

# The Prompt Payment Act

Act 291

HB 3036 Hd1 Sd2 Cd1, SLH 2006

# Act 291 Section 1 - Purpose

The purpose of this Act is to accelerate a subcontractor's or material supplier's right to payment upon completion of the subcontract or the furnishing of materials by providing for prompt payment to a subcontractor or material supplier upon completion of the subcontractor's or material supplier's work in government projects.

# Act 291 Section 2

- Amends 103-10.5, HRS to provide for prompt payment to the subcontractor *including retainage* for work satisfactorily completed under the subcontract
  - Clarifies requirements for *properly documented final payment request*
  - Affirms acceptability of performance and payment bonds
  - Allows for use of acceptable “*release of retainage bond*” 90 days after last work done or material furnished with no written notice of claim

# Act 291 Section 2

- Specifies penalties that shall be imposed on the *government agency* or general contractor for failing to pay in accordance with the requirements of the section
  - 1 ½% per month x outstanding amount
  - *Taken from government agency if government agency is responsible party*
  - Withheld from future payments to contractor if contractor is responsible party
  - Contractor referral to contractor license board *by procurement officer* for three or more violations within two years of the first violation

# Act 291 Section 3

- Requires that any retainage provided for in 103-32.1, HRS, be *held by the government procurement officer*
- Affirms that government agency is not a party in disputes between contractors and subcontractors
- *Protects the right of the contractors and subcontractors to negotiate other conditions in their subcontracts*
- *Adopts documentation requirements from the federal prompt payment act*

# Act 291 Section 4

- Provides for prompt payment for change orders under 103D-501(b), HRS *when the government and general contractor cannot agree on change order costs*

## Change orders not exceeding \$50,000

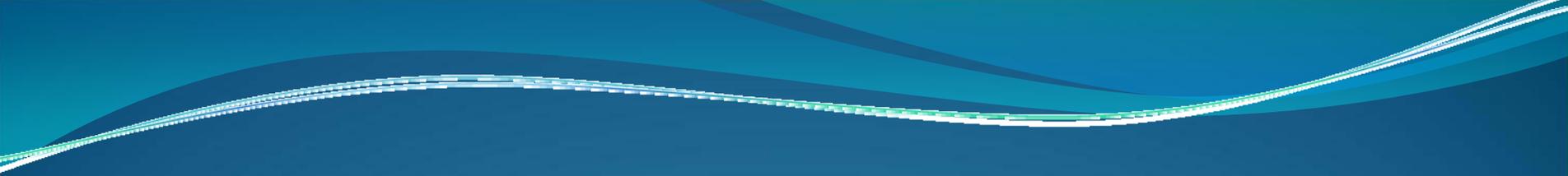
- *Cost plus 20% of documented actual costs on work done directly by the contractor*
- *10% on subcontractor's billing*
- *Change order to be issued in 15 days*

# Act 291 Section 4

- Provides for prompt payment for change orders under 103D-501(b), HRS *when the government and general contractor cannot agree on change order costs*

## Change orders exceeding \$50,000

- *Unilateral determination that allows for cost plus 20% of documented actual costs on work done directly by the contractor and 10% on subcontractor's billings*
- *Change order to be issued in 10 days*
- *Contractor to file notice of intent to claim within 30 days of receipt of unilateral change order if contractor does not agree with terms and conditions*



**Mahalo!**

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