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# Local Finance Notice

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## PROMPT PAYMENT OF CONSTRUCTION CONTRACTS P.L. 2006, c. 96

On September 1, 2006 Governor Corzine signed Senate Bill 1726 into law as [P.L. 2006, c.96](#) of the Laws of 2006. Known as the "Prompt Payment" Law, Chapter 96 establishes timing standards for the payment of bills by both public and private sector organizations for a wide range of construction-related contractors. The "default" payment procedure in the law may conflict with existing procedures in some government agencies. The bill, however, provides alternate procedures for these local units (see Section III).

Codified as [N.J.S.A. 2A:30A-1](#) et seq., the law took effect immediately upon signing. It affects construction-related contracts of all local units (municipalities, schools, counties, fire districts, local authorities, etc.) that **took effect after September 1, 2006**. Given that the law is currently in effect, immediate attention must be paid by all local units to ensure their interests are protected.

The law intends to ensure that contractors submitting bills for completed work are paid on a timely, established schedule, and that the full chain of subcontractors receive timely payment from their hiring contractor. When payments are not made pursuant to the schedule, the law allows contractors to receive interest on the outstanding balance and, under certain circumstances, to halt work without being subject to breach of contract clauses.

**The law affects all contracts for "improvements" (defined below) regardless of dollar amount.** This means it affects contracts for which public bidding is required as well as those **contracts under the bid threshold** that are traditionally authorized through solicitation of quotes.

This Local Finance Notice reviews the general provisions of the law. Section VI is a "to-do" list local units should consider in meeting the obligations of the law. Because local units have a wide range of policies regarding payment of bills, careful analysis and application of the law is warranted.

Local payment procedures should **immediately** be reviewed by the chief financial officer, purchasing agent, legal counsel, consulting engineers, and other staff as appropriate in order to develop local procedures to meet the requirements of the law.

## I. Definitions

The law affects contracts for above and below ground “improvements” to real property and structures. The law defines the term “[structure](#)” to mean any part of a building and other improvements to real property. The law defines the term “improve” to mean the following:

- ...to build, alter, repair or demolish any structure upon, connected with, on or beneath the surface of any real property;
- to excavate, clear, grade, fill or landscape any real property;
- to construct driveways and private roadways on real property;
- to furnish construction related materials, including trees and shrubbery, for any of the above purposes;
- ...or to perform any labor upon a structure, including any design, professional or skilled services furnished by an architect, engineer, land surveyor or landscape architect licensed or registered pursuant to the laws of this State.

This is an expansive definition and includes **all** improvements to real property. Real property is defined as “real estate” – which includes publicly owned property – including traditional infrastructure: roads, bridges, underground utilities, rights-of-way, and easements.

**In other words, the law affects contracts for improvements to any land (regardless of ownership or use) and its appurtenances.**

With respect to local units, the law covers contracts with general or “prime contractors.” While this term may have specific meaning for certain kinds of construction contracts under the Local Public and Public School Contracts Laws, for Prompt Payment purposes, it means any contractor that has contracted directly with a local unit for construction of improvements. It permits separate identification of “prime” contractors from any subcontractors working for the prime contractor – subs have their own rights to timely payment under the law. This Notice uses “prime contractor” and “contractor” interchangeably.

## II. Billing Dates and Payment Cycles

While the law does not define the term “bill,” local units should interpret the term as being the same as an invoice, voucher, warrant, or whatever term the local unit uses to describe the documents a vendor submits to request payment.

The law uses the phrase “periodic payment, final payment and retainage monies” as the types of bills that are submitted on a “[billing date](#).” In the case of a periodic billing, the law defines the “billing date” as the “date specified in the contract.” This requirement implies that local units should establish a periodic billing date in contracts whenever a contract will have more than one payment.

The law does not define billing dates for final payments and payments of retainage. To avoid confusion, **local unit bid specifications and contracts should define billing date for final and retainage payments as “the date the bill is received by the local unit.”** The Division’s position is that a fixed billing date can not be set for final or retainage payments – bills must be processed as they are received.

Local units subject to the Local Public Contracts Law should also include payments required by [N.J.S.A. 40A:11-16.2](#), in its periodic billing schedule. This section requires a monthly payment for construction projects in excess of \$100,000. This provision does not apply to the Public School Contracts Law.

