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Overhead/Profit on Change Orders—Proposed Bill Revised for 2019

[Proposed additions are indicated by underline.]

AN ACT CONCERNING CHANGE ORDERS IN CONSTRUCTION CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (a) of section 42-158j of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2019):

(a) Each construction contract shall contain the following provisions: (1) A requirement that the owner pay any amounts due to any contractor in a direct contractual relationship with the owner, or due to any subcontractor or supplier in a direct contractual relationship with the contractor, whether for labor performed or materials furnished, not later than thirty days after the date any written request for such payment has been made to the owner by such contractor, subcontractor or supplier; (2) a requirement that the contractor pay any amounts due any subcontractor or supplier, whether for labor performed or materials furnished, not later than thirty days after the date the contractor receives payment from the owner which encompasses labor performed or materials furnished by such subcontractor or supplier; [and] (3) a requirement that the contractor shall include in each of its subcontracts a provision requiring each subcontractor and supplier to pay any amounts due any of its subcontractors or suppliers, whether for labor performed or materials furnished, not later than thirty

days after the date such subcontractor or supplier receives a payment from the contractor which encompasses labor performed or materials furnished by such subcontractor or supplier; and

(4) a requirement that, for all pending or approved change orders or directives to perform extra work, the minimum allowable rate of overhead and profit to be paid to any contractor or subcontractor who performs such extra work shall be not less than fifteen per cent of the total value of such extra work, including, but not limited to, the costs of all labor, direct supervision, material and equipment required to perform such extra work.

Sec. 2. Section 49-41b of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2019):

When any public work is awarded by a contract for which a payment bond is required by section 49-41 and such contract contains a provision requiring the general or prime contractor under such contract to furnish a performance bond in the full amount of the contract price, the following shall apply:

(1) In the case of a contract advertised by the Department of Administrative Services or any other state agency, except as specified in subdivision (2) of this section, (A) the awarding authority shall not withhold more than seven and one-half per cent from any periodic or final payment which is otherwise properly due to the general or prime contractor under the terms of such contract, provided, when fifty per cent of the contract is completed, said amount shall be reduced to five per cent, and (B) any such general or prime contractor shall not withhold from any subcontractor more than (i) seven and one-half per cent from any periodic or final payment which is otherwise due to the subcontractor, or (ii) the amount withheld by the awarding authority from such general or prime contractor under subparagraph (A) of this subdivision, whichever is less, provided, when fifty per cent of the contract is completed, said amount shall be reduced to five per cent. Payment shall be made not later than ninety days after a complete application for payment demonstrating that fifty per cent contract completion has been submitted to the awarding authority. Notwithstanding the provisions of this subdivision (1),

the awarding authority shall establish an early release program with respect to periodic payments by general or prime contractors to subcontractors.

(2) In the case of a contract advertised by the state Department of Transportation, (A) the department shall not withhold more than two and one-half per cent from any periodic or final payment which is otherwise properly due to the general or prime contractor under the terms of such contract, and (B) any such general or prime contractor shall not withhold more than two and one-half per cent from any periodic or final payment which is otherwise due to any subcontractor.

(3) If the awarding authority is a municipality, (A) the municipality shall not withhold more than five per cent from any periodic or final payment which is otherwise properly due to the general or prime contractor under the terms of such contract, and (B) any such general or prime contractor shall not withhold more than five per cent from any periodic or final payment which is otherwise due to any subcontractor.

(4) In the case of a contract advertised by a municipality or municipal agency, excluding the Department of Administrative Services or any other state agency, and also excluding the state Department of Transportation, a requirement that, for all pending or approved change orders or directives to perform extra work pursuant to the contract, the minimum allowable rate of overhead and profit to be paid to any contractor or subcontractor who performs such extra work shall be not less than fifteen per cent of the total value of such extra work, including, but not limited to, the costs of all labor, direct supervision, material and equipment required to perform such extra work.

This act shall take effect as follows and shall amend the following sections:

Section 1 October 1, 2019 §42-158j(a)

Sec. 2 October 1, 2019 §49-41b

Statement of Purpose:

To require a minimum amount be included in certain private and commercial construction contracts, as well as municipal contracts, for work performed pursuant to a change order.