

Senate Engrossed
public works; contracts; payments

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SENATE BILL 1136

AN ACT

AMENDING SECTIONS 5-559, 15-213, 28-6924, 34-221, 34-609, 41-2501 AND
41-2577, ARIZONA REVISED STATUTES; RELATING TO PUBLIC CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-559, Arizona Revised Statutes, is amended to
3 read:

4 5-559. Contracts; limitation; restrictions

5 A. Notwithstanding any other statute, the director may:

6 1. Directly solicit bids and contract for the design and operation
7 of the lottery or the purchase of lottery equipment, tickets and related
8 materials.

9 2. Contract to effectuate the purposes of this chapter and the
10 rules adopted pursuant to this chapter.

11 3. Acquire administrative office facilities and related facilities
12 and equipment for the use of the commission by lease, purchase or
13 lease-purchase.

14 B. Procurement pursuant to this section shall be performed as
15 prescribed in section 41-2501, subsection ~~G~~ H. Bids received under this
16 section may be deemed confidential in whole or in part by the director if
17 required on account of the sensitive and responsible nature of the
18 commission's functions and the paramount considerations of security and
19 integrity.

20 C. Any award made by the director pursuant to this section becomes
21 effective and binding on the commission unless it is rejected by the
22 commission at a meeting held within fourteen calendar days after the award
23 is communicated to the members of the commission.

24 D. A contract awarded or entered into by the director pursuant to
25 this section shall not be assigned by the holder except by specific
26 approval of the director. In all awards of contracts pursuant to this
27 section, the director shall take particular account of the sensitive and
28 responsible nature of the commission's functions and the paramount
29 considerations of security and integrity.

30 Sec. 2. Section 15-213, Arizona Revised Statutes, is amended to
31 read:

32 15-213. Procurement practices of school districts and charter
33 schools; violations; classification; definitions

34 A. The state board of education shall adopt rules prescribing
35 procurement practices for all school districts in this state as follows:

36 1. The state board shall submit to the auditor general proposed
37 rules consistent with the procurement practices prescribed in title 41,
38 chapter 23, modifying the provisions for public notice of invitation for
39 bids, requests for proposals and requests for qualifications to allow a
40 governing board to give public notice of the invitation for bids, requests
41 for proposals and requests for qualifications by publication in the
42 official newspaper of the county as prescribed in section 11-255,
43 modifying the provisions relating to disposal of materials to comply with
44 section 15-342, paragraph 18, providing for governing board delegation of
45 procurement authority and modifying as necessary other provisions that the

1 state board determines are not appropriate for school districts. The
2 rules shall include provisions specifying that school districts are not
3 required to engage in competitive bidding in order to make the decision to
4 participate in programs pursuant to section 15-382 and that a program
5 authorized by section 15-382 is not required to engage in competitive
6 bidding for the services necessary to administer the program or for
7 purchase of insurance or reinsurance. The rules shall include provisions
8 specifying that school districts are not required to engage in competitive
9 bidding in order to place a pupil in a private school that provides
10 special education services if such a placement is prescribed in the
11 pupil's individualized education program and the private school has been
12 approved by the department of education division of special education
13 pursuant to section 15-765, subsection D. This placement is not subject
14 to rules adopted by the state board of education before November 24, 2009
15 pursuant to this section. The rules for procurement of construction
16 projects shall include provisions specifying that surety bonds furnished
17 as bid security and performance and payment bonds shall be executed and
18 furnished as required by title 34, chapter 2 or 6, as applicable. The
19 rules shall specify the total cost of a procurement that is subject to
20 invitations for bids, requests for proposals and requests for
21 clarification, using the aggregate dollar amount limits for procurements
22 prescribed in section 41-2535. **THE RULES MUST FOLLOW THE PROMPT PAYMENT**
23 **REQUIREMENTS PRESCRIBED IN SECTIONS 41-2576 AND 41-2577 EXCEPT FOR**
24 **EXTERNAL FUNDING THAT HAS NOT YET BEEN RECEIVED.**

25 2. The state board of education shall adopt rules for procurements
26 involving construction not exceeding \$150,000, which shall be known as the
27 simplified school construction procurement program. At a minimum, the
28 rules for a simplified construction procurement program shall require
29 that:

30 (a) Each county school superintendent maintain a list of persons
31 who desire to receive solicitations to bid on construction projects to
32 which additions shall be ~~permitted~~ **ALLOWED** throughout the year.

33 (b) The list of persons be available for public inspection.

34 (c) A performance bond and a payment bond as required by this
35 section be provided for contracts for construction by contractors.

36 (d) All bids for construction be opened at a public opening and the
37 bids shall remain confidential until the public opening.

38 (e) All persons desiring to submit bids be treated equitably and
39 the information related to each project be available to all eligible
40 persons.

41 (f) Competition for construction projects under the simplified
42 school construction procurement program be encouraged to the maximum
43 extent possible. At a minimum, a school district shall submit information
44 on each project to all persons listed with the county school
45 superintendent by any school district within that county.

1 (g) A provision, covenant, clause or understanding in, collateral
2 to or affecting a construction contract that makes the contract subject to
3 the laws of another state or that requires any litigation, arbitration or
4 other dispute resolution proceeding arising from the contract to be
5 conducted in another state is against this state's public policy and is
6 void and unenforceable.

7 3. The state board of education shall adopt rules for the
8 procurement of goods and information services by school districts and
9 charter schools using electronic, online bidding. The rules adopted by
10 the state board shall include the use of reverse auctions and shall be
11 consistent with the procurement practices prescribed in title 41, chapter
12 23, article 13, modifying as necessary those provisions and the rules
13 adopted pursuant to that article that the state board determines are not
14 appropriate for school districts and charter schools. Until the rules are
15 adopted, school districts and charter schools may procure goods and
16 information services pursuant to title 41, chapter 23, article 13 using
17 the rules adopted by the department of administration in implementing that
18 article.

19 4. The state board shall adopt rules for the procurement by school
20 districts of any materials, services, goods, construction or construction
21 services that ensure maximum practicable competition as prescribed in
22 section 41-2565 and shall require that a person:

23 (a) That contracts for or purchases any materials, services, goods,
24 construction or construction services in a manner contrary to the rules
25 adopted by the state board pursuant to this section is personally liable
26 for the recovery of all public monies paid plus twenty percent of that
27 amount and legal interest from the date of payment and all costs and
28 damages arising out of the violation as prescribed in section 41-2616.

29 (b) That intentionally or knowingly contracts for or purchases any
30 materials, services, goods, construction or construction services pursuant
31 to a scheme or artifice to avoid the rules adopted by the state board
32 pursuant to this section is guilty of a class 4 felony as prescribed in
33 section 41-2616.

34 (c) That prepares procurement specifications may not receive any
35 direct or indirect benefit from using those specifications.

36 (d) That serves on a selection committee for a procurement may not
37 be a contractor or subcontractor under a contract awarded under the
38 procurement or provide any specified professional services, construction,
39 construction services, materials or other services under the contract. A
40 person that serves on a selection committee for a procurement and that
41 fails to disclose contact with a representative of a competing vendor or
42 fails to provide required accurate information is subject to a civil
43 penalty as prescribed in section 41-2616.

1 5. The state board shall adopt rules requiring school districts to
2 obtain and maintain a record of proof that a construction or construction
3 services provider that has been awarded a contract with the school
4 district, or school purchasing cooperative, has a valid license to
5 practice in this state.

6 6. The auditor general shall review the proposed rules to determine
7 whether the rules are consistent with the procurement practices prescribed
8 in title 41, chapter 23 and any modifications are required to adapt the
9 procedures for school districts.

10 7. If the auditor general approves the proposed rules, the auditor
11 general shall notify the state board in writing and the state board shall
12 adopt such rules.

13 8. If the auditor general objects to the proposed rules, the
14 auditor general shall notify the state board of the objections in writing
15 and the state board, in adopting the rules, shall conform the proposed
16 rules to meet the objections of the auditor general or revise the proposed
17 rules to which an objection has been made and submit the revisions to the
18 auditor general for approval.

19 B. After the bids submitted in response to an invitation for bids
20 are opened and the award is made or after the proposals or qualifications
21 are submitted in response to a request for proposals or a request for
22 qualifications and the award is made, the governing board shall make
23 available for public inspection all information, all bids, proposals and
24 qualifications submitted and all findings and other information considered
25 in determining whose bid conforms to the invitation for bids and will be
26 the most advantageous with respect to price, conformity to the
27 specifications and other factors or whose proposal or qualifications are
28 to be selected for the award, including the rationale for awarding a
29 contract for any specified professional services, construction,
30 construction services or materials to an entity selected from a qualified
31 select bidders list or through a school purchasing cooperative. The
32 invitation for bids, request for proposals or request for qualifications
33 shall include a notice that all information and bids, proposals and
34 qualifications submitted will be made available for public inspection.
35 The rules adopted by the state board shall prohibit the use in connection
36 with procurement of specifications in any way proprietary to one supplier
37 unless the specification includes all of the following:

38 1. A statement of the reasons **why** no other specification is
39 practicable.

40 2. A description of the essential characteristics of the specified
41 product.

