

MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
STATE FINANCE LAW
CHAPTER 56 OF THE CONSOLIDATED LAWS
ARTICLE IX—CONTRACTS

Current through L.2003, chs. 4 to 9.

§ 139-f. Payment on public work projects

Notwithstanding the provisions of any other law to the contrary, except the provisions of section thirty-eight of the highway law, all contracts made and awarded by the state, or by any public department, or by any public benefit corporation or by any public corporation or official thereof, hereafter referred to as the public owner, for construction, reconstruction or alteration of any public work project shall provide for payment by the public owner to the contractor and payment by the contractor to the subcontractor in accordance with the following:

1. Payment by public owners to contractors. The contractor shall periodically, in accordance with the terms of the contract, submit to the public owner and/or his agent a requisition for a progress payment for the work performed and/or materials furnished to the date of the requisition, less any amount previously paid to the contractor. The public owner shall in accordance with the terms of the contract approve and promptly pay the requisition for the progress payment less an amount necessary to satisfy any claims, liens or judgments against the contractor which have not been suitably discharged and less any retained amount as hereafter described. The public owner shall retain not more than five per centum of each progress payment to the contractor except that the public owner may retain in excess of five per centum but not more than ten per centum of each progress payment to the contractor provided that there are no requirements by the public owner for the contractor to provide a performance bond and a labor and material bond both in the full amount of the contract. The public owner shall pay, upon requisition from the contractor, for materials pertinent to the project which have been delivered to the site or off-site by the contractor and/or subcontractor and suitably stored and secured as required by the public owner and the contractor provided, the public owner may limit such payment to materials in short and/or critical supply and materials specially fabricated for the project each as defined in the contract. When the work or major portions thereof as contemplated by the terms of the contract are substantially completed, the contractor shall submit to the public owner and/or his agent a requisition for payment of the remaining amount of the contract balance. Upon receipt of such requisition the public owner shall approve and promptly pay the remaining amount of the contract balance less two times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens or judgments against the contractor which have not been suitably discharged. As the remaining items of work are satisfactorily completed or corrected, the public owner shall promptly pay, upon receipt of a requisition, for these remaining items less an amount necessary to satisfy any claims, liens or judgments against the contractor which have not been suitably discharged. Any claims, liens and judgments referred to in this section shall pertain to the project and shall be filed in accordance with the terms of the applicable contract and/or applicable laws.

1-a. Notwithstanding any other provision of this section to the contrary, payment of the moneys due under a contract awarded (i) by a state agency as defined in article eleven-A of this chapter or (ii) by a corporation as defined in subdivision one of section twenty-eight hundred eighty of the public authorities law which is subject to the provision of this section shall be made in accordance with the provisions of such article eleven-A, in the case of such state agencies, or such section twenty-eight hundred eighty, in the case of such corporations, provided failure to make such payment, as heretofore prescribed, shall not be due to any fault, neglect, or omission on the part of the contractor or by reason of the filing of any lien, attachment, or other legal process against the money due such contractor.

