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Notice Regarding Citation of these Laws

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The Mississippi "Little Miller Act"

Mississippi Code, Title 31, Public Business, Bonds and Obligations, Chapter 5, Public Works Contracts, Sections 31-5-51 through 31-5-57, Bonds Securing Public Works Contracts

See also, Miss. Code §§ 31-5-25 through 31-5-31 (prompt payment provisions)

© State of Mississippi, pursuant to Miss. Code § 1-1-9.

§ 31-5-51. Performance and payment bonds; persons entitled to sue on payment bond; proof of general liability insurance required before entering into certain contracts with state or local governments.

(1) Any person entering into a formal contract with the state or any county, city or political subdivision thereof, or other public authority for the construction, alteration, or repair of any public building or public work, before entering into such contract, shall furnish to such public body, except as provided in subsection (5) of this section, bonds with good and sufficient surety as follows:

(a) A performance bond payable to, in favor of or for the protection of such public body, as owner, for the work to be done in an amount not less than the amount of the contract, conditioned for the full and faithful performance of the contract;

(b) A payment bond payable to such public body but conditioned for the prompt payment of all persons supplying labor or material used in the prosecution of the work under said contract, for the use of each such person, in an amount not less than the amount of the contract; and

(c) The bonds herein provided for may be made by any surety company which is authorized to do business in the State of Mississippi and listed on the United States Treasury Department's list of acceptable sureties, or such bonds may be guaranteed by a personal surety as provided for herein. The personal surety shall deposit with the State Treasurer cash or certificates of deposit in an amount not less than the amount of the contract, and the State Treasurer shall hold same in trust and on deposit for the benefit of the public body that is a party to the contract providing for the construction, alteration or repair of the public building or for the public work.

(2) Every person who has furnished labor or material used in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed by him or the last of the materials was furnished by him and for which such claim is made, provided the same has been approved, where required, by

the public authority or its architect or engineers, or such approval is being withheld as a result of unreasonable acts of the contractor, shall have the right to sue on such payment bond for the amount, or the balance thereof that is due and payable, but unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment. Notwithstanding anything to the contrary contained herein, if the amount claimed in such action is subject to contractual provisions or conditions, between the parties involved in such action, the action shall be abated pending the performance of such provisions and the fulfillment of such conditions.

(3) Any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be given in writing by the claimant to the contractor or surety at any place where the contractor or surety maintains an office or conducts business. Such notice may be personally delivered by the claimant to the contractor or surety, or it may be mailed by certified mail, return receipt requested, postage prepaid, to the contractor or surety. No such action may be maintained by any person not having a direct contractual relationship with the contractor-principal, unless the notice required by this section shall have been given.

(4) The only persons protected by such payment bond, subject to the notice provisions of this section are:

(a) Subcontractors and material suppliers of the contractor;

(b) Sub-subcontractors and material suppliers of those subcontractors named in subsection (4)(a) of this section; and

(c) Laborers who have performed work on the project site.

(5) Whenever a contract is less than Twenty-five Thousand Dollars (\$25,000.00) the owners may elect to make a lump sum payment at the completion of the job. Lump sum payments will not be made until completion and acceptance by the governing agency. In such a case a performance bond or payment bond will not be required.

(6) Except as otherwise provided in subsection (1)(c) for a personal surety, no surety or surety company shall be allowed to guarantee or write bonds for the benefit of the public body that is a party to a contract providing for the construction, alteration or repair of a public building or for public work, unless that surety is listed on the United States Treasury Department's list of acceptable sureties. If the surety is not listed on the United States Treasury Department's list of acceptable sureties, the public body for which the public work is being performed shall be liable to the extent that the surety would be liable.

(7) Any person entering into a formal contract with the state which exceeds Five Thousand Dollars (\$5,000.00), or with a county, city or other public authority which exceeds Twenty-five Thousand dollars (\$25,000.00), for the construction, alteration, or repair of any public building or public work, before entering into such contract, shall furnish to the public body proof of

general liability insurance coverage in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury and property damage. Exempted from the provisions of this subsection are any persons who enter into a contract with the Mississippi Department of Rehabilitation Services for the construction, alteration or repair of the home of a disabled individual who has been determined eligible for services by the Mississippi Department of Rehabilitation Services.

§ 31-5-52. Performance and payment bonds required when using design-build or construction manager at risk methods of project delivery.

The use of either the design-build method of project delivery as provided in Section 31-7-13.1 or the construction manager at risk method of project delivery as provided in Section 31-7-13.2 must comply with the provisions of Section 31-5-51.

§ 31-5-53. Time for bringing suit on bond; venue.

(a) When suit is instituted on a performance bond given in accordance with this chapter, it shall be commenced within one (1) year after the obligee shall have made final payment on the contract; provided, however, if the contract is abandoned by the general contractor as bond principal or is terminated by the bond obligee, suit shall be commenced within one (1) year after the earlier of the abandonment by the bond principal or termination by the bond obligee.

(b) When suit is instituted on a payment bond given in accordance with this chapter, it shall be commenced within one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing the action and not later.

(c) Any suit brought on a performance or payment bond given in accordance with this chapter shall be brought in the county in which the contract or some part thereof was performed or in the county in which service of process may be obtained upon either the principal or the surety on such bond.

§ 31-5-55. Persons entitled to copies of contract and bond.

Any person supplying labor or materials for the prosecution of the work shall, upon request to the obligee, be furnished with a certified copy of the contract and bonds.

§ 31-5-57. Award of attorney's fees.

Whenever any person supplying labor or material in the prosecution of the work brings an action on such payment bond and the trial judge finds that the defense raised to such action by the contractor or surety was not reasonable, or not in good faith, or merely for the purpose of delaying payment, then the trial judge may, in his discretion, award the claimant a reasonable amount to be determined by the trial judge as claimant's attorney's fees in bringing such successful action. Likewise, if the trial judge finds that such action was brought by claimant without just cause or in bad faith, the trial judge may, in his discretion, award the contractor or surety a reasonable amount to be determined by the trial judge as attorney's fees for defending such action; provided, however, this section shall not affect the right of any person to recover attorney's fees where provided by contract or bond.

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The above statutory text was last reviewed for accuracy on July 11, 2009.