

Amended: 5/7/89

6-1026E

Offered: 5/1/89
Referred: Rules

Original sponsors: Boyer, Donley,
Furnace, et al.

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

CS FOR HOUSE BILL NO. 284 (L&C) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the terms and conditions under
7 which prime contractors and subcontractors are paid
8 for materials and services provided to a public
9 construction project; and providing for an effective
10 date."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 * Section 1. AS 36.90 is amended by adding new sections to read:

13

ARTICLE 2. PUBLIC CONSTRUCTION CONTRACT PAYMENTS.

14

15 Sec. 36.90.200. PAYMENT DEADLINE AND INTEREST. (a) The state
16 or a political subdivision of the state shall pay the prime contractor
17 for satisfactory performance on a public construction or public works
18 contract within 30 calendar days of the date the state or political
19 subdivision receives a payment request from the prime contractor that
20 complies with the contract. If a political subdivision is going to
21 use grant money for the contract, the subdivision shall pay the prime
22 contractor for satisfactory performance within 21 calendar days of the
23 date the subdivision receives a payment request that complies with the
24 contract or within 21 calendar days of the date the subdivision ac-
25 tually receives the grant money, whichever is later. If the state is
26 going to use federal money for the contract, the state shall pay the
27 prime contractor for satisfactory performance within 21 calendar days
28 of the date the state receives a payment request that complies with
29 the contract or within 21 calendar days of the date the state actually
receives the federal money, whichever is later.

1 (b) If the prime contractor is not paid as required by (a) of
2 this section, the state or political subdivision shall pay interest on
3 the unpaid amount of the required payment from the 21st calendar day
4 after the date required for payment under (a) of this section at an
5 interest rate that is equal to the amount set out in AS 45.45.010(a).

6 (c) If part or all of a payment is going to be withheld for
7 unsatisfactory performance or if the payment request made under (a) of
8 this section does not comply with the requirements of the contract,
9 within eight calendar days after receipt of the payment request the
10 state or political subdivision shall notify the prime contractor in
11 writing stating specifically why part or all of the payment is being
12 withheld and what remedial actions may be taken by the prime contrac-
13 tor to receive the full payment.

14 (d) If the notification by the state or political subdivision
15 required by (c) of this section does not comply with (c) of this
16 section, the state or political subdivision shall pay interest on the
17 withheld amount from the eighth calendar day after receipt of the
18 initial payment request until the state or political subdivision
19 provides notice that does comply with (c) of this section.

20 (e) If part or all of a payment is withheld under (c) of this
21 section, the state or political subdivision shall pay the withheld
22 amount within 21 calendar days after the prime contractor satisfac-
23 torily completes the remedial actions identified in the notice. If a
24 political subdivision is going to use grant money for the contract,
25 the subdivision shall pay the prime contractor within 21 calendar days
26 after the prime contractor satisfactorily completes the remedial
27 actions identified in the notice or within 21 calendar days after the
28 political subdivision actually receives the grant money, whichever is
29 later. If the state is going to use federal money for the contract,

1 the state shall pay the prime contractor within 21 calendar days after
2 the prime contractor satisfactorily completes the remedial actions
3 identified in the notice, or within 21 calendar days after the subdivi-
4 sion actually receives the money, whichever is later. If the with-
5 held amount is not paid within the 21 calendar days, the state or
6 political subdivision shall pay interest on the withheld amount from
7 the 21st calendar day at an interest rate that is equal to the amount
8 set out in AS 45.45.010(a).

9 Sec. 36.90.210. REQUIRED CONTRACTUAL TERMS. (a) The prime
10 contractor and a subcontractor on a public construction or public
11 works contract shall include in a subcontract between the prime con-
12 tractor and subcontractor for the public construction or public works
13 a clause that requires the prime contractor

14 (1) to pay the subcontractor for satisfactory performance
15 under the subcontract within eight calendar days after receiving
16 payment from which the subcontractor is to be paid;

17 (2) to pay the subcontractor all retainage due under the
18 subcontract within eight calendar days after final payment is received
19 from the state or political subdivision or after the notice period
20 under AS 36.25.020(b) expires, whichever is later;

21 (3) to pay the subcontractor interest on an amount that is
22 not paid in accordance with (1) or (2) of this subsection for the
23 period beginning on the day after the required payment date and ending
24 on the day on which payment of the amount due is made; the interest
25 shall be computed at an interest rate that is equal to the amount set
26 out in AS 45.45.010(a);

27 (4) to pass through to the subcontractor the retainage
28 interest under AS 36.90.250(a) that is attributable to the retainage
29 withheld from the subcontractor.

1 (b) A subcontractor on a public construction or public works
2 contract shall include in each subcontract under which a person agrees
3 to provide the subcontractor with services, other than as an employee,
4 or supplies to be used in the public construction or public works
5 project a clause that requires the subcontractor

6 (1) to pay the person for satisfactory performance under
7 the subcontract within eight calendar days after receiving payment
8 from which the person is to be paid;

9 (2) to pay the person all retainage due under the subcon-
10 tract with the person within eight calendar days after the subcontrac-
11 tor receives its share of the state-held retainage from the prime
12 contractor or another subcontractor;

13 (3) to pay the person interest on an amount that is not
14 paid in accordance with (1) or (2) of this subsection for the period
15 beginning on the day after the required payment date and ending on the
16 day on which payment of the amount due is made; the interest shall be
17 computed at an interest rate that is equal to the amount set out in
18 AS 45.45.010(a);

19 (4) to pass through to the person the retainage interest
20 under AS 36.90.250(a) that is attributable to retainage withheld from
21 the person.

