



RHODE ISLAND CONSTRUCTION LAW PRIMER

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I. Introduction:

As the construction industry continues to attempt to emerge from a period of decreased volume created by and resulting from the overall economic downturn of recent years, Massachusetts contractors can continue to explore all available options for work opportunities. Those opportunities may carry Massachusetts contractors beyond the borders of Massachusetts.

In the April and May 2010 editions of the CIM Construction Journal, Hinckey, Allen & Snyder LLP provided a summary of construction nuances and practices for Massachusetts contractors performing work, respectively, in neighboring Connecticut and New Hampshire. Furthering that theme, this article is intended as a primer for Massachusetts contractors performing work in Rhode Island.

II. Licensing, Registration, Certifications:

REGISTRATION - Most contractors, including nonresident contractors, performing work in Rhode Island must, pursuant to Rhode Island General Laws (RIGL) Title 5, Chapter 65, formally register through the State of Rhode Island Contractors' Registration Board (the Registration Board). For the purposes of registration, a "contractor" is

a person who, in the pursuit of an independent business, undertakes or offers to undertake or submits a bid, or for compensation and with or without the intent to sell the structure arranges

to construct, alter, repair, improve, move over public highways, roads or streets or demolish a structure or to perform any work in connection with the construction, alteration, repair, improvement, moving over public highways, roads or streets or demolition of a structure, and the appurtenances thereto.

The statute further states that a "contractor" includes, but is not limited to, "any person who purchases or owns property and constructs or for compensation arranges for the construction of one or more structures." RIGL 5-65-1(3).

All registered contractors are required to carry liability and property damage insurance covering the work of the contractor in not less than five hundred thousand dollars (\$500,000) combined single limit, bodily injury and property damage. In addition, all contractors shall have in effect worker's compensation insurance as required under RIGL Title 28, Chapter 29. RIGL 5-65-7.

Certain trade contractors that are "licensed" through the Rhode Island Department of Labor and Training (discussed further below) are exempt from the registration requirements, except for the insurance requirements of RIGL 5-65-7. RIGL 5-65-2(a)(10). There are also some additional exemptions from the registration requirements provided in RIGL 5-65-2(a), but most will not be relevant to the majority of contractors this article is meant to address. For those contractors that must register, the actual registration process is relatively straightforward, consisting of the filing of

an application and additional supporting documents. No test of any kind is required to register. The exact registration process can be found at www.crb.ri.gov/residentialcontractors/index.php. The current registration fee is \$200.00 initially and for most contractors renewal is \$200.00 annually.

Proper registration is a prerequisite to performing any designated work in the State (including both private and public projects), receiving building permits for performing work in the State, or obtaining judicial or administrative remedies, for example filing a lien.

There are severe civil and criminal penalties, including imprisonment, for failing to register as a contractor as required. Pursuant to RIGL 5-65-19:

(a) Any person who ... fails to register as a contractor as stipulated, and upon proper written notification, is deemed guilty of a misdemeanor, and, upon conviction, shall be imprisoned for a term not exceeding one year, or fined not more than five thousand dollars (\$5,000) for a first offense and not more than ten thousand dollars (\$10,000) for a second and/or subsequent offense(s) each. ...

Repeat offenders can be convicted of a felony with significant additional prison time and increased fines. In addition, all contractors are barred from hiring unregistered or unlicensed lower-tier contractors. See generally, RIGL 5-65-3 and 5-65-4.

Two additional points worth noting for nonresident contractors registering in Rhode Island: (i) Each and every separate "business entity," regardless if owned by the same individual, must obtain its own separate registration. RIGL 5-65-1(3)(ii); and (ii) Nonresident contractors must also file with the Registration Board a power of attorney designating a registered agent upon whom legal process can be served. RIGL 5-65-2(b).

LICENSING - As noted above, certain trade contractors that are "licensed" in Rhode Island are exempt from the Rhode Island contractor registration requirements, except for the insurance requirements of RIGL 5-65-7.