42 3. A statement specifically **permitting ALLOWING** an acceptable
43 alternative product to be supplied.

1 C. A project or purchase may not be divided or sequenced into
2 separate projects or purchases in order to avoid the limits prescribed by
3 the state board under subsection A of this section.

4 D. A contract for the procurement of construction or construction
5 services shall include a provision that provides for negotiations between
6 the school district and the contractor for the recovery of damages related
7 to expenses incurred by the contractor for a delay for which the school
8 district is responsible, that is unreasonable under the circumstances and
9 that was not within the contemplation of the parties to the contract.
10 This subsection does not void any provision in the contract that requires
11 notice of delays, provides for arbitration or any other procedure for
12 settlement or provides for liquidated damages.

13 E. The auditor general may conduct discretionary reviews,
14 investigations and audits of the financial and operational procurement
15 activities of school districts, nonexempt charter schools and school
16 purchasing cooperatives. The auditor general has final review and
17 approval authority over all school district, nonexempt charter school and
18 school purchasing cooperative audit contracts and any audit reports issued
19 in accordance with this section. If the attorney general has reasonable
20 cause to believe an employee of a school district or school purchasing
21 cooperative, or an employee of an entity that has been awarded a contract
22 by a school district or school purchasing cooperative, has engaged in, is
23 engaging in or is about to engage in any practice or transaction that
24 violates the rules adopted by the state board of education pursuant to
25 this section, the attorney general may:

26 1. Require that person to file on forms prescribed by the attorney
27 general a statement or report in writing and under oath as to all the
28 facts and circumstances concerning a violation of the rules adopted by the
29 state board pursuant to this section by that person and any other data and
30 information deemed necessary by the attorney general.

31 2. Examine under oath any person in connection with a violation of
32 the rules adopted by the state board pursuant to this section.

33 F. In addition to the requirements of sections 15-914 and
34 15-914.01, school districts, nonexempt charter schools and school
35 purchasing cooperatives, in connection with any audit conducted by a
36 certified public accountant, shall contract for a systematic review of
37 purchasing practices using methodology consistent with sampling guidelines
38 established by the auditor general. The auditor general shall consider
39 cost when establishing guidelines pursuant to this subsection and to the
40 extent possible shall attempt to minimize the cost of the review. The
41 purpose of the review is to determine whether the school district,
42 nonexempt charter school or school purchasing cooperative is in compliance
43 with the procurement laws and applicable procurement rules of this state.
44 A copy of the review shall be submitted on completion to the auditor
45 general. The auditor general may conduct discretionary reviews of school

1 districts, nonexempt charter schools and school purchasing cooperatives
2 that are not required to contract for independent audits.

3 G. A school district school employee who has control over personnel
4 actions may not take reprisal against a school district school employee
5 for that employee's disclosure of information that is a matter of public
6 concern, including a violation of this section, to a public body pursuant
7 to title 38, chapter 3, article 9.

8 H. The attorney general or county attorney has jurisdiction to
9 enforce this section. The attorney general or county attorney may seek
10 relief for any violation of this section through an appropriate civil or
11 criminal action in superior court, including an action to enjoin a
12 threatened or pending violation of this section and including an action to
13 enforce compliance with any request for documents made by the auditor
14 general pursuant to this section.

15 I. The department of education shall enact policies and procedures
16 for the acceptance and disposition of complaints from the public regarding
17 school procurement practices and shall forward all school procurement
18 complaints to the attorney general. Notwithstanding rules adopted by the
19 state board, school districts shall not be required to prepare or submit
20 an annual report on the benefits associated with the use of
21 construction-manager-at-risk, design-build, qualified select bidders list
22 and job-order-contracting methods.

23 J. The state board of education shall adopt, and the auditor
24 general shall review, rules authorizing school districts to procure
25 construction services by construction-manager-at-risk, design-build,
26 qualified select bidders list and job-order-contracting methods of project
27 delivery. The rules shall not require school districts to obtain bid
28 security for the construction-manager-at-risk method of project delivery.

29 K. A school district or charter school may evaluate United States
30 general services administration contracts for materials and services. The
31 governing board or governing body may authorize purchases under a current
32 contract for materials or services without complying with the requirements
33 of the procurement rules adopted by the state board of education if the
34 governing board or governing body determines in writing that all of the
35 following apply:

36 1. The price for materials or services is equal to or less than the
37 contractor's current federal supply contract price with the general
38 services administration.

39 2. The contractor has indicated in writing that the contractor is
40 willing to extend the current federal supply contract pricing, terms and
41 conditions to the school district or charter school.

42 3. The purchase order adequately identifies the federal supply
43 contract on which the order is based.

44 4. The purchase contract is cost effective and is in the best
45 interests of the school district or charter school.

1 L. Unless otherwise provided by law, multiterm contracts for
2 materials or services and contracts for job-order-contracting construction
3 services may be entered into if the duration of the contract and the
4 conditions of renewal or extension, if any, are included in the invitation
5 for bids or the request for proposals and if monies are available for the
6 first fiscal period at the time the contract is executed. The duration of
7 contracts for materials or services and contracts for
8 job-order-contracting construction services are limited to ~~no~~ NOT more
9 than five years unless the governing board determines in writing before
10 the procurement solicitation is issued that a contract of longer duration
11 would be advantageous to the school district. Payment and performance
12 obligations for succeeding fiscal periods are subject to the availability
13 and appropriation of monies.

14 M. Notwithstanding the rules adopted by the state board of
15 education, the maximum dollar amount of an individual job order for
16 job-order-contracting construction services is \$1,000,000 or a higher or
17 lower amount prescribed by the governing board in a policy adopted in a
18 public meeting held pursuant to title 38, chapter 3, article 3.1.
19 Requirements shall not be artificially divided or fragmented in order to
20 constitute a job order that satisfies the requirements of this subsection.

21 N. A person who supervises or participates in contracts, purchases,
22 payments, claims or other financial transactions, or a person who
23 supervises or participates in the planning, recommending, selecting or
24 contracting for materials, services, goods, construction, or construction
25 services of a school district or school purchasing cooperative is guilty
26 of a class 6 felony if the person solicits, accepts or agrees to accept
27 any personal gift or benefit with a value of \$300 or more from a person or
28 vendor that has secured or has taken steps to secure a contract, purchase,
29 payment, claim or financial transaction with the school district or school
30 purchasing cooperative. Soliciting, accepting or agreeing to accept any
31 personal gift or benefit with a value of less than \$300 is a class 1
32 misdemeanor. A gift or benefit does not include an item of nominal value
33 such as a greeting card, t-shirt, mug or pen.

34 O. Any person or vendor that has secured or has taken steps to
35 secure a contract, purchase, payment, claim or financial transaction with
36 a school district or school purchasing cooperative that offers, confers or
37 agrees to confer any personal gift or benefit with a value of \$300 or more
38 on a person who supervises or participates in contracts, purchases,
39 payments, claims or other financial transactions, or on a person who
40 supervises or participates in planning, recommending, selecting or
41 contracting for materials, services, goods, construction or construction
42 services of a school district or school purchasing cooperative, is guilty
43 of a class 6 felony. Offering, conferring or agreeing to confer any
44 personal gift or benefit with a value of less than \$300 is a class 1

1 misdemeanor. A gift or benefit does not include an item of nominal value
2 such as a greeting card, t-shirt, mug or pen.

3 P. Any person or vendor convicted under subsection O of this
4 section may be suspended for up to six months or barred for up to three
5 years by the director of the department of administration from doing
6 business with school districts and school purchasing cooperatives. The
7 director of the department of administration shall adopt rules, including
8 administrative procedures, to suspend or bar any person from consideration
9 for award of contracts pursuant to this section.

10 Q. For the purposes of this section:

11 1. "Gift or benefit" means a payment, distribution, expenditure,
12 advance, deposit or donation of monies, any intangible personal property
13 or any kind of tangible personal or real property. Gift or benefit does
14 not include either:

15 (a) Food or beverage.

16 (b) Expenses or sponsorships relating to a special event or
17 function to which individuals listed in subsection N of this section are
18 invited.

19 2. "Nonexempt charter school" means a charter school that is not
20 exempted from procurement laws pursuant to section 15-183, subsection E,
21 paragraph 6.

22 3. "School purchasing cooperative" means an entity that is engaged
23 in cooperative purchasing as defined in section 41-2631.

24 4. "Total cost" means the cost of all materials and services,
25 including the cost of labor performed by employees of the school district,
26 for all construction as provided in subsection A of this section.

27 Sec. 3. Section 28-6924, Arizona Revised Statutes, is amended to
28 read:

29 28-6924. Progress payments; changed or additional work;
30 attorney fees; definitions

31 A. The following apply to the department's highway construction
32 projects awarded pursuant to section 28-6923, 28-7365 or 28-7366:

33 1. Progress payments may be made by the department to the
34 contractor on the basis of a duly certified and approved estimate of the
35 work performed during a preceding period of time. The progress payments
36 shall be paid on or before fourteen days after the estimate of the work is
37 certified and approved. The estimate of the work shall be deemed received
38 by the department on submission to the person designated by the department
39 for the submission, review or approval of the estimate of the work. An
40 estimate of the work submitted under this section shall be deemed approved
41 and certified ~~after~~ seven days ~~from~~ **AFTER** the date of submission unless
42 before that time the department prepares and issues a specific written
43 finding detailing those items in the estimate of the work that are not
44 approved and certified under the contract. The department may withhold an
45 amount from the progress payment **THAT IS** sufficient to pay the expenses

1 the department reasonably expects to incur in correcting the deficiency
2 set forth in the written finding. On completion and acceptance of
3 separate divisions of the contract on which the price is stated separately
4 in the contract, payment may be made in full including retained
5 percentages, less deductions, unless a substitute security has been
6 provided.

