

REFERENCE TITLE: contract progress payments; design professionals

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2336

Introduced by
Representative Fann

AN ACT

AMENDING SECTION 28-411, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4; AMENDING SECTIONS 34-221, 34-227, 41-2571, 41-2577 AND 41-2583, ARIZONA REVISED STATUTES; RELATING TO CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-411, Arizona Revised Statutes, is amended to
3 read:

4 28-411. Prompt payment; progress payment; consultants and
5 contractors; subconsultants and subcontractors

6 A. The department shall make progress payments pursuant to the terms
7 of an agreement with a consultant or contractor on the basis of an invoice
8 for work already performed. All progress payments shall be paid on or before
9 the twenty-first day after the date the department receives the invoice
10 unless the department does not approve and certify the invoice pursuant to
11 subsection B of this section.

12 B. Any invoice from a consultant or contractor for progress payments
13 shall be deemed approved and certified by the department unless within seven
14 days from the date the department receives the invoice the department sends
15 the consultant or contractor written notice by first class mail of those
16 items that the department does not approve and certify under the terms of the
17 agreement.

18 C. On or before the seventh day after the date the department makes a
19 progress payment, if the consultant or contractor contracted with
20 subconsultants or subcontractors to perform the work for which the department
21 made the progress payment, the consultant or contractor shall pay the
22 subconsultants or subcontractors for the work performed to the extent of each
23 subconsultant's or subcontractor's contractual interest in the progress
24 payment. If any subconsultant or subcontractor contests the amount paid by a
25 consultant or contractor from a progress payment made under subsection A of
26 this section, the subconsultant or subcontractor shall notify the department
27 in writing within thirty days after receiving the payment from the consultant
28 or contractor. This subsection does not apply if the contract between the
29 consultant or contractor and the subconsultant or subcontractor expressly
30 provides that the prompt payment provisions of this subsection do not apply
31 to the agreement between the consultant or contractor and the subconsultant
32 or subcontractor.

33 D. If a consultant or contractor fails to pay a subconsultant or
34 subcontractor within seven days of receiving a progress payment from the
35 department, the consultant or contractor shall pay the subconsultant or
36 subcontractor interest on the unpaid balance, beginning on the eighth day at
37 the rate of one ~~per-cent~~ PERCENT per month or fraction of a month. This
38 subsection does not apply if the contract between the consultant or
39 contractor and the subconsultant or subcontractor expressly provides that the
40 prompt payment provisions of this subsection do not apply to the agreement
41 between the consultant or contractor and the subconsultant or subcontractor.

42 E. A subconsultant or subcontractor may submit a written request to
43 the department asking the department to notify the subconsultant or
44 subcontractor of each subsequent progress payment made to the consultant or
45 contractor. If the department receives a written request under this

1 subsection, the department shall send the requesting party a written notice
2 by first class mail of each subsequent progress payment within five days of
3 making the progress payment.

4 F. Agreements with the department for consultant or contractor
5 services do not alter the rights of any consultant or contractor to receive
6 prompt and timely payment as provided under this section.

7 G. SUBJECT TO THE REQUIREMENTS OF THIS SECTION, THE DEPARTMENT SHALL
8 PAY THE AGREED OR REASONABLE VALUE OF ALL LABOR, MATERIALS, WORK OR SERVICES
9 FURNISHED, INSTALLED OR PERFORMED BY A CONTRACTOR OR CONSULTANT PURSUANT TO
10 AN ADVANCE NOTICE TO PROCEED OR OTHER ORAL OR WRITTEN DIRECTION OR REQUEST
11 FROM THE DEPARTMENT'S AUTHORIZED AGENT BEFORE THE EXECUTION OF A CONTRACT OR
12 CONTRACT MODIFICATION APPLICABLE TO THE LABOR, MATERIALS, WORK OR SERVICES.
13 IT IS NOT A DEFENSE FOR NONPAYMENT THAT THE LABOR, MATERIALS, WORK OR
14 SERVICES WERE FURNISHED, INSTALLED OR PERFORMED BEFORE THE EXECUTION OR
15 EFFECTIVE DATE OF AN ADVANCE NOTICE TO PROCEED, A CONTRACT OR A CONTRACT
16 MODIFICATION. THE UNIT PRICES, CONTRACT SUM, HOURLY RATES OR OTHER COST OR
17 PRICING FORMULA OF THE CONTRACT OR CONTRACT MODIFICATION APPLICABLE TO THE
18 LABOR, MATERIALS, WORK OR SERVICES IS THE PRESUMPTIVE AGREED OR REASONABLE
19 VALUE FOR PURPOSES OF THIS SECTION UNLESS THE DEPARTMENT AND ITS CONTRACTOR
20 OR CONSULTANT OTHERWISE AGREE IN WRITING.

21 ~~G.~~ H. To the extent that this section conflicts with section 28-6924,
22 section 28-6924 controls any agreement between the department and a
23 contractor for highway construction projects.

24 Sec. 2. Title 32, chapter 1, Arizona Revised Statutes, is amended by
25 adding article 4, to read:

26 ARTICLE 4. DESIGN PROFESSIONAL SERVICE CONTRACTS

27 32-161. Definitions: applicability

28 A. IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

29 1. "CONTRACTOR" MEANS A PERSON WHO IS LICENSED BY THE REGISTRAR OF
30 CONTRACTORS PURSUANT TO CHAPTER 10 OF THIS TITLE.

31 2. "DESIGN PROFESSIONAL" MEANS AN INDIVIDUAL OR FIRM REGISTERED BY THE
32 BOARD TO PRACTICE ARCHITECTURE, ENGINEERING, GEOLOGY, LANDSCAPE ARCHITECTURE
33 OR LAND SURVEYING OR ANY COMBINATION OF THOSE PROFESSIONS AND PERSONS
34 EMPLOYED BY THE REGISTERED INDIVIDUAL OR FIRM.