The Rhode Island Department of Labor and Training, through its respective Boards, requires that the following trade contractors be licensed to perform work in Rhode Island: Electricians, Hoisting Engineers, Pipe Fitters, Refrigeration Technicians, Fire Protection Sprinkler Fitters, Sheet Metal Workers, Plumbers, Irrigation Contractors, Sewage Disposal System Installers, and Telecommunication System Contractors and Installers. See generally, RIGL 5-65-2(a)(10), 5-6, 5-20, 5-56, 28-26 and 28-27.

Licensing exams are generally offered three times per month with varying fees according to trade. Licenses renew on a 2-year cycle. More specific information regarding licensing can be found at www.ri.gov/licensing/.

III. Performing Public Projects:

Rhode Island General Laws 37-2 and 45-55 govern, respectively, state and municipal public work in Rhode Island. The State has also promulgated its procurement regulations in Code of Rhode Island Rules (CRIR) 01-065-004.

In addition to the registration and/or licensing requirements discussed above, prior to bidding any state work in Rhode Island, all potential bidders, including nonresident contractors, must register with the Rhode Island Division of Purchases through the Rhode Island Vendor Information Program (RIVIP) Website (www.purchasing.ri.gov/RIVIP/Home.asp). Upon registration, the registered contractor is assigned a Vendor ID number. Invitations for Bid, Requests for Proposals (RFPs), and all accompanying information are provided electronically online, and such materials are only available for download by registered vendors.

Registration through RIVIP, however, does not also provide for prequalification. Pursuant to RIGL 37-2-9, 37-2-24 and 37-2-25 (pertaining specifically to contractors) and CRIR 01-065-004 Section 4, the State's Chief Purchasing Officer (CPO) maintains a list of prequalified responsible prospective contractors and suppliers. Any particular solicitation may also require additional information be submitted by potential bidders to ensure prequalification by the CPO. Generally, prequalification considers the financial strength of the contractor, business competence, reputation, and product quality. There are also specific requirements for the prequalification of contractors bidding on road work (RIGL 37-2-26) for the Department of Transportation and of contractors bidding on construction management contracts (RIGL 37-2-27).

Additionally, pursuant to Executive Order 08-01, all contractors, subcontractors, and vendors doing business with or proposing to engage in a business relationship with an Executive Branch department or agency of the State of Rhode Island must be registered with and utilize a federally approved work authorization program/service, such as "E-Verify," to ensure that newly hired employees of the contractor, subcontractor or vendor have complied with all applicable federal immigration laws. CRIR 01-065-004 – 1.12.

RIGL 37-2-18 and CRIR 01-065-004 Section 5 generally regulate the actual sealed bidding process. Public notice of the invitation for bids or RFPs will be provided through RIVIP prior to the opening of bids. Alternatively, notice may occur through newspaper publication neither less than seven days nor more than twenty-one days before the date set for the opening of the bid. Bids are opened publicly at the time/place designation in the invitation for bids and each bid and bidder name is recorded and an abstract of each bid is made available for public inspection.

Pursuant to RIGL 37-2-40 and CRIR 01-065-004 § 5.7, a bid bond is required for all competitive sealed bidding for construction contracts greater than \$50,000 or for construction contracts less than \$50,000 when deemed appropriate by the Purchasing Agent. The bidder's security must be in an amount equal to at least 5% of the amount bid. Noncompliance results in rejection of the bid except where the CPO issues regulations of exceptions to this requirement in the event of substantial compliance.

IV. Bonding on Public Projects:

RIGL 37-12 and 37-13 require that for projects in excess of \$50,000 (or for a contract for the construction, improvement, completion, or repairs of any public building, or portion thereof), the contractor provide payment and performance bonds by sureties in good standing in the State in amounts between 50% and 100% (as required in the solicitation) of the contract value.

A subcontractor or supplier to a general contractor may commence suit to recover on the bond ninety days "after the day on which the last of the labor was performed or furnished ... or material or equipment furnished or supplied ... on which the claim is made." RIGL 37-12-2. Second-tier subcontractors (subcontractors not having a direct contractual relationship with the general contractor) or suppliers may also bring suit on the bond. The statute of limitations for bringing suit on the bond is two (2) years from the last day of performance of the work for which payment is due, or within the period provided by the terms of the bond, whichever is longer. RIGL 37-12-5.

