An Act

ENROLLED SENATE
BILL NO. 1012

By: Coates of the Senate

and

Sullivan and Morgan of the House

An Act relating to contracts; establishing requirements for certain bid project contracts; specifying language required on certain bid contracts; providing for inclusion of certain payment requirements on certain bid contracts; specifying architects shall not be subject to certain liability; providing for certain payment failures; allowing reduction of payment in certain circumstances; establishing requirements for certain privately negotiated contracts; authorizing the confidentiality of certain negotiations; specifying requirements for certain invited bids; requiring that payment terms for certain negotiated subcontracts shall be the same as for contract; establishing requirements for the suspension of work in certain circumstances; providing requirements for the resumption of work in certain circumstances; specifying certain dwellings shall not be subject to act; specifying unenforceable provisions in certain contracts; providing for codification; and declaring an emergency.

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

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

A. Bid Projects.

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

OWNER SHALL ISSUE PAYMENTS WITH A FREQUENCY OF _____.

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

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

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

a. the owner shall make monthly progress payments, and

b. payments shall be due within twenty-eight (28) calendar days after receipt of billing.

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

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

B. Private Negotiated Projects.

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

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

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

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

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

1. The prime contractor may suspend work:

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

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

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

2. Subcontractors may suspend work:

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

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

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

D. Resumption of Work.

No prime contractor or subcontractor shall be required to resume work until:

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

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

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

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

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

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

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

2. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that disallows or

alters the rights of any contractor or subcontractor to receive and enforce any and all rights under this act.

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

Passed the Senate the 29th day of April, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 7th day of April, 2010.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 3rd

day of May, 2010,

at 3:33 o'clock P M.

By:

Approved by the Governor of the State of Oklahoma the 5th day of

May, 2010, at 6:13 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

6th day of May, 2010,

at 2:10 o'clock P M.

By: