



OLR RESEARCH REPORT

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OLR BACKGROUNDER: THE LITTLE MILLER ACT

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SUMMARY

Black's Law Dictionary (7th Ed., 1999) defines the Miller Act as “a federal law requiring the posting of performance and payment bonds before an award is made for a contract for construction, alteration, or repair of a public work of building.” Since the Miller Act only applies to federal contracts, each state also has its own version of the legislation, known as the “Little Miller Act” that applies to state contracts.

Connecticut’s “Little Miller Act” applies to any construction, reconstruction, or development property rehabilitation by a municipality, governmental unit, or nonprofit corporation to which a municipality has delegated powers ([CGS § 7-502](#)). It includes the:

1. bonding requirements for state and municipal construction projects,
2. surety bond contract requirements,
3. limits on use of owner-controlled insurance programs,
4. means by which contractors and subcontractors may enforce payment, and
5. payment withholding limitations ([CGS §§ 49-41 – 49-43](#)).

STATE AND MUNICIPAL CONSTRUCTION CONTRACTS

Bonding Requirements

Each contract for the construction, alteration or repair of any state or municipal public building or work over \$100,000 must state that the contractor must provide the state or municipality with a bond for the contract amount on or before the contract award date. Once awarded a contract, the contractor is bound to it. The bond must list the contractor as the principal ([CGS § 49-41\(a\)](#)). Neither the contract nor the contracting officer can require the contractor to obtain the bond from a specific surety, agent, broker, or producer ([CGS § 49-41\(c\)](#)).

A contractor is not required to provide a bond in relation to any:

1. general bid in which the total estimated labor and materials cost is less than \$100,000;
2. sub-bid in which the total estimated labor and material cost is less than \$100,000; or
3. general bid or sub-bid submitted by a consultant ([CGS § 49-41\(a\)](#)).

In addition to the bond, the contractor must provide sureties to the awarding officer to protect the necessary labor and materials suppliers. A contracting officer may require an additional performance bond or security but the officer may not require a performance bond for a:

1. general bid in which the total estimated labor and materials cost is less than \$25,000 or
2. sub-bid in which the total estimated labor and materials cost is less than \$50,000 ([CGS § 49-41\(b\)](#)).

If a municipality or other political subdivision fails to obtain the required bond for a contract, an unpaid subcontractor or supplier may sue it just as he or she may sue a surety company for payment. The law does not extend liability to the state for anyone's right to be paid or waive the state's sovereign immunity ([CGS § 49-41\(d\)](#)).

Owner-Controlled Insurance Programs

The law defines an “owner-controlled insurance program” as an insurance procurement program under which a principal provides and consolidates insurance coverage for one or more contractors on one or more construction projects ([CGS § 49-41\(e\)\(1\)](#)).

A contract for the construction, alteration, or repair of any state or municipal public building or work may not include a provision that allows or requires the state or municipality to maintain an owner-controlled insurance program, except for:

1. a project approved as part of the UConn 2000 infrastructure improvement program or
2. one or more municipal projects totaling \$100,000 or more, either (a) under one construction manager’s supervision or (b) located within the municipality’s boundaries if under more than one construction manager’s supervision ([CGS § 49-41\(e\)\(2\)](#)).

Each contract or insurance policy issued under an owner-controlled insurance program must provide that:

1. labor and materials insurance coverage must continue from the work completion date until the date all causes of action are barred under any applicable statute of limitations;
2. the program must notify the principal and all covered contractors of any coverage change, cancellation, or failure to renew the coverage under the contract or policy; and
3. the effective date of a (a) change in coverage under the contract or policy must be at least 30 days after the date the principal and contractors receive notice, and (b) cancellation or refusal to renew must be at least 60 days after the principal and contractors receive notice ([CGS § 49-41\(e\)\(3\)](#)).

Each principal or contractor must disclose if, the project will be covered by an owner-controlled insurance program in the project plans or specifications when soliciting bids for the construction project ([CGS § 49-41\(e\)\(4\)](#)).

Surety Bond Contracts

Whenever the law requires a contractor to post a surety bond on a state or municipal building construction project that is at least partially state-funded and estimated to cost more than \$500,000, the contract between the surety company and the contractor must state:

In the event that the surety assumes the contract or obtains a bid or bids for completion of the contract, the surety shall ensure that the contractor chosen to complete the contract is prequalified pursuant to section 4a-100 of the Connecticut General Statutes in the requisite classification and has the aggregate work capacity rating and single project limit necessary to complete the contract.
([CGS § 49-41\(f\)](#))

In other words, the surety must ensure that the contractor is prequalified by the Department of Administrative Services to bid on or perform work under the contract. The “aggregate work capacity rating” is the maximum amount of work the contractor is capable of undertaking for any and all projects. The “single project limit” is the highest estimated cost of a single project that the contractor is capable of undertaking ([CGS § 4a-100](#)).

PAYMENT ENFORCEMENT

Payment Bond Requirements

Any contract for public work that requires a payment bond must require the general contractor to:

1. pay any subcontractor for labor performed or materials provided (a) within 30 days after the state or municipality paid the contractor and (b) when the labor or materials were included in a requisition the contractor submitted and the state or municipality paid and
2. include a provision in each of its subcontracts requiring each subcontractor to pay any amounts due to any of its subcontractors for labor performed or materials furnished within 30 days after the subcontractor receives payment from the general contractor.

Payment Requisitions

Each payment requisition, unless for a Department of Transportation (DOT) contract, must include a statement showing the status of all pending construction change orders and directives (authorized directives for extra work issued to a contractor or subcontractor), and approved changes to the original contract or subcontract. The statement must (1) identify the pending construction change orders and other pending change directives and (2) include the date the change orders and directives were initiated, the associated costs, and a description of any work completed ([CGS § 49-41a\(b\)](#)).

