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1 IN THE SENATE

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2

SENATE BILL NO. 289

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 Sec. 36.90.200. PAYMENT DEADLINE AND INTEREST. (a) The state
15 or a political subdivision of the state shall pay the prime contractor
16 for satisfactory performance on a public construction or public works
17 contract within 14 calendar days of the date the state or political
18 subdivision receives a payment request from the prime contractor that
19 complies with the contract.

20 (b) If the prime contractor is not paid as required by (a) of
21 this section, the state or political subdivision shall pay interest on
22 the unpaid amount of the required payment from the 15th day after
23 receipt of the payment request at an interest rate that is equal to
24 the amount set out in AS 45.45.010(a).

25 (c) If part or all of a payment is going to be withheld for
26 unsatisfactory performance or if the payment request made under (a) of
27 this section does not comply with the requirements of the contract,
28 within eight days after receipt of the payment request the state or
29 political subdivision shall notify the prime contractor in writing

1 stating specifically why part or all of the payment is being withheld
2 and what remedial actions may be taken by the prime contractor to
3 receive the full payment.

4 (d) If the notification by the state or political subdivision
5 required by (c) of this section does not comply with (c) of this
6 section, the state or political subdivision shall pay interest on the
7 withheld amount from the eighth day after receipt of the initial
8 payment request until the state or political subdivision provides
9 notice that does comply with (c) of this section.

10 (e) If part or all of a payment is withheld under (c) of this
11 section, the state or political subdivision shall pay the withheld
12 amount within 14 calendar days after the prime contractor satisfac-
13 torily completes the remedial actions identified in the notice. If
14 the withheld amount is not paid within the 14 days, the state or
15 political subdivision shall pay interest on the withheld amount from
16 the 15th day at an interest rate that is equal to the amount set out
17 in AS 45.45.010(a).

18 Sec. 36.90.210. REQUIRED CONTRACTUAL TERMS. (a) The prime
19 contractor and a subcontractor on a public construction or public
20 works contract shall include in a subcontract between the prime con-
21 tractor and subcontractor for the public construction or public works
22 a clause that requires the prime contractor

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

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

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

7 (4) to pass through to the subcontractor the retainage
8 interest under AS 36.90.250(a) that is attributable to the retainage
9 withheld from the subcontractor.

10 (b) A subcontractor on a public construction or public works
11 contract shall include in each subcontract under which a person agrees
12 to provide the subcontractor with services, other than as an employee,
13 or supplies to be used in the public construction or public works
14 project a clause that requires the subcontractor

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

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

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

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

1 the person.

2 Sec. 36.90.220. OPTIONAL CONTRACTUAL TERMS. Notwithstanding
3 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor
4 may negotiate and include in a public construction or public works
5 subcontract a provision that

6 (1) permits the prime contractor or a subcontractor to
7 retain without cause and under mutually agreeable terms and conditions
8 a specified percentage of a progress payment otherwise due to the
9 subcontractor for satisfactory performance under the subcontract
10 without incurring an obligation to pay interest on the retainage,
11 except for interest under AS 36.90.250(a) that is attributable to
12 retainage, including warranty retainage, withheld from the subcontrac-
13 tor; when making the provision, the parties may consider the ability
14 of the subcontractor to furnish performance and payment bonds;

15 (2) permits the prime contractor or a subcontractor to
16 determine that part or all of a subcontractor's request for payment
17 may be withheld for unsatisfactory performance under the subcontract;
18 and

19 (3) permits the prime contractor or a subcontractor to
20 withhold payment for unsatisfactory performance without incurring an
21 obligation to pay interest for late payment, if a notice complying
22 with AS 36.90.240 has been previously furnished to the subcontractor
23 and a copy of the notice is furnished to the contracting officer of
24 the state or political subdivision.

25 Sec. 36.90.230. WITHHOLDING PAYMENT FOR UNSATISFACTORY PERFOR-
26 MANCE. (a) If the prime contractor on a public construction or
27 public works contract, after making a request for payment to the state
28 or political subdivision but before paying a subcontractor for the
29 subcontractor's performance covered by the payment request, discovers

1 that part or all of the payment otherwise due to the subcontractor is
2 subject to withholding from the subcontractor under the subcontract
3 for unsatisfactory performance, the prime contractor may withhold the
4 amount as allowed under the subcontract. If the prime contractor
5 withholds an amount under this subsection, the prime contractor shall

6 (1) give the subcontractor a notice complying with AS 36.-
7 90.240 as soon as practicable after determining the cause for the with-
8 holding but before the due date for the subcontractor payment;

9 (2) give the contracting officer of the state or political
10 subdivision a copy of the notice furnished to the subcontractor under
11 (1) of this subsection;

12 (3) pay the subcontractor within eight days after correc-
13 tion of the identified subcontractor performance deficiency.

14 (b) If the prime contractor does not comply with the notice and
15 payment requirements of (a) of this section, the contractor shall pay
16 the subcontractor interest on the withheld amount from the eighth day
17 at an interest rate that is equal to the amount set out in AS 45.45.-
18 010(a).

19 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-
20 90.220(3) or 36.90.230(a)(1) must be in writing and must state the
21 amount being withheld, the specific causes for the withholding under
22 the terms of the subcontract, and the remedial actions to be taken by
23 the subcontractor to receive payment of the amount withheld.

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

1 contractor.

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

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

7 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. In AS 36.90.210 -
8 36.90.290,

9 (1) a payment is considered to be made when mailed or
10 personally delivered to the party being paid;

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

13 (3) an invoice is considered to be received when it is
14 date-stamped or otherwise marked as delivered; if the invoice is not
15 date-stamped or otherwise marked as delivered, the date of the invoice
16 is considered to be the date when the invoice is received.

17 Sec. 36.90.270. WAIVER OF PROVISIONS PROHIBITED. A contract
18 provision that waives a provision required by AS 36.90.200 - 36.90.290
19 is void.

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

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

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

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

1 (d) This section does not apply
2 (1) if the cost of the goods or services purchased exceeds
3 \$500,000;
4 (2) to payment for specific goods or services in dispute
5 after a seller of goods or services receives notice from the state
6 official responsible for authorizing payment for goods and services
7 that the amount of the invoice or quality of specific goods or ser-
8 vices is in dispute and stating the reasons for the dispute; the state
9 agency shall pay for the specific goods or services in dispute within
10 30 days after resolution of the dispute; or
11 (3) to a contract covered by AS 36.90.200 - 36.90.290
12 [AS 36.90.010].
13 * Sec. 3. AS 36.90.010 is repealed.
14 * Sec. 4. This Act applies to public construction and public works
15 contracts that are entered into on or after the effective date of this Act.
16 * Sec. 5. This Act takes effect July 1, 1989.