35 3. "DESIGN PROFESSIONAL SERVICE CONTRACT" MEANS A WRITTEN OR ORAL
36 AGREEMENT RELATING TO THE PLANNING, DESIGN, DESIGN-BUILD, CONSTRUCTION
37 ADMINISTRATION, STUDY, EVALUATION, CONSULTING, INSPECTION, SURVEYING,
38 MAPPING, MATERIAL SAMPLING, TESTING OR OTHER PROFESSIONAL, SCIENTIFIC OR
39 TECHNICAL SERVICES FURNISHED IN CONNECTION WITH ANY ACTUAL OR PROPOSED STUDY,
40 PLANNING, SURVEY, ENVIRONMENTAL REMEDIATION, CONSTRUCTION, IMPROVEMENT,
41 ALTERATION, REPAIR, MAINTENANCE, RELOCATION, MOVING, DEMOLITION OR EXCAVATION
42 OF A STRUCTURE, STREET OR ROADWAY, APPURTENANCE, FACILITY OR DEVELOPMENT OR
43 OTHER IMPROVEMENT TO LAND.

44 4. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER
45 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT

1 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE
2 SUPERVISION OF A DESIGN PROFESSIONAL OR EMPLOYEES OR SUBCONSULTANTS OF THE
3 DESIGN PROFESSIONAL.

4 5. "FINAL COMPLETION" MEANS THE EARLIEST OF THE FOLLOWING:

5 (a) THE TIME THAT THE WORK, OR THE WORK UNDER A PORTION OF A DESIGN
6 PROFESSIONAL SERVICE CONTRACT FOR WHICH THE CONTRACT STATES A SEPARATE PRICE,
7 HAS BEEN COMPLETED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DESIGN
8 PROFESSIONAL SERVICE CONTRACT.

9 (b) THE DATE OF FINAL INSPECTION AND FINAL WRITTEN ACCEPTANCE BY THE
10 GOVERNMENTAL BODY THAT ISSUES THE BUILDING PERMIT FOR THE BUILDING, STRUCTURE
11 OR IMPROVEMENT.

12 6. "OWNER" MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION,
13 ASSOCIATION OR OTHER ORGANIZATION, OR A COMBINATION OF ANY OF THEM, THAT
14 PROCURES DESIGN PROFESSIONAL SERVICES OR CAUSES A BUILDING, STRUCTURE OR
15 IMPROVEMENT TO BE CONSTRUCTED, ALTERED, REPAIRED, MAINTAINED, MOVED OR
16 DEMOLISHED OR THAT CAUSES LAND TO BE EXCAVATED OR OTHERWISE DEVELOPED OR
17 IMPROVED, WHETHER THE INTEREST OR ESTATE OF THE PERSON IS IN FEE, AS VENDEE
18 UNDER A CONTRACT TO PURCHASE, AS LESSEE OR ANOTHER INTEREST OR ESTATE LESS
19 THAN FEE.

20 7. "RETENTION" MEANS A PORTION OF A PROGRESS PAYMENT OTHERWISE DUE
21 FROM THE OWNER TO THE DESIGN PROFESSIONAL THAT IS WITHHELD PURSUANT TO THE
22 TERMS AND CONDITIONS OF A DESIGN PROFESSIONAL SERVICE CONTRACT TO ENSURE
23 PROPER PERFORMANCE OF THE CONTRACT.

24 8. "SERVICES" MEANS THE LABOR, MATERIALS, EQUIPMENT AND SERVICES TO BE
25 PROVIDED BY A DESIGN PROFESSIONAL OR SUBCONSULTANT UNDER A DESIGN
26 PROFESSIONAL SERVICE CONTRACT.

27 9. "SUBCONSULTANT" MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION,
28 ASSOCIATION OR OTHER ORGANIZATION, OR A COMBINATION OF ANY OF THEM, THAT HAS
29 A DIRECT CONTRACT WITH A DESIGN PROFESSIONAL OR ANOTHER SUBCONSULTANT TO
30 PERFORM A PORTION OF THE WORK UNDER A DESIGN PROFESSIONAL SERVICE CONTRACT.

31 B. THE DEFINITIONS IN THIS SECTION DO NOT APPLY TO SECTION 12-552.

32 32-162. Progress payments: design professionals and
33 subconsultants

34 A. BY MUTUAL AGREEMENT WITH A DESIGN PROFESSIONAL, AN OWNER OR
35 CONTRACTOR SHALL MAKE PROGRESS PAYMENTS PURSUANT TO THE TERMS OF AN AGREEMENT
36 WITH THE DESIGN PROFESSIONAL ON THE BASIS OF AN INVOICE FOR A DEPOSIT
37 REQUIRED BY A CONTRACT FOR WORK ALREADY PERFORMED. THE OWNER OR CONTRACTOR
38 SHALL PAY ALL PROGRESS PAYMENTS ON OR BEFORE THE TWENTY-FIRST DAY AFTER THE
39 DATE THE OWNER OR CONTRACTOR RECEIVES THE INVOICE UNLESS THE OWNER OR
40 CONTRACTOR DOES NOT APPROVE AND CERTIFY THE INVOICE PURSUANT TO SUBSECTION B
41 OF THIS SECTION.

42 B. ANY INVOICE FROM A DESIGN PROFESSIONAL FOR PROGRESS PAYMENTS IS
43 DEEMED APPROVED BY THE OWNER OR CONTRACTOR UNLESS, WITHIN SEVEN DAYS AFTER
44 THE DATE THAT THE OWNER OR CONTRACTOR RECEIVES THE INVOICE, THE OWNER OR
45 CONTRACTOR SENDS THE DESIGN PROFESSIONAL WRITTEN NOTICE BY FIRST CLASS MAIL

1 OF THOSE ITEMS THAT THE OWNER OR CONTRACTOR DOES NOT APPROVE AND CERTIFY
2 UNDER THE TERMS OF THE AGREEMENT.

3 C. ON OR BEFORE THE SEVENTH DAY AFTER THE DATE THE OWNER OR CONTRACTOR
4 MAKES A PROGRESS PAYMENT, IF THE DESIGN PROFESSIONAL CONTRACTED WITH
5 SUBCONSULTANTS TO PERFORM THE WORK FOR WHICH THE OWNER OR CONTRACTOR MADE THE
6 PROGRESS PAYMENT, THE DESIGN PROFESSIONAL SHALL PAY THE SUBCONSULTANTS FOR
7 THE WORK PERFORMED TO THE EXTENT OF EACH SUBCONSULTANT'S CONTRACTUAL INTEREST
8 IN THE PROGRESS PAYMENT. IF ANY SUBCONSULTANT CONTESTS THE AMOUNT PAID BY A
9 DESIGN PROFESSIONAL FROM A PROGRESS PAYMENT MADE UNDER SUBSECTION A OF THIS
10 SECTION, THE SUBCONSULTANT SHALL NOTIFY THE OWNER OR CONTRACTOR IN WRITING
11 WITHIN THIRTY DAYS AFTER RECEIVING THE PAYMENT FROM THE DESIGN PROFESSIONAL.

