

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SENATE BILL 1231

AN ACT

AMENDING SECTIONS 34-101, 34-226, 41-2503 AND 41-2586, ARIZONA REVISED STATUTES; RELATING TO CONSTRUCTION INDEMNITY AGREEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 34-101, Arizona Revised Statutes, is amended to
3 read:
4 34-101. Definitions
5 In this title, unless the context otherwise requires:
6 1. "Agent":
7 (a) Means any county, city or town, or officer, board or commission of
8 any county, city or town, and irrigation, power, electrical, drainage, flood
9 protection and flood control districts, tax levying public improvement
10 districts and county or city improvement districts.
11 (b) Includes any county board of supervisors and any representative
12 authorized by an agent to act as an agent for the purpose of authorizing
13 necessary change orders to previously awarded contracts in accordance with
14 guidelines established by rule of the agent, including the board of
15 supervisors.
16 2. "Architect services" means those professional architect services
17 that are within the scope of architectural practice as provided in title 32,
18 chapter 1.
19 3. "Construction":
20 (a) Means the process of building, altering, repairing, improving or
21 demolishing any public structure or building or other public improvements of
22 any kind to any public real property.
23 (b) Does not include the routine operation, routine repair or routine
24 maintenance of existing facilities, structures, buildings or real property.
25 4. "Construction-manager-at-risk" means a project delivery method in
26 which:
27 (a) There is a separate contract for design services and a separate
28 contract for construction services, except that instead of a single contract
29 for construction services, the agent may elect separate contracts for
30 preconstruction services during the design phase, for construction during the
31 construction phase and for any other construction services.
32 (b) The contract for construction services may be entered into at the
33 same time as the contract for design services or at a later time.
34 (c) Design and construction of the project may be either:
35 (i) Sequential with the entire design complete before construction
36 commences.
37 (ii) Concurrent with the design produced in two or more phases and
38 construction of some phases commencing before the entire design is complete.
39 (d) Finance services, maintenance services, operations services,
40 preconstruction services and other related services may be included.
41 5. "Construction services" means either of the following for
42 construction-manager-at-risk, design-build and job-order-contracting project
43 delivery methods:

1 (a) Construction, excluding services, through the
2 construction-manager-at-risk or job-order-contracting project delivery
3 methods.

4 (b) A combination of construction and, as elected by the agent, one or
5 more related services, such as finance services, maintenance services,
6 operations services, design services and preconstruction services, as those
7 services are authorized in the definitions of construction-manager-at-risk,
8 design-build or job-order-contracting in this section.

9 6. "Contract" means all types of agent agreements, regardless of what
10 they are called, for the procurement of services pursuant to this title.

11 7. "Contractor" means any person who has a contract with an agent.

12 8. "Design-bid-build" means a project delivery method in which:

13 (a) There is a sequential award of two separate contracts.

14 (b) The first contract is for design services.

15 (c) The second contract is for construction.

16 (d) Design and construction of the project are in sequential phases.

17 (e) Finance services, maintenance services and operations services are
18 not included.

19 9. "Design-build" means a project delivery method in which:

20 (a) There is a single contract for design services and construction
21 services, except that instead of a single contract for design services and
22 construction services, the agent may elect separate contracts for
23 preconstruction services and design services during the design phase, for
24 construction and design services during the construction phase and for any
25 other construction services.

26 (b) Design and construction of the project may be either:

27 (i) Sequential with the entire design complete before construction
28 commences.

29 (ii) Concurrent with the design produced in two or more phases and
30 construction of some phases commencing before the entire design is complete.

31 (c) Finance services, maintenance services, operations services,
32 preconstruction services and other related services may be included.

33 10. "DESIGN PROFESSIONAL" MEANS AN INDIVIDUAL OR FIRM THAT IS
34 REGISTERED BY THE STATE BOARD OF TECHNICAL REGISTRATION PURSUANT TO TITLE 32,
35 CHAPTER 1 TO PRACTICE ARCHITECTURE, ENGINEERING, GEOLOGY, LANDSCAPE
36 ARCHITECTURE OR LAND SURVEYING OR ANY COMBINATION OF THOSE PROFESSIONS AND
37 THE BONA FIDE EMPLOYEES OF THE REGISTERED INDIVIDUAL OR FIRM.