[N.J.S.A. 40A:5-17](#) establishes procedures local units (except schools) must follow for payment of bills. The law requires governing bodies to approve all bills, unless the local unit adopts other procedures that permit payments without governing body approval. Many local units have used this authority to permit the chief financial officer to pay bills in between governing body meetings, and submit a list of bills paid at the following meeting for inclusion in the official minutes. Similarly, [N.J.S.A. 18A:19-1 et seq.](#) and associated rules at [N.J.A.C. 6A:23-2.11\(a\)](#) set forth procedures to be used by public schools.

Finally, the law uses the phrase “payment cycle” to describe when actual payment is made after the governing body has approved payment. While not directly required by the law, it is concluded that the law intends that contractors have some certainty of when they will receive payment. To meet this expectation, local units should formally adopt a payment cycle and provide the information to contractors so they know when payments will be made.

### III. Required Procedures and Processes

[N.J.S.A. 2A:30A-2a](#) sets out two procedures: a **default**, covering **any public or private entity** that enters into a contract for described services; and an “alternate,” specifically created for public entities where the governing body must vote to authorize the payment of bills.

The **default procedure** applies to local units that **do not require governing body approval** to authorize the payment of bills. It imposes the following payment process:

- If the contractor has performed in accordance with the contract; and
- The work has been approved and certified by the owner or the owner’s “authorized approving agent,”
- The owner shall pay the bill not more than 30 calendar days after the billing date;
- Provided that the billing shall be deemed “approved” and “certified” 20 calendar days after the owner receives it, unless the owner provides, **before the end** of the 20-day period, a written statement of the amount withheld and the reason for withholding payment.

The **alternate procedure** for local units applies when local policies **require governing body** approval authorizing the payment of bills. In addition to ensuring the contractor has performed in accordance with the contract and that the work has been approved and certified by the owner or the owner’s “authorized approving agent,” the following provisions apply:

- The 20th calendar day deadline of the default procedure to approve and certify, or decide to withhold full or partial payment **is deferred until the public meeting following 20 calendar days of the billing date**, at which time the bill must be approved for payment or notice provided as to why the bill or any portion of it will not be approved.
- If the billing is approved, the 30-day payment requirement of the default is replaced by the requirement that the bill be paid in the payment cycle following the meeting.

- The law anticipates prompt and timely notice to the contractor of any denial of payment, its deficiency, and what is required to resolve it.
- The alternate procedure must be defined in bid specifications and contract documents to have effect.

Because the law allows the local unit to set the “billing date” by establishing a “periodic billing date” in the contract, the local unit can control when periodic bills are submitted, and to a degree the timing of the payment process. This date should be carefully coordinated with internal or external professionals with responsibility to review bills.

**It is important to note the law uses the term “public meeting”** as the time when bills are approved. This includes **any meeting** of the governing body that is open to the public, in addition to the traditional meetings where formal action is taken. This includes “workshop,” “agenda,” 48-hour notice, or special meetings (but not closed or executive sessions or emergency meetings). **It does not permit** a local unit to designate that bills will only be approved at public meetings where “formal action” is routinely taken. Local units must arrange their meeting agendas and internal review procedures to accommodate bill payment to take place at any meeting following an established billing date.

The payment cycle is independent of meetings – the law does not require that a meeting trigger its own payment cycle.

#### **IV. Setting Dispute Resolution Policies**

[Subsection “f” of N.J.S.A. 2A:30A-2](#) provides that all contracts for improvements **shall** include a provision that disputes **may be** submitted to an alternative dispute resolution (ADR) procedure for bills (or portions) that are not approved. While not precisely drafted, it appears that the intent of the bill is to provide that either party may submit a claim to ADR.

This is consistent with [N.J.S.A. 40A:11-50](#) that requires local units covered by the Local Public Contracts Law to include an ADR provision in all construction contracts (regardless of value), that covers the construction work, as well as related professional service (i.e., architect, engineer) contracts.

**Considering these two elements, the law requires that all local units provide for an ADR process in their bid specifications and contracts for improvements that can be used by either party.**

Local units can refer to [Local Finance Notice AU-98-4](#) for details of [N.J.S.A. 40A:11-50](#), a general explanation of the ADR process, and suggested ADR procedures. While that law does not pertain to them, local units that fall under the Public School Contracts Law or the County College Contracts Law may find the Notice instructive.

As a general approach to ADR, the Division recommends immediate communication between the parties as a first step, with discussions at successively higher levels in the organization, then the use of an outside mediator or arbitrator as attempts to resolve the matter before court action is taken. The specific steps and procedures are the local unit’s decision and should be reflected in bid specifications and contracts.

The law specifically states that ADR provisions **do not apply** to disputes concerning the bid solicitation or award process or formation of contracts.