2. Payment by contractors to subcontractors. Within fifteen calendar days of the receipt of any payment from the public owner, the contractor shall pay each of his subcontractors and materialmen the proceeds from the payment representing the value of the work performed and/or materials furnished by the subcontractor and/or materialman and reflecting the percentage of the subcontractor's work completed or the materialman's material supplied in the requisition approved by the owner and based upon the actual value of the subcontract or purchase order less an amount necessary to satisfy any claims, liens or judgments against the subcontractor or materialman which have not been suitably discharged and less any retained amount as hereafter described. Failure by the contractor to pay any subcontractor or materialman within fifteen calendar days of the receipt of any payment from the public owner shall result in the commencement and accrual of interest on amounts due to such subcontractor or materialman for the period beginning on the day immediately following the expiration of such fifteen calendar day period and ending on the date on which payment is made by the contractor to such subcontractor or materialman. Such interest payment shall be the sole responsibility of the contractor, and shall be paid at the rate of interest in effect on the date payment is made by the contractor. Notwithstanding any other provision of law to the contrary, interest shall be computed at the rate equal to the overpayment rate set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six of the tax law. The contractor shall retain not more than five percentum of each payment to the subcontractor and/or materialman except that the contractor may retain in excess of five percentum but not more than ten percentum of each payment to the subcontractor provided that prior to entering into a subcontract with the contractor, the subcontractor is unable or unwilling to provide a performance bond and a labor and material bond, both in the full amount of the subcontract, at the request of the contractor. However, the contractor shall retain nothing from those payments representing proceeds owed the subcontractor and/or materialman from the public owner's payments to the contractor for the remaining amounts of the contract balance as provided in subdivision one of this section. If the contractor has failed to submit a requisition for payment of the remaining amounts of the contract balance within ninety days of substantial completion as provided in subdivision one of this section, then any clause in the subcontract between the contractor and the subcontractor or materialman which states that payment by the contractor to such subcontractor or materialman is contingent upon payment by the owner to the contractor shall be deemed invalid. Within fifteen calendar days of the receipt of payment from the contractor, the subcontractor and/or materialman shall pay each of his subcontractors and materialmen in the same manner as the contractor has paid the subcontractor, including interest as herein provided above. Nothing provided herein shall create any obligation on the part of the public owner to pay or to see to the payment of any moneys to any subcontractor or materialman from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor or materialman and the public owner.

3. In the event that the terms of payment on a public works project as provided in this section are pre-empted or superseded as a result of the provisions of any federal statute, regulation or rule applicable to the project, the terms of this section shall not apply.

4. Notwithstanding any other provision of this section or other law, requirements for the furnishing of a performance bond or a payment bond may be dispensed with at the discretion of the head of the state agency or corporation, or his or her designee, where the public owner is a state agency or corporation described in subdivision one-a of this section and the aggregate amount of the contract awarded or to be awarded is under fifty thousand dollars and, in a case where the contract is not subject to the multiple contract award requirements of section one hundred thirty-five of this article, such requirements may be dispensed with where the head of the state agency or corporation finds it to be in the public interest and where the aggregate amount of the contract awarded or to be awarded is under two hundred thousand dollars. Provided further, that in a case where a performance or payment bond is dispensed with, twenty per centum may be retained from each progress payment or estimate until the entire contract work has been completed and accepted, at which time the head of the state agency or corporation shall, pending the payment of the final estimate, pay not to exceed seventy-five per centum of the amount of the retained percentage.

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(Added L.1978, c. 769, § 8; amended L.1981, c. 166, § 2; L.1983, c. 884, § 2; L.1984, c. 153, § 5; L.1987, c. 183, § 4; L.1990, c. 86, § 1; L.1991, c. 664, § 2; L.1994, c. 170, § 211; L.1995, c. 83, § 38.)

<<STATE FINANCE LAW >>

< Laws 1940, Chapter 593>

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

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L.1995, c. 83 legislation

Subd. 4. L. 1995, c. 83, § 38, eff. July 20, 1995, retroactive to April 1, 1995, raised threshold for bonds to \$200,000 from \$100,000.

L. 1994, c. 170 legislation

Subd. 4. L.1994, c. 170, § 211, eff. June 9, 1994, retroactive to Apr. 1, 1994, provided that performance or payment bond requirements would be dispensed with where the contract is not subject to the multiple contract award requirements of State Finance Law § 135, the contract is for less than \$100,000 dollars, and dispensation is deemed to be in the public interest.

L.1991, c. 664 legislation

Subd. 4. L.1991, c. 664, § 2, eff. Aug. 25, 1991, added subd. 4.

L. 1990, c. 86 legislation

L.1990, c. 86, § 2, provided:

“This act [amending this section] shall take effect on the thirtieth day after it shall have become a law [eff. May 13, 1990], and shall apply to all payments received by a contractor from a public owner on or after such effective date.”

