



# LAWS OF ALASKA

1990

**Source**

SCS CSHB 284 (C&RA)

**Chapter No.**

137

**AN ACT**

Relating to the terms and conditions under which prime contractors and subcontractors are paid for materials and services provided to a public construction project; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 12

Approved by the Governor: June 12, 1990  
Actual Effective Date: July 1, 1990

AN ACT

Relating to the terms and conditions under which prime contractors and subcontractors are paid for materials and services provided to a public construction project; and providing for an effective date.

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

ARTICLE 2. PUBLIC CONSTRUCTION CONTRACT PAYMENTS.

Sec. 36.90.200. PAYMENT DEADLINE AND INTEREST. (a) The state or a political subdivision of the state shall pay the prime contractor for satisfactory performance on a public construction or public works contract within 30 calendar days of the date the state or political subdivision receives a payment request from the prime contractor that complies with the contract. If a political subdivision is going to use grant money for the contract, the subdivision shall pay the prime contractor for satisfactory performance within 21 calendar days of the date the subdivision receives a payment request that complies with the contract or within 21 calendar days of the date the subdivision actually receives the grant money, whichever is later. If the state is going to use federal money for the contract, the state shall pay the prime contractor for satisfactory performance within 21 calendar days of the date the state receives a payment request that complies with the contract or within 21 calendar days of the date the state actually receives the federal money, whichever is later.

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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 working 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 working 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 (f) The obligation to pay interest under this section does not  
10 apply to retainage.

11 (g) This section does not apply to public construction or public  
12 works contracts made by a political subdivision that has a population  
13 under 800.

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

19 (1) to pay the subcontractor for satisfactory performance  
20 under the subcontract within eight working days after receiving pay-  
21 ment from which the subcontractor is to be paid;

22 (2) to pay the subcontractor all retainage due under the  
23 subcontract within eight working days after final payment is received  
24 from the state or political subdivision or after the notice period  
25 under AS 36.25.020(b) expires, whichever is later;

26 (3) to pay the subcontractor interest on an amount that is  
27 not paid in accordance with (1) of this subsection for the period  
28 beginning on the day after the required payment date and ending on the  
29 day on which payment of the amount due is made; the interest shall be

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1 computed at an interest rate that is equal to the amount set out in  
2 AS 45.45.010(a);

3 (4) to pay interest on retainage withheld from the subcon-  
4 tractor at an interest rate that is equal to the amount set out in  
5 AS 45.45.010(a).

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

11 (1) to pay the person for satisfactory performance under  
12 the subcontract within eight working days after receiving payment from  
13 which the person is to be paid;

14 (2) to pay the person all retainage due under the subcon-  
15 tract with the person within eight working days after the subcon-  
16 tractor receives its share of the state-held retainage from the prime  
17 contractor or another subcontractor;

18 (3) to pay the person interest on an amount that is not  
19 paid in accordance with (1) of this subsection for the period begin-  
20 ning on the day after the required payment date and ending on the day  
21 on which payment of the amount due is made; the interest shall be  
22 computed at an interest rate that is equal to the amount set out in  
23 AS 45.45.010(a);

24 (4) to pay interest on retainage withheld from the person  
25 at an interest rate that is equal to the amount set out in AS 45.45.-  
26 010(a).

27 Sec. 36.90.220. OPTIONAL CONTRACTUAL TERMS. Notwithstanding  
28 AS 36.90.210 and 36.90.230, the prime contractor or a subcontractor  
29 may negotiate and include in a public construction or public works

1 subcontract a provision that

2 (1) permits the prime contractor or a subcontractor to  
3 determine that part or all of a subcontractor's request for payment  
4 may be withheld for unsatisfactory performance under the subcontract;  
5 and

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

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

22 (1) give the subcontractor a notice complying with AS 36.-  
23 90.240 as soon as practicable after determining the cause for the with-  
24 holding but before the due date for the subcontractor payment;

25 (2) give the contracting officer of the state or political  
26 subdivision a copy of the notice furnished to the subcontractor under  
27 (1) of this subsection;

28 (3) pay the subcontractor within eight working days after  
29 correction of the identified subcontractor performance deficiency.

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

6 Sec. 36.90.240. FORM OF CERTAIN NOTICES. A notice under AS 36.-  
7 90.220(2) or 36.90.230(a)(1) must be in writing and must state the  
8 amount being withheld, the specific causes for the withholding under  
9 the terms of the subcontract, and the remedial actions to be taken by  
10 the subcontractor to receive payment of the amount withheld.

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

18 (b) A political subdivision that has a population of 500 or less  
19 is exempt from the payment of interest under (a) of this section.

20 Sec. 36.90.260. MISCELLANEOUS PROVISIONS. (a) In AS 36.90.-  
21 210 - 36.90.290,

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

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

26 (3) an invoice is considered to be received when it is  
27 date-stamped or otherwise marked as delivered; if the invoice is not  
28 date-stamped or otherwise marked as delivered, the date of the invoice  
29 is considered to be the date when the invoice is received.

1 (b) A political subdivision that receives a state grant for a  
2 public construction or public works project may use money from the  
3 state grant to pay the interest under AS 36.90.200 - 36.90.290.

4 Sec. 36.90.265. APPLICABILITY TO POLITICAL SUBDIVISIONS. AS 36.-  
5 90.200 - 36.90.290 apply to a public construction or public works con-  
6 tract of a political subdivision if the political subdivision has  
7 entered into a written contract with the state for the state to  
8 provide funds for the public construction or public work.

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

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

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

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

21 (3) "working day" does not include a Saturday, Sunday, or a  
22 state holiday.

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

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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, 1990.  
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