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Revised Laws Regarding Prompt Payment and Payment Bonds in Public Works Projects

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Effective August 28, 2014, the Missouri laws regarding prompt payment and payment bonds for public works contracts have changed.

Prompt Payment for All!

Well, maybe not for all. However, Senate Bill 529 expands the application of the Prompt Payment Act (Mo. Rev. Stat. § 34.057) to include additional persons. Previously, the Act provided that all contracts for public works projects must provide for prompt payment to the contractor. Senate Bill 529 extends the application of the Prompt Payment Act to engineers, architects, landscape architects, and land surveyors. If amounts due to engineers, architects, landscape architects, or land surveyors are not paid within 30 days following the receipt of an invoice, the public owner must pay interest at the rate of one and one-half percent per month until paid.

And With Less Retainage!

Senate Bill 529 also modifies the amounts that may be retained pending completion of the contract. Formerly, a public owner could retain 5% of the value of a public works contract or up to 10% if it was determined by the public owner and the architect or engineer that a higher rate was required to ensure performance. The Bill eliminates the ability of the public owner to withhold 10% as formerly allowed, and provides that a public owner may only retain up to 10% if the contractor is not required to obtain a bond because the contract is not estimated to exceed \$50,000.

Required Amount for Payment Bond

Related to the allowed retainage amount, Senate Bill 529 increases from \$25,000 to \$50,000 the minimum amount of a construction project for which a payment bond is required under Mo. Rev. Stat. § 107.170.

Other Significant Changes

In addition to those discussed above, Senate Bill 529 makes additional changes related public works contracts:

- Prior to Senate Bill 529, the law provided that retainage may be adjusted prior to

completion when work is proceeding satisfactorily. In such cases, 200% of the value of the remaining work was withheld until completion. With enactment of the Bill, only 150% of the value may now be withheld until completion.

- With the enactment of Senate Bill 529, the public owner is required to pay at least 98% of the retainage, less any offsets or deductions authorized in the contract or by law. If the public owner determines that the work is not substantially completed, the owner must provide a written explanation within 14 calendar days to the contractor. The contractor is then required to provide the notice to any subcontractor or suppliers responsible. If the explanation is not given by the public body, the public body must pay at least 98% of the retainage within 30 calendar days. Similarly, if the public owner does not release full payment under the contract because there are specific areas of work or materials that it is rejecting, the specific subcontractors or suppliers involved shall not be paid for that portion of the work provided that the public owner has given a written explanation to the contractor, subcontractor, or supplier involved as to why the work or supplies were rejected or deemed not suitable for payment.
- Senate Bill 529 requires that a public owner include any withheld retainage with final payment of the moneys owed to the contractor within 30 days of the due date.

All governmental entities covered by these laws should be aware of these changes as they prepare for and carry out future public works contracts.

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