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Payment Bond Claims on Federal and State Projects

On public construction projects in Pennsylvania and federal projects, a prime contractor is required by statute to furnish a payment bond before a contract is awarded. These payment bonds are for the protection of first and second tier subcontractors and suppliers that supply labor and/or material to the project, in the event they do not receive payment for work performed from the party with whom they contracted.

Failure to Adhere to Notice and Time Requirements Will Bar Payment Bond Claim

Pennsylvania's Public Works Contractors' Bond Law imposes specific notice and time requirements for payment bond claims on public projects in Pennsylvania. The federal statute, commonly referred to as the "Miller Act," imposes specific notice and time requirements for payment bond claims on federal projects. The failure of a subcontractor or supplier to strictly adhere to the notice and time requirements of either statute will bar its payment bond claim.

Notice Requirement

With respect to payment bond claims on public projects in Pennsylvania, a second-tier subcontractor must provide written notice of its claim to the prime contractor that gave the payment bond within 90 days from the date that the second-tier subcontractor last performed labor or furnished materials. Failure to send the written notice within this 90-day window will bar any claim against the payment bond surety. The notice must state with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. The written notice must be sent by registered or certified mail, postage prepaid, and addressed to the prime contractor at its regular place of business. On federal projects, the Miller Act imposes the exact same 90-day written notice requirement upon second-tier subcontractors with the only additional requirement that the written notice actually be received by the prime contractor within the 90-day win-

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dow and that the written notice be served by a means that provides written, third-party verification of delivery to the contractor, such as registered mail.

Disputes often arise between sureties and payment bond claimants over the last date labor was performed or material was furnished. This date is critical as it is the start of the 90-day window within which a second-tier subcontractor must send the written notice. The best and most conservative practice is use the last date that labor was performed on site, or that material was delivered, prior to substantial completion. In determining the last date of work, do not use or rely on the date that punch list or warranty work is performed as a court will likely find that such work is too insubstantial to constitute the start of the 90-day window.

One Year Statute of Limitation

First and second-tier subcontractors and suppliers must commence a legal action against a payment bond surety within one year or their claim is barred. However, for public projects in Pennsylvania, claimants are prohibited from commencing legal action against the surety until the 90-day window has expired. Therefore, the one year statute of limitation begins to run the day after the 90-day window expires. For payment bond claims on federal projects, the one year begins to run on the last date labor is supplied or material is furnished (i.e., the date the 90-day window begins).

The preceding article was written for informational purposes only and does not constitute legal advice. Before taking any action related to the issues addressed above, you should consult with legal experts.

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