7 2. The contractor shall pay to the contractor's subcontractors or
8 material suppliers and each subcontractor shall pay to the subcontractor's
9 subcontractors or material suppliers, within seven days ~~of~~ AFTER receipt
10 of each progress payment, unless otherwise agreed in writing by the
11 parties, the respective amounts allowed the contractor or subcontractor on
12 account of the work performed by the contractor's or subcontractor's
13 subcontractors or material suppliers, to the extent of each
14 subcontractor's or material supplier's interest in the amount. These
15 payments to subcontractors or material suppliers shall be based on
16 payments received pursuant to this section. Any diversion by the
17 contractor or subcontractor of payment received for work performed on a
18 contract or failure to reasonably account for the application or use of
19 the payments constitutes grounds for disciplinary action by the registrar
20 of contractors. A subcontractor or material supplier shall notify the
21 registrar of contractors and the department in writing of any payment less
22 than the amount of percentage approved for the class or item of work as
23 set forth in this section.

24 3. A subcontractor may notify the department in writing requesting
25 that the subcontractor be notified by the department in writing within
26 five days after payment of each progress payment THAT IS made to the
27 contractor. The subcontractor's request under this paragraph remains in
28 effect for the duration of the subcontractor's work on the project.

29 4. If any payment to a contractor is delayed after the date due,
30 interest shall be paid at the rate of one ~~per cent~~ PERCENT per month or a
31 fraction of the month on the unpaid balance.

32 5. If any periodic or final payment to a subcontractor or material
33 supplier is delayed by more than seven days after receipt of the periodic
34 or final payment by the contractor or subcontractor, the contractor or
35 subcontractor shall pay the subcontractor or material supplier interest,
36 beginning on the eighth day, at the rate of one ~~per cent~~ PERCENT per month
37 or a fraction of a month on the unpaid balance.

38 B. A contract for construction shall not materially alter the
39 rights of any contractor, subcontractor or material supplier to receive
40 prompt and timely payment as provided under this section.

41 C. ~~Nothing in~~ This section ~~prevents~~ DOES NOT PREVENT a contractor
42 or subcontractor, at the time of application and certification to the
43 department or contractor, from withholding the application and
44 certification to the department or contractor for payment to the
45 subcontractor or material supplier for unsatisfactory job progress,

1 defective construction work or materials not remedied, disputed work or
2 materials, ~~third party~~ THIRD-PARTY claims filed or reasonable evidence
3 that a claim will be filed, failure of a subcontractor to make timely
4 payments for labor, equipment and materials, damage to the contractor or
5 another subcontractor, reasonable evidence that the subcontract cannot be
6 completed for the unpaid balance of the subcontract amount or a reasonable
7 amount for retention that does not exceed the annual percentage retained
8 by the department.

9 D. This section ~~creates no~~ DOES NOT CREATE A duty of the department
10 to a subcontractor or material supplier other than the duty to notify
11 pursuant to subsection A, paragraph 3 of this section and ~~creates no~~ DOES
12 NOT CREATE A cause of action in favor of a subcontractor or material
13 supplier against this state, the department or any state employee or
14 agent.

15 E. IF THE DEPARTMENT DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
16 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE TERMS OF THE
17 CONSTRUCTION CONTRACT AND THE CONTRACTOR SUBMITS TO THE DEPARTMENT A
18 REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL WORK AS MAY BE
19 REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL DETERMINATION OF
20 THE TOTAL AMOUNT TO BE PAID FOR THE CHANGED OR ADDITIONAL WORK, THE
21 CONTRACTOR MAY REQUEST PAYMENT FOR CHANGED OR ADDITIONAL WORK THAT THE
22 CONTRACTOR COMPLETED DURING THE PRECEDING CALENDAR MONTH IN MONTHLY PAY
23 ESTIMATES BASED ON THE COSTS THE CONTRACTOR INCURRED TO PERFORM THAT WORK.
24 THE PERSON DESIGNATED IN THE CONSTRUCTION CONTRACT TO CERTIFY AND APPROVE
25 THE MONTHLY PAYMENT ESTIMATE SHALL MAKE AN INTERIM DETERMINATION FOR
26 PURPOSES OF APPROVAL FOR PAYMENT OF THOSE COSTS AND CERTIFY FOR PAYMENT
27 THE AMOUNT THAT PERSON DETERMINES TO BE REASONABLY JUSTIFIED. EITHER
28 PARTY MAY DISAGREE WITH THE INTERIM DETERMINATION AND MAY ASSERT A CLAIM
29 IN ACCORDANCE WITH THE TERMS OF THE CONSTRUCTION CONTRACT.

30 F. IF THE DEPARTMENT DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
31 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
32 AND THE CONTRACTOR SUBMITS TO THE DEPARTMENT A REASONABLE COST ESTIMATE OF
33 THE CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
34 CONTRACT AND IF THE CONTRACTOR DIRECTS THE SUBCONTRACTOR TO PERFORM THE
35 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT
36 BETWEEN THE CONTRACTOR AND SUBCONTRACTOR AND THE SUBCONTRACTOR SUBMITS TO
37 THE CONTRACTOR A REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL
38 WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL
39 DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR THE CHANGED OR ADDITIONAL
40 WORK, THE SUBCONTRACTOR MAY REQUEST PAYMENT FROM THE CONTRACTOR FOR THE
41 CHANGED OR ADDITIONAL WORK THAT THE SUBCONTRACTOR COMPLETED DURING THE
42 PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
43 SUBCONTRACTOR INCURRED TO PERFORM THAT WORK. EITHER PARTY MAY DISAGREE
44 WITH THE INTERIM DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH
45 THE TERMS OF THE AGREEMENT BETWEEN THE CONTRACTOR AND SUBCONTRACTOR.

1 G. IN ANY ACTION OR ARBITRATION BROUGHT PURSUANT TO THIS SECTION,
2 THE SUCCESSFUL PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES AND COSTS.

3 H. FOR THE PURPOSES OF THIS SECTION:

4 1. "CONSTRUCTION CONTRACT" MEANS A WRITTEN AGREEMENT RELATING TO
5 CONSTRUCTING, ALTERING OR REPAIRING ALL WORK ON STATE HIGHWAYS.

6 2. "CONTRACTOR":

7 (a) MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION
8 OR OTHER ORGANIZATION, OR A COMBINATION OF ANY OF THEM, THAT HAS A DIRECT
9 CONTRACT WITH THE DEPARTMENT TO PERFORM WORK UNDER A CONSTRUCTION
10 CONTRACT.

11 (b) DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT FORMED
12 PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED PURSUANT
13 TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER IMPROVEMENT
14 DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED PURSUANT TO
15 TITLE 48, CHAPTER 6, ARTICLE 4.

16 3. "COSTS" MEANS THE AGGREGATE COSTS OF ALL LABOR, MATERIALS,
17 EQUIPMENT AND SERVICES.

18 4. "SUBCONTRACTOR":

19 (a) MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION
20 OR OTHER ORGANIZATION, OR A COMBINATION OF ANY OF THEM, THAT HAS A DIRECT
21 CONTRACT WITH A CONTRACTOR OR ANOTHER SUBCONTRACTOR TO PERFORM A PORTION
22 OF THE WORK UNDER A CONSTRUCTION CONTRACT.

23 (b) DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT FORMED
24 PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED PURSUANT
25 TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER IMPROVEMENT
26 DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED PURSUANT TO
27 TITLE 48, CHAPTER 6, ARTICLE 4.

28 5. "WORK" MEANS THE LABOR, MATERIALS, EQUIPMENT AND SERVICES TO BE
29 PROVIDED BY A CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT.

30 Sec. 4. Section 34-221, Arizona Revised Statutes, is amended to
31 read:

32 34-221. Contract with successful bidder; payments to
33 contractor and design professional; security;
34 recovery of damages for delay; progress payments;
35 changed or additional work; attorney fees;
36 definitions

37 A. The agent shall enter into a contract with the lowest
38 responsible bidder whose proposal is satisfactory, except that in
39 determining the lowest responsible bidder under this section, the board of
40 supervisors may consider, for ~~no~~ NOT more than five projects, the time of
41 completion proposed by the bidder, the value over time of completed
42 services and facilities and the value over time of interrupted services if
43 the board determines that this procedure will serve the public interest by
44 providing a substantial fiscal benefit or that the use of the traditional
45 awarding of contracts is not practicable for meeting desired construction

1 standards or delivery schedules and if the formula for considering the
2 time of completion is specifically stated in the bidding information.