12 D. IF A DESIGN PROFESSIONAL FAILS TO PAY A SUBCONSULTANT WITHIN SEVEN
13 DAYS AFTER RECEIVING A PROGRESS PAYMENT FROM THE OWNER OR CONTRACTOR, THE
14 DESIGN PROFESSIONAL SHALL PAY THE SUBCONSULTANT INTEREST ON THE UNPAID
15 BALANCE, BEGINNING ON THE EIGHTH DAY AT THE RATE OF ONE PERCENT PER MONTH OR
16 FRACTION OF A MONTH.

17 E. A SUBCONSULTANT MAY SUBMIT A WRITTEN REQUEST TO THE OWNER OR
18 CONTRACTOR ASKING THE OWNER OR CONTRACTOR TO NOTIFY THE SUBCONSULTANT OF EACH
19 SUBSEQUENT PROGRESS PAYMENT MADE TO THE DESIGN PROFESSIONAL. IF THE OWNER OR
20 CONTRACTOR RECEIVES A WRITTEN REQUEST UNDER THIS SUBSECTION, THE OWNER OR
21 CONTRACTOR SHALL SEND THE SUBCONSULTANT A WRITTEN NOTICE BY FIRST CLASS MAIL
22 OF EACH SUBSEQUENT PROGRESS PAYMENT WITHIN FIVE DAYS AFTER MAKING THE
23 PROGRESS PAYMENT.

24 F. AN AGREEMENT WITH THE OWNER OR CONTRACTOR FOR DESIGN PROFESSIONAL
25 SERVICES DOES NOT ALTER THE RIGHTS OF ANY DESIGN PROFESSIONAL OR
26 SUBCONSULTANT TO RECEIVE PROMPT AND TIMELY PAYMENT AS PROVIDED UNDER THIS
27 SECTION.

28 G. THIS SECTION DOES NOT PREVENT A DESIGN PROFESSIONAL OR
29 SUBCONSULTANT, AT THE TIME OF APPLICATION AND CERTIFICATION TO THE OWNER,
30 CONTRACTOR OR DESIGN PROFESSIONAL, FROM WITHHOLDING THE APPLICATION AND
31 CERTIFICATION TO THE OWNER, CONTRACTOR OR DESIGN PROFESSIONAL FOR PAYMENT TO
32 THE SUBCONSULTANT FOR:

- 33 1. UNSATISFACTORY JOB PROGRESS.
- 34 2. DEFECTIVE DESIGN WORK OR MATERIALS NOT REMEDIED.
- 35 3. DISPUTED WORK OR MATERIALS.
- 36 4. FAILURE TO COMPLY WITH OTHER MATERIAL PROVISIONS OF THE DESIGN
37 PROFESSIONAL SERVICE CONTRACT.
- 38 5. THIRD-PARTY CLAIMS FILED OR REASONABLE EVIDENCE THAT A CLAIM WILL
39 BE FILED.
- 40 6. FAILURE OF THE SUBCONSULTANT TO MAKE TIMELY PAYMENTS FOR SERVICES,
41 LABOR, EQUIPMENT AND MATERIALS.
- 42 7. DAMAGE TO A DESIGN PROFESSIONAL OR ANOTHER SUBCONSULTANT.
- 43 8. REASONABLE EVIDENCE THAT THE SUBCONSULTANT'S CONTRACT CANNOT BE
44 COMPLETED FOR THE UNPAID BALANCE OF THE CONTRACT SUM.

1 9. THE OWNER OR CONTRACTOR HAS WITHHELD RETENTION FROM THE DESIGN
2 PROFESSIONAL, IN WHICH CASE THE AMOUNT OF THE RETENTION WITHHELD BY THE
3 DESIGN PROFESSIONAL MAY NOT EXCEED THE ACTUAL AMOUNT OF THE RETENTION
4 RETAINED BY THE OWNER OR CONTRACTOR PERTAINING TO THE SUBCONSULTANT'S WORK.

5 H. IF ANY PAYMENT TO A DESIGN PROFESSIONAL IS DELAYED AFTER THE DATE
6 DUE, INTEREST SHALL BE PAID AT THE RATE OF ONE PERCENT PER MONTH OF A
7 FRACTION OF A MONTH ON THE UNPAID BALANCE DUE.

8 I. THIS SECTION DOES NOT REQUIRE OR ALLOW THE WITHHOLDING OF RETENTION
9 FROM A DESIGN PROFESSIONAL OR SUBCONSULTANT UNLESS OTHERWISE PROVIDED BY A
10 DESIGN PROFESSIONAL SERVICE CONTRACT.

11 J. IN ANY ACTION OR ARBITRATION BROUGHT TO COLLECT PAYMENTS OR
12 INTEREST PURSUANT TO THIS SECTION, THE SUCCESSFUL PARTY SHALL BE AWARDED
13 COSTS AND ATTORNEY FEES IN A REASONABLE AMOUNT.

