Proposed Changes to Public Prompt Pay Laws

 Neal Eckel, Farhang & Medcoff

 neckel@farhangmedcoff.com

 2/9/22

The Arizona Legislature is considering amending A.R.S. Section 34 -221 to strengthen public prompt pay laws. The proposed changes deal with the requirements for payment to contractors and subcontractors for changed or additional work (“change orders”) in public construction contracts with government entities.

Under proposed Section L, if the Owner directs the Contractor to perform changed or additional work, the Contractor can submit an estimate for the reasonable cost of the changed or additional work for the preceding month pending a final determination of the total amount to be paid. This could allow the Contractor to get paid for at least part of the work if there is a dispute over the total billing.

Under proposed Section M, if the Owner directs the Contractor to perform changed or additional work and the Contractor in turn directs the Subcontractor to do such work, the Subcontractor can submit an estimate for the reasonable cost of the work pending final determination.

In both situations, an interim determination of the approval of such costs is to be made in accordance with the Contract by the person designated in the Contract to certify and approve the monthly pay estimate. Any party can disagree with the interim determination and assert a claim per the Contract.

The same changes are also being proposed to A.R.S. Section 28-6924 dealing with the department of transportation’s highway construction projects.