3 B. In determining the lowest responsible bidder for a horizontal
4 construction project using the design-bid-build project delivery method,
5 an agent may consider the time of completion proposed by the bidder if the
6 agent determines that this procedure will serve the public interest by
7 providing a substantial fiscal benefit or that the use of the traditional
8 awarding of contracts is not practicable for meeting desired construction
9 standards or delivery schedules and if the formula for considering the
10 time of completion is specifically stated in the bidding information.

11 C. The terms of a contract entered into pursuant to subsection A of
12 this section shall include the following items:

13 1. A surety company bond or bonds as required under this article.

14 2. The owner by mutual agreement may make progress payments on
15 contracts of less than ninety days and shall make monthly progress
16 payments on all other contracts as provided for in this paragraph.
17 Payment to the contractor on the basis of a duly certified and approved
18 estimate of the work performed during the preceding calendar month under
19 such contract may include payment for material and equipment, but to
20 ensure the proper performance of such contract, the owner shall retain ten
21 percent of the amount of each estimate until final completion and
22 acceptance of all material, equipment and work covered by the contract.
23 An estimate of the work submitted shall be deemed approved and certified
24 for payment seven days after the date of submission unless before that
25 time the owner or owner's agent prepares and issues a specific written
26 finding setting forth those items in detail in the estimate of the work
27 that are not approved for payment under the contract. The owner may
28 withhold an amount from the progress payment sufficient to pay the
29 expenses the owner reasonably expects to incur in correcting the
30 deficiency set forth in the written finding. The progress payments shall
31 be paid on or before fourteen days after the estimate of the work is
32 certified and approved. The estimate of the work shall be deemed received
33 by the owner on submission to any person designated by the owner for the
34 submission, review or approval of the estimate of the work.

35 3. When the contract is fifty percent completed, one-half of the
36 amount retained, including any securities substituted under paragraph 5 of
37 this subsection, shall be paid to the contractor on the contractor's
38 request if the contractor is making satisfactory progress on the contract
39 and there is no specific cause or claim requiring a greater amount to be
40 retained. After the contract is fifty percent completed, not more than
41 five percent of the amount of any subsequent progress payments made under
42 the contract may be retained if the contractor is making satisfactory
43 progress on the project, except that if at any time the owner determines
44 satisfactory progress is not being made, ten percent retention shall be

1 reinstated for all progress payments made under the contract subsequent to
2 the determination.

3 4. On completion and acceptance of each separate building, public
4 work or other division of the contract on which the price is stated
5 separately in the contract, except as qualified in paragraph 5 of this
6 subsection, payment may be made in full, including retained percentages
7 thereon, minus authorized deductions. In preparing estimates, the
8 material and equipment delivered on the site to be incorporated in the job
9 shall be taken into consideration in determining the estimated value by
10 the architect or engineer.

11 5. Ten percent of all estimates shall be retained by the agent as a
12 guarantee for complete performance of the contract, to be paid to the
13 contractor within sixty days after completion or filing notice of
14 completion of the contract. Retention of payments by a purchasing agency
15 longer than sixty days after final completion and acceptance requires a
16 specific written finding by the purchasing agency of the reasons
17 justifying the delay in payment. A purchasing agency may not retain any
18 monies after sixty days that are in excess of the amount necessary to pay
19 the expenses the purchasing agency reasonably expects to incur in order to
20 pay or discharge the expenses determined by the purchasing agency in the
21 finding justifying the retention of monies. In lieu of the retention
22 provided in this section, the agent, at the option of the contractor,
23 shall accept as a substitute an assignment of money market accounts,
24 demand deposit accounts, time certificates of deposit of banks licensed by
25 this state, securities of or guaranteed by the United States of America,
26 securities of this state, securities of counties, municipalities and
27 school districts within this state or shares of savings and loan
28 associations authorized to transact business in this state, in an amount
29 equal to ten percent of all estimates, which shall be retained by the
30 agent as a guarantee for complete performance of the contract. If the
31 contractor opts for substitute security as described in this paragraph for
32 the ten percent retention, the contractor is entitled to receive all
33 interest or income earned by such security as it accrues, and all such
34 security in lieu of retention shall be returned to the contractor by the
35 agent within sixty days after final completion and acceptance of all
36 material, equipment and work covered by the contract if the contractor has
37 furnished the agent satisfactory receipts for all labor and material
38 billed and waivers of liens from any and all persons holding claims
39 against the work. The agent may not accept a money market account, A
40 demand deposit account, A time certificate of deposit of a bank or shares
41 of a savings and loan association in lieu of the retention specified
42 unless accompanied by a signed and acknowledged waiver of the bank or
43 savings and loan association of any right or power to setoff against
44 either the agent or the contractor in relationship to the certificates or
45 shares assigned. The amount deposited in a money market account or demand

1 deposit account in lieu of the retention provided in this section shall
2 not be released by the financial institution to the contractor except on
3 written authorization of the agent.

4 6. If the agent has accepted substitute security as provided in
5 paragraph 5 of this subsection, any subcontractor undertaking to perform
6 any part of such public work is entitled to provide substitute security to
7 the contractor on terms and conditions similar to those described in
8 paragraph 5 of this subsection, and such security is in lieu of any
9 retention under the subcontract.

10 D. A contract for construction or design professional services may
11 not materially alter the rights of any contractor, subcontractor, design
12 professional or material supplier to receive prompt and timely payment
13 required to be included in the contract under subsection C of this
14 section.

15 E. The contract shall be signed by the agent and the contractor.

16 F. A contract for the procurement of construction shall include a
17 provision that provides for negotiations between the agent and the
18 contractor for the recovery of damages related to expenses incurred by the
19 contractor for a delay for which the agent is responsible, which is
20 unreasonable under the circumstances and which was not within the
21 contemplation of the parties to the contract. This section does not void
22 any provision in the contract that requires notice of delays or provides
23 for arbitration or other procedure for settlement or provides for
24 liquidated damages.

25 G. The contractor shall pay to the contractor's subcontractors,
26 design professionals or material suppliers and each subcontractor shall
27 pay to the subcontractor's subcontractor, design professional or material
28 supplier, within seven days after receipt of each progress payment, unless
29 otherwise agreed in writing by the parties, the respective amounts allowed
30 the contractor, subcontractor or design professional on account of the
31 work performed by subordinate subcontractors or design professionals, to
32 the extent of each such subcontractor's or design professional's interest
33 therein, except that a contract for construction may not materially alter
34 the rights of any contractor, subcontractor, design professional or
35 material supplier to receive prompt and timely payment as provided under
36 this section. Such payments to subcontractors, design professionals or
37 material suppliers shall be based on payments received pursuant to this
38 section. Any diversion by the contractor or subcontractor of payments
39 received for work performed on a contract, or failure to reasonably
40 account for the application or use of such payments, constitutes grounds
41 for disciplinary action by the registrar of contractors. The
42 subcontractor or material supplier shall notify the registrar of
43 contractors and the purchasing agency in writing of any payment that is
44 less than the amount or percentage approved for the class or item of work
45 as set forth in this section.

1 H. A subcontractor or design professional may notify the purchasing
2 agency in writing requesting that the subcontractor or design professional
3 be notified by the purchasing agency in writing within five days after
4 payment of each progress payment THAT IS made to the contractor. The
5 subcontractor's or design professional's request remains in effect for the
6 duration of the subcontractor's or design professional's work on the
7 project.

8 I. This chapter does not prevent the contractor or subcontractor,
9 at the time of application and certification to the owner or contractor,
10 from withholding such application and certification to the owner or
11 contractor for payment to the subcontractor, design professional or
12 material supplier for unsatisfactory job progress, defective design
13 professional services or construction work or materials not remedied,
14 disputed design professional services, work or materials, third-party
15 claims filed or reasonable evidence that a claim will be filed, failure of
16 a subcontractor or design professional to make timely payments for design
17 professional services, labor, equipment and materials, damage to the
18 contractor or another subcontractor or design professional, reasonable
19 evidence that the subcontract or design professional service contract
20 cannot be completed for the unpaid balance of the subcontract or design
21 professional service contract sum or a reasonable amount for retention
22 that does not exceed the actual percentage retained by the owner.

23 J. If any payment to a contractor is delayed after the date due,
24 interest shall be paid at the rate of one percent per month or fraction of
25 a month on such unpaid balance as may be due.

26 K. If any periodic or final payment to a subcontractor or design
27 professional is delayed by more than seven days after receipt of the
28 periodic or final payment by the contractor or subcontractor, the
29 contractor or subcontractor shall pay a subordinate subcontractor, design
30 professional or material supplier interest, beginning on the eighth day,
31 at the rate of one percent per month or a fraction of a month on such
32 unpaid balance as may be due.

