductions prior to any claims against
16 such amounts by creditors of the contractor.

17 (h) A subcontractor may demand direct payment for a periodic payment and a contractor
18 may file a sworn reply in accordance with the provisions of subsection (c) of this section if the
19 subcontractor does not receive periodic payments as provided in subsection (a) of this section, or
20 the contractor does not submit a periodic estimate for the value of the labor or materials
21 performed or furnished by the subcontractor and the subcontractor does not receive payment for
22 same when due, less any deductions provided for pursuant to this section.

23 Thereafter the awarding authority shall proceed as provided in subsection (d) of this
24 section. A demand, made after the first day of the month following performance by the
25 subcontractor for which the subcontractor seeks payment shall be valid even if mailed prior to the
26 time payment was due on a periodic estimate from the contractor.

27 (i) Any assignment by a subcontractor of the rights under this section to a surety
28 company furnishing a bond under the provisions of § 37-13-14 shall be invalid. The assignment
29 or subrogation rights of the surety to amounts included in a demand for direct payment which are
30 in the possession of the awarding authority or which are on deposit pursuant to this section shall
31 be subordinate to the rights of all subcontractors who are entitled to be paid under this section and
32 who have not been paid in full.

33 (j) A contractor or a subcontractor shall enforce a claim to any portion of the amount of a
34 demand for direct payment deposited in accordance with this section by a petition in equity in the

1 superior court against the other, and the awarding authority shall be a necessary party. A
2 subcontractor shall enforce a claim for direct payment or a right to require a deposit as provided
3 by this section by a petition in equity in the superior court against the awarding authority, and the
4 contractor shall not be a necessary party. Upon motion of any party, the court shall provide for
5 priority assignment for trial any petition filed as provided for in this section. The court shall enter
6 an interlocutory decree upon which execution shall issue for any part of a claim found due and,
7 upon motion of any party, shall advance by priority assignment for trial the petition to collect the
8 remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to
9 appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of
10 any subcontractor with the petition of one or more subcontractors on the same general contract
11 unless the court finds that a substantial portion of the evidence of the same events during the
12 course of construction (other than the fact that the claims sought to be consolidated arise under
13 the same general contract) is applicable to the petitions sought to be consolidated and that such
14 consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding
15 shall not include interest on the disputed amount deposited in excess of the interest earned for the
16 period of any such deposit.

17 SECTION 3. Section 37-12-2 of the General Laws in Chapter 37-12 entitled
18 "Contractors' Bonds" is hereby amended to read as follows:

19 **37-12-2. Rights of persons furnishing labor and materials.**

20 (a) Every person who shall have performed labor and every person who shall have
21 furnished or supplied labor, material, or equipment in the prosecution of the work provided for in
22 the contract, in respect of which a payment bond is furnished under § 37-12-1, and who has not
23 been paid in full therefor before the expiration of a period of ninety (90) days after the day on
24 which the last of the labor was performed or furnished by him or her, or material or equipment
25 furnished or supplied by him or her for which a claim is made, shall have the right to sue on the
26 payment bond for the amount, or the balance thereof, unpaid at the time of institution of the suit
27 and to prosecute the action to final execution and judgment for the sum or sums justly due him or
28 her; provided, however, that any person having direct contractual relationship with a
29 subcontractor but no contractual relationship express or implied with the contractor furnishing the
30 payment bond shall have a right of action upon the payment bond upon giving written notice to
31 the contractor within ninety (90) days from the date on which the person furnished or performed
32 the last of the labor, or furnished or supplied the last of the material or equipment for which the
33 claim is made, stating with substantial accuracy the amount claimed and the name of the party to
34 whom the labor was furnished or performed or the material or equipment was furnished or

1 supplied. The notice shall be served by mailing the same by certified mail, postage prepaid, in an
2 envelope addressed to the contractor at any place he or she maintains an office, conducts his or
3 her business, or his or her residence.

4 [\(b\) A judgment, decree or other award in favor of any claimant under this section shall](#)
5 [include reasonable attorneys' fees and costs.](#)

6 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- LABOR AND PAYMENT OF DEBTS
BY CONTRACTORS

1 This act would provide that subcontractors for public works contracts may seek payment
2 directly from the awarding authority for amounts due for work and materials supplied. It would
3 also provide for priority assignment for trial of disputes between subcontractors and contractor.
4 The act would provide that a judgment in favor of a subcontractor on the payment bond for the
5 contractor would include an award of reasonable attorneys' fees and costs.

6 This act would take effect upon passage.

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