

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

CHAPTER 282
HOUSE BILL 2336

AN ACT

AMENDING SECTIONS 28-411, 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 **OR BY**
16 **ELECTRONIC MEANS** of those items that the department does not approve and
17 certify under the terms of the 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
46 subsection, the department shall send the requesting party a written notice

1 by first class mail of each subsequent progress payment within five days of
2 making the progress payment.

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

6 G. SUBJECT TO THE REQUIREMENTS OF THIS SECTION, THE DEPARTMENT SHALL
7 PAY THE AGREED OR REASONABLE VALUE OF ALL LABOR, MATERIALS, WORK OR SERVICES
8 FURNISHED, INSTALLED OR PERFORMED BY A DESIGN PROFESSIONAL PURSUANT TO A
9 LIMITED NOTICE TO PROCEED FROM THE DEPARTMENT'S AUTHORIZED AGENT BEFORE THE
10 EXECUTION OF A CONTRACT OR CONTRACT MODIFICATION APPLICABLE TO THE LABOR,
11 MATERIALS, WORK OR SERVICES. THE UNIT PRICES, CONTRACT SUM, HOURLY RATES OR
12 OTHER COST OR PRICING FORMULA OF THE CONTRACT OR CONTRACT MODIFICATION
13 APPLICABLE TO THE LABOR, MATERIALS, WORK OR SERVICES IS THE FAIR AND
14 REASONABLE COST FOR PURPOSES OF THIS SECTION UNLESS THE DEPARTMENT AND ITS
15 DESIGN PROFESSIONAL OTHERWISE AGREE IN WRITING. IF THE PARTIES FAIL TO
16 SUCCESSFULLY NEGOTIATE AND SIGN A CONTRACT OR CONTRACT MODIFICATION, THE
17 DESIGN PROFESSIONAL SHALL BE PAID FOR COSTS INCURRED PURSUANT TO THE LIMITED
18 NOTICE TO PROCEED AND SUBJECT TO THE DEPARTMENT'S COST ALLOWABILITY
19 GUIDELINES. FOR THE PURPOSES OF THIS SUBSECTION, "DESIGN PROFESSIONAL" MEANS
20 AN INDIVIDUAL OR FIRM REGISTERED PURSUANT TO TITLE 32, CHAPTER 1, ARTICLE 1,
21 TO PRACTICE ARCHITECTURE, ENGINEERING, GEOLOGY, LANDSCAPE ARCHITECTURE OR
22 LAND SURVEYING OR ANY COMBINATION OF THOSE PROFESSIONS AND PERSONS EMPLOYED
23 BY THE REGISTERED INDIVIDUAL OR FIRM.

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

27 Sec. 2. Section 34-221, Arizona Revised Statutes, is amended to read:

28 ~~34-221.~~ 34-221. Contract with successful bidder; payments to contractor
29 and design professional; security; recovery of
30 damages for delay; progress payments; definitions

31 A. The agent shall enter into a contract with the lowest responsible
32 bidder whose proposal is satisfactory, except that in determining the lowest
33 responsible bidder under this section, the board of supervisors may consider,
34 for no more than five projects, the time of completion proposed by the
35 bidder, the value over time of completed services and facilities and the
36 value over time of interrupted services if the board determines that this
37 procedure will serve the public interest by providing a substantial fiscal
38 benefit or that the use of the traditional awarding of contracts is not
39 practicable for meeting desired construction standards or delivery schedules
40 and if the formula for considering the time of completion is specifically
41 stated in the bidding information.

42 B. In determining the lowest responsible bidder for a horizontal
43 construction project using the design-bid-build project delivery method, an
44 agent may consider the time of completion proposed by the bidder if the agent
45 determines that this procedure will serve the public interest by providing a
46 substantial fiscal benefit or that the use of the traditional awarding of

1 contracts is not practicable for meeting desired construction standards or
2 delivery schedules and if the formula for considering the time of completion
3 is specifically stated in the bidding information.

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

6 1. A surety company bond or bonds as required under this article.