33 L. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
34 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
35 AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE
36 CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
37 CONTRACT, PENDING A FINAL DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR
38 THE CHANGED OR ADDITIONAL WORK, THE CONTRACTOR MAY REQUEST PAYMENT FOR
39 CHANGED OR ADDITIONAL WORK THAT THE CONTRACTOR COMPLETED DURING THE
40 PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
41 CONTRACTOR INCURRED TO PERFORM THAT WORK. THE PERSON DESIGNATED IN THE
42 CONSTRUCTION CONTRACT TO CERTIFY AND APPROVE THE MONTHLY PAYMENT ESTIMATE
43 SHALL MAKE AN INTERIM DETERMINATION FOR PURPOSES OF APPROVAL FOR PAYMENT
44 OF THOSE COSTS AND CERTIFY FOR PAYMENT THE AMOUNT THAT PERSON DETERMINES
45 TO BE REASONABLY JUSTIFIED. EITHER PARTY MAY DISAGREE WITH THE INTERIM

1 DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH THE TERMS OF THE
2 CONSTRUCTION CONTRACT.

3 M. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
4 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
5 AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE
6 CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
7 CONTRACT AND IF THE CONTRACTOR DIRECTS THE SUBCONTRACTOR TO PERFORM THE
8 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT
9 BETWEEN THE CONTRACTOR AND SUBCONTRACTOR AND THE SUBCONTRACTOR SUBMITS TO
10 THE CONTRACTOR A REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL
11 WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL
12 DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR THE CHANGED OR ADDITIONAL
13 WORK, THE SUBCONTRACTOR MAY REQUEST PAYMENT FROM THE CONTRACTOR FOR THE
14 CHANGED OR ADDITIONAL WORK THAT THE SUBCONTRACTOR COMPLETED DURING THE
15 PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
16 SUBCONTRACTOR INCURRED TO PERFORM THAT WORK. EITHER PARTY MAY DISAGREE
17 WITH THE INTERIM DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH
18 THE TERMS OF THE AGREEMENT BETWEEN THE CONTRACTOR AND SUBCONTRACTOR.

19 N. IN ANY ACTION OR ARBITRATION BROUGHT PURSUANT TO THIS SECTION,
20 THE SUCCESSFUL PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES AND COSTS.

21 ~~1.~~ 0. For the purposes of this section:

22 1. CONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT
23 FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED
24 PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER
25 IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED
26 PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

27 2. "COSTS" MEANS THE AGGREGATE COST OF ALL LABOR, MATERIALS,
28 EQUIPMENT AND SERVICES.

29 ~~1.~~ 3. "Design professional service contract" means a written
30 agreement relating to the planning, design, construction administration,
31 study, evaluation, consulting, inspection, surveying, mapping, material
32 sampling, testing or other professional, scientific or technical services
33 furnished in connection with any actual or proposed study, planning,
34 survey, environmental remediation, construction, improvement, alteration,
35 repair, maintenance, relocation, moving, demolition or excavation of a
36 structure, street or roadway, appurtenance, facility, development or other
37 improvement to land.

38 ~~2.~~ 4. "Design professional services" means architect services,
39 engineer services, land surveying services, geologist services or
40 landscape architect services or any combination of those services
41 performed by or under the supervision of a design professional or an
42 employee or subconsultant of the design professional.

1 ~~5.~~ 5. "Subconsultant" means any person, firm, partnership,
2 corporation, association or other organization, or a combination of any of
3 them, that has a direct contract with a design professional or another
4 subconsultant to perform a portion of the work under a design professional
5 service contract.

6 6. SUBCONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT
7 DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE
8 FORMED PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC
9 WATER IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT
10 FORMED PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

11 7. "WORK" MEANS THE LABOR, MATERIALS, EQUIPMENT AND SERVICES TO BE
12 PROVIDED BY A CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT.

13 Sec. 5. Section 34-609, Arizona Revised Statutes, is amended to
14 read:

15 34-609. Contracts for construction-manager-at-risk,
16 design-build and job-order-contracting construction
17 services; payments to contractor; security;
18 recovery of damages by contractor for delay;
19 progress payments; changed or additional work;
20 attorney fees; definitions

21 A. An agent shall enter into a contract with the selected person or
22 firm for construction-manager-at-risk construction services, design-build
23 construction services or job-order-contracting construction services.

24 B. The terms of a contract entered into pursuant to subsection A
25 shall include the following items:

26 1. A surety company bond or bonds as required by this chapter.

27 2. The owner by mutual agreement may make progress payments on
28 contracts of less than ninety days and shall make monthly progress
29 payments on all other contracts as provided for in this paragraph.
30 Payment to the contractor on the basis of a duly certified and approved
31 estimate of the work performed during the preceding calendar month under
32 the contract may include payment for material and equipment, but to ensure
33 the proper performance of the contract, the owner shall retain ten ~~per~~
34 ~~cent~~ PERCENT of the amount of each estimate until final completion and
35 acceptance of all material, equipment and work covered by the contract.
36 An estimate of the work submitted shall be deemed approved and certified
37 for payment ~~after~~ seven days ~~from~~ AFTER the date of submission unless
38 before that time the owner or owner's agent prepares and issues a specific
39 written finding setting forth those items in detail in the estimate of the
40 work that are not approved for payment under the contract. The owner may
41 withhold an amount from the progress payment sufficient to pay the
42 expenses the owner reasonably expects to incur in correcting the
43 deficiency set forth in the written finding. The progress payments shall
44 be paid on or before fourteen days after the estimate of the work is
45 certified and approved. The estimate of the work shall be deemed received

1 by the owner on submission to any person designated by the owner for the
2 submission, review or approval of the estimate of the work.

3 3. When the contract is fifty ~~per cent~~ PERCENT completed, one-half
4 of the amount retained including any securities substituted under
5 paragraph 5 OF THIS SUBSECTION shall be paid to the contractor on the
6 contractor's request provided the contractor is making satisfactory
7 progress on the contract and there is no specific cause or claim requiring
8 a greater amount to be retained. After the contract is fifty ~~per cent~~
9 PERCENT completed, ~~no~~ NOT more than five ~~per cent~~ PERCENT of the amount of
10 any subsequent progress payments made under the contract may be retained
11 providing the contractor is making satisfactory progress on the project,
12 except that if at any time the owner determines satisfactory progress is
13 not being made, ten ~~per cent~~ PERCENT retention shall be reinstated for all
14 progress payments made under the contract after the determination.

15 4. On completion and acceptance of each separate building, public
16 work or other division of the contract on which the price is stated
17 separately in the contract, except as qualified in paragraph 5 OF THIS
18 SUBSECTION, payment may be made in full, including retained percentages,
19 less authorized deductions. In preparing estimates, the material and
20 equipment delivered on the site to be incorporated in the job shall be
21 taken into consideration in determining the estimated value by the
22 architect, engineer or other person, as specified in the contract.

23 5. Ten ~~per cent~~ PERCENT of all estimates shall be retained by the
24 agent as a guarantee for complete performance of the contract, to be paid
25 to the contractor within sixty days after completion or filing notice of
26 completion of the contract. Retention of payments by an agent longer than
27 sixty days after final completion and acceptance requires a specific
28 written finding by the agent of the reasons justifying the delay in
29 payment. ~~no~~ AN agent may NOT retain any monies after sixty days that are
30 in excess of the amount necessary to pay the expenses the agent reasonably
31 expects to incur in order to pay or discharge the expenses determined by
32 the agent in the finding justifying the retention of monies. In lieu of
33 the retention provided in this section, the agent, at the option of the
34 contractor, shall accept as a substitute an assignment of time
35 certificates of deposit of banks licensed by this state, securities of or
36 guaranteed by the United States of America, securities of this state,
37 securities of counties, municipalities and school districts within this
38 state or shares of savings and loan associations authorized to transact
39 business in this state, in an amount equal to ten ~~per cent~~ PERCENT of all
40 estimates that are retained by the agent as a guarantee for complete
41 performance of the contract. If the agent accepts substitute security as
42 described in this paragraph for the ten ~~per cent~~ PERCENT retention, the
43 contractor is entitled to receive all interest or income earned by this
44 security as it accrues and all such security in lieu of retention shall be
45 returned to the contractor by the agent within sixty days after final

1 completion and acceptance of all material, equipment and work covered by
2 the contract if the contractor has furnished the agent satisfactory
3 receipts for all labor and material billed and waivers of liens from any
4 and all persons holding claims against the work. ~~in no event shall~~ The
5 agent MAY NOT accept a time certificate of deposit of a bank or shares of
6 a savings and loan association in lieu of the retention specified unless
7 accompanied by a signed and acknowledged waiver of the bank or savings and
8 loan association of any right or power to setoff against either the agent
9 or the contractor in relationship to the certificates or shares assigned.

10 6. ~~in any instance where~~ IF the agent has accepted substitute
11 security as provided in paragraph 5 OF THIS SUBSECTION, any subcontractor
12 undertaking to perform any part of this public work is entitled to provide
13 substitute security to the contractor on terms and conditions similar to
14 those described in paragraph 5 OF THIS SUBSECTION, and this security is in
15 lieu of any retention under the subcontract.

16 7. Notwithstanding paragraphs 1 through 6 OF THIS SUBSECTION, any
17 other provision of this section and any other law, there is no retention
18 for job-order-contracting construction services contracts and the agent
19 may elect to have no retention for construction-manager-at-risk and
20 design-build construction services contracts.

21 C. ~~No~~ A contract for construction services may NOT materially alter
22 the rights of any contractor, subcontractor or material supplier to
23 receive prompt and timely payment required to be included in the contract
24 under subsection B OF THIS SECTION.