38 ~~10.~~ 11. "Design requirements":

39 (a) Means at a minimum the agent's written description of the project
40 or service to be procured, including:

41 (i) The required features, functions, characteristics, qualities and
42 properties.

43 (ii) The anticipated schedule, including start, duration and
44 completion.

1 (iii) The estimated budgets applicable to the specific procurement for
2 design and construction and, if applicable, for operation and maintenance.

3 (b) May include:

4 (i) Drawings and other documents illustrating the scale and
5 relationship of the features, functions and characteristics of the project,
6 which shall all be prepared by ~~an architect or engineer, as appropriate,~~ A
7 DESIGN PROFESSIONAL who is registered pursuant to section 32-121.

8 (ii) Additional design information or documents that the agent elects
9 to include.

10 ~~11.~~ 12. "Design services" means architect services, engineer services
11 or landscape architect services.

12 ~~12.~~ 13. "Direct selection" means the selection of a technical
13 registrant without the requirement of advertising or the use of a current
14 register.

15 ~~13.~~ 14. "Engineer services" means those professional engineer services
16 that are within the scope of engineering practice as provided in title 32,
17 chapter 1.

18 ~~14.~~ 15. "Finance services" means financing for a construction services
19 project.

20 ~~15.~~ 16. "Horizontal construction" means construction of highways,
21 roads, streets, bridges, canals, floodways, earthen dams, landfills, light
22 rail and airport runways, taxiways and aprons. For the purposes of this
23 paragraph, light rail does not include any related rail stations, maintenance
24 facilities or parking facilities.

25 ~~16.~~ 17. "Job-order-contracting" means a project delivery method in
26 which:

27 (a) The contract is a requirements contract for indefinite quantities
28 of construction.

29 (b) The construction to be performed is specified in job orders issued
30 during the contract.

31 (c) Finance services, maintenance services, operations services,
32 preconstruction services, design services and other related services may be
33 included.

34 ~~17.~~ 18. "Landscape architect services" means those professional
35 landscape architect services that are within the scope of landscape
36 architectural practice as provided in title 32, chapter 1.

37 ~~18.~~ 19. "Maintenance services" means routine maintenance, repair and
38 replacement of existing facilities, structures, buildings or real property.

39 ~~19.~~ 20. "Materials":

40 (a) Means all property, including equipment, supplies, printing,
41 insurance and leases of property.

42 (b) Does not include land, a permanent interest in land or real
43 property or leasing space.

44 ~~20.~~ 21. "Operations services" means routine operation of existing
45 facilities, structures, buildings or real property.

1 REQUIRE THAT THE CONSTRUCTION CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL
2 SERVICES CONTRACT OR SUBCONTRACT REQUIRE THE CONTRACTOR, SUBCONTRACTOR OR
3 DESIGN PROFESSIONAL TO INDEMNIFY AND HOLD HARMLESS THE AGENT, AND ITS
4 OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES AND COSTS,
5 INCLUDING REASONABLE ATTORNEY FEES, BUT ONLY TO THE EXTENT CAUSED BY THE
6 NEGLIGENCE, RECKLESSNESS OR INTENTIONAL WRONGFUL CONDUCT OF THE CONTRACTOR,
7 SUBCONTRACTOR OR DESIGN PROFESSIONAL OR OTHER PERSONS EMPLOYED OR USED BY THE
8 CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL IN THE PERFORMANCE OF THE
9 CONTRACT OR SUBCONTRACT.

10 C. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A CONSTRUCTION
11 CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICES CONTRACT OR
12 SUBCONTRACT ENTERED INTO IN CONNECTION WITH A PUBLIC BUILDING OR IMPROVEMENT
13 MAY NOT REQUIRE THAT THE CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL
14 DEFEND, INDEMNIFY, INSURE OR HOLD HARMLESS THE CONTRACTING AGENT OR ITS
15 EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS OR SUBCONTRACTORS FROM
16 ANY LIABILITY, DAMAGE, LOSS, CLAIM, ACTION OR PROCEEDING, AND ANY CONTRACT
17 PROVISION THAT IS NOT PERMITTED BY SUBSECTION B OF THIS SECTION IS AGAINST
18 THE PUBLIC POLICY OF THIS STATE AND IS VOID.