14 32-163. Design professional service contracts; suspension of
15 performance; termination of contract; notice
16 required; costs and fees

17 A. A DESIGN PROFESSIONAL MAY SUSPEND PERFORMANCE UNDER A DESIGN
18 PROFESSIONAL SERVICE CONTRACT OR TERMINATE A DESIGN PROFESSIONAL SERVICE
19 CONTRACT FOR FAILURE BY THE OWNER OR CONTRACTOR TO MAKE TIMELY PAYMENT OF THE
20 AMOUNT APPROVED AND CERTIFIED PURSUANT TO SECTION 32-162. A DESIGN
21 PROFESSIONAL SHALL PROVIDE WRITTEN NOTICE TO THE OWNER OR CONTRACTOR AT LEAST
22 SEVEN CALENDAR DAYS BEFORE THE DESIGN PROFESSIONAL'S INTENDED SUSPENSION OR
23 TERMINATION UNLESS A SHORTER NOTICE PERIOD IS PRESCRIBED IN THE DESIGN
24 PROFESSIONAL SERVICE CONTRACT BETWEEN THE OWNER OR CONTRACTOR AND DESIGN
25 PROFESSIONAL. A DESIGN PROFESSIONAL IS NOT IN BREACH OF THE DESIGN
26 PROFESSIONAL SERVICE CONTRACT FOR SUSPENDING PERFORMANCE OR TERMINATING A
27 DESIGN PROFESSIONAL SERVICE CONTRACT PURSUANT TO THIS SUBSECTION. A DESIGN
28 PROFESSIONAL SERVICE CONTRACT MAY NOT EXTEND THE TIME PERIOD FOR A DESIGN
29 PROFESSIONAL TO SUSPEND PERFORMANCE OR TERMINATE A DESIGN PROFESSIONAL
30 SERVICE CONTRACT UNDER THIS SUBSECTION.

31 B. A SUBCONSULTANT MAY SUSPEND PERFORMANCE UNDER A DESIGN PROFESSIONAL
32 SERVICE CONTRACT OR TERMINATE A DESIGN PROFESSIONAL SERVICE CONTRACT IF THE
33 OWNER OR CONTRACTOR FAILS TO MAKE TIMELY PAYMENT OF AMOUNTS APPROVED AND
34 CERTIFIED PURSUANT TO SECTION 32-162 FOR THE SUBCONSULTANT'S SERVICES AND THE
35 DESIGN PROFESSIONAL FAILS TO PAY THE SUBCONSULTANT FOR THE APPROVED AND
36 CERTIFIED DESIGN PROFESSIONAL SERVICES. A SUBCONSULTANT SHALL PROVIDE
37 WRITTEN NOTICE TO THE DESIGN PROFESSIONAL AND OWNER OR CONTRACTOR AT LEAST
38 THREE CALENDAR DAYS BEFORE THE SUBCONSULTANT'S INTENDED SUSPENSION OR
39 TERMINATION UNLESS A SHORTER NOTICE PERIOD IS PRESCRIBED IN THE SUBCONSULTANT
40 CONTRACT BETWEEN THE DESIGN PROFESSIONAL AND SUBCONSULTANT. A SUBCONSULTANT
41 IS NOT IN BREACH OF A DESIGN PROFESSIONAL SERVICE CONTRACT FOR SUSPENDING
42 PERFORMANCE OR TERMINATING A DESIGN PROFESSIONAL SERVICE CONTRACT PURSUANT TO
43 THIS SUBSECTION. A DESIGN PROFESSIONAL SERVICE CONTRACT MAY NOT EXTEND THE
44 TIME PERIOD FOR A SUBCONSULTANT TO SUSPEND PERFORMANCE OR TERMINATE A DESIGN
45 PROFESSIONAL SERVICE CONTRACT UNDER THIS SUBSECTION.

1 C. A SUBCONSULTANT MAY SUSPEND PERFORMANCE UNDER A DESIGN PROFESSIONAL
2 SERVICE CONTRACT OR TERMINATE A DESIGN PROFESSIONAL SERVICE CONTRACT IF THE
3 OWNER OR CONTRACTOR MAKES TIMELY PAYMENT OF AMOUNTS APPROVED AND CERTIFIED
4 PURSUANT TO SECTION 32-162 FOR THE SUBCONSULTANT'S SERVICES BUT THE DESIGN
5 PROFESSIONAL FAILS TO PAY THE SUBCONSULTANT FOR THE APPROVED AND CERTIFIED
6 WORK. A SUBCONSULTANT SHALL PROVIDE WRITTEN NOTICE TO THE DESIGN
7 PROFESSIONAL AND OWNER OR CONTRACTOR AT LEAST SEVEN CALENDAR DAYS BEFORE THE
8 SUBCONSULTANT'S INTENDED SUSPENSION OR TERMINATION UNLESS A SHORTER NOTICE
9 PERIOD IS PRESCRIBED IN THE DESIGN PROFESSIONAL SERVICE CONTRACT BETWEEN THE
10 SUBCONSULTANT AND DESIGN PROFESSIONAL. A SUBCONSULTANT IS NOT IN BREACH OF A
11 DESIGN PROFESSIONAL SERVICE CONTRACT FOR SUSPENDING PERFORMANCE OR
12 TERMINATING A DESIGN PROFESSIONAL SERVICE CONTRACT PURSUANT TO THIS
13 SUBSECTION. A DESIGN PROFESSIONAL SERVICE CONTRACT MAY NOT EXTEND THE TIME
14 PERIOD FOR A SUBCONSULTANT TO SUSPEND PERFORMANCE OR TERMINATE A DESIGN
15 PROFESSIONAL SERVICE CONTRACT UNDER THIS SUBSECTION.

