

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

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

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

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

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

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

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

43 B. In determining the lowest responsible bidder for a horizontal
44 construction project using the design-bid-build project delivery method, an
45 agent may consider the time of completion proposed by the bidder if the agent

1 determines that this procedure will serve the public interest by providing a
2 substantial fiscal benefit or that the use of the traditional awarding of
3 contracts is not practicable for meeting desired construction standards or
4 delivery schedules and if the formula for considering the time of completion
5 is specifically stated in the bidding information.

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

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

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

41 4. Upon completion and acceptance of each separate building, public
42 work or other division of the contract on which the price is stated
43 separately in the contract, except as qualified in paragraph 5 **OF THIS**
44 **SUBSECTION**, payment may be made in full, including retained percentages
45 thereon, less authorized deductions. In preparing estimates, the material

1 and equipment delivered on the site to be incorporated in the job shall be
2 taken into consideration in determining the estimated value by the architect
3 or engineer.

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

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

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

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

2 F. A contract for the procurement of construction shall include a
3 provision ~~which~~ THAT provides for negotiations between the agent and the
4 contractor for the recovery of damages related to expenses incurred by the
5 contractor for a delay for which the agent is responsible, which is
6 unreasonable under the circumstances and which was not within the
7 contemplation of the parties to the contract. This section shall not be
8 construed to void any provision in the contract ~~which~~ THAT requires notice of
9 delays, OR provides for arbitration or other procedure for settlement or
10 provides for liquidated damages.

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

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

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

1 and materials, damage to the contractor or another subcontractor **OR DESIGN**
2 **PROFESSIONAL**, reasonable evidence that the subcontract **OR DESIGN PROFESSIONAL**
3 **SERVICE CONTRACT** cannot be completed for the unpaid balance of the
4 subcontract **OR DESIGN PROFESSIONAL SERVICE CONTRACT** sum or a reasonable
5 amount for retention that does not exceed the actual percentage retained by
6 the owner.

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

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

17 L. FOR THE PURPOSES OF THIS SECTION:

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

26 2. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER
27 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT
28 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE
29 SUPERVISION OF A DESIGN PROFESSIONAL OR AN EMPLOYEE OR SUBCONSULTANT OF THE
30 DESIGN PROFESSIONAL.

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

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

36 34-227. Construction contracts; design professional service
contracts; void provisions

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

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

2 **41-2571. Definitions**

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

4 1. "Architect services", "engineer services", "land surveying
5 services", "assayer services", "geologist services" and "landscape architect
6 services" means those professional services within the scope of the practice
7 of those services as provided in title 32, chapter 1, article 1.

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

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

18 4. "**DESIGN PROFESSIONAL SERVICES**" MEANS ARCHITECT SERVICES, ENGINEER
19 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT
20 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE
21 SUPERVISION OF A DESIGN PROFESSIONAL OR EMPLOYEES OR SUBCONSULTANTS OF THE
22 DESIGN PROFESSIONAL.

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

27 Sec. 5. Section 41-2577, Arizona Revised Statutes, is amended to read:

28 **41-2577. Progress payments**

29 A. Progress payments may be made by this state to the contractor on
30 the basis of a duly certified and approved estimate of the work performed
31 during a preceding period of time as set by rule, except that a percentage of
32 all estimates shall be retained as provided in section 41-2576. The progress
33 payments shall be paid on or before fourteen days after the estimate of the
34 work is certified and approved. The estimate of the work shall be deemed
35 received by the owner on submission to any person designated by the owner for
36 the submission, review or approval of the estimate of the work. An estimate
37 of the work submitted under this section shall be deemed approved and
38 certified after seven days from the date of submission unless before that
39 time the owner or owner's agent prepares and issues a specific written
40 finding detailing those items in the estimate of the work that are not
41 approved and certified under the contract **OR DESIGN PROFESSIONAL SERVICE**
42 **CONTRACT**. The owner may withhold an amount from the progress payment
43 sufficient to pay the expenses the owner reasonably expects to incur in
44 correcting the deficiency set forth in the written finding. On completion
45 and acceptance of separate divisions of the contract **OR DESIGN PROFESSIONAL**

1 SERVICE CONTRACT on which the price is stated separately in the contract OR
2 DESIGN PROFESSIONAL SERVICE CONTRACT, payment may be made in full including
3 retained percentages, less deductions, unless a substitute security has been
4 provided pursuant to section 41-2576. No contract for construction OR DESIGN
5 PROFESSIONAL SERVICES may materially alter the rights of any contractor,
6 subcontractor, DESIGN PROFESSIONAL or material supplier to receive prompt and
7 timely payment as provided under this section.

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

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

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

1 be completed for the unpaid balance of the subcontract **OR DESIGN PROFESSIONAL**
2 **SERVICE CONTRACT** sum or a reasonable amount for retention that does not
3 exceed the actual percentage retained by the owner.

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

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

14 G. Notwithstanding anything to the contrary in this section, this
15 section applies only to amounts payable in a construction services contract
16 for construction **AND IN A CONTRACT FOR DESIGN SERVICES** and does not apply to
17 amounts payable in a ~~construction services~~ contract for ~~design services~~,
18 preconstruction services, finance services, maintenance services, operations
19 services or any other related services included in the contract.

20 Sec. 6. Section 41-2583, Arizona Revised Statutes, is amended to read:

21 **41-2583. Construction contracts; design professional service**
22 **contracts; void provisions**

23 A provision, covenant, clause or understanding in, collateral to or
24 affecting a construction contract **OR DESIGN PROFESSIONAL SERVICE CONTRACT**
25 that makes the contract subject to the laws of another state or that requires
26 any litigation, arbitration or other dispute resolution proceeding arising
27 from the contract to be conducted in another state is against this state's
28 public policy and is void and unenforceable.

29 **Sec. 7. Applicability**

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

33 **Sec. 8. Short title**

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