Local units that awarded contracts after September 1, 2006 that did not include Prompt Payment provisions in their contracts should work with their contractors to develop reasonable procedures or contract amendments that do not conflict with either the Prompt Payment Law or [N.J.S.A. 40A:5-17](#).

If an amount is withheld, the local unit is obligated to take good faith action to resolve the matter. Failure to make a timely payment permits a contractor to add interest to unpaid amounts and can, barring a good faith effort to resolve the matter, result in a work stoppage.

If the local unit challenges the billing, it should reach a clear determination of what is not satisfactory, and act accordingly to accept or reject portions of the bill. The local unit must then provide prompt and timely notice to the contractor as to why the bill was rejected and what is necessary to cure the defect. Finally, the local unit must pay the undisputed portion of the bill. Denial of payment to an entire bill should occur when the circumstances warrant it.

Combining an ADR process with other policies, including documentation to address billing disputes, can lead to what the Prompt Payment law refers to as a “good faith effort to resolve the reason for the withholding.” [\[N.J.S.A. 2A:30A-2\(d\)\]](#) Engaging in a good faith effort will reduce the possibility of a contractor stopping work due to the local unit’s failure to make payment.

Without a good faith effort on the part of the local unit, a contractor can stop work and not be held liable for a breach of contract (See Section V). The local unit should include in its bid specifications, contracts, and if appropriate, purchase orders covered by Prompt Payment an explanation of its ADR policies.

## V. Enforcement and Exceptions

The law has enforcement provisions a contractor can use when the contractor is not paid in full as required; either by 30 calendar days after submitting the bill or, in the alternate, after the payment date of the payment cycle following the meeting where the bill was to have been approved.

There are two enforcement provisions:

1. [N.J.S.A. 2A:30A-2\(c\)](#) permits contractors to charge interest when a bill is not paid in accordance with the schedule and notice has not been provided as to why a bill or portion of it was not paid.

In this case, a contractor can charge interest at the [prime rate](#)<sup>1</sup> plus one percent from the day after the required payment date and ending on the day the check for payment is drawn. Thus, it is exceptionally important that if a bill is not fully paid in accordance with the local unit’s established schedule, the contractor is notified in writing of the amount withheld and the reasons for the withholding. It is presumed that the written notice will contain information as to how the deficiency can be cured.

If payment is not made in a timely manner and notice is not given, the contractor may be able to recover interest. Further, care should be taken and legal counsel consulted when deciding to withhold payment. Depending on the specific circumstances, a local unit could be responsible for paying interest, if the reason for withholding payment is found to be without merit.

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<sup>1</sup> This web link leads to an explanation of the prime rate, how it is calculated, and the current figure. The prime rate at the time of debt is incurred should be maintained until the payment is made.

If such an interest payment becomes due, the local unit is required to appropriate the necessary funds from project reserves, contingency amount, or other account.

2. [N.J.S.A. 2A:30A-2\(d\)](#) permits the contractor to suspend work without penalty for breach of contract. This can be implemented by the contractor after providing seven calendar days written notice to the owner if:
  - a. Payment was not made as required under the law; and,
  - b. The contractor was not provided a written statement of the amount withheld and the reason for the withholding; and,
  - c. The payor is not engaged in a good faith effort to resolve the reason for the withholding.

In any civil action brought to collect payments the action shall be conducted inside of New Jersey and the prevailing party shall be awarded reasonable costs and attorney fees.

It is important to note that the law exempts from its provisions any transportation project as defined in [N.J.S.A. 27:1B-3](#), if that project receives federal funding and the application of this provision would jeopardize the funding because the owner could not meet the federal standards for financial management systems as outlined in 49 C.F.R. 18.20.

## VI. Actions Local Units Should Take

Local units that authorize bills to be paid without governing body approval should review internal procedures and controls to ensure staff is prepared to meet the 20 day approval/30 day payment cycle deadlines. These controls can include establishing “periodic billing dates” in contracts.

If governing body approval **is required**, local units must immediately review their policies and develop procedures and internal controls to comply with the law.

