



# Alabama Legislature Amends Law Requiring Timely Payment for Public-Works Contracts

In the last two years, Alabama has twice amended its laws regarding timely payments to contractors that are involved in public works contracts (contracts with the state, counties, cities or their agencies). The second amendment effective on July 1, 2014 added to what was included in 2012.

The new law is a change from the pre-2012 statute that partial payments were required as work progressed “at the end of each calendar month, or as soon thereafter as practicable, on the estimates made and approved by the awarding authority” (emphasis added). The new law deletes the arguably ambiguous “practicable” language and requires partial payments within 35 days after the authority accepts that the estimate and the terms providing for partial payments have been fulfilled.

The 2014 amendment also requires the contract between the contractor and the awarding authority designate “a person” to review documents submitted by the contractor. The designated person cannot just hold a payment submission without taking any action. Instead, within ten days (or twenty days for Department of Transportation contracts) of the contractor’s submission they must either: (a) send it on for payment; or, (b) write back to the contractor informing of errors. If the awarding authority does not pay within 35 days, contractors may collect interest at a statutory rate which for 2012 through 2014, has been 3%. The 35-day window cannot be extended.

The new law also allows recovery of attorneys’ fees and costs of collection related to nonpayment. Contractors may sue the party obligated for the payment claimed and seek amounts due, interest, attorneys’ fees, court costs, and other expenses.

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The 2014 amendment also added a provision that appears to address contractor’s concerns about not having sufficient time between the pre-bid meeting and the time when a bid must be submitted. It states that if an awarding authority conducts a pre-bid meeting, the meeting must occur more than seven days before the bid opening unless an emergency is declared. Ala. Code § 39-2-2 (h).

Finally, the 2012 amendment included a special provision that required disclosure in the bid documents of situations where the source of funds for a project is a grant, award or direct reimbursement from the state or federal government or another source and the funds are not going to be available until after the signing of the contract. The 2014 amendment added that once the awarding authority receives funds it must make payment to the contractor within ten days assuming payment is otherwise due.

These amendments should result in more timely payments for contractors on public works projects in Alabama.



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