16 D. A SUBCONSULTANT MAY SUSPEND PERFORMANCE UNDER A DESIGN PROFESSIONAL
17 SERVICE CONTRACT OR TERMINATE A DESIGN PROFESSIONAL SERVICE CONTRACT IF THE
18 OWNER OR CONTRACTOR DECLINES TO APPROVE AND CERTIFY PORTIONS OF THE DESIGN
19 PROFESSIONAL'S BILLING OR ESTIMATE PURSUANT TO SECTION 32-162 FOR THAT
20 SUBCONSULTANT'S SERVICES BUT ONLY IF THE REASONS FOR THAT FAILURE BY THE
21 OWNER OR CONTRACTOR TO APPROVE AND CERTIFY ARE NOT THE FAULT OF OR DIRECTLY
22 RELATED TO THE SUBCONSULTANT'S SERVICES. A SUBCONSULTANT SHALL PROVIDE
23 WRITTEN NOTICE TO THE DESIGN PROFESSIONAL AND THE OWNER OR CONTRACTOR AT
24 LEAST SEVEN CALENDAR DAYS BEFORE THE SUBCONSULTANT'S INTENDED SUSPENSION OR
25 TERMINATION UNLESS A SHORTER NOTICE PERIOD IS PRESCRIBED IN THE DESIGN
26 PROFESSIONAL SERVICE CONTRACT BETWEEN THE SUBCONSULTANT AND DESIGN
27 PROFESSIONAL. A SUBCONSULTANT IS NOT IN BREACH OF A DESIGN PROFESSIONAL
28 SERVICE CONTRACT FOR SUSPENDING PERFORMANCE OR TERMINATING A CONSTRUCTION
29 CONTRACT OR DESIGN PROFESSIONAL SERVICE CONTRACT PURSUANT TO THIS SUBSECTION.
30 A DESIGN PROFESSIONAL SERVICE CONTRACT MAY NOT EXTEND THE TIME PERIOD FOR A
31 SUBCONSULTANT TO SUSPEND PERFORMANCE OR TERMINATE A DESIGN PROFESSIONAL
32 SERVICE CONTRACT UNDER THIS SUBSECTION.

33 E. A SUBCONSULTANT THAT SUSPENDS PERFORMANCE AS PROVIDED IN THIS
34 SECTION IS NOT REQUIRED TO FURNISH FURTHER DESIGN PROFESSIONAL SERVICES UNTIL
35 THE SUBCONSULTANT IS PAID THE AMOUNT THAT WAS APPROVED AND CERTIFIED,
36 TOGETHER WITH ANY COSTS RESULTING FROM THE SHUTDOWN OR STARTUP OF A PROJECT.

37 F. IN ANY ACTION OR ARBITRATION BROUGHT PURSUANT TO THIS SECTION, THE
38 SUCCESSFUL PARTY SHALL BE AWARDED COSTS AND ATTORNEY FEES IN A REASONABLE
39 AMOUNT.

40 G. WRITTEN NOTICE REQUIRED UNDER THIS SECTION IS DEEMED TO HAVE BEEN
41 PROVIDED IF THE WRITTEN NOTICE IS DELIVERED EITHER:

42 1. IN PERSON TO THE INDIVIDUAL OR TO A MEMBER OF THE ENTITY OR AN
43 OFFICER OF THE CORPORATION FOR WHICH IT WAS INTENDED.

1 2. AT OR SENT BY ANY MEANS THAT PROVIDES WRITTEN, THIRD-PARTY
2 VERIFICATION OF DELIVERY TO THE LAST BUSINESS ADDRESS KNOWN TO THE PARTY
3 GIVING NOTICE.

4 32-164. Design professional service contracts; void provisions

5 A. A PROVISION, COVENANT, CLAUSE OR UNDERSTANDING IN, COLLATERAL TO OR
6 AFFECTING A DESIGN PROFESSIONAL SERVICE CONTRACT IS AGAINST THIS STATE'S
7 PUBLIC POLICY AND IS VOID AND UNENFORCEABLE IF IT EITHER:

8 1. MAKES THE CONTRACT SUBJECT TO THE LAWS OF ANOTHER STATE OR REQUIRES
9 ANY LITIGATION ARISING FROM THE CONTRACT TO BE CONDUCTED IN ANOTHER STATE.

10 2. STATES THAT A PARTY TO THE CONTRACT CANNOT SUSPEND PERFORMANCE
11 UNDER THE CONTRACT OR TERMINATE THE CONTRACT IF ANOTHER PARTY TO THE CONTRACT
12 FAILS TO MAKE PROMPT PAYMENTS UNDER THE CONTRACT PURSUANT TO SECTION 32-162
13 OR 32-163.

14 B. ANY MEDIATION, ARBITRATION OR OTHER DISPUTE RESOLUTION PROCEEDING
15 ARISING FROM A DESIGN PROFESSIONAL SERVICE CONTRACT FOR WORK PERFORMED IN
16 THIS STATE SHALL BE CONDUCTED IN THIS STATE.

17 32-165. Applicability; notice; definitions

18 A. SECTIONS 32-162 AND 32-163 DO NOT APPLY TO THIS STATE OR POLITICAL
19 SUBDIVISIONS OF THIS STATE.

20 B. SECTION 32-162 DOES NOT APPLY TO DESIGN PROFESSIONAL SERVICE
21 CONTRACTS FOR THE DESIGN OF A DWELLING FOR AN OWNER-OCCUPANT UNLESS THE
22 FOLLOWING NOTICE OR SUBSTANTIALLY SIMILAR LANGUAGE APPEARS IN CLEAR AND
23 CONSPICUOUS TYPE ON THE FRONT PAGE OF EACH BILLING OR ESTIMATE FROM THE
24 DESIGN PROFESSIONAL TO THE OWNER-OCCUPANT:

25 NOTICE TO OWNER OF APPLICABILITY OF ARIZONA DESIGN PROFESSIONAL
26 PROMPT PAY ACT (REQUIRED BY SECTION 32-165, ARIZONA REVISED
27 STATUTES):

