

2012 Kansas Statutes

16-1903. Public construction contracts; payment provisions; provisions against public policy, void, unenforceable; failure to pay. (a) Subject to the provisions of subsections (b), (c), (d), (e), (f), (g), (h) and K.S.A. 16-1904 and 16-1905, and amendments thereto, all owners, contractors and subcontractors, who enter into a contract for public construction after the effective date of this act, shall make all payments pursuant to the terms of the contract.

(b) The following provisions in a contract for public construction shall be against public policy and shall be void and unenforceable:

(1) A provision that purports to waive, release or extinguish the right to resolve disputes through litigation in court or substantive or procedural rights in connection with such litigation except that a contract may require nonbinding alternative dispute resolution as a prerequisite to litigation;

(2) a provision that purports to waive, release or extinguish rights to file a claim against a payment or performance bond, except that a contract may require a contractor or subcontractor to provide a waiver or release of such rights as a condition for payment, but only to the extent of the amount of payment received; and

(3) a provision that purports to waive, release or extinguish rights of subrogation for losses or claims covered or paid by liability or workers compensation insurance except that a contract may require waiver of subrogation for losses or claims paid by a consolidated or wrap-up insurance program, owners and contractors protective liability insurance, or project management protective liability insurance or a builder's risk policy.

(c) All contracts for public construction shall provide that payment of amounts due a contractor from an owner, except retainage, shall be made within 30 days after the owner receives a timely, properly completed, undisputed request for payment according to terms of the contract, unless extenuating circumstances exist which would preclude approval of payment within 30 days. If such extenuating circumstances exist, then payment shall be made within 45 days after the owner receives such payment request.

(d) The architect or engineer of record or agent of the owner shall review, approve and forward undisputed requests for payment to the owner within seven business days of receipt from the contractor.

(e) If the owner fails to pay a contractor within the time period set forth in subsection (c), the owner shall pay interest computed at the rate of 18% per annum on the undisputed amount to the contractor beginning on the day following the end of the time period set forth in subsection (d).

(f) A contractor shall pay its subcontractors any amounts due within seven business days of receipt of payment from the owner, including payment of retainage, if retainage is released by the owner, if the subcontractor has provided a timely, properly completed and undisputed request for payment to the contractor.

(g) If the contractor fails to pay a subcontractor within seven business days, the contractor shall pay interest to the subcontractor beginning on the eighth business day after receipt of payment by the contractor, computed at the rate of 18% per annum on the undisputed amount.

(h) The provisions of subsection (g) shall also apply to all payments from subcontractors to their subcontractors.

History: L. 2007, ch. 163, § 3; July 1.