

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1012

By: Coates of the Senate

and

Sullivan of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to contracts; establishing
11 requirements for certain bid project contracts;
12 specifying language required on certain bid
13 contracts; providing for inclusion of certain payment
14 requirements on certain bid contracts; specifying
15 architects shall not be subject to certain liability;
16 providing for certain payment failures; allowing
17 reduction of payment in certain circumstances;
18 establishing requirements for certain privately
19 negotiated contracts; authorizing the confidentiality
20 of certain negotiations; specifying requirements for
21 certain invited bids; requiring that payment terms
22 for certain negotiated subcontracts shall be the same
23 as for contract; establishing requirements for the
24 suspension of work in certain circumstances;
providing requirements for the resumption of work in
certain circumstances; specifying certain dwellings
shall not be subject to act; specifying unenforceable
provisions in certain contracts; providing for
codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 820 of Title 15, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Bid Projects.

5 1. On all private construction projects in which a set of plans
6 or specifications or both plans and specifications are issued for
7 bid, the owner shall specify in writing the frequency and time
8 period for payments to the prime contractor. The general
9 specifications and the first page of all bid plans shall include the
10 following, or substantially similar, language:

11 OWNER SHALL ISSUE PAYMENTS WITH A FREQUENCY OF _____.

12 OWNER SHALL ISSUE EACH PAYMENT TO THE PRIME CONTRACTOR WITHIN
13 _____ DAYS AFTER RECEIPT OF CONTRACTOR'S BILLING.

14 Any resulting contract shall include the payment frequency and time
15 period prescribed in the general specifications and bid plans. An
16 architect, engineer, or other entity preparing the plans and
17 specifications for the owner shall not be liable for the failure to
18 include the payment terms on a set of plans or specifications used
19 for bidding purposes.

20 2. If the owner fails to comply with the provisions of
21 paragraph 1 of this subsection, the following shall be applicable:

- 22 a. the owner shall make monthly progress payments, and
- 23 b. payments shall be due within twenty-eight (28)
- 24 calendar days after receipt of billing.

1 3. The owner may reduce the progress payment as provided for in
2 the contract.

3 4. Subcontractors shall be paid by the prime contractor within
4 ten (10) calendar days of payment from the owner, or as otherwise
5 agreed to by the parties. Payment may be reduced as provided for in
6 the subcontract.

7 B. Private Negotiated Projects.

8 1. The provisions of subsection A of this section shall not be
9 applicable to private negotiated projects.

10 2. An owner may choose to negotiate a construction contract
11 with a contractor, and may also choose to keep the payment terms of
12 that contract private.

13 3. If a contractor invites a subcontractor to bid on any
14 portion of a negotiated project, the contractor shall clearly define
15 the contractor's payment term upon issuance of the invitation to
16 bid. Such payment term shall be defined as to the frequency that
17 payments shall be made, and a specific day of the month that the
18 subcontractor shall expect to receive each payment.

19 4. Any subcontract negotiated pursuant to this subsection shall
20 include the same payment terms as were represented by the prime
21 contractor to the subcontractor prior to the acceptance of the bid
22 of the subcontractor. Payment may be reduced as provided for in the
23 subcontract.

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1 C. Suspension of Work for Bid Projects and Private Negotiated
2 Projects.

3 1. The prime contractor may suspend work:

4 a. when payment has not been received within ten (10)
5 calendar days of the date payment should have been
6 received,

7 b. if the prime contractor has complied with the
8 contract, and

9 c. if the prime contractor has given the owner ten (10)
10 calendar days written notice of work suspension
11 delivered by certified mail or other verifiable
12 service.

13 2. Subcontractors may suspend work:

14 a. when payment has not been received within ten (10)
15 calendar days of the date payment should have been
16 received,

17 b. if the subcontractor has complied with the
18 subcontract, and

19 c. if the subcontractor has given the prime contractor
20 ten (10) calendar days written notice of work
21 suspension delivered by certified mail or other
22 verifiable service.

23 D. Resumption of Work.
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1 No prime contractor or subcontractor shall be required to resume
2 work until:

3 1. Receipt of full payment of undisputed portions of
4 outstanding billing;

5 2. The contracted work schedule is extended the number of days
6 of delay; and

7 3. A change order is issued for the verifiable direct cost of
8 suspension, delay and start-up.

9 SECTION 2. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 821 of Title 15, unless there is
11 created a duplication in numbering, reads as follows:

12 A. This act shall not apply to any contract relating to a
13 single-, two-, three-, or four-family dwelling.

14 B. The following are against this state's public policy and are
15 void and unenforceable:

16 1. A provision, covenant, clause or understanding in,
17 collateral to or affecting a construction contract that makes the
18 contract subject to the laws of another state or that requires any
19 litigation, arbitration or other dispute resolution proceeding
20 arising from the contract to be conducted in another state; and

21 2. A provision, covenant, clause or understanding in,
22 collateral to or affecting a construction contract that disallows or
23 alters the rights of any contractor or subcontractor to receive and
24 enforce any and all rights under this act.

1 SECTION 3. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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