L. 1987, c. 183 legislation

Section 5 of L. 1987, c. 183, provided in part that “This act [adding and amending Public Authorities Law § 2880 and amending this section] shall take effect on the first day of January next succeeding the date on which it shall have become a law [became law June 29, 1987] and shall apply to all contracts entered into on and after the one hundred twentieth day after that effective date”.

L. 1978, c. 769 legislation

Section 10 of L. 1978, c. 769, provided:

“This act [L. 1978, c. 769] shall take effect on the ninetieth day after it shall have become a law [became law Aug. 7, 1978] and shall apply to all applicable public work contracts bid on or after the effective date of this act.”

LEGISLATIVE HISTORIES

- L. 1987, c. 183: For memorandum of the State Executive Department, see McKinney’s 1987 Session Laws of New York, p. 2371.
- L. 1984, c. 153: For memorandum of the State Executive Department, see McKinney’s 1984 Session Laws of New York, p. 3159.

CROSS REFERENCES

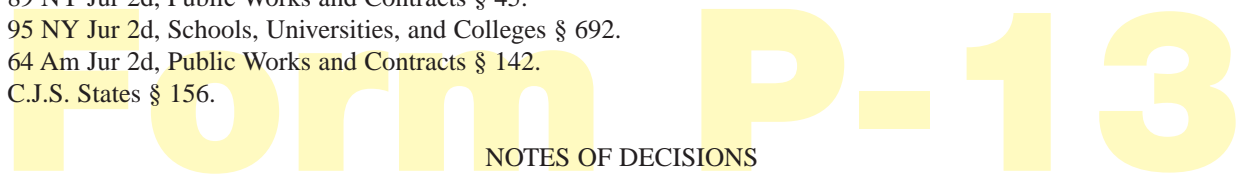
- Interest payments on certain amounts owed by state, see State Finance Law § 179-d et seq.
- Payment on municipal public works projects, see General Municipal Law § 106- b.

LIBRARY REFERENCES

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American Digest System
States ⇄ 96.

- Encyclopedias
- 27 NY Jur 2d, Counties, Towns, and Municipal Corporations § 1250.
 - 89 NY Jur 2d, Public Works and Contracts § 45.
 - 95 NY Jur 2d, Schools, Universities, and Colleges § 692.
 - 64 Am Jur 2d, Public Works and Contracts § 142.
 - C.J.S. States § 156.



NOTES OF DECISIONS

- Interest payments 2
- Law governing 1
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N.Y.S.2d 471, affirmed 170 A.D.2d 899, 566 N.Y.S.2d 728.

3. Withheld payments

1. Law governing

The Suffolk County Water Authority, being a public benefit corporation, is not subject to the provisions of General Municipal Law § 106-b, but is subject to the similar provisions of this section. Op.State Compt. 79-688.

Under New York statute providing that general contractor within 15 days of receiving payment from public owner of project “shall pay” his subcontractors portion of that payment that represents percentage of subcontractor’s work completed, general contractor may withhold such payments beyond date otherwise due in circumstances where general contractor has identifiable claims, liens or judgments against subcontractor, and those claims, liens or judgments have not been suitably discharged. Pottstown Fabricators, Inc. v. Manshul Const. Corp., 1996, 927 F.Supp. 756.

2. Interest payments

Existence of claims by subcontractor against contractor for breach of contract did not justify state’s withholding of payment of amount due contractor, and thus state was liable for interest on contractor’s judgment against it, where subcontractor’s contract claims merely restated lien claims that were “suitably discharged” by filing of bond. Walsh Const. Co., a Div. of Guy F. Atkinson Co. v. Egan, 1989, 143 Misc.2d 928, 542

Genuine issue of material fact, precluding summary judgment for subcontractor in its action against general contractor to recover unpaid contract balance for subcontractor’s work on public project,

existed as to whether general contractor had identifiable claims against subcontractor at time that payment was withheld. Pottstown Fabricators, Inc. v. Manshul Const. Corp., 1996, 927 F.Supp. 756.

McKinney's State Finance Law § 139-f

NY STATE FIN § 139-f

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