19 ~~B.~~ D. Notwithstanding subsection ~~A~~ C OF THIS SECTION, a contractor
20 who is responsible for the performance of a construction contract or
21 subcontract may fully indemnify a person, firm, corporation, state or other
22 agency for whose account the construction contract or subcontract is not
23 being performed and ~~who~~ THAT, as an accommodation, enters into an agreement
24 with the contractor that permits the contractor to enter on or adjacent to
25 its property to perform the construction contract or subcontract for others.

26 E. THIS SECTION DOES NOT AFFECT CONSTRUCTION CONTRACTS OR SUBCONTRACTS
27 OR DESIGN PROFESSIONAL SERVICES CONTRACTS OR SUBCONTRACTS ENTERED INTO BEFORE
28 THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.

29 ~~C.~~ F. ~~In~~ FOR THE PURPOSES OF this section:

30 ~~1. "Architect engineer professional service contract or subcontract"~~
31 ~~means a written or oral agreement relating to the design, construction~~
32 ~~administration, study, evaluation or other professional services furnished in~~
33 ~~connection with any actual or proposed construction, alteration, repair,~~
34 ~~maintenance, moving, demolition or excavation of a structure, street or~~
35 ~~roadway, appurtenance or other development or improvement to land.~~

36 ~~2.~~ 1. "Construction contract or subcontract" means a written or oral
37 agreement relating to the construction, alteration, repair, maintenance,
38 OPERATION, MANAGEMENT, RELOCATION, moving, demolition or excavation OF A
39 STRUCTURE, STREET OR ROADWAY, APPURTENANCE, FACILITY, ~~or other~~ development or
40 OTHER improvement to land.

41 2. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER
42 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT
43 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE
44 SUPERVISION OF A DESIGN PROFESSIONAL OR THE BONA FIDE EMPLOYEES OF THE DESIGN
45 PROFESSIONAL.

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

10 Sec. 3. Section 41-2503, Arizona Revised Statutes, is amended to read:

11 41-2503. Definitions

12 In this chapter, unless the context otherwise requires:

13 1. "Architect services" means those professional architect services
14 that are within the scope of architectural practice as provided in title 32,
15 chapter 1.

16 2. "Business" means any corporation, partnership, individual, sole
17 proprietorship, joint stock company, joint venture or other private legal
18 entity.

19 3. "Change order" means a written order ~~which~~ THAT is signed by a
20 procurement officer and ~~which~~ THAT directs the contractor to make changes
21 that the changes clause of the contract authorizes the procurement officer to
22 order.

23 4. "Construction":

24 (a) Means the process of building, altering, repairing, improving or
25 demolishing any public structure or building or other public improvements of
26 any kind to any public real property.

27 (b) Does not include:

28 (i) The routine operation, routine repair or routine maintenance of
29 existing facilities, structures, buildings or real property.

30 (ii) The investigation, characterization, restoration or remediation
31 due to an environmental issue of existing facilities, structures, buildings
32 or real property.

33 5. "Construction-manager-at-risk" means a project delivery method in
34 which:

35 (a) There is a separate contract for design services and a separate
36 contract for construction services, except that instead of a single contract
37 for construction services, the purchasing agency may elect separate contracts
38 for preconstruction services during the design phase, for construction during
39 the construction phase and for any other construction services.

40 (b) The contract for construction services may be entered into at the
41 same time as the contract for design services or at a later time.

42 (c) Design and construction of the project may be either:

43 (i) Sequential with the entire design complete before construction
44 commences.

1 (ii) Concurrent with the design produced in two or more phases and
2 construction of some phases commencing before the entire design is complete.

3 (d) Finance services, maintenance services, operations services,
4 preconstruction services and other related services may be included.

5 6. "Construction services" means either of the following for
6 construction-manager-at-risk, design-build and job-order-contracting project
7 delivery methods:

8 (a) Construction, excluding services, through the
9 construction-manager-at-risk or job-order-contracting project delivery
10 methods.

11 (b) A combination of construction and, as elected by the purchasing
12 agency, one or more related services, such as finance services, maintenance
13 services, operations services, design services and preconstruction services,
14 as those services are authorized in the definitions of
15 construction-manager-at-risk, design-build or job-order-contracting in this
16 section.

17 7. "Contract" means all types of state agreements, regardless of what
18 they may be called, for the procurement of materials, services, construction,
19 construction services or the disposal of materials.