7 2. The owner by mutual agreement may make progress payments on
8 contracts of less than ninety days and shall make monthly progress payments
9 on all other contracts as provided for in this paragraph. Payment to the
10 contractor on the basis of a duly certified and approved estimate of the work
11 performed during the preceding calendar month under such contract may include
12 payment for material and equipment, but to ~~insure~~ ENSURE the proper
13 performance of such contract, the owner shall retain ten ~~per-cent~~ PERCENT of
14 the amount of each estimate until final completion and acceptance of all
15 material, equipment and work covered by the contract. An estimate of the
16 work submitted shall be deemed approved and certified for payment after seven
17 days from the date of submission unless before that time the owner or owner's
18 agent prepares and issues a specific written finding setting forth those
19 items in detail in the estimate of the work that are not approved for payment
20 under the contract. The owner may withhold an amount from the progress
21 payment sufficient to pay the expenses the owner reasonably expects to incur
22 in correcting the deficiency set forth in the written finding. The progress
23 payments shall be paid on or before fourteen days after the estimate of the
24 work is certified and approved. The estimate of the work shall be deemed
25 received by the owner on submission to any person designated by the owner for
26 the submission, review or approval of the estimate of the work.

27 3. When the contract is fifty ~~per-cent~~ PERCENT completed, one-half of
28 the amount retained including any securities substituted under paragraph 5 OF
29 THIS SUBSECTION shall be paid to the contractor upon the contractor's request
30 ~~provided~~ IF the contractor is making satisfactory progress on the contract
31 and there is no specific cause or claim requiring a greater amount to be
32 retained. After the contract is fifty ~~per-cent~~ PERCENT completed, no more
33 than five ~~per-cent~~ PERCENT of the amount of any subsequent progress payments
34 made under the contract may be retained ~~providing~~ IF the contractor is making
35 satisfactory progress on the project, except that if at any time the owner
36 determines satisfactory progress is not being made, ten ~~per-cent~~ PERCENT
37 retention shall be reinstated for all progress payments made under the
38 contract subsequent to the determination.

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

1 5. Ten ~~per-cent~~ PERCENT of all estimates shall be retained by the
2 agent as a guarantee for complete performance of the contract, to be paid to
3 the contractor within sixty days after completion or filing notice of
4 completion of the contract. Retention of payments by a purchasing agency
5 longer than sixty days after final completion and acceptance requires a
6 specific written finding by the purchasing agency of the reasons justifying
7 the delay in payment. No purchasing agency may retain any monies after sixty
8 days ~~which~~ THAT are in excess of the amount necessary to pay the expenses the
9 purchasing agency reasonably expects to incur in order to pay or discharge
10 the expenses determined by the purchasing agency in the finding justifying
11 the retention of monies. In lieu of the retention provided in this section,
12 the agent, at the option of the contractor, shall accept as a substitute an
13 assignment of time certificates of deposit of banks licensed by this state,
14 securities of or guaranteed by the United States of America, securities of
15 this state, securities of counties, municipalities and school districts
16 within this state or shares of savings and loan associations authorized to
17 transact business in this state, in an amount equal to ten ~~per-cent~~ PERCENT
18 of all estimates, which shall be retained by the agent as a guarantee for
19 complete performance of the contract. In the event the agent accepts
20 substitute security as described in this paragraph for the ten ~~per-cent~~
21 PERCENT retention, the contractor shall be entitled to receive all interest
22 or income earned by such security as it accrues and all such security in lieu
23 of retention shall be returned to the contractor by the agent within sixty
24 days after final completion and acceptance of all material, equipment and
25 work covered by the contract if the contractor has furnished the agent
26 satisfactory receipts for all labor and material billed and waivers of liens
27 from any and all persons holding claims against the work. In no event shall
28 the agent accept a time certificate of deposit of a bank or shares of a
29 savings and loan association in lieu of the retention specified unless
30 accompanied by a signed and acknowledged waiver of the bank or savings and
31 loan association of any right or power to setoff against either the agent or
32 the contractor in relationship to the certificates or shares assigned.