28 ATTENTION: YOUR OBLIGATIONS TO PAY YOUR DESIGN
29 PROFESSIONAL ARE SUBJECT TO THE ARIZONA DESIGN PROFESSIONAL
30 PROMPT PAY ACT. THE ACT IS SET FORTH IN SECTIONS 32-161 THROUGH
31 32-164, ARIZONA REVISED STATUTES. THE FULL TEXT OF THE STATUTES
32 ARE AVAILABLE AT YOUR LOCAL PUBLIC LAW LIBRARY OR ON THE
33 INTERNET. UNDER THE ACT, YOU HAVE THE RIGHT TO WITHHOLD ALL OR
34 A PORTION OF A PAYMENT TO A DESIGN PROFESSIONAL FOR A VARIETY OF
35 REASONS, INCLUDING DEFECTIVE DESIGN SERVICE THAT HAS NOT BEEN
36 CORRECTED. HOWEVER, IN ORDER TO DO SO, YOU MUST ISSUE A WRITTEN
37 STATEMENT SETTING FORTH IN REASONABLE DETAIL YOUR REASONS FOR
38 WITHHOLDING PAYMENTS WITHIN SEVEN DAYS AFTER THE DATE YOU
39 RECEIVE A BILLING OR ESTIMATE. IF YOU FAIL TO ISSUE THE WRITTEN
40 STATEMENT WITHIN THAT PERIOD, THE BILLING OR ESTIMATE WILL BE
41 DEEMED APPROVED. ONCE THE BILLING OR ESTIMATE IS DEEMED
42 APPROVED, YOU MUST PAY THE BILLING OR ESTIMATE WITHIN TWENTY-ONE
43 DAYS AFTER THE DATE YOU RECEIVE THE DESIGN PROFESSIONAL'S
44 BILLING OR ESTIMATE. GENERALLY, YOU ARE LIMITED BY THE ACT TO
45 WITHHOLDING ONLY AN AMOUNT THAT IS SUFFICIENT TO PAY THE DIRECT

1 COSTS AND EXPENSES YOU REASONABLY EXPECT TO INCUR TO PROTECT YOU
2 FROM LOSS FOR WHICH THE DESIGN PROFESSIONAL IS RESPONSIBLE. YOU
3 ARE ENCOURAGED TO READ THE ACT IN FULL TO KNOW YOUR OBLIGATIONS
4 AND RIGHTS.

5 C. FOR THE PURPOSES OF THIS SECTION, "DWELLING" AND "OWNER-OCCUPANT"
6 HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 33-1002.

7 Sec. 3. Section 34-221, Arizona Revised Statutes, is amended to read:
8 34-221. Contract with successful bidder; payments to contractor
9 and design professional; security; recovery of
10 damages for delay; progress payments; definitions

11 A. The agent shall enter into a contract with the lowest responsible
12 bidder whose proposal is satisfactory, except that in determining the lowest
13 responsible bidder under this section, the board of supervisors may consider,
14 for no more than five projects, the time of completion proposed by the
15 bidder, the value over time of completed services and facilities and the
16 value over time of interrupted services if the board determines that this
17 procedure will serve the public interest by providing a substantial fiscal
18 benefit or that the use of the traditional awarding of contracts is not
19 practicable for meeting desired construction standards or delivery schedules
20 and if the formula for considering the time of completion is specifically
21 stated in the bidding information.

22 B. In determining the lowest responsible bidder for a horizontal
23 construction project using the design-bid-build project delivery method, an
24 agent may consider the time of completion proposed by the bidder if the agent
25 determines that this procedure will serve the public interest by providing a
26 substantial fiscal benefit or that the use of the traditional awarding of
27 contracts is not practicable for meeting desired construction standards or
28 delivery schedules and if the formula for considering the time of completion
29 is specifically stated in the bidding information.

30 C. The terms of a contract entered into pursuant to subsection A OF
31 THIS SECTION shall include the following items:

- 32 1. A surety company bond or bonds as required under this article.
- 33 2. The owner by mutual agreement may make progress payments on
34 contracts of less than ninety days and shall make monthly progress payments
35 on all other contracts as provided for in this paragraph. Payment to the
36 contractor on the basis of a duly certified and approved estimate of the work
37 performed during the preceding calendar month under such contract may include
38 payment for material and equipment, but to ~~insure~~ ENSURE the proper
39 performance of such contract, the owner shall retain ten ~~per-cent~~ PERCENT of
40 the amount of each estimate until final completion and acceptance of all
41 material, equipment and work covered by the contract. An estimate of the
42 work submitted shall be deemed approved and certified for payment after seven
43 days from the date of submission unless before that time the owner or owner's
44 agent prepares and issues a specific written finding setting forth those
45 items in detail in the estimate of the work that are not approved for payment

1 under the contract. The owner may withhold an amount from the progress
 2 payment sufficient to pay the expenses the owner reasonably expects to incur
 3 in correcting the deficiency set forth in the written finding. The progress
 4 payments shall be paid on or before fourteen days after the estimate of the
 5 work is certified and approved. The estimate of the work shall be deemed
 6 received by the owner on submission to any person designated by the owner for
 7 the submission, review or approval of the estimate of the work.

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

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

28 5. Ten ~~per cent~~ PERCENT of all estimates shall be retained by the
 29 agent as a guarantee for complete performance of the contract, to be paid to
 30 the contractor within sixty days after completion or filing notice of
 31 completion of the contract. Retention of payments by a purchasing agency
 32 longer than sixty days after final completion and acceptance requires a
 33 specific written finding by the purchasing agency of the reasons justifying
 34 the delay in payment. No purchasing agency may retain any monies after sixty
 35 days ~~which~~ THAT are in excess of the amount necessary to pay the expenses the
 36 purchasing agency reasonably expects to incur in order to pay or discharge
 37 the expenses determined by the purchasing agency in the finding justifying
 38 the retention of monies. In lieu of the retention provided in this section,
 39 the agent, at the option of the contractor, shall accept as a substitute an
 40 assignment of time certificates of deposit of banks licensed by this state,
 41 securities of or guaranteed by the United States of America, securities of
 42 this state, securities of counties, municipalities and school districts
 43 within this state or shares of savings and loan associations authorized to
 44 transact business in this state, in an amount equal to ten ~~per cent~~ PERCENT
 45 of all estimates, which shall be retained by the agent as a guarantee for

1 complete performance of the contract. In the event the agent accepts
2 substitute security as described in this paragraph for the ten ~~per cent~~
3 PERCENT retention, the contractor shall be entitled to receive all interest
4 or income earned by such security as it accrues and all such security in lieu
5 of retention shall be returned to the contractor by the agent within sixty
6 days after final completion and acceptance of all material, equipment and
7 work covered by the contract if the contractor has furnished the agent
8 satisfactory receipts for all labor and material billed and waivers of liens
9 from any and all persons holding claims against the work. In no event shall
10 the agent accept a time certificate of deposit of a bank or shares of a
11 savings and loan association in lieu of the retention specified unless
12 accompanied by a signed and acknowledged waiver of the bank or savings and
13 loan association of any right or power to setoff against either the agent or
14 the contractor in relationship to the certificates or shares assigned.

