CONTRACTS FOR IMPROVEMENT TO REAL PROPERTY
Act 57 of 1998

AN ACT to require contractors to provide certain notices to governmental entities concerning improvements on real property; to allow for the modification of contracts for improvement to real property; to provide for remedies; and to repeal acts and parts of acts.

History: 1998, Act 57, Eff. Oct. 6, 1998.

The People of the State of Michigan enact:

125.1591 Definitions.

Sec. 1. As used in this act:

(a) "Contractor" means a person who contracts with a governmental entity to improve real property or perform or manage construction services. Contractor does not include a person licensed under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014.

(b) "Governmental entity" means the state, a county, city, township, village, public educational institution, or any political subdivision thereof.

(c) "Improve" means to build, alter, repair, or demolish an improvement upon, connected with, or beneath the surface of any real property, to excavate, clear, grade, fill, or landscape any real property, to construct driveways and roadways, or to perform labor upon improvements.

(d) "Improvement" includes, but is not limited to, all or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, landscaping, trees, shrubbery, driveways, and roadways on real property.

(e) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(f) "Real property" means the real estate that is improved, including, but not limited to, lands, leaseholds, tenements, hereditaments, and improvements placed on the real property.

History: 1998, Act 57, Eff. Oct. 6, 1998.

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125.1592 Improvement contract exceeding $75,000; provisions.

Sec. 2. A contract between a contractor and a governmental entity for an improvement that exceeds $75,000.00 shall contain all of the following provisions:

(a) That if a contractor discovers 1 or both of the following physical conditions of the surface or subsurface at the improvement site, before disturbing the physical condition, the contractor shall promptly notify the governmental entity of the physical condition in writing:

(*i*) A subsurface or a latent physical condition at the site is differing materially from those indicated in the improvement contract.

(*ii*) An unknown physical condition at the site is of an unusual nature differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the improvement contract.

(b) That if the governmental entity receives a notice under subdivision (a), the governmental entity shall promptly investigate the physical condition.

(c) That if the governmental entity determines that the physical conditions do materially differ and will cause an increase or decrease in costs or additional time needed to perform the contract, the governmental entity's determination shall be made in writing and an equitable adjustment shall be made and the contract modified in writing accordingly.

(d) That the contractor cannot make a claim for additional costs or time because of a physical condition unless the contractor has complied with the notice requirements of subdivision (a). The governmental entity may extend the time required for notice under subdivision (a).

(e) That the contractor cannot make a claim for an adjustment under the contract after the contractor has received the final payment under the contract.

History: 1998, Act 57, Eff. Oct. 6, 1998.

125.1593 Contract completion; performance; consent of governmental entity; arbitration; judgment rendered.

Sec. 3. (1) If the contractor does not agree with the governmental entity's determination, with the governmental entity's consent the contractor may complete performance on the contract.

(2) At the option of the governmental entity, the contractor and the governmental entity shall arbitrate the

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contractor's entitlement to recover the actual increase in contract time and costs incurred because of the physical condition of the improvement site. The arbitration shall be conducted in accordance with the rules of the American arbitration association and judgment rendered may be entered in any court having jurisdiction.

History: 1998, Act 57, Eff. Oct. 6, 1998.

125.1594 Incorporation of additional provisions.

Sec. 4. If an improvement contract does not contain the provisions required under section 2, the provisions shall be incorporated into and considered part of the improvement contract.

History: 1998, Act 57, Eff. Oct. 6, 1998.

125.1595 Rights or remedies.

Sec. 5. This act does not limit the rights or remedies otherwise available to a contractor or the governmental entity under any other law or statute.

History: 1998, Act 57, Eff. Oct. 6, 1998.

125.1596 Repealed. 2001, Act 28, Imd. Eff. June 22, 2001.

Compiler's note: The repealed section pertained to repeal of act.

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