33 6. In any instance where the agent has accepted substitute security as
34 provided in paragraph 5 OF THIS SUBSECTION, any subcontractor undertaking to
35 perform any part of such public work shall be entitled to provide substitute
36 security to the contractor upon terms and conditions similar to those
37 described in paragraph 5 OF THIS SUBSECTION, and such security shall be in
38 lieu of any retention under the subcontract.

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

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

44 F. A contract for the procurement of construction shall include a
45 provision ~~which~~ THAT provides for negotiations between the agent and the
46 contractor for the recovery of damages related to expenses incurred by the

1 contractor for a delay for which the agent is responsible, which is
2 unreasonable under the circumstances and which was not within the
3 contemplation of the parties to the contract. This section shall not be
4 construed to void any provision in the contract ~~which~~ THAT requires notice of
5 delays, ~~OR~~ provides for arbitration or other procedure for settlement or
6 provides for liquidated damages.

7 G. The contractor shall pay to the contractor's subcontractors, DESIGN
8 PROFESSIONALS or material suppliers and each subcontractor shall pay to the
9 subcontractor's subcontractor, DESIGN PROFESSIONAL or material supplier,
10 within seven days of receipt of each progress payment, unless otherwise
11 agreed in writing by the parties, the respective amounts allowed the
12 contractor, ~~or~~ subcontractor OR DESIGN PROFESSIONAL on account of the work
13 performed by subordinate subcontractors OR DESIGN PROFESSIONALS, to the
14 extent of each such subcontractor's OR DESIGN PROFESSIONAL'S interest
15 therein, except that no contract for construction may materially alter the
16 rights of any contractor, subcontractor, DESIGN PROFESSIONAL or material
17 supplier to receive prompt and timely payment as provided under this section.
18 Such payments to subcontractors, DESIGN PROFESSIONALS or material suppliers
19 shall be based on payments received pursuant to this section. Any diversion
20 by the contractor or subcontractor of payments received for work performed on
21 a contract, or failure to reasonably account for the application or use of
22 such payments, constitutes grounds for disciplinary action by the registrar
23 of contractors. The subcontractor or material supplier shall notify the
24 registrar of contractors and the purchasing agency in writing of any payment
25 less than the amount or percentage approved for the class or item of work as
26 set forth in this section.

27 H. A subcontractor OR DESIGN PROFESSIONAL may notify the purchasing
28 agency in writing requesting that the subcontractor OR DESIGN PROFESSIONAL be
29 notified by the purchasing agency in writing within five days from payment of
30 each progress payment made to the contractor. The subcontractor's OR DESIGN
31 PROFESSIONAL'S request remains in effect for the duration of the
32 subcontractor's OR DESIGN PROFESSIONAL'S work on the project.

33 I. Nothing in this chapter prevents the contractor or subcontractor,
34 at the time of application and certification to the owner or contractor, from
35 withholding such application and certification to the owner or contractor for
36 payment to the subcontractor, DESIGN PROFESSIONAL or material supplier for
37 unsatisfactory job progress, defective DESIGN PROFESSIONAL SERVICES OR
38 construction work or materials not remedied, disputed DESIGN PROFESSIONAL
39 SERVICES, work or materials, third-party claims filed or reasonable evidence
40 that a claim will be filed, failure of a subcontractor OR DESIGN PROFESSIONAL
41 to make timely payments for DESIGN PROFESSIONAL SERVICES, labor, equipment
42 and materials, damage to the contractor or another subcontractor OR DESIGN
43 PROFESSIONAL, reasonable evidence that the subcontract OR DESIGN PROFESSIONAL
44 SERVICE CONTRACT cannot be completed for the unpaid balance of the
45 subcontract OR DESIGN PROFESSIONAL SERVICE CONTRACT sum or a reasonable

1 amount for retention that does not exceed the actual percentage retained by
2 the owner.