20 8. "Contract modification" means any written alteration in the terms
21 and conditions of any contract accomplished by mutual action of the parties
22 to the contract.

23 9. "Contractor" means any person who has a contract with a state
24 governmental unit.

25 10. "Data" means documented information, regardless of form or
26 characteristic.

27 11. "Department" means the department of administration.

28 12. "Design-bid-build" means a project delivery method in which:

29 (a) There is a sequential award of two separate contracts.

30 (b) The first contract is for design services.

31 (c) The second contract is for construction.

32 (d) Design and construction of the project are in sequential phases.

33 (e) Finance services, maintenance services and operations services are
34 not included.

35 13. "Design-build" means a project delivery method in which:

36 (a) There is a single contract for design services and construction
37 services, except that instead of a single contract for design services and
38 construction services, the purchasing agency may elect separate contracts for
39 preconstruction services and design services during the design phase, for
40 construction and design services during the construction phase and for any
41 other construction services.

42 (b) Design and construction of the project may be either:

43 (i) Sequential with the entire design complete before construction
44 commences.

1 (ii) Concurrent with the design produced in two or more phases and
2 construction of some phases commencing before the entire design is complete.

3 (c) Finance services, maintenance services, operations services,
4 preconstruction services and other related services may be included.

5 14. "DESIGN PROFESSIONAL" MEANS AN INDIVIDUAL OR FIRM THAT IS
6 REGISTERED BY THE STATE BOARD OF TECHNICAL REGISTRATION PURSUANT TO TITLE 32,
7 CHAPTER 1 TO PRACTICE ARCHITECTURE, ENGINEERING, GEOLOGY, LANDSCAPE
8 ARCHITECTURE OR LAND SURVEYING OR ANY COMBINATION OF THOSE PROFESSIONS AND
9 THE BONA FIDE EMPLOYEES OF THE REGISTERED INDIVIDUAL OR FIRM.

10 ~~14.~~ 15. "Design requirements":

11 (a) Means at a minimum the purchasing agency's written description of
12 the project or service to be procured, including:

13 (i) The required features, functions, characteristics, qualities and
14 properties.

15 (ii) The anticipated schedule, including start, duration and
16 completion.

17 (iii) The estimated budgets applicable to the specific procurement for
18 design and construction and, if applicable, for operation and maintenance.

19 (b) May include:

20 (i) Drawings and other documents illustrating the scale and
21 relationship of the features, functions and characteristics of the project,
22 which shall all be prepared by ~~an architect or engineer, as appropriate,~~ A
23 DESIGN PROFESSIONAL who is registered pursuant to section 32-121.

24 (ii) Additional design information or documents that the purchasing
25 agency elects to include.

26 ~~15.~~ 16. "Design services" means architect services, engineer services
27 or landscape architect services.

28 ~~16.~~ 17. "Designee" means a duly authorized representative of the
29 director.

30 ~~17.~~ 18. "Director" means the director of the department of
31 administration.

32 ~~18.~~ 19. "Employee" means an individual drawing a salary from a state
33 governmental unit, whether elected or not, and any noncompensated individual
34 performing personal services for any state governmental unit.

35 ~~19.~~ 20. "Engineer services" means those professional engineer services
36 that are within the scope of engineering practice as provided in title 32,
37 chapter 1.

38 ~~20.~~ 21. "Finance services" means financing for a construction services
39 project.

40 ~~21.~~ 22. "General services administration contract" means contracts
41 awarded by the United States government general services administration.

42 ~~22.~~ 23. "Grant" means the furnishing of financial or other assistance,
43 including state funds or federal grant funds, by any state governmental unit
44 to any person for the purpose of supporting or stimulating educational,
45 cultural, social or economic quality of life.

1 ~~23.~~ 24. "Job-order-contracting" means a project delivery method in
2 which:

3 (a) The contract is a requirements contract for indefinite quantities
4 of construction.

5 (b) The construction to be performed is specified in job orders issued
6 during the contract.

7 (c) Finance services, maintenance services, operations services,
8 preconstruction services, design services and other related services may be
9 included.

10 ~~24.~~ 25. "Landscape architect services" means those professional
11 landscape architect services that are within the scope of landscape
12 architectural practice as provided in title 32, chapter 1.