15 6. In any instance where the agent has accepted substitute security as
16 provided in paragraph 5 OF THIS SUBSECTION, any subcontractor undertaking to
17 perform any part of such public work shall be entitled to provide substitute
18 security to the contractor upon terms and conditions similar to those
19 described in paragraph 5 OF THIS SUBSECTION, and such security shall be in
20 lieu of any retention under the subcontract.

21 D. No contract for construction OR DESIGN PROFESSIONAL SERVICES may
22 materially alter the rights of any contractor, subcontractor, DESIGN
23 PROFESSIONAL or material supplier to receive prompt and timely payment
24 required to be included in the contract under subsection C OF THIS SECTION.

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

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

35 G. The contractor shall pay to the contractor's subcontractors, DESIGN
36 PROFESSIONALS or material suppliers and each subcontractor shall pay to the
37 subcontractor's subcontractor, DESIGN PROFESSIONAL or material supplier,
38 within seven days of receipt of each progress payment, unless otherwise
39 agreed in writing by the parties, the respective amounts allowed the
40 contractor, ~~or~~ subcontractor OR DESIGN PROFESSIONAL on account of the work
41 performed by subordinate subcontractors OR DESIGN PROFESSIONALS, to the
42 extent of each such subcontractor's OR DESIGN PROFESSIONAL'S interest
43 therein, except that no contract for construction may materially alter the
44 rights of any contractor, subcontractor, DESIGN PROFESSIONAL or material
45 supplier to receive prompt and timely payment as provided under this section.

1 Such payments to subcontractors, DESIGN PROFESSIONALS or material suppliers
2 shall be based on payments received pursuant to this section. Any diversion
3 by the contractor or subcontractor of payments received for work performed on
4 a contract, or failure to reasonably account for the application or use of
5 such payments, constitutes grounds for disciplinary action by the registrar
6 of contractors. The subcontractor or material supplier shall notify the
7 registrar of contractors and the purchasing agency in writing of any payment
8 less than the amount or percentage approved for the class or item of work as
9 set forth in this section.

10 H. A subcontractor OR DESIGN PROFESSIONAL may notify the purchasing
11 agency in writing requesting that the subcontractor OR DESIGN PROFESSIONAL be
12 notified by the purchasing agency in writing within five days from payment of
13 each progress payment made to the contractor. The subcontractor's OR DESIGN
14 PROFESSIONAL'S request remains in effect for the duration of the
15 subcontractor's OR DESIGN PROFESSIONAL'S work on the project.

16 I. Nothing in this chapter prevents the contractor or subcontractor,
17 at the time of application and certification to the owner or contractor, from
18 withholding such application and certification to the owner or contractor for
19 payment to the subcontractor, DESIGN PROFESSIONAL or material supplier for
20 unsatisfactory job progress, defective DESIGN PROFESSIONAL SERVICES OR
21 construction work or materials not remedied, disputed DESIGN PROFESSIONAL
22 SERVICES, work or materials, third-party claims filed or reasonable evidence
23 that a claim will be filed, failure of a subcontractor OR DESIGN PROFESSIONAL
24 to make timely payments for DESIGN PROFESSIONAL SERVICES, labor, equipment
25 and materials, damage to the contractor or another subcontractor OR DESIGN
26 PROFESSIONAL, reasonable evidence that the subcontract OR DESIGN PROFESSIONAL
27 SERVICE CONTRACT cannot be completed for the unpaid balance of the
28 subcontract OR DESIGN PROFESSIONAL SERVICE CONTRACT sum or a reasonable
29 amount for retention that does not exceed the actual percentage retained by
30 the owner.

31 J. If any payment to a contractor is delayed after the date due,
32 interest shall be paid at the rate of one ~~per-cent~~ PERCENT per month or
33 fraction of a month on such unpaid balance as may be due.

34 K. If any periodic or final payment to a subcontractor OR DESIGN
35 PROFESSIONAL is delayed by more than seven days after receipt of the periodic
36 or final payment by the contractor or subcontractor, the contractor or
37 subcontractor shall pay a subordinate subcontractor, DESIGN PROFESSIONAL or
38 material supplier interest, beginning on the eighth day, at the rate of one
39 ~~per-cent~~ PERCENT per month or a fraction of a month on such unpaid balance as
40 may be due.

41 L. FOR THE PURPOSES OF THIS SECTION:

42 1. "DESIGN PROFESSIONAL SERVICE CONTRACT" MEANS A WRITTEN OR ORAL
43 AGREEMENT RELATING TO THE PLANNING, DESIGN, CONSTRUCTION ADMINISTRATION,
44 STUDY, EVALUATION, CONSULTING, INSPECTION, SURVEYING, MAPPING, MATERIAL
45 SAMPLING, TESTING OR OTHER PROFESSIONAL, SCIENTIFIC OR TECHNICAL SERVICES

1 FURNISHED IN CONNECTION WITH ANY ACTUAL OR PROPOSED STUDY, PLANNING, SURVEY,
2 ENVIRONMENTAL REMEDIATION, CONSTRUCTION, IMPROVEMENT, ALTERATION, REPAIR,
3 MAINTENANCE, RELOCATION, MOVING, DEMOLITION OR EXCAVATION OF A STRUCTURE,
4 STREET OR ROADWAY, APPURTENANCE, FACILITY, DEVELOPMENT OR OTHER IMPROVEMENT
5 TO LAND.

6 2. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER
7 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT
8 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE
9 SUPERVISION OF A DESIGN PROFESSIONAL OR AN EMPLOYEE OR SUBCONSULTANT OF THE
10 DESIGN PROFESSIONAL.

11 3. "SUBCONSULTANT" MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION,
12 ASSOCIATION OR OTHER ORGANIZATION, OR A COMBINATION OF ANY OF THEM, THAT HAS
13 A DIRECT CONTRACT WITH A DESIGN PROFESSIONAL OR ANOTHER SUBCONSULTANT TO
14 PERFORM A PORTION OF THE WORK UNDER A DESIGN PROFESSIONAL SERVICE CONTRACT.