Regardless of the method of bill payment, local units can consider several courses of action, with appropriate variations based on local practices:

1. **Review bill paying procedures, resolution, or ordinance.** [N.J.S.A. 40A:5-17](#) sets forth the “normal” process for authorizing payment of bills (which requires governing body approval), but allows local units to adopt their own procedure. Local policies can establish different practices depending on the type of obligation being paid; i.e., a policy for construction contracts.
2. **Establish or define billing dates for contracts covered by Prompt Payment.** This can be done as a standard for all contracts, or established on a contract-by-contract basis in specifications. This should include the “periodic payment” date for contracts with more than one payment, and the “billing date” for all other contracts and payments (i.e., the date the bill is received by the local unit). This provision can also provide that if a fixed billing date is missed, the bill is deferred to the next cycle.
3. **Establish dates for the unit’s “payment cycle.”** The payment cycle should provide for a reasonable time for payment to be made after approval of bills. It should be consistent with other bills approved at the same time. It is in the local unit’s interest to let their contractors know when they can expect payment.
4. **Review paper flow and contractual arrangements for review of bills.** This may involve amending contracts with professionals (i.e., engineers or architects) that review bills to set requirements for their timely review of bills. This also applies to training internal staff on new

- procedures. In particular, finance staff should be trained to pay careful attention to incoming bills, and if appropriate, ensure logging, transmittal, and tracking of bills.
5. When governing bodies approve bills, **add “payment of bills” as a routine agenda item for all public meetings** to allow the governing body to approve or reject any bills or portion of one whenever they meet.
  6. When a bill or portion of a bill is denied, immediately notify the contractor **in writing** of any denial of payment, its deficiency, and what is required to remedy the deficiency.
  7. **Add a bill payment provision/schedule to bid specifications and contracts.** The law permits use of the alternate governing body approval practice **only** if it is reflected in bid specifications and contract documents. All bid specifications, contract documents, and purchase order “boilerplate” text (as appropriate to local circumstances) should be amended to describe the process used by the local unit for approval and payment of bills, including billing dates and payment dates.
  8. **Update outstanding contracts and bid proposals.** The law does not apply to contracts for the improvement of structures awarded before the effective date of September 1, 2006. Local units may currently have outstanding bid advertisements or have received bids but not yet awarded contracts. In these cases, local officials should act, as appropriate to amend bid specifications through the addenda process, or work with legal counsel to amend pending or issued contracts to include the appropriate language, or work with contractors to otherwise meet the intent of the law.
  9. **Review alternative dispute resolution provisions for construction contracts.** [N.J.S.A. 40A:11-50](#) has required for several years that all construction contracts include an alternative dispute resolution process. Local units should carefully review their existing procedure in context of Prompt Payment and update it as appropriate.

## VII. Conclusion

The Prompt Payment Law presents new challenges to local units in managing their payment procedures. Its immediate effect adds to that challenge. Local unit officials should act expeditiously to ensure they do not violate the law while they consider implementing long-term policies.

Local finance officials can use GovConnect to share information via the Discussion Forums. They can submit sample language to the Division for posting in the Chief Financial Officer, Authority, and Fire District Document Libraries.

As there are many variations on policies that can be adopted, the Division is not at this time recommending specific language for inclusion in bid specifications and contracts. Local units are urged to carefully review this Notice and the law to adopt practices that meet their needs, and the intent and spirit of the law.

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Approved: Susan Jacobucci, Director

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5	<a href="#">Prime Rate</a>	<a href="#">Wall Street Journal Prime Rate</a>

## PROMPT PAYMENT STATUTORY REFERENCES

### CHAPTER 96, P.L. 2006

AN ACT concerning the prompt payment of construction contracts and amending P.L.1991, c.133.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1991, c.133 (C.2A:30A-1) is amended to read as follows:

C.2A:30A-1 Definitions.

1. As used in this act:

"Billing" means, in accordance with the terms and definitions of the applicable contract, any periodic payment, final payment, written approved change order or request for release of retainage.

"Prime contractor" means a person who contracts with an owner to improve real property.

"Improve" means: to build, alter, repair or demolish any structure upon, connected with, on or beneath the surface of any real property; to excavate, clear, grade, fill or landscape any real property; to construct driveways and private roadways on real property; to furnish construction related materials, including trees and shrubbery, for any of the above purposes; or to perform any labor upon a structure, including any design, professional or skilled services furnished by an architect, engineer, land surveyor or landscape architect licensed or registered pursuant to the laws of this State.

"Structure" means all or any part of a building and other improvements to real property.

"Owner" means any person, including any public or governmental entity, who has an interest in the real property to be improved and who has contracted with a prime contractor for such improvement to be made. "Owner" shall be deemed to include any successor in interest or agent acting on behalf of an owner.

"Prime rate" means the base rate on corporate loans at large United States money center commercial banks.

"Real property" means the real estate that is improved upon or to be improved upon.

