

CHAPTER 201-A

CONSTRUCTION CONTRACTS

§1111. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1993, c. 461, §1 (NEW).]

1. Billing period. "Billing period" means the time period for payment agreed to by 2 parties or, in the absence of an agreement, the calendar month within which work is performed. [PL 1993, c. 461, §1 (NEW).]

2. Construction contract. "Construction contract" means any agreement, whether written or oral, to perform or to supply materials for work on any real property. [PL 1993, c. 461, §1 (NEW).]

3. Contractor. "Contractor" means a person or entity that contracts with an owner to perform work on real property. [PL 1993, c. 461, §1 (NEW).]

4. Delivery. "Delivery" means receipt by addressee, including, but not limited to, by first class, registered or certified mail, or by hand delivery or transmitted by facsimile machine. Properly addressed mail is deemed delivered 3 days from the day it was sent. [PL 1993, c. 461, §1 (NEW).]

5. Material supplier. "Material supplier" means any person or entity that has furnished or contracted to furnish materials or supplies in connection with a construction contract. [PL 1993, c. 461, §1 (NEW).]

6. Owner. "Owner" means a person or entity having an interest in real property on which work is performed or to which materials for performing work are delivered, if the person or entity has agreed to or requested that work. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority. "Owner" also includes the State and instrumentalities and subdivisions of the State including municipalities, school districts and school administrative districts having an interest in that real property. [PL 1993, c. 461, §1 (NEW).]

7. Real property. "Real property" means real estate, including lands, leaseholds, tenements and hereditaments and improvements placed on real estate. [PL 1993, c. 461, §1 (NEW).]

8. Subcontractor. "Subcontractor" means any person or entity that has contracted to perform work for or provide services to a contractor or another subcontractor in connection with a construction contract. [PL 1993, c. 461, §1 (NEW).]

9. Work. "Work" means to build, alter, repair or demolish any improvement on, connected with or beneath the surface of any real property, or to excavate, clear, grade, fill or landscape any real property, to construct driveways, private roadways, highways and bridges, drilled wells, septic systems, sewage systems or utilities, to furnish materials for any of those purposes or to perform labor upon real property. "Work" also includes any design or other professional or skilled services rendered by architects, engineers, land surveyors, landscape architects and construction engineers. [PL 1993, c. 461, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 461, §1 (NEW).

§1112. Application

This chapter does not apply to contracts entered into by the Department of Transportation. [PL 1993, c. 461, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 461, §1 (NEW).

§1113. Owner's payment obligations

Payment to a contractor for work is subject to the following terms. [PL 1993, c. 461, §1 (NEW).]

1. Contractual agreements. The owner shall pay the contractor strictly in accordance with the terms of the construction contract.

[PL 1993, c. 461, §1 (NEW).]

2. Invoices. If the construction contract does not contain a provision governing the terms of payment, the contractor may invoice the owner for progress payments at the end of the billing period. The contractor may submit a final invoice for payment in full upon completion of the agreed upon work.

[PL 1993, c. 461, §1 (NEW).]

3. Invoice payment terms. Except as otherwise agreed, payment of interim and final invoices is due from the owner 20 days after the end of the billing period or 20 days after delivery of the invoice, whichever is later.

[PL 1993, c. 461, §1 (NEW).]

4. Delayed payments. Except as otherwise agreed, if any progress or final payment to a contractor is delayed beyond the due date established in subsection 3, the owner shall pay the contractor interest on any unpaid balance due beginning on the 21st day, at an interest rate equal to that specified in Title 14, section 1602-C.

[PL 2003, c. 460, §1 (AMD).]

SECTION HISTORY

PL 1993, c. 461, §1 (NEW). PL 2003, c. 460, §1 (AMD).

§1114. Contractor's and subcontractor's payment obligations

Payment to a subcontractor for work is subject to the following conditions. [PL 1993, c. 461, §1 (NEW).]

1. Contractual agreements. The contractor or subcontractor shall pay a subcontractor or material supplier strictly in accordance with the terms of the subcontractor's or material supplier's contract.

[PL 1993, c. 461, §1 (NEW).]

2. Disclosure. Notwithstanding any contrary agreement, a contractor or subcontractor shall disclose to a subcontractor or material supplier the due date for receipt of payments from the owner before a contract between those parties is entered. Notwithstanding any other provision of this chapter, if a contractor or subcontractor fails to accurately disclose the due date to a subcontractor or material supplier, the contractor or subcontractor is obligated to pay the subcontractor or material supplier as though the 20-day due dates in section 1113, subsection 3 were met.

[PL 2001, c. 471, Pt. A, §13 (AMD).]

3. Invoices. Notwithstanding any contrary agreement, when a subcontractor or material supplier has performed in accordance with the provisions of a contract, a contractor shall pay to the subcontractor or material supplier, and each subcontractor shall in turn pay to its subcontractors or material suppliers, the full or proportional amount received for each subcontractor's work and materials

based on work completed or service provided under the subcontract, 7 days after receipt of each progress or final payment or 7 days after receipt of the subcontractor's or material supplier's invoice, whichever is later.