15 Sec. 4. Section 34-227, Arizona Revised Statutes, is amended to read:

16 34-227. Construction contracts; design professional service
17 contracts; void provisions

18 A provision, covenant, clause or understanding in, collateral to or
19 affecting a construction contract OR A DESIGN PROFESSIONAL SERVICE CONTRACT,
20 AS DEFINED IN SECTION 34-226, that makes the contract subject to the laws of
21 another state or that requires any litigation, arbitration or other dispute
22 resolution proceeding arising from the contract to be conducted in another
23 state is against this state's public policy and is void and unenforceable.

24 Sec. 5. Section 41-2571, Arizona Revised Statutes, is amended to read:

25 41-2571. Definitions

26 ~~As used~~ In this article, UNLESS THE CONTEXT OTHERWISE REQUIRES:

27 1. "Architect services", "engineer services", "land surveying
28 services", "assayer services", "geologist services" and "landscape architect
29 services" means those professional services within the scope of the practice
30 of those services as provided in title 32, chapter 1, article 1.

31 2. "Cost" means the aggregate cost of all materials and services,
32 including labor performed by force account.

33 3. "DESIGN PROFESSIONAL SERVICE CONTRACT" MEANS A WRITTEN OR ORAL
34 AGREEMENT RELATING TO THE PLANNING, DESIGN, CONSTRUCTION ADMINISTRATION,
35 STUDY, EVALUATION, CONSULTING, INSPECTION, SURVEYING, MAPPING, MATERIAL
36 SAMPLING, TESTING OR OTHER PROFESSIONAL, SCIENTIFIC OR TECHNICAL SERVICES
37 FURNISHED IN CONNECTION WITH ANY ACTUAL OR PROPOSED STUDY, PLANNING, SURVEY,
38 ENVIRONMENTAL REMEDIATION, CONSTRUCTION, IMPROVEMENT, ALTERATION, REPAIR,
39 MAINTENANCE, RELOCATION, MOVING, DEMOLITION OR EXCAVATION OF A STRUCTURE,
40 STREET OR ROADWAY, APPURTENANCE, FACILITY OR DEVELOPMENT OR OTHER IMPROVEMENT
41 TO LAND.

42 4. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER
43 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT
44 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE

1 SUPERVISION OF A DESIGN PROFESSIONAL OR EMPLOYEES OR SUBCONSULTANTS OF THE
2 DESIGN PROFESSIONAL.

3 5. "SUBCONSULTANT" MEANS ANY PERSON, FIRM, PARTNERSHIP, CORPORATION,
4 ASSOCIATION OR OTHER ORGANIZATION, OR A COMBINATION OF ANY OF THEM, THAT HAS
5 A DIRECT CONTRACT WITH A DESIGN PROFESSIONAL OR ANOTHER SUBCONSULTANT TO
6 PERFORM A PORTION OF THE WORK UNDER A DESIGN PROFESSIONAL SERVICE CONTRACT.

7 Sec. 6. Section 41-2577, Arizona Revised Statutes, is amended to read:
8 41-2577. Progress payments

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

33 B. The contractor shall pay to the contractor's subcontractors, DESIGN
34 PROFESSIONALS or material suppliers and each subcontractor shall pay to the
35 subcontractor's subcontractor, DESIGN PROFESSIONAL or material supplier,
36 within seven days of receipt of each progress payment, unless otherwise
37 agreed in writing by the parties, the respective amounts allowed the
38 contractor, ~~or~~ subcontractor OR DESIGN PROFESSIONAL on account of the work
39 performed by the contractor's or subcontractor's subcontractors OR DESIGN
40 PROFESSIONALS, to the extent of each such subcontractor's OR DESIGN
41 PROFESSIONAL'S interest therein, except that no contract for construction may
42 materially alter the rights of any contractor, subcontractor, DESIGN
43 PROFESSIONAL or material supplier to receive prompt and timely payment as
44 provided under this section. These payments to subcontractors, DESIGN
45 PROFESSIONALS or material suppliers shall be based on payments received

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

9 C. A subcontractor OR DESIGN PROFESSIONAL may notify the purchasing
 10 agency in writing requesting that the subcontractor OR DESIGN PROFESSIONAL be
 11 notified by the purchasing agency in writing within five days from payment of
 12 each progress payment made to the contractor. The subcontractor's OR DESIGN
 13 PROFESSIONAL'S request remains in effect for the duration of the
 14 subcontractor's OR DESIGN PROFESSIONAL'S work on the project.

15 D. Nothing in this chapter prevents the contractor or subcontractor,
 16 at the time of application and certification to the owner or contractor, from
 17 withholding such application and certification to the owner or contractor for
 18 payment to the subcontractor, DESIGN PROFESSIONAL or material supplier for
 19 unsatisfactory job progress, defective construction work OR DESIGN
 20 PROFESSIONAL SERVICES or materials not remedied, disputed work or materials,
 21 third-party claims filed or reasonable evidence that a claim will be filed,
 22 failure of a subcontractor OR DESIGN PROFESSIONAL to make timely payments for
 23 labor, equipment and materials OR DESIGN PROFESSIONAL SERVICES, damage to the
 24 contractor or another subcontractor OR DESIGN PROFESSIONAL, reasonable
 25 evidence that the subcontract OR DESIGN PROFESSIONAL SERVICE CONTRACT cannot
 26 be completed for the unpaid balance of the subcontract OR DESIGN PROFESSIONAL
 27 SERVICE CONTRACT sum or a reasonable amount for retention that does not
 28 exceed the 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 ~~per-cent~~ PERCENT per month or a
 31 fraction 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 or
 34 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 ~~per-cent~~ PERCENT per calendar month or a fraction of
 38 a 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 contract
 41 for construction and does not apply to amounts payable in a construction
 42 services contract ~~for design services~~, preconstruction services, finance
 43 services, maintenance services, operations services or any other related
 44 services included in the contract.