"Subcontractor" means any person who has contracted to furnish labor, materials or other services to a prime contractor in connection with a contract to improve real property.

"Subsubcontractor" means any person who has contracted to furnish labor, materials or other services to a subcontractor in connection with a contract to improve real property.

2. Section 2 of P.L.1991, c.133 (C.2A:30A-2) is amended to read as follows:

C.2A:30A-2 Payment to prime contractor, subsubcontractor, timely payment; exceptions; disputes; resolution.

2. a. If a prime contractor has performed in accordance with the provisions of a contract with the owner and the billing for the work has been approved and certified by the owner or the owner's authorized approving agent, the owner shall pay the amount due to the prime contractor for each periodic payment, final payment or retainage monies not more than 30 calendar days after the billing date, which for a periodic billing, shall be the periodic billing date specified in the contract. The billing shall be deemed approved and certified 20 days after the owner receives it unless the owner provides, before the end of the 20-day period, a written statement of the amount withheld and the

reason for withholding payment, except that in the case of a public or governmental entity that requires the entity's governing body to vote on authorizations for each periodic payment, final payment or retainage monies, the amount due may be approved and certified at the next scheduled public meeting of the entity's governing body, and paid during the entity's subsequent payment cycle, provided this exception has been defined in the bid specifications and contract documents.

b. If a subcontractor or subsubcontractor has performed in accordance with the provisions of its contract with the prime contractor or subcontractor and the work has been accepted by the owner, the owner's authorized approving agent, or the prime contractor, as applicable, and the parties have not otherwise agreed in writing, the prime contractor shall pay to its subcontractor and the subcontractor shall pay to its subsubcontractor within 10 calendar days of the receipt of each periodic payment, final payment or receipt of retainage monies, the full amount received for the work of the subcontractor or subsubcontractor based on the work completed or the services rendered under the applicable contract. In the case of ongoing work on the same project for which partial payments are made, the amount of money owed for work already completed shall only be payable if the subcontractor or subsubcontractor is performing to the satisfaction of the prime contractor or subcontractor, as applicable.

c. If a payment due pursuant to the provisions of this section is not made in a timely manner, the delinquent party shall be liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%. Interest on amounts due pursuant to this section shall be paid to the prime contractor, subcontractor or subsubcontractor for the period beginning on the day after the required payment date and ending on the day on which the check for payment has been drawn. The provisions of this subsection c. shall not apply to any transportation project as defined in section 3 of P.L. 1984, c.73 (C.27:1B-3), if that project receives federal funding and the awarding agency has been notified by the federal government that it will be classified as a high risk grantee pursuant to 49 C.F.R. 18.12.

d. A prime contractor, subcontractor or subsubcontractor may, after providing seven calendar days' written notice to the party failing to make the required payments, suspend performance of a construction contract, without penalty for breach of contract, until the payment required pursuant to this section is made, if the contractor, subcontractor or subsubcontractor: is not paid as required by this section; is not provided a written statement of the amount withheld and the reason for the withholding; and the payor is not engaged in a good faith effort to resolve the reason for the withholding. The provisions of this subsection d. shall not apply to any transportation project as defined in section 3 of P.L. 1984, c.73 (C.27:1B-3), if that project receives federal funding and the application of this provision would jeopardize the funding because the owner could not meet the federal standards for financial management systems as outlined in 49 C.F.R. 18.20.

e. (1) The rights, remedies or protections provided by this section for prime contractors, subcontractors and subsubcontractors shall be in addition to other remedies provided pursuant to any other provision of State law. To the extent that the provisions of this section provide greater rights, remedies or protections for prime contractors, subcontractors and subsubcontractors than other provisions of State law, the provisions of this section shall supersede those other provisions.

(2) No provision of this section shall be construed as restricting in any way the rights or remedies provided by any other applicable State or federal law to an owner who is a resident homeowner or purchaser with respect to the real property being improved.

f. All contracts for the improvement of structures entered into after the effective date of P.L.2006, c.96 between owners, prime contractors, subcontractors or subsubcontractors shall provide that disputes regarding whether a party has failed to make payments required pursuant to this section may be submitted to a process of alternative dispute resolution. Alternative dispute resolution permitted by this section shall not apply to disputes concerning the bid solicitation or award process, or to the

formation of contracts or subcontracts. In any civil action brought to collect payments pursuant to this section, the action shall be conducted inside of this State and the prevailing party shall be awarded reasonable costs and attorney fees.

3. This act shall take effect immediately, but shall not apply to contracts for the improvement of structures entered into before the effective date.