Escrow Accounts

A contractor or subcontractor must deposit funds in an interest-bearing escrow account on a subcontractor's written demand if (1) a payment is not made according to the contract schedule, (2) 10 days have passed since the payment date, and (3) the subcontractor has sent a payment demand by registered or certified mail. The escrowed amount must be for the amount that the general contractor or subcontractor is liable, which is the amount of the claim plus 1% per month interest. The contractor or subcontractor may refuse to escrow funds if he or she contends that the subcontractor has not substantially completed the work according to the terms of the contract ([CGS § 49-41a\(c\)](#)).

Contractor Disputes

A general contractor may not withhold payment from a subcontractor for work performed because of a dispute between the general contractor and another contractor or subcontractor ([CGS § 49-41a\(d\)](#)).

Progress Payments

The law (1) does not prohibit progress payments made prior to the final contract payment and (2) is applicable to all subcontractors for material or labor whether they have contracted directly with the general contractor or with some other subcontractor on the work ([CGS § 49-41a\(e\)](#)).

RELEASE OF PAYMENTS ON CONSTRUCTION PROJECTS

When a contract for public work requires a payment bond and contains a provision requiring the general or prime contractor to furnish a performance bond in the full contract amount, the following apply:

1. in the case of a contract advertised by any state agency other than the DOT, (a) the awarding authority must not withhold more than 10% from any periodic or final payment properly due to the general or prime contractor under the terms of the contract (b) any general or prime contractor must not withhold from any subcontractor more than 10%, or the amount withheld by the awarding authority, whichever is less, from any periodic or final payment properly due to the subcontractor. The awarding authority must establish an early release program with respect to periodic payments by general or prime contractors to subcontractors;
2. in the case of a contract advertised by the DOT, (a) the department must not withhold more than 2.5% from any periodic or final payment properly due to the general or prime contractor under the terms of the contract and (b) any general or subcontractor must not withhold more than 2.5% from any periodic or final payment due to any subcontractor; and
3. if the awarding authority is a municipality, (a) it must not withhold more than 5% from any periodic or final payment due to the general or prime contractor under the terms of the contract and (b) any general or prime contractor must not withhold more than 5% from any periodic or final payment due to any subcontractor ([CGS § 49-41b](#)).

ENFORCEMENT OF RIGHT TO PAYMENT ON BOND

Claim Notice Service

A person may enforce the right to payment under a bond by serving a claim notice on the surety that issued the bond if he or she (1) performed work or supplied materials for which a requisition was submitted to, or an estimate was prepared by, the awarding authority and has not received full payment for such work or materials within 60 days of the applicable payment date or (2) supplied materials or performed subcontracting work not included on a requisition or estimate who has not received full payment within 60 days after the date the materials

were supplied or the work was performed. He or she must also serve a copy of the claim notice to the contractor named as principal in the bond no more than 180 days after the last date he or she supplied materials or performed work ([CGS § 49-42\(a\)](#)).

Retainage

“Retainage” means money otherwise payable to a contractor or subcontractor that an owner withholds until substantial or final completion of all work under the contract ([CGS § 42-158i](#)). Retainage does not include any sum withheld due to the contractor’s or subcontractor’s failure to comply with construction plans and specifications.

For retainage payment, a claim notice must be served no later than 180 days after the applicable payment date. The claim notice must (1) state the amount claimed and the name of the party for whom the work was performed or the materials were supplied and (2) provide a detailed description of the bonded project for which the work or materials were provided ([CGS § 49-42\(a\)](#)).

Legal Action

No later than 90 days after the claim notice is served, the surety must (1) make payment under the bond and satisfy the claim, or any part of the claim not subject to a good faith dispute and (2) serve a notice on the claimant denying liability for any unpaid portion of the claim. The notices must be served by registered or certified mail, postage prepaid. If the surety denies liability on the claim or any portion of it, the claimant may bring action on the payment bond in Superior Court for the sum and prosecute the action to final execution and judgment.

The court cannot consolidate actions brought on the same bond for trial unless it finds that (1) a substantial portion of the evidence is common to both actions and that (2) consolidation will not result in excessive delays to any claimant whose action was instituted at a time significantly prior to the motion to consolidate. In any such proceeding, the judgment must award the prevailing party the costs for bringing the proceeding and allow interest at the rate specified in the labor or materials contract (or 10% interest on the amount recovered if no interest rate is specified in the contract) computed from the date the claim notice was served. For any portion of the claim that the court finds was due and payable after the claim notice service date, the interest must be computed from the date the portion became due and payable ([CGS § 49-42\(a\)](#)).

Judgment

The court judgment may award reasonable attorney fees to either party if upon reviewing the entire record, it appears that the original claim, the surety's liability denial, or the defense to the claim lacked a substantial factual or legal basis. Any person with a direct contractual relationship with a subcontractor but no express or implied contractual relationship with the contractor furnishing the payment bond has a right of action on the payment bond after submitting a written claim notice.

CERTIFIED COPIES OF BONDS AND CONTRACTS FOR PUBLIC WORKS

Each state agency or subdivision in charge of construction, alteration or repair of any state public building or work must furnish a copy of the bond and the contract to any applicant who submits an affidavit that he or she (1) supplied labor or materials for the work and has not been paid or (2) is being sued on the bond. The copy must be certified by the agency's administrative head, and serves as prima facie evidence of the original document's contents, execution, and delivery. Applicants must pay for the certified copies.

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