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

6 K. If any periodic or final payment to a subcontractor OR DESIGN
7 PROFESSIONAL is delayed by more than seven days after receipt of the periodic
8 or final payment by the contractor or subcontractor, the contractor or
9 subcontractor shall pay a subordinate subcontractor, DESIGN PROFESSIONAL or
10 material supplier interest, beginning on the eighth day, at the rate of one
11 ~~per-cent~~ PERCENT per month or a fraction of a month on such unpaid balance as
12 may be due.

13 L. FOR THE PURPOSES OF THIS SECTION:

14 1. "DESIGN PROFESSIONAL SERVICE CONTRACT" MEANS A WRITTEN AGREEMENT
15 RELATING TO THE PLANNING, DESIGN, CONSTRUCTION ADMINISTRATION, STUDY,
16 EVALUATION, CONSULTING, INSPECTION, SURVEYING, MAPPING, MATERIAL SAMPLING,
17 TESTING OR OTHER PROFESSIONAL, SCIENTIFIC OR TECHNICAL SERVICES FURNISHED IN
18 CONNECTION WITH ANY ACTUAL OR PROPOSED STUDY, PLANNING, SURVEY, ENVIRONMENTAL
19 REMEDIATION, CONSTRUCTION, IMPROVEMENT, ALTERATION, REPAIR, MAINTENANCE,
20 RELOCATION, MOVING, DEMOLITION OR EXCAVATION OF A STRUCTURE, STREET OR
21 ROADWAY, APPURTENANCE, FACILITY, DEVELOPMENT OR OTHER IMPROVEMENT TO LAND.

22 2. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER
23 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT
24 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE
25 SUPERVISION OF A DESIGN PROFESSIONAL OR AN EMPLOYEE OR SUBCONSULTANT OF THE
26 DESIGN PROFESSIONAL.

27 3. "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 Sec. 3. Section 34-227, Arizona Revised Statutes, is amended to read:

32 34-227. Construction contracts: design professional service
33 contracts: void provisions

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

40 Sec. 4. Section 41-2571, Arizona Revised Statutes, is amended to read:

41 41-2571. Definitions

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

43 1. "Architect services", "engineer services", "land surveying
44 services", "assayer services", "geologist services" and "landscape architect
45 services" means those professional services within the scope of the practice
46 of those services as provided in title 32, chapter 1, article 1.

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

3 3. "DESIGN PROFESSIONAL SERVICE CONTRACT" MEANS A WRITTEN AGREEMENT
4 RELATING TO THE PLANNING, DESIGN, CONSTRUCTION ADMINISTRATION, STUDY,
5 EVALUATION, CONSULTING, INSPECTION, SURVEYING, MAPPING, MATERIAL SAMPLING,
6 TESTING OR OTHER PROFESSIONAL, SCIENTIFIC OR TECHNICAL SERVICES FURNISHED IN
7 CONNECTION WITH ANY ACTUAL OR PROPOSED STUDY, PLANNING, SURVEY, ENVIRONMENTAL
8 REMEDIATION, CONSTRUCTION, IMPROVEMENT, ALTERATION, REPAIR, MAINTENANCE,
9 RELOCATION, MOVING, DEMOLITION OR EXCAVATION OF A STRUCTURE, STREET OR
10 ROADWAY, APPURTENANCE, FACILITY OR DEVELOPMENT OR OTHER IMPROVEMENT TO LAND.

11 4. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER
12 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT
13 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE
14 SUPERVISION OF A DESIGN PROFESSIONAL OR EMPLOYEES OR SUBCONSULTANTS OF THE
15 DESIGN PROFESSIONAL.

