

Business & Classifieds

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ASK A LAWYER

Bond may cover unpaid supplier

Q. I recently supplied materials to a general contractor for the construction of a local school, but have not been paid in over a month. Is it true there is a bond posted with the school board to protect me from non-payment?

Under the scenario you describe, the answer is yes, but only if you comply with the provisions of the New Jersey Public Works Bond Act ("Bond Act").

The bond act protects certain classes of subcontractors, suppliers and laborers ("Beneficiaries") by requiring contractors of state, municipal and other local governmental entities to post with the public entity a payment bond from a qualified bonding company (a surety) to secure payment to the Beneficiaries. Because you supplied materials directly to the contractor, you would qualify as a Beneficiary under the bond act.

Additionally, a supplier or subcontractor who provides materials to or performs work for a subcontractor who, in turn, has a direct contract with the contractor is also a Beneficiary. It is important to note, however, that such a "third-tier" supplier or subcontractor (without a direct contract with the contractor) may only make a claim under the payment bond for the value of materials supplied or work performed after that Beneficiary has provided written notice to the contractor of that Beneficiary's role in the project.

The bond act further requires that all Beneficiaries provide the contractor and surety with a statement of the amount claimed due within nine months of the particular Beneficiary's last date of work. This is so because a lawsuit must be filed against the surety under the bond act within one year of the Beneficiary's last date of work, and, before a Beneficiary may file suit, the surety is afforded 90 days to investigate the claim.

The bond act provides Beneficiaries with an excellent remedy to redress non-payment on a public project, but Beneficiaries must be careful to abide strictly by its provisions.

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