22 Sec. 36.90.220. OPTIONAL CONTRACTUAL TERMS. Notwithstanding
23 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor
24 may negotiate and include in a public construction or public works
25 subcontract a provision that

26 (1) permits the prime contractor or a subcontractor to
27 retain without cause and under mutually agreeable terms and conditions
28 a specified percentage of a progress payment otherwise due to the
29 subcontractor for satisfactory performance under the subcontract

1 without incurring an obligation to pay interest on the retainage,
2 except for interest under AS 36.90.250(a) that is attributable to
3 retainage, including warranty retainage, withheld from the subcontractor;
4 when making the provision, the parties may consider the ability
5 of the subcontractor to furnish performance and payment bonds;

6 (2) permits the prime contractor or a subcontractor to
7 determine that part or all of a subcontractor's request for payment
8 may be withheld for unsatisfactory performance under the subcontract;
9 and

10 (3) permits the prime contractor or a subcontractor to
11 withhold payment for unsatisfactory performance without incurring an
12 obligation to pay interest for late payment, if a notice complying
13 with AS 36.90.240 has been previously furnished to the subcontractor
14 and a copy of the notice is furnished to the contracting officer of
15 the state or political subdivision.

16 Sec. 36.90.230. WITHHOLDING PAYMENT FOR UNSATISFACTORY PERFOR-
17 MANCE. (a) If the prime contractor on a public construction or
18 public works contract, after making a request for payment to the state
19 or political subdivision but before paying a subcontractor for the
20 subcontractor's performance covered by the payment request, discovers
21 that part or all of the payment otherwise due to the subcontractor is
22 subject to withholding from the subcontractor under the subcontract
23 for unsatisfactory performance, the prime contractor may withhold the
24 amount as allowed under the subcontract. If the prime contractor
25 withholds an amount under this subsection, the prime contractor shall

26 (1) give the subcontractor a notice complying with AS 36.-
27 90.240 as soon as practicable after determining the cause for the with-
28 holding but before the due date for the subcontractor payment;

29 (2) give the contracting officer of the state or political

1 subdivision a copy of the notice furnished to the subcontractor under
2 (1) of this subsection;

3 (3) pay the subcontractor within eight calendar days after
4 correction of the identified subcontractor performance deficiency.

5 (b) If the prime contractor does not comply with the notice and
6 payment requirements of (a) of this section, the contractor shall pay
7 the subcontractor interest on the withheld amount from the eighth
8 calendar day at an interest rate that is equal to the amount set out
9 in AS 45.45.010(a).

10 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-
11 90.220(3) or 36.90.230(a)(1) must be in writing and must state the
12 amount being withheld, the specific causes for the withholding under
13 the terms of the subcontract, and the remedial actions to be taken by
14 the subcontractor to receive payment of the amount withheld.

15 Sec. 36.90.250. RETAINAGE. (a) The state or a political subdi-
16 vision of the state shall pay to the prime contractor interest on
17 retainage, including warranty retainage, on a contract for public
18 construction or public works at an interest rate that is equal to the
19 amount set out in AS 45.45.010(a). Interest on retainage accrues from
20 the date of approval of a pay request until the date of payment to the
21 contractor.

22 (b) A political subdivision that receives a state grant for a
23 public construction or public works project may use money from the
24 state grant to pay the interest under (a) of this section.

25 (c) A political subdivision that has a population of 500 or less
26 is exempt from the payment of interest under (a) of this section.

27 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. In AS 36.90.210 -
28 36.90.290,

29 (1) a payment is considered to be made when mailed or

1 personally delivered to the party being paid;

2 (2) a payment is considered to be received when it is
3 endorsed for payment, if it is a check;

4 (3) an invoice is considered to be received when it is
5 date-stamped or otherwise marked as delivered; if the invoice is not
6 date-stamped or otherwise marked as delivered, the date of the invoice
7 is considered to be the date when the invoice is received.

8 (4) AS 36.90.200 does not apply to public construction or
9 public works contracts in communities that have a population under
10 800.

11 Sec. 36.90.270. WAIVER OF PROVISIONS PROHIBITED. A contract
12 provision that waives a provision required by AS 36.90.200 - 36.90.290
13 is void.

14 Sec. 36.90.290. DEFINITIONS. In AS 36.90.200 - 36.90.290,

15 (1) "prime contractor" means a person required to be regis-
16 tered under AS 08.18 who has a contract with the state or a political
17 subdivision of the state to provide materials or services, other than
18 as an employee, for a public construction or public works project;

19 (2) "subcontractor" means a person at any level, other than
20 a prime contractor, who provides materials or services, other than as
21 an employee, to be used in a public construction or public works
22 project.

23 * Sec. 2. AS 37.05.285(d) is amended to read:

24 (d) This section does not apply

25 (1) if the cost of the goods or services purchased exceeds
26 \$500,000;

27 (2) to payment for specific goods or services in dispute
28 after a seller of goods or services receives notice from the state
29 official responsible for authorizing payment for goods and services

1 that the amount of the invoice or quality of specific goods or ser-
2 vices is in dispute and stating the reasons for the dispute; the state
3 agency shall pay for the specific goods or services in dispute within
4 30 days after resolution of the dispute; or

5 (3) to a contract covered by AS 36.90.200 - 36.90.290
6 [AS 36.90.010].

7 * Sec. 3. AS 36.90.010 is repealed.

8 * Sec. 4. This Act applies to public construction and public works
9 contracts that are entered into on or after the effective date of this Act.

10 * Sec. 5. This Act takes effect July 1, 1989.