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

20 Sec. 5. Section 41-2577, Arizona Revised Statutes, is amended to read:
21 41-2577. Progress payments

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

1 B. The contractor shall pay to the contractor's subcontractors, DESIGN
2 PROFESSIONALS or material suppliers and each subcontractor shall pay to the
3 subcontractor's subcontractor, DESIGN PROFESSIONAL or material supplier,
4 within seven days of receipt of each progress payment, unless otherwise
5 agreed in writing by the parties, the respective amounts allowed the
6 contractor, ~~or~~ subcontractor OR DESIGN PROFESSIONAL on account of the work
7 performed by the contractor's or subcontractor's subcontractors OR DESIGN
8 PROFESSIONALS, to the extent of each such subcontractor's OR DESIGN
9 PROFESSIONAL'S interest therein, except that no contract for construction may
10 materially alter the rights of any contractor, subcontractor, DESIGN
11 PROFESSIONAL or material supplier to receive prompt and timely payment as
12 provided under this section. These payments to subcontractors, DESIGN
13 PROFESSIONALS or material suppliers shall be based on payments received
14 pursuant to this section. Any diversion by the contractor, ~~or~~ subcontractor
15 OR DESIGN PROFESSIONAL of payments received for work performed on a contract,
16 or failure to reasonably account for the application or use of such payments,
17 constitutes grounds for disciplinary action by the registrar of contractors.
18 The subcontractor, DESIGN PROFESSIONAL or material supplier shall notify the
19 registrar of contractors and the purchasing agency in writing of any payment
20 less than the amount or percentage approved for the class or item of work OR
21 DESIGN PROFESSIONAL SERVICES as set forth in this section.

22 C. A subcontractor OR DESIGN PROFESSIONAL may notify the purchasing
23 agency in writing requesting that the subcontractor OR DESIGN PROFESSIONAL be
24 notified by the purchasing agency in writing within five days from payment of
25 each progress payment made to the contractor. The subcontractor's OR DESIGN
26 PROFESSIONAL'S request remains in effect for the duration of the
27 subcontractor's OR DESIGN PROFESSIONAL'S work on the project.

28 D. Nothing in this chapter prevents the contractor or subcontractor,
29 at the time of application and certification to the owner or contractor, from
30 withholding such application and certification to the owner or contractor for
31 payment to the subcontractor, DESIGN PROFESSIONAL or material supplier for
32 unsatisfactory job progress, defective construction work OR DESIGN
33 PROFESSIONAL SERVICES or materials not remedied, disputed work or materials,
34 third-party claims filed or reasonable evidence that a claim will be filed,
35 failure of a subcontractor OR DESIGN PROFESSIONAL to make timely payments for
36 labor, equipment and materials OR DESIGN PROFESSIONAL SERVICES, damage to the
37 contractor or another subcontractor OR DESIGN PROFESSIONAL, reasonable
38 evidence that the subcontract OR DESIGN PROFESSIONAL SERVICE CONTRACT cannot
39 be completed for the unpaid balance of the subcontract OR DESIGN PROFESSIONAL
40 SERVICE CONTRACT sum or a reasonable amount for retention that does not
41 exceed the actual percentage retained by the owner.

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

45 F. If any periodic or final payment to a subcontractor OR DESIGN
46 PROFESSIONAL is delayed by more than seven days after receipt of periodic or

1 final payment by the contractor or subcontractor, the contractor or
2 subcontractor shall pay the contractor's or subcontractor's subcontractor,
3 DESIGN PROFESSIONAL or material supplier interest, beginning on the eighth
4 day, at the rate of one ~~per cent~~ PERCENT per calendar month or a fraction of
5 a calendar month on such unpaid balance as may be due.

6 G. Notwithstanding anything to the contrary in this section, this
7 section applies only to amounts payable in a construction services contract
8 for construction AND IN A CONTRACT FOR DESIGN SERVICES and does not apply to
9 amounts payable in a ~~construction services~~ contract for ~~design services~~,
10 preconstruction services, finance services, maintenance services, operations
11 services or any other related services included in the contract.

12 Sec. 6. Section 41-2583, Arizona Revised Statutes, is amended to read:
13 41-2583. Construction contracts; design professional service
14 contracts; void provisions

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

21 Sec. 7. Applicability

22 Sections 28-411, 34-221, 34-227, 41-2571, 41-2577 and 41-2583, Arizona
23 Revised Statutes, as amended by this act, do not apply to design professional
24 service contracts entered into before the effective date of this act.

25 Sec. 8. Short title

26 This act shall be known and may be cited as "The Arizona Design
27 Professional Prompt Pay Act".

APPROVED BY THE GOVERNOR APRIL 13, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2015.