25 D. The contract shall be signed by the agent and the contractor.

26 E. A contract for the procurement of construction services shall
27 include a provision that provides for negotiations between the agent and
28 the contractor for the recovery of damages related to expenses incurred by
29 the contractor for a delay for which the agent is responsible, that is
30 unreasonable under the circumstances and that was not within the
31 contemplation of the parties to the contract. This section ~~shall not be~~
32 ~~construed to~~ DOES NOT void any provision in the contract that requires
33 notice of delays, provides for arbitration or other procedures for
34 settlement or provides for liquidated damages.

35 F. The contractor shall pay to the contractor's subcontractors or
36 material suppliers and each subcontractor shall pay to the subcontractor's
37 subcontractor or material supplier, within seven days ~~of~~ AFTER receipt of
38 each progress payment, unless otherwise agreed in writing by the parties,
39 the respective amounts allowed the contractor or subcontractor on account
40 of the work performed by the subcontractors, to the extent of each
41 subcontractor's interest, except that ~~no~~ A contract for construction
42 services may NOT materially alter the rights of any contractor,
43 subcontractor or material supplier to receive prompt and timely payment as
44 provided under this section. The payments to subcontractors or material
45 suppliers shall be based on payments received pursuant to this section.

1 Any diversion by the contractor or subcontractor of payments received for
2 work performed on a contract, or failure to reasonably account for the
3 application or use of those payments, constitutes grounds for disciplinary
4 action by the registrar of contractors. The subcontractor or material
5 supplier shall notify the registrar of contractors and the agent in
6 writing of any payment less than the amount or percentage approved for the
7 class or item of work as set forth in this section.

8 G. A subcontractor may notify the agent in writing requesting that
9 the subcontractor be notified by the agent in writing within five days
10 ~~from~~ AFTER payment of each progress payment THAT IS made to the
11 contractor. The subcontractor's request remains in effect for the
12 duration of the subcontractor's work on the project.

13 H. ~~Nothing in~~ This chapter ~~prevents~~ DOES NOT PREVENT the contractor
14 or subcontractor, at the time of application and certification to the
15 owner or contractor, from withholding the application and certification to
16 the owner or contractor for payment to the subcontractor or material
17 supplier for unsatisfactory job progress, defective construction work or
18 materials not remedied, disputed work or materials, ~~third-party~~
19 THIRD-PARTY claims filed or reasonable evidence that a claim will be
20 filed, failure of a subcontractor to make timely payments for labor,
21 equipment and materials, damage to the contractor or another
22 subcontractor, reasonable evidence that the subcontract cannot be
23 completed for the unpaid balance of the subcontract sum or a reasonable
24 amount for retention that does not exceed the actual percentage retained
25 by the owner.

26 I. If any payment to a contractor is delayed after the date due
27 interest shall be paid at the rate of one ~~per cent~~ PERCENT per month or
28 fraction of a month on the unpaid balance as may be due.

29 J. If any periodic or final payment to a subcontractor is delayed
30 by more than seven days after receipt of the periodic or final payment by
31 the contractor or subcontractor, the contractor or subcontractor shall pay
32 the subcontractor or material supplier interest, beginning on the eighth
33 day, at the rate of one ~~per cent~~ PERCENT per month or fraction of a month
34 on the unpaid balance as may be due.

35 K. Notwithstanding anything to the contrary in this section, this
36 section applies only to amounts payable in a construction services
37 contract for construction and does not apply to amounts payable in a
38 construction services contract for design services, preconstruction
39 services, finance services, maintenance services, operations services and
40 other related services.

41 L. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
42 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
43 AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE
44 CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
45 CONTRACT, PENDING A FINAL DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR

1 THE CHANGED OR ADDITIONAL WORK, THE CONTRACTOR MAY REQUEST PAYMENT FOR
2 CHANGED OR ADDITIONAL WORK THAT THE CONTRACTOR COMPLETED DURING THE
3 PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
4 CONTRACTOR INCURRED TO PERFORM THAT WORK. THE PERSON DESIGNATED IN THE
5 CONSTRUCTION CONTRACT TO CERTIFY AND APPROVE THE MONTHLY PAYMENT ESTIMATE
6 SHALL MAKE AN INTERIM DETERMINATION FOR PURPOSES OF APPROVAL FOR PAYMENT
7 OF THOSE COSTS AND CERTIFY FOR PAYMENT THE AMOUNT THAT PERSON DETERMINES
8 TO BE REASONABLY JUSTIFIED. EITHER PARTY MAY DISAGREE WITH THE INTERIM
9 DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH THE TERMS OF THE
10 CONSTRUCTION CONTRACT.

11 M. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
12 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
13 AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE
14 CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
15 CONTRACT AND IF THE CONTRACTOR DIRECTS THE SUBCONTRACTOR TO PERFORM THE
16 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT
17 BETWEEN THE CONTRACTOR AND SUBCONTRACTOR AND THE SUBCONTRACTOR SUBMITS TO
18 THE CONTRACTOR A REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL
19 WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL
20 DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR THE CHANGED OR ADDITIONAL
21 WORK, THE SUBCONTRACTOR MAY REQUEST PAYMENT FROM THE CONTRACTOR FOR THE
22 CHANGED OR ADDITIONAL WORK THAT THE SUBCONTRACTOR COMPLETED DURING THE
23 PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
24 SUBCONTRACTOR INCURRED TO PERFORM THAT WORK. EITHER PARTY MAY DISAGREE
25 WITH THE INTERIM DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH
26 THE TERMS OF THE AGREEMENT BETWEEN THE CONTRACTOR AND SUBCONTRACTOR.

27 N. IN ANY ACTION OR ARBITRATION BROUGHT PURSUANT TO THIS SECTION,
28 THE SUCCESSFUL PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES AND COSTS.

29 O. FOR THE PURPOSES OF THIS SECTION:

30 1. CONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT
31 FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED
32 PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER
33 IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED
34 PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

35 2. "COSTS" MEANS THE AGGREGATE COST OF ALL LABOR, MATERIALS,
36 EQUIPMENT AND SERVICES.

37 3. SUBCONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT
38 DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE
39 FORMED PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC
40 WATER IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT
41 FORMED PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

42 4. "WORK" MEANS THE LABOR, MATERIALS, EQUIPMENT AND SERVICES TO BE
43 PROVIDED BY A CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT.

1 Sec. 6. Section 41-2501, Arizona Revised Statutes, is amended to
2 read:

3 41-2501. Applicability

4 A. This chapter applies only to procurements initiated after
5 January 1, 1985 unless the parties agree to its application to
6 procurements initiated before that date.

7 B. This chapter applies to every expenditure of public monies,
8 including federal assistance monies except as otherwise specified in
9 section 41-2637, by this state, acting through a state governmental unit
10 as defined in this chapter, under any contract, except that this chapter
11 does not apply to either grants as defined in this chapter, or contracts
12 between this state and its political subdivisions or other governments,
13 except as provided in chapter 24 of this title and in article 10 of this
14 chapter. This chapter also applies to the disposal of state materials.
15 This chapter and rules adopted under this chapter do not prevent any state
16 governmental unit or political subdivision from complying with the terms
17 of any grant, gift, bequest or cooperative agreement.

18 C. All political subdivisions and other local public agencies of
19 this state may adopt all or any part of this chapter and the rules adopted
20 pursuant to this chapter.

21 D. Notwithstanding any other law, sections 41-2517 and 41-2546
22 apply to any agency as defined in section 41-1001, including the office of
23 the governor.

24 E. The Arizona board of regents and the legislative and judicial
25 branches of state government are not subject to this chapter except as
26 prescribed in ~~subsection~~ SUBSECTIONS F AND G of this section.

27 F. The Arizona board of regents ~~and the judicial branch~~ shall adopt
28 rules prescribing procurement policies and procedures for ~~themselves~~
29 ITSELF and institutions under ~~their~~ ITS jurisdiction. The rules must be
30 substantially equivalent to the OTHER policies and procedures prescribed
31 in this chapter, INCLUDING SECTIONS 41-2576 AND 41-2577.

32 G. THE JUDICIAL BRANCH SHALL ADOPT RULES PRESCRIBING PROCUREMENT
33 POLICIES AND PROCEDURES FOR ITSELF AND INSTITUTIONS UNDER ITS
34 JURISDICTION. THE RULES MUST BE SUBSTANTIALLY EQUIVALENT TO THE POLICIES
35 AND PROCEDURES PRESCRIBED IN THIS CHAPTER.

36 ~~G.~~ H. The Arizona state lottery commission is exempt from this
37 chapter for procurement relating to the design and operation of the
38 lottery or purchase of lottery equipment, tickets and related
39 materials. The executive director of the Arizona state lottery commission
40 shall adopt rules substantially equivalent to the policies and procedures
41 in this chapter for procurement relating to the design and operation of
42 the lottery or purchase of lottery equipment, tickets or related
43 materials. All other procurement shall be as prescribed by this chapter.

