

2013 -- S 0690

LC01306

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS

Introduced By: Senators Gallo, Lynch, P Fogarty, Lombardo, and Lombardi

Date Introduced: March 06, 2013

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

SECTION 1. Chapter 37-13 of the General Laws entitled "Labor and Payment of Debts by Contractors" is hereby amended by adding thereto the following section:

37-13-4.1. Method of payment to subcontractors under certain public works contracts; deposit of amounts in dispute; Proceedings to enforce claims to amounts on deposit.-- (a) Every contract awarded under title 37 shall contain the following language:

(1) Forthwith after the general contractor receives payment on account of periodic estimate, the general contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(2) Not later than the sixty-fifth (65th) day after each subcontractor substantially completes his/her work in accordance with the plans and specifications, the entire balance due under the subcontract, less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of works, shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(3) Each payment made by the awarding authority to the general contractor pursuant to

1 subdivisions (a)(1) and (a)(2) of this section for the labor performed and the materials furnished
2 by a subcontractor shall be made to the general contractor for the account of that subcontractor;
3 and the awarding authority shall take reasonable steps to compel the general contractor to make
4 each such payment to each subcontractor. If the awarding authority has received a demand for the
5 direct payment from a subcontractor for any amount which has already been included in a
6 payment to the general contractor or which is to be included in a payment to the general
7 contractor for payment to the subcontractor as provided in subdivisions (a)(1) and (a)(2), the
8 awarding authority shall act upon the demand as provided in this section.

9 (4) If, within seventy (70) days after the subcontractor has substantially completed the
10 subcontract work, the subcontractor has not received from the general contractor the balance due
11 under the subcontract including any amount due for extra labor and materials furnished to the
12 general contractor, less any amount retained by the awarding authority as the estimated cost of
13 completing the incomplete and unsatisfactory items of work, the subcontractor may demand
14 direct payment of that balance from the awarding authority. The demand shall be by a sworn
15 statement delivered to or sent by certified mail to the general contractor at the same time. The
16 demand shall contain a detailed breakdown of the balance due under the subcontract and also a
17 statement of the status of completion of the subcontract work shall be valid even if delivered or
18 mailed prior to the seventieth (70th) day after the subcontractor has substantially completed the
19 subcontractor work. Within ten (10) days after the subcontractor has delivered or so mailed the
20 demand to the awarding authority and delivered or so mailed a copy to the general contractor, the
21 general contractor may reply to the demand. The reply shall be by a sworn statement delivered to
22 or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by
23 certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown
24 of the balance due under the subcontract including any amount due for extra labor and materials
25 furnished to the general contractor and of the amount due for each claim made by the general
26 contractor against the subcontractor.

27 (5) Within fifteen (15) days after the receipt of the demand by the awarding authority, but
28 in no event prior to the seventieth (70th) day after substantial completion of the subcontract work,
29 the awarding authority shall make direct payment to the subcontractor of the balance due under
30 the subcontract including any amount due for extra labor and materials furnished to the general
31 contractor, less any amount: (i) Retained by the awarding authority as the estimated cost of
32 completing the incomplete or unsatisfactory items of work; (ii) Specified in any court
33 proceedings barring such payment; (iii) Disputed by the general contractor in the sworn reply;
34 provided, that the awarding authority shall not deduct from a direct payment any amount as

1 provided in part; or (iv) if the reply is not sworn to, or for which the sworn reply does not contain
2 the detailed breakdown required by subdivision (a)(4). The awarding authority shall make further
3 direct payments to the subcontractor forthwith after the removal of the basis for deductions from
4 direct payments made as provided in paragraphs (i) and (ii) of this subsection.

5 (6) The awarding authority shall forthwith deposit the amount deducted from a direct
6 payment as provided in paragraph (iii) subdivision (a)(5) in an interest-bearing joint account in
7 the names of the general contractor and the subcontractor in a bank in Rhode Island selected by
8 the awarding authority or agreed upon by the general contractor and the subcontractor and shall
9 notify the general contractor and the subcontractor of the date of the deposit and the bank
10 receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as
11 provided in an agreement between the general contractor and the subcontractor or as determined
12 by decree of a court of competent jurisdiction.