[PL 1993, c. 461, §1 (NEW).]

4. Delayed payments. Notwithstanding any contrary agreement, if any progress or final payment to a subcontractor or material supplier is delayed beyond the due date established in subsection 2 or 3, the contractor or subcontractor shall pay its subcontractor or material supplier interest on any unpaid balance due beginning on the next day, at an interest rate equal to that specified in Title 14, section 1602-C.

[PL 2003, c. 460, §2 (AMD).]

SECTION HISTORY

PL 1993, c. 461, §1 (NEW). PL 2001, c. 471, §A13 (AMD). PL 2003, c. 460, §2 (AMD).

§1115. Errors in documentation

1. Invoice errors. If an invoice is filled out incorrectly or incompletely or if there is any defect or impropriety in an invoice submitted, the owner, contractor or subcontractor must contact the person submitting the invoice in writing within 10 working days of receiving the invoice. If the contractor or subcontractor does not notify the person submitting the invoice within 10 days, the documentary errors are deemed waived.

[PL 1993, c. 461, §1 (NEW).]

2. Timely payment requirements. All timely payment requirements of this chapter apply, regardless of the dates invoices are corrected, whenever the person submitting the invoice has completed the work in a timely manner.

[PL 1993, c. 461, §1 (NEW).]

3. New billing period. If an error on the invoice is corrected by the person submitting the invoice, the date on which the corrected invoice is delivered is the end of the billing period.

[PL 1993, c. 461, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 461, §1 (NEW).

§1116. Retainage

1. Payment. If payments under a construction contract are subject to retainage, any amounts retained during the performance of the contract and due to be released to the contractor upon completion must be paid within 30 days after final acceptance of the work.

[PL 1993, c. 461, §1 (NEW).]

2. Retainage for subcontractors. If an owner is not withholding retainage for a subcontractor's work, a contractor may withhold retainage from its subcontractor or material supplier in accordance with their agreement. The retainage must be paid within 30 days of final acceptance of the work.

[PL 1993, c. 461, §1 (NEW).]

3. Payment of retainage to subcontractors. Notwithstanding any contrary agreement, a contractor shall pay to its subcontractors or material suppliers and each subcontractor shall in turn pay to its subcontractors or material suppliers, within 7 days after receipt of the retainage, the full amount due to each subcontractor or material supplier.

[PL 1993, c. 461, §1 (NEW).]

4. Withholding retainage. If a contractor or subcontractor unreasonably withholds acceptance of the work or materials or fails to pay retainage as required by this section, the owner, contractor or subcontractor is subject to the interest, penalty and attorney's fees provisions of this chapter.

[PL 1993, c. 461, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 461, §1 (NEW).

§1117. Prepayment or advance payment

This chapter in no way may be construed to prohibit an owner, contractor or subcontractor from making advance payments, progress payments or from prepaying if agreements or other circumstances make those payments appropriate. All such payments must be made promptly and are subject to the interest, penalty and other provisions of this chapter. [PL 1993, c. 461, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 461, §1 (NEW).

§1118. Disputes; penalties; attorney's fees

1. Withholding payment. Nothing in this chapter prevents an owner, contractor or subcontractor from withholding payment in whole or in part under a construction contract in an amount equalling the value of any good faith claims against an invoicing contractor, subcontractor or material supplier, including claims arising from unsatisfactory job progress, defective construction or materials, disputed work or 3rd-party claims.

[PL 1993, c. 461, §1 (NEW).]

2. Penalty. If arbitration or litigation is commenced to recover payment due under the terms of this chapter and it is determined that an owner, contractor or subcontractor has failed to comply with the payment terms of this chapter, the arbitrator or court shall award an amount equal to 1% per month of all sums for which payment has wrongfully been withheld, in addition to all other damages due and as a penalty.

[PL 1993, c. 461, §1 (NEW).]

3. Wrongful withholding. A payment is not deemed to be wrongfully withheld if it bears a reasonable relation to the value of any claim held in good faith by the owner, contractor or subcontractor against which an invoicing contractor, subcontractor or material supplier is seeking to recover payment.

[PL 1993, c. 461, §1 (NEW).]

4. Attorney's fees. Notwithstanding any contrary agreement, the substantially prevailing party in any proceeding to recover any payment within the scope of this chapter must be awarded reasonable attorney's fees in an amount to be determined by the court or arbitrator, together with expenses.

[PL 1993, c. 461, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 461, §1 (NEW).

§1119. Contracts involving federal funds

Notwithstanding any provision of this chapter, language at variance to the requirements of this chapter may be included in contracts when that variance is required by any law, regulation or grant agreement conditioning the receipt or expenditure of federal aid. [PL 1993, c. 461, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 461, §1 (NEW).

§1120. Owner exclusion

This chapter does not apply to contracts for the purchase of materials by a person performing work on that person's own real property. [PL 1993, c. 461, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 461, §1 (NEW).

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