1 ~~H.~~ I. The Arizona health care cost containment system
2 administration is exempt from this chapter for provider contracts pursuant
3 to section 36-2904, subsection A and contracts for goods and services,
4 including program contractor contracts pursuant to title 36, chapter 29,
5 articles 2 and 3 and contracts with regional behavioral health authorities
6 pursuant to title 36, chapter 34. All other procurement, including
7 contracts for the statewide administrator of the program pursuant to
8 section 36-2903, subsection B, shall be as prescribed by this chapter.

9 ~~I.~~ J. Arizona correctional industries is exempt from this chapter
10 for purchases of raw materials, components and supplies that are used in
11 the manufacture or production of goods or services for sale entered into
12 pursuant to section 41-1622. All other procurement shall be as prescribed
13 by this chapter.

14 ~~J.~~ K. The state transportation board and the director of the
15 department of transportation are exempt from this chapter other than
16 sections 41-2517 and 41-2586 and are subject to title 28, chapter 20 and 2
17 Code of Federal Regulations section 200.317 for the procurement of the
18 following:

19 1. All items of construction, reconstruction, rehabilitation,
20 preservation or improvement undertaken on highway infrastructure.

21 2. Engineering services and any other work or activity to carry out
22 engineering services related to highway infrastructure.

23 3. Right-of-way services related to land titles, appraisals, real
24 property acquisitions, relocation services, property management and
25 facility design.

26 4. Any other construction, reconstruction, rehabilitation,
27 preservation or improvement work or activity that is required pursuant to
28 title 28, chapter 20.

29 ~~K.~~ L. The Arizona highways magazine is exempt from this chapter
30 for contracts for the production, promotion, distribution and sale of the
31 magazine and related products and for contracts for sole source creative
32 works entered into pursuant to section 28-7314, subsection A, paragraph 5.
33 All other procurement shall be as prescribed by this chapter.

34 ~~L.~~ M. The secretary of state is exempt from this chapter for
35 contracts entered into pursuant to section 41-1012 to publish and sell the
36 administrative code. All other procurement shall be as prescribed by this
37 chapter.

38 ~~M.~~ N. This chapter is not applicable to contracts for professional
39 witnesses if the purpose of such contracts is to provide for professional
40 services or testimony relating to an existing or probable judicial
41 proceeding in which this state is or may become a party or to contract for
42 special investigative services for law enforcement purposes.

1 ~~N~~. O. The head of any state governmental unit, in relation to any
2 contract exempted by this section from this chapter, has the same
3 authority to adopt rules, procedures or policies as is delegated to the
4 director pursuant to this chapter.

5 ~~O~~. P. Agreements negotiated by legal counsel representing this
6 state in settlement of litigation or threatened litigation are exempt from
7 this chapter.

8 ~~P~~. Q. This chapter is not applicable to contracts entered into by
9 the department of economic security:

10 1. With a provider licensed or certified by an agency of this state
11 to provide child day care services.

12 2. With area agencies on aging created pursuant to the older
13 Americans act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code
14 sections 3001 through 3058ff).

15 3. For services pursuant to title 36, chapter 29, article 2.

16 4. With an eligible entity as defined by Public Law 105-285,
17 section 673(1)(A)(i), as amended, for designated community services block
18 grant program monies and any other monies given to the eligible entity
19 that accomplishes the purpose of Public Law 105-285, section 672.

20 ~~Q~~. R. The Arizona health care cost containment system may not
21 require that persons with whom it contracts follow this chapter for the
22 purposes of subcontracts entered into for the provision of the following:

23 1. Mental health services pursuant to section 36-189, subsection B.

24 2. Services for the seriously mentally ill pursuant to title 36,
25 chapter 5, article 10.

26 3. Drug and alcohol services pursuant to section 36-141.

27 ~~R~~. S. The department of health services may not require that
28 persons with whom it contracts follow this chapter for the purpose of
29 subcontracts entered into for the provision of domestic violence services
30 pursuant to title 36, chapter 30, article 1.

31 ~~S~~. T. The department of health services is exempt from this
32 chapter for contracts for services of physicians at the Arizona state
33 hospital.

34 ~~T~~. U. Contracts for goods and services approved by the board of
35 trustees of the public safety personnel retirement system are exempt from
36 this chapter.

37 ~~U~~. V. The Arizona department of agriculture is exempt from this
38 chapter with respect to contracts for private labor and equipment to
39 effect cotton or cotton stubble plow-up pursuant to rules adopted under
40 title 3, chapter 2, article 1.

41 ~~V~~. W. The Arizona state parks board is exempt from this chapter
42 for purchases of guest supplies and items for resale such as food, linens,
43 gift items, sundries, furniture, china, glassware and utensils for the
44 facilities located in the Tonto natural bridge state park.

1 ~~W.~~ X. The Arizona state parks board is exempt from this chapter
2 for the purchase, production, promotion, distribution and sale of
3 publications, souvenirs and sundry items obtained and produced for resale.

4 ~~X.~~ Y. The Arizona state schools for the deaf and the blind are
5 exempt from this chapter for the purchase of textbooks and when purchasing
6 products through a cooperative that is organized and operates in
7 accordance with state law if such products are not available on a
8 statewide contract and are related to the operation of the schools or are
9 products for which special discounts are offered for educational
10 institutions.

11 ~~Y.~~ Z. Expenditures of monies in the morale, welfare and
12 recreational fund established by section 26-153 are exempt from this
13 chapter.

14 ~~Z.~~ AA. Notwithstanding section 41-2534, the director of the state
15 department of corrections may contract with local medical providers in
16 counties with a population of less than four hundred thousand persons for
17 the following purposes:

18 1. To acquire hospital and professional medical services for
19 inmates who are incarcerated in state department of corrections facilities
20 that are located in those counties.

21 2. To ensure the availability of emergency medical services to
22 inmates in all counties by contracting with the closest medical facility
23 that offers emergency treatment and stabilization.

24 ~~AA.~~ BB. The department of environmental quality is exempt from
25 this chapter for contracting for procurements relating to the water
26 quality assurance revolving fund program established pursuant to title 49,
27 chapter 2, article 5. The department shall engage in a source selection
28 process that is similar to the procedures prescribed by this chapter. The
29 department may contract for remedial actions with a single selection
30 process. The exclusive remedy for disputes or claims relating to
31 contracting pursuant to this subsection is as prescribed by article 9 of
32 this chapter and the rules adopted pursuant to that article. All other
33 procurement by the department shall be as prescribed by this chapter.

34 ~~BB.~~ CC. The motor vehicle division of the department of
35 transportation is exempt from this chapter for third-party authorizations
36 pursuant to title 28, chapter 13, only if all of the following conditions
37 exist:

38 1. The division does not pay any public monies to an authorized
39 third party.

40 2. Exclusivity is not granted to an authorized third party.

41 3. The director has complied with the requirements prescribed in
42 title 28, chapter 13 in selecting an authorized third party.

43 ~~CC.~~ DD. This section does not exempt third-party authorizations
44 pursuant to title 28, chapter 13 from any other applicable law.

1 ~~DD~~. EE. The state forester is exempt from this chapter for
2 purchases and contracts relating to wildland fire suppression and
3 pre-positioning equipment resources and for other activities related to
4 combating wildland fires and other unplanned risk activities, including
5 fire, flood, earthquake, wind and hazardous material responses. All other
6 procurement by the state forester shall be as prescribed by this chapter.

7 ~~EE~~. FF. The cotton research and protection council is exempt from
8 this chapter for procurements.

9 ~~FF~~. GG. The Arizona commerce authority is exempt from this
10 chapter, except article 10 for the purpose of cooperative purchases. The
11 authority shall adopt policies, procedures and practices, in consultation
12 with the department of administration, that are similar to and based on
13 the policies and procedures prescribed by this chapter for the purpose of
14 increased public confidence, fair and equitable treatment of all persons
15 engaged in the process and fostering broad competition while accomplishing
16 flexibility to achieve the authority's statutory requirements. The
17 authority shall make its policies, procedures and practices available to
18 the public. The authority may exempt specific expenditures from the
19 policies, procedures and practices.

20 ~~GG~~. HH. The Arizona exposition and state fair board is exempt from
21 this chapter for contracts for professional entertainment.

22 ~~HH~~. II. This chapter does not apply to ~~the purchase~~ PURCHASES of
23 water, gas or electric utilities.

24 ~~II~~. JJ. This chapter does not apply to professional
25 certifications, professional memberships and conference registrations.

26 ~~JJ~~. KK. The department of gaming is exempt from this chapter for
27 problem gambling treatment services contracts with licensed behavioral
28 health professionals.

29 ~~KK~~. LL. This chapter does not apply to contracts for credit
30 reporting services.

31 ~~LL~~. MM. This chapter does not apply to contracts entered into by
32 the department of child safety:

33 1. With a provider of family foster care pursuant to section 8-503.

34 2. With an eligible entity as defined by Public Law 105-285,
35 section 673(1)(A)(i), as amended, for designated community services block
36 grant program monies and any other monies given to the eligible entity
37 that accomplishes the purpose of Public Law 105-285, section 672.

38 3. For services pursuant to title 36, chapter 29, article 1 and as
39 set forth in the approved medicaid state plan.

