

1 State of Arkansas As Engrossed: H2/17/15 H2/24/15 H3/3/15

2 90th General Assembly

A Bill

3 Regular Session, 2015

HOUSE BILL 1008

4

5 By: Representative Murdock

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For An Act To Be Entitled

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AN ACT TO REGULATE THE FAIRNESS IN THE BIDDING

9

PRACTICES FOR THE CONSTRUCTION OF PUBLICLY FUNDED

10

PROJECTS; TO MODIFY THE RETAINAGE LAWS OF THE STATE

11

OF ARKANSAS; AND FOR OTHER PURPOSES.

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Subtitle

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TO REGULATE THE FAIRNESS IN THE BIDDING

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PRACTICES FOR THE CONSTRUCTION OF

17

PUBLICLY FUNDED PROJECTS; AND TO MODIFY

18

THE RETAINAGE LAWS OF THE STATE OF

19

ARKANSAS.

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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24 *SECTION 1. Arkansas Code § 22-9-604 is amended to read as follows:*

25 *22-9-604. Procedure.*

26 *(a)(1)(A) In the case of a construction contract entered into between*
27 *a public agency and a contractor who is required to furnish a performance and*
28 *payment bond, the contractor shall be entitled to payment of ninety-five*
29 *percent (95%) of the earned progress payments when due, with the public*
30 *agency retaining five percent (5%) to assure faithful performance of the*
31 *construction contract.*

32 *(B)(i) A public agency may forego withholding retainage of*
33 *the progress payments if:*

34 *(a) The construction contract is fifty-percent*
35 *complete;*

36 *(b) The contractor has provided the work in a*



1 satisfactory manner; and

2 (c) The design professional and public agency
3 agree with and approve of subdivisions (a)(1)(B)(i)(a) and (b) of this
4 section.

5 (ii) This subdivision (a)(1)(B) does not prohibit a
6 public agency from withholding retainage throughout the project.

7 (2) If the construction contract allows for phased work in which
8 completion may occur on a partial occupancy, any retention proceeds withheld
9 and retained under this section shall be partially released within thirty
10 (30) days under the same conditions under this section in direct proportion
11 to the value of the part of the capital improvement completed.

12 (b)(1) In the case of a construction subcontract entered into between
13 a contractor for a public agency and a subcontractor who is required by the
14 contractor to furnish a performance and payment bond, the subcontractor shall
15 be entitled to payment of ninety-five percent (95%) of the earned progress
16 payments when due, with the contractor retaining five percent (5%) to assure
17 faithful performance of the construction subcontract.

18 (2) Upon the approval of the contractor, if the subcontractor
19 completes fifty percent (50%) of the construction subcontract the contractor
20 shall not retain any further moneys.

21 ~~(b)(c)~~ All sums withheld by the public agency shall be paid to the
22 contractor within thirty (30) days after the construction contract has been
23 completed.

24 ~~(e)(d)~~ In the event the construction contract requires the contractor
25 to purchase and furnish materials or equipment that will be stored on the job
26 site or in a bonded warehouse by the contractor and used in the job as
27 required by the construction contract, no retainage ~~will~~ shall be withheld on
28 that amount of the submitted progress payment pertaining to the cost of these
29 stored materials or equipment.

30 /s/Murdock

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33 **APPROVED: 04/01/2015**