V. Mechanic's Liens on Private Projects:

Rhode Island Mechanics Liens are governed by RIGL 34-28, which was substantially modified in 2006. Parties entitled to file Mechanic's Liens are contractors with direct contracts with the

owner/lessee/tenant, subcontractors who have “constructed, erected, altered, or repaired” any building, canal, turnpike, or other improvement pursuant to an oral or written contract, suppliers of materials used in the construction, erection, alteration or repair of improvements, parties who lease or rent equipment that contribute to the improvement of the property, and architects and engineers (“or any immediate or mediate subcontractor thereto”) whose services have been used in the actual construction, etc., of the improvements.

As contrary to public policy, lien rights cannot be waived by contract. RIGL 34-28-1.

In summary, the procedure for filing a lien is generally as follows:

- A. Within 10 business days of commencing work on a project, any party who has contracted directly with the owner must mail, by prepaid registered or certified mail, return-receipt requested, a Notice of Possible Mechanics’ Lien to the owner. RIGL 34-28-4.1.
- B. Within 200 days of the first unpaid day of work, any party, regardless what its relationship with the owner, seeking the lien must mail, by prepaid registered or certified mail, return-receipt requested, a Notice of Intention to the owner. RIGL 34-28-4. To protect its lien rights, the party seeking the lien should, within that same 200-day period, record the Notice of Intention in the records of land evidence in the town/city where the property is located. RIGL 34-28-4.
- C. Within 40 days of the filing of the Notice of Intention, the party seeking the lien must record a Notice of Lis Pendens in the town/city where the property is located. RIGL 34-28-10. RIGL 34-28-11 provides the format for the Lis Pendens.
- D. Simultaneously with, or within 7 days after, recording of the Notice of Lis Pendens, the

party seeking the lien must file a Complaint to Enforce the Lien in the Superior Court in the county in which the property is located. RIGL 34-28-10. RIGL 34-28-13 provides the format for the Complaint.

- E. After the Complaint, the case will proceed as a standard civil matter. Lien actions can be accelerated if requested, pursuant to RIGL 9-2-18.1.

An owner/lessee/tenant can discharge a lien against its property in a number of ways. See generally, RIGL 34-28-17(a), 34-28-17(a), and 34-28-17.1.

VI. Other Rhode Island Construction Issues:

- A. Rhode Island has a 10-year Statute of Repose for actions sounding in tort. RIGL 9-1-29. The Statute of Limitations on contract actions is also 10 years, RIGL 9-1-13(a), but subject to the “discovery rule.” Accordingly, contractors should be aware that liability for contract actions is not necessarily extinguished after 10-years from “substantial completion” notwithstanding the 10-year Statute of Repose.
- B. No damages for Delay provisions are generally enforceable in Rhode Island, unless it can be proven that the Owner, or a party under the Owner’s control, has actively interfered with the delay.
- C. Liquidated Damages provisions are generally enforceable in Rhode Island, provided that they are not deemed to be a “penalty.”
- D. Punitive damages are generally not recoverable in contract actions unless awarded pursuant to the applicable portions of the Rhode Island Deceptive Trade Practices Act.
- E. Pursuant to RIGL 6-34-1, indemnification obligations in general contracts uniformly allocate liability on a comparative fault basis. Accordingly, a subcontractor’s indemnity obligation to the contractor extends only

to those damages attributable to the subcontractor's percentage of negligence.

- F. Pay-If-Paid and Pay-When-Paid provisions are generally enforceable in Rhode Island.
- G. Rhode Island has a Prompt Payment act that operates generally to ensure prompt payments from public agencies and subsequent lower-tier payments. RIGL 42-11.1-1. A detailed discussion of the Rhode Island Prompt Payment Act is beyond the scope of this article.
- H. Rhode Island has a Deceptive Trade Practices Act, which operates similarly to Massachusetts c. 93A. RIGL 6-13-1. A detailed discussion of the Rhode Island Deceptive Trade Practices Act is beyond the scope of this article.

VII. Conclusion

For those Massachusetts contractors venturing outside of Massachusetts, this article has hopefully provided an oversight of some key Rhode Island construction law issues. Naturally, for each item there can be intricacies and pitfalls not necessarily apparent in the brief discussion herein included. Massachusetts contractors with any particular questions regarding working in Rhode Island are encouraged to seek appropriate counsel.