40 ~~MM~~. NN. This chapter does not apply to contracts entered into by
41 the department of economic security with a financial institution to serve
42 as a program manager and depository under section 46-903.

1 Sec. 7. Section 41-2577, Arizona Revised Statutes, is amended to
2 read:

3 41-2577. Progress payments; changed or additional work;
4 attorney fees; definitions

5 A. Progress payments may be made by this state to the contractor on
6 the basis of a duly certified and approved estimate of the work performed
7 during a preceding period of time as set by rule, except that a percentage
8 of all estimates shall be retained as provided in section 41-2576. The
9 progress payments shall be paid on or before fourteen days after the
10 estimate of the work is certified and approved. The estimate of the work
11 shall be deemed received by the owner on submission to any person
12 designated by the owner for the submission, review or approval of the
13 estimate of the work. An estimate of the work submitted under this
14 section shall be deemed approved and certified ~~after~~ seven days ~~from~~ AFTER
15 the date of submission unless before that time the owner or owner's agent
16 prepares and issues a specific written finding detailing those items in
17 the estimate of the work that are not approved and certified under the
18 contract or design professional service contract. The owner may withhold
19 an amount from the progress payment sufficient to pay the expenses the
20 owner reasonably expects to incur in correcting the deficiency set forth
21 in the written finding. On completion and acceptance of separate
22 divisions of the contract or design professional service contract on which
23 the price is stated separately in the contract or design professional
24 service contract, payment may be made in full including retained
25 percentages, less deductions, unless a substitute security has been
26 provided pursuant to section 41-2576. ~~No~~ A contract for construction or
27 design professional services may NOT materially alter the rights of any
28 contractor, subcontractor, design professional or material supplier to
29 receive prompt and timely payment as provided under this section.

30 B. The contractor shall pay to the contractor's subcontractors,
31 design professionals or material suppliers and each subcontractor shall
32 pay to the subcontractor's subcontractor, design professional or material
33 supplier, within seven days ~~of~~ AFTER receipt of each progress payment,
34 unless otherwise agreed in writing by the parties, the respective amounts
35 allowed the contractor, subcontractor or design professional on account of
36 the work performed by the contractor's or subcontractor's subcontractors
37 or design professionals, to the extent of each such subcontractor's or
38 design professional's interest therein, except that ~~no~~ A contract for
39 construction may NOT materially alter the rights of any contractor,
40 subcontractor, design professional or material supplier to receive prompt
41 and timely payment as provided under this section. These payments to
42 subcontractors, design professionals or material suppliers shall be based
43 on payments received pursuant to this section. Any diversion by the
44 contractor, subcontractor or design professional of payments received for
45 work performed on a contract, or failure to reasonably account for the

1 application or use of such payments, constitutes grounds for disciplinary
2 action by the registrar of contractors. The subcontractor, design
3 professional or material supplier shall notify the registrar of
4 contractors and the purchasing agency in writing of any payment less than
5 the amount or percentage approved for the class or item of work or design
6 professional services as set forth in this section.

7 C. A subcontractor or design professional may notify the purchasing
8 agency in writing requesting that the subcontractor or design professional
9 be notified by the purchasing agency in writing within five days ~~from~~
10 AFTER payment of each progress payment THAT IS made to the contractor.
11 The subcontractor's or design professional's request remains in effect for
12 the duration of the subcontractor's or design professional's work on the
13 project.

14 D. ~~Nothing in~~ This chapter ~~prevents~~ DOES NOT PREVENT the contractor
15 or subcontractor, at the time of application and certification to the
16 owner or contractor, from withholding such application and certification
17 to the owner or contractor for payment to the subcontractor, design
18 professional or material supplier for unsatisfactory job progress,
19 defective construction work or design professional services or materials
20 not remedied, disputed work or materials, third-party claims filed or
21 reasonable evidence that a claim will be filed, failure of a subcontractor
22 or design professional to make timely payments for labor, equipment and
23 materials or design professional services, damage to the contractor or
24 another subcontractor or design professional, reasonable evidence that the
25 subcontract or design professional service contract cannot be completed
26 for the unpaid balance of the subcontract or design professional service
27 contract sum or a reasonable amount for retention that does not exceed the
28 actual percentage retained by the owner.

29 E. If any payment to a contractor is delayed after the date due,
30 interest shall be paid at the rate of one percent per month or a fraction
31 of the month on such unpaid balance as may be due.

32 F. If any periodic or final payment to a subcontractor or design
33 professional is delayed by more than seven days after receipt of periodic
34 or final payment by the contractor or subcontractor, the contractor or
35 subcontractor shall pay the contractor's or subcontractor's subcontractor,
36 design professional or material supplier interest, beginning on the eighth
37 day, at the rate of one percent per calendar month or a fraction of a
38 calendar month on such unpaid balance as may be due.

39 G. Notwithstanding anything to the contrary in this section, this
40 section applies only to amounts payable in a construction services
41 contract for construction and in a contract for design services and does
42 not apply to amounts payable in a contract for preconstruction services,
43 finance services, maintenance services, operations services or any other
44 related services included in the contract.

1 H. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
2 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
3 AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE
4 CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
5 CONTRACT, PENDING A FINAL DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR
6 THE CHANGED OR ADDITIONAL WORK, THE CONTRACTOR MAY REQUEST PAYMENT FOR
7 CHANGED OR ADDITIONAL WORK THAT THE CONTRACTOR COMPLETED DURING THE
8 PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
9 CONTRACTOR INCURRED TO PERFORM THAT WORK. THE PERSON DESIGNATED IN THE
10 CONSTRUCTION CONTRACT TO CERTIFY AND APPROVE THE MONTHLY PAYMENT ESTIMATE
11 SHALL MAKE AN INTERIM DETERMINATION FOR PURPOSES OF APPROVAL FOR PAYMENT
12 OF THOSE COSTS AND CERTIFY FOR PAYMENT THE AMOUNT THAT PERSON DETERMINES
13 TO BE REASONABLY JUSTIFIED. EITHER PARTY MAY DISAGREE WITH THE INTERIM
14 DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH THE TERMS OF THE
15 CONSTRUCTION CONTRACT.

16 I. IF THE OWNER DIRECTS THE CONTRACTOR IN WRITING TO PERFORM
17 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT
18 AND THE CONTRACTOR SUBMITS TO THE OWNER A REASONABLE COST ESTIMATE OF THE
19 CHANGED OR ADDITIONAL WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION
20 CONTRACT AND IF THE CONTRACTOR DIRECTS THE SUBCONTRACTOR TO PERFORM THE
21 CHANGED OR ADDITIONAL WORK IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT
22 BETWEEN THE CONTRACTOR AND SUBCONTRACTOR AND THE SUBCONTRACTOR SUBMITS TO
23 THE CONTRACTOR A REASONABLE COST ESTIMATE OF THE CHANGED OR ADDITIONAL
24 WORK AS MAY BE REQUIRED UNDER THE CONSTRUCTION CONTRACT, PENDING A FINAL
25 DETERMINATION OF THE TOTAL AMOUNT TO BE PAID FOR THE CHANGED OR ADDITIONAL
26 WORK, THE SUBCONTRACTOR MAY REQUEST PAYMENT FROM THE CONTRACTOR FOR THE
27 CHANGED OR ADDITIONAL WORK THAT THE SUBCONTRACTOR COMPLETED DURING THE
28 PRECEDING CALENDAR MONTH IN MONTHLY PAY ESTIMATES BASED ON THE COSTS THE
29 SUBCONTRACTOR INCURRED TO PERFORM THAT WORK. EITHER PARTY MAY DISAGREE
30 WITH THE INTERIM DETERMINATION AND MAY ASSERT A CLAIM IN ACCORDANCE WITH
31 THE TERMS OF THE AGREEMENT BETWEEN THE CONTRACTOR AND SUBCONTRACTOR.

32 J. IN ANY ACTION OR ARBITRATION BROUGHT PURSUANT TO THIS SECTION,
33 THE SUCCESSFUL PARTY SHALL BE AWARDED REASONABLE ATTORNEY FEES AND COSTS.

34 K. FOR THE PURPOSES OF THIS SECTION:

35 1. CONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT DISTRICT
36 FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE FORMED
37 PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC WATER
38 IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT FORMED
39 PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.

40 2. "COSTS" MEANS THE AGGREGATE COST OF ALL LABOR, MATERIALS,
41 EQUIPMENT AND SERVICES.

1 3. SUBCONTRACTOR DOES NOT INCLUDE AN AGRICULTURAL IMPROVEMENT
2 DISTRICT FORMED PURSUANT TO TITLE 48, CHAPTER 17, AN ELECTRIC COOPERATIVE
3 FORMED PURSUANT TO TITLE 10, CHAPTER 19, ARTICLE 2 OR 4 OR A DOMESTIC
4 WATER IMPROVEMENT DISTRICT OR A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT
5 FORMED PURSUANT TO TITLE 48, CHAPTER 6, ARTICLE 4.
6 4. "WORK" MEANS THE LABOR, MATERIALS, EQUIPMENT AND SERVICES TO BE
7 PROVIDED BY A CONTRACTOR OR SUBCONTRACTOR UNDER A CONSTRUCTION CONTRACT.