Approved September 1, 2006.

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**40A:5-17. Approval and payment of claims and required general books of account**

Approval and payment of claims and required general books of account. a. Approval of claims. The governing body shall approve or disapprove all claims. In the case of a county, other than a county which has adopted a form of government pursuant to the "Optional County Charter Law," P.L. 1972, c. 154 (C. 40:41A-1 et seq.), the governing body may, by resolution, designate one person who may approve claims between meetings of the governing body. The specified designee shall be chosen from the following positions: the certified financial officer, chief fiscal officer, county administrator, director of finance, treasurer or comptroller. Any approval by the designated person shall be presented to the county governing body at its next meeting for ratification, except that, prior to being paid, such vouchers shall be brought to the attention of the freeholder who has responsibility for the designee. The county governing body may establish a maximum dollar amount for which payment may be approved without prior approval of the governing body. Claims shall be approved or disapproved in the manner prescribed by rules made and promulgated by the bureau unless the governing body adopts an ordinance or resolution, as may be appropriate, in the case of a county, or an ordinance, in the case of a municipality, including the following provisions:

(1) Designating an approval officer with the title of certifying and approval officer;

(2) Prescribing the duties of the approval officer, including the making of certifications required by 40A:5-16b., ascertaining the existence of proper and sufficient appropriations for the payments to be made and determining that there is legal authority for the payments, evidenced by action of a purchasing department or agent or officer in respect to the goods or services ordered and the incurring of the expense therefor;

(3) Prescribing the procedure for approving and certifying to the proper officer claims for payments and drawing checks therefor;

(4) Prescribing the procedure for certifying approved claims to the governing body and regulating its action of approval or disapproval thereon.

b. Payment of claims. A resolution or an ordinance adopted pursuant to this section may also provide a method of disbursing moneys or payment of claims approved, but if it does not so provide the method shall be as follows:

(1) In the case of a county organized pursuant to the provisions of the "Optional County Charter Law" (P.L. 1972, c. 154; C. 40:41A-1 et seq.), by check issued upon the requisition of and signed by the chief executive officer and countersigned by the treasurer, and in all other counties by check issued upon requisition of the clerk of the board of chosen freeholders, signed by the county treasurer and countersigned by such other officer or officers as are designated by ordinance or resolution of the governing body;

(2) In the case of a municipality, by check drawn on the municipality, signed by the mayor or other chief executive officer and the municipal clerk and countersigned by such other officer or officers as are designated by ordinance.

c. Required general books of account. The bureau shall prescribe the kind and manner of keeping of general books of account for the financial officers of the local units and said officers shall be required to keep and maintain said books.

Amended by L. 1985, c. 127, s. 1, eff. April 12, 1985.

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#### **40A:11-16.2 Partial payments; deposit bonds.**

1. Any contract, the total price of which exceeds \$100,000.00, entered into by a contracting unit involving the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to real property, shall provide for partial payments to be made at least once each month as the work progresses, unless the contractor shall agree to deposit bonds with the contracting unit pursuant to P.L.1979, c.152 (C.40A:11-16.1).

L.1979,c.464,s.1; amended 1999, c.440, s.25.

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#### **40A:11-50. Process of resolution for construction contract disputes**

1. All construction contract documents entered into in accordance with the provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) after the effective date of P.L.1997, c.371 (C.40A:11-50) shall provide that disputes arising under the contract shall be submitted to a process of resolution pursuant to alternative dispute resolution practices, such as mediation, binding arbitration or non-binding arbitration pursuant to industry standards, prior to being submitted to a court for adjudication. Nothing in this section shall prevent the contracting unit from seeking injunctive or declaratory relief in court at any time. The alternative dispute resolution practices required by this section shall not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts to be entered into pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.).

Notwithstanding industry rules or any provision of law to the contrary, whenever a dispute concerns more than one contract, such as when a dispute in a contract involving construction relates to a contract involving design, architecture, engineering or management, upon the demand of a contracting party, other interested parties to the dispute shall be joined unless the arbitrator or person appointed to resolve the dispute determines that such joinder is inappropriate. Notwithstanding industry rules or any provision of law to the contrary, whenever more than one dispute of a similar nature arises under a construction contract, or related construction contracts, upon the demand of a contracting party, the disputes shall be joined unless the arbitrator or person appointed to resolve the dispute determines that the disputes are inappropriate for joinder.

For the purposes of this section, the term "construction contract" means a contract involving construction, or a contract related thereto concerning architecture, engineering or construction management

L.1997, c.371.