13 ~~25.~~ 26. "Maintenance services" means routine maintenance, repair and
14 replacement of existing facilities, structures, buildings or real property.

15 ~~26.~~ 27. "Materials":

16 (a) Means all property, including equipment, supplies, printing,
17 insurance and leases of property.

18 (b) Does not include land, a permanent interest in land or real
19 property or leasing space.

20 ~~27.~~ 28. "Operations services" means routine operation of existing
21 facilities, structures, buildings or real property.

22 ~~28.~~ 29. "Owner" means a state purchasing agency or state governmental
23 unit.

24 ~~29.~~ 30. "Person" means any corporation, business, individual, union,
25 committee, club, other organization or group of individuals.

26 ~~30.~~ 31. "Preconstruction services" means services and other activities
27 during the design phase.

28 ~~31.~~ 32. "Procurement":

29 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
30 any materials, services, construction or construction services.

31 (b) Includes all functions that pertain to obtaining any materials,
32 services, construction or construction services, including description of
33 requirements, selection and solicitation of sources, preparation and award of
34 contract, and all phases of contract administration.

35 ~~32.~~ 33. "Procurement officer":

36 (a) Means any person duly authorized to enter into and administer
37 contracts and make written determinations with respect to the contracts.

38 (b) Includes an authorized representative acting within the limits of
39 the authorized representative's authority.

40 ~~33.~~ 34. "Purchasing agency" means any state governmental unit ~~which~~
41 THAT is authorized by this chapter or rules adopted pursuant to this chapter,
42 or by way of delegation from the director, to enter into contracts.

1 C. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A CONSTRUCTION
2 CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICES CONTRACT OR
3 SUBCONTRACT ENTERED INTO IN CONNECTION WITH A PUBLIC BUILDING OR IMPROVEMENT
4 MAY NOT REQUIRE THAT THE CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL
5 DEFEND, INDEMNIFY, INSURE OR HOLD HARMLESS THE CONTRACTING AGENT OR ITS
6 EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS OR SUBCONTRACTORS FROM
7 ANY LIABILITY, DAMAGE, LOSS, CLAIM, ACTION OR PROCEEDING, AND ANY CONTRACT
8 PROVISION THAT IS NOT PERMITTED BY SUBSECTION B OF THIS SECTION IS AGAINST
9 THE PUBLIC POLICY OF THIS STATE AND IS VOID.

10 ~~B.~~ D. Notwithstanding subsection ~~A- C~~ OF THIS SECTION, a contractor
11 who is responsible for the performance of a construction contract or
12 subcontract may fully indemnify a person, firm, corporation, state or other
13 agency for whose account the construction contract or subcontract is not
14 being performed and ~~who~~ THAT, as an accommodation, enters into an agreement
15 with the contractor that permits the contractor to enter on or adjacent to
16 its property to perform the construction contract or subcontract for others.

17 E. THIS SECTION DOES NOT AFFECT CONSTRUCTION CONTRACTS OR SUBCONTRACTS
18 OR DESIGN PROFESSIONAL SERVICES CONTRACTS OR SUBCONTRACTS ENTERED INTO BEFORE
19 THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.

20 ~~C.~~ F. ~~IN~~ FOR THE PURPOSES OF this section:

21 ~~1. "Architect-engineer professional service contract or subcontract"~~
22 ~~means a written or oral agreement relating to the design, construction~~
23 ~~administration, study, evaluation or other professional services furnished in~~
24 ~~connection with any actual or proposed construction, alteration, repair,~~
25 ~~maintenance, moving, demolition or excavation of a structure, street or~~
26 ~~roadway, appurtenance or other development or improvement to land.~~

27 ~~2.~~ 1. "Construction contract or subcontract" means a written or oral
28 agreement relating to the construction, alteration, repair, maintenance,
29 OPERATION, MANAGEMENT, RELOCATION, moving, demolition or excavation OF A
30 STRUCTURE, STREET OR ROADWAY, APPURTENANCE, FACILITY, ~~or other~~ development or
31 OTHER improvement to land.

32 2. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER
33 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT
34 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE
35 SUPERVISION OF A DESIGN PROFESSIONAL OR THE BONA FIDE EMPLOYEES OF THE DESIGN
36 PROFESSIONAL.

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