13 (7) All direct payments and all deductions from demands for direct payments deposited in
14 an interest-bearing account or accounts in a bank pursuant to subdivision (a)(6) shall be made out
15 of amounts payable to the general contractor at the time of receipt of a demand for direct payment
16 from a subcontractor and out of amounts which later become payable to the general contractor
17 and in the order of receipt of such demands from subcontractors. All direct payments shall
18 discharge the obligation of the awarding authority to the general contractor to the extent of such
19 payment.

20 (8) The awarding authority shall deduct from payments to a general contractor amounts
21 which, together with the deposits in interest-bearing accounts pursuant to subdivision (a)(6), are
22 sufficient to satisfy all unpaid balances of demands for direct payment received from
23 subcontractors. All such amounts shall be earmarked for such direct payments, and the
24 subcontractors shall have a right in such deductions prior to any claims against such amounts by
25 creditors of the general contractor.

26 (9) If the subcontractor does not receive payment as provided in subdivision (a)(1) or if
27 the general contractor does not submit a periodic estimate for the value of the labor or materials
28 performed or furnished by the subcontractor and the subcontractor does not receive payment for
29 same when due less the deduction provided for in subdivision (a)(1), the subcontractor may
30 demand direct payment by following the procedure in subdivision (a)(4) and the general
31 contractor may file a sworn reply as provided in that same subdivision. A demand made after the
32 first day of the month following that for which the subcontractor performed or furnished the labor
33 and materials for which the subcontractor seeks payment shall be valid even if delivered or
34 mailed prior to the time payment was due on a periodic estimate from the general contractor.

1 Thereafter the awarding authority shall proceed as provided in subdivisions (a)(5) through (8).

2 (b) Any assignment by a subcontractor of the rights under this section to a surety
3 company furnishing a bond under provisions of this title shall be invalid. The assignment and
4 subrogation rights of the surety to amounts included in a demand for direct payment which are in
5 the possession of the awarding authority or which are on deposit shall be subordinate to the rights
6 of all subcontractors who are entitled to be paid under this section and who have not been paid in
7 full.

8 (c) "Subcontractor" means, as used in subdivision (a)(9) for contracts awarded, a person
9 who files a sub-bid and receives a subcontract as a result of that filed sub-bid or who is approved
10 by the awarding authority in writing as a person performing labor or both performing labor and
11 furnishing materials pursuant to a contract with the general contractor to supply materials used or
12 employed in public works project for a price in excess of five thousand dollars (\$5,000).

13 (d) A general contractor or a subcontractor shall enforce a claim to any portion of the
14 amount of a demand for direct payment deposited by a petition in equity in the superior court
15 against the other and the bank shall not be a necessary party. A subcontractor shall enforce a
16 claim for direct payment or a right to require a deposit by a petition in equity in the superior court
17 against the awarding authority and the general contractor shall not be a necessary party. Upon
18 motion of any party the court shall advance for speedy trial any petition filed as provided in this
19 paragraph. The court shall enter an interlocutory decree upon which execution shall issue for any
20 part of a claim found due and, upon motion of any party, shall advance for speedy trial the
21 petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree
22 shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for
23 trial the petition of any subcontractor with the petition of one or more subcontractors or the same
24 general contractor unless the court finds that a substantial portion of the evidence of the same
25 events during the course of construction (other than the fact the claims sought to be consolidated
26 arise under the same general contract) is applicable to the petitions sought to be consolidated and
27 that such consolidation will prevent unnecessary duplication of evidence. A decree in any such
28 proceeding shall not include interest on the disputed amount deposited in excess of the interest
29 direct earned for the period of any such deposit. No person except a subcontractor filing a
30 demand for direct payment for which no funds due the general contractor are available for direct
31 payment shall have a right to file a petition in a court of equity against the awarding authority
32 claiming a demand for direct payment premature and such subcontractor must file the petition
33 before the awarding authority has made a direct payment to the subcontractor and has made a
34 deposit of the disputed portion.

1 (e) In any petition to collect any claim for which a subcontractor has filed a demand for
2 direct payment the court shall, upon motion of the general contractor, reduce by the amount of
3 any deposit of a disputed amount by the awarding authority and any amount held under a trustee
4 writ of pursuant to a restraining order or injunction.

5 SECTION 2. 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

- 1 This act would provide for procedures to assist and facilitate payment to subcontractors
- 2 involved in public works contracts.
- 3 This act would take effect upon passage.

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