

Rules for Securing Payment from a Public Project

When you supply materials, equipment or labor for a public project (i.e. “a construction project paid for with public funds”), you have certain extra statutory remedies to help ensure you receive payment. These remedies go beyond the typical contract rights your business has against the party with whom you contracted. These remedies consist of:

① **New Jersey’s Municipal Mechanic’s Lien Law**

Unlike on private projects where a construction lien is filed against the project property, suppliers need to assert a municipal mechanic’s lien against the monies due, or to become due, from the Public Owner to the General Contractor. If done properly, the municipal mechanic’s lien creates a “fund” against which the debt owed to the material or labor supplier will be secured, and ultimately paid.

② **New Jersey’s Public Works Bond Act**

A material or labor supplier or subcontractor additionally has rights under a statutory payment bond that the General or Prime Contractor is required to obtain as a condition to contracting with the Public Owner.

The payment bond guarantees payment of the debt from its principal, the General Contractor, to the subcontractor or supplier.

Strict Compliance Required

However, simply knowing about these extra statutory remedies is not enough to protect your investment. You must take certain affirmative steps to protect your rights under both the Mechanic’s Lien Law and Bond Act. Failing to strictly comply with the multiple statutory pre-conditions will result in the complete loss of any available lien and bond rights.

These pre-conditions consist of, among other things:

- Complying with specific notice requirements prior to the first delivery of materials or labor to the project
- Filing notice of claim in a timely fashion once work has commenced and/or materials have been delivered to the project site and
- Instituting suit within the established statutory time period.

Additional Rights Available to Suppliers & Subcontractors

The Prompt Pay Act

enhances the obligation of the entity with whom you have contracted on a public project to pay you promptly for the services provided. If a violation has been found, the Act provides for the potential recovery of attorney fees and interest.

The Trust Fund Act

places a special obligation on the recipient of the funds to use them to pay suppliers and subcontractors for whom they have received payment. Violation of this Trust Fund Act can open the door to personal liability for officers and owners of a Contractor who does not appropriately utilize the trust funds received.



LINDABURY

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Lindabury, McCormick, Estabrook & Cooper, P.C.

is a mid-sized general practice law firm, located in Central New Jersey. We provide litigation and transactional counsel to a broad spectrum of clients throughout New Jersey and the Mid-Atlantic region. We are committed to providing quality legal representation with a focus on personalized service.

The Construction Law Practice at Lindabury is comprised of some of the leading construction attorneys in New Jersey, nationally recognized for their capabilities and experience. We have represented clients in the construction industry in some of the largest construction disputes in New Jersey and have established some of the leading reported case law on issues arising out of public contract law.

Lindabury provides representations in all venues for disputes arising out of construction projects, including litigation, arbitration and mediation.

We represent a broad range of clients in all areas of construction law, including trade associations, owners, contractors, vendors, sureties and insurance companies. We are general counsel to the Mechanical Contractors Association of New Jersey and are recognized as special counsel for the Mechanical Contractors Association of America. We are also general counsel to the New Jersey Subcontractors Association and the New Jersey Chapter of Professional Women in Construction. Additionally, we have represented some of the major institutional owners and sureties and are experienced in all areas and disciplines involved in the construction process for both public and private projects.

Our Construction Law attorneys have provided extensive representation of entities in public construction projects, including construction of numerous projects under the Education Facilities Financing Act and the oversight of the New Jersey Schools Construction Corporation.

Lindabury, McCormick, Estabrook & Cooper's construction law team is comprised of leading New Jersey attorneys who have represented construction clients in some of the largest disputes in the state.



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- "40 Under 40", New Jersey Law Journal (2006)
- "40 Under 40", NJBiz (2007)
- New Jersey Super Lawyers, Rising Star*



Representative Litigation & Transactional Matters

- Currently serving as local counsel in Morris County, New Jersey to a fire suppression contractor in the defense of a multi-million dollar construction defect claim brought by a condo association against the general and subcontractors.
- Currently serving as local counsel to a drilling company in a dispute with a general contractor over payment and delay impacts arising from a public project installing electrical cable beneath the Hudson River.
- Negotiated a \$1.2 million settlement with the School Development Authority for contract funds and change orders due, including a claim for general conditions due to project delays.
- Obtained a \$1 million settlement on behalf of a construction client for contract funds owed, including disputed work items.
- Represented owner/landlord in redevelopment/construction of 524,000 square foot warehouse.

Business Associations to Which We Are Legal Counsel

- Mechanical Contractors Association of New Jersey
- National Subcontractors Alliance
- New Jersey Subcontractors Association
- New Jersey Chapter of Professional Women in Construction

Nonprofit Boards on Which Attorneys Serve

- American Subcontractors Association
- Linden Industrial Association
- National Subcontractors Alliance