

S T A T E O F N E W Y O R K

9944

I N A S S E M B L Y

April 26, 2012

Introduced by M. of A. GUNTHER, RABBITT -- read once and referred to the
Committee on Governmental Operations

AN ACT to confer authority on the state comptroller to verify and pay
the claim of A. Servidone, Inc./B. Anthony Construction Corp., J.V.
against the state of New York with respect to construction of a
project known as the reconstruction and bridge replacement on Route 17
at Exit 122 in the Town of Wallkill, Orange County, New York

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The legislature finds that A. Servidone, Inc./B. Anthony
2 Construction Corp., J.V. was engaged and authorized by the state, acting
3 by and through the New York State Department of Transportation, on or
4 about October 6, 2011, to perform a construction project known as the
5 reconstruction and bridge replacement on Route 17 at Exit 122 in the
6 Town of Wallkill, Orange County, New York (NYSDOT Contract No. D261655),
7 and having commenced performance and making substantial progress, the
8 contractor is threatened by financial loss, by reason of the Decision
9 and Order issued by the Supreme Court dated March 1, 2012 in which the
10 construction contract was found to be a nullity. A. Servidone, Inc./B.
11 Anthony Construction Corp., J.V. made purchases and executed subcon-
12 tracts and purchase orders in furtherance of the project. It is further
13 found that A. Servidone, Inc./B. Anthony Construction Corp., J.V.
14 undertook and executed the aforesaid work in good faith and without
15 wrongful intent and that by virtue of the benefits received by the state
16 and the consideration rendered by A. Servidone, Inc./B. Anthony
17 Construction Corp., J.V. through its performance of such work, a clear
18 moral obligation has arisen on the part of the state to compensate and
19 pay damages for the loss sustained by A. Servidone, Inc./B. Anthony
20 Construction Corp., J.V. on account of the work performed and the work
21 that it was not able to perform by virtue of the Decision and Order, in
22 the manner set forth in this act. In this connection, A. Servidone,
23 Inc./B. Anthony Construction Corp., J.V. submitted a verified statement
24 of claim in the sum \$22,323,588.00.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD15391-01-2

1 S 2. Notwithstanding any other provision of law, the comptroller is
2 hereby authorized to verify the amounts submitted by A. Servidone,
3 Inc./B. Anthony Construction Corp., J.V. in its statement of claim and
4 such other amounts that may be due or come due on account of the cessa-
5 tion of work and approve payment of the claim by A. Servidone, Inc./B.
6 Anthony Construction Corp., J.V. and its subcontractors, suppliers and
7 materialmen who performed or were under a commitment to perform the
8 construction project known as the reconstruction and bridge replacement
9 on Route 17 at Exit 122 in the Town of Wallkill, Orange County, New York
10 (NYSDOT Contract No. D261655).

11 Payment under this act shall be made from funds heretofore allocated
12 and encumbered for such construction work or from general funds and
13 shall include such amount to pay for the damages sustained by A. Servi-
14 done, Inc./B. Anthony Construction Corp., J.V. and its subcontractors,
15 suppliers and materialmen, including, but not limited to, the following:

16 (1) The costs incurred in performing work, including work that was
17 extra or additional to the scope of work, and the purchase of material
18 and purchase and rental of equipment. This includes, but is not limited
19 to, work performed and requisitioned but not paid, work performed but
20 not paid in full, work completed but not on a pay requisition and the
21 initial office set up cost.

22 (2) The costs incurred as a result of the stop work order.

23 (3) The costs incurred in the premature cessation of work, including,
24 but not limited to:

25 a. Professional fees related to the premature ending of the contract
26 and bookkeeping expenses.

27 b. Demobilization of equipment and facilities.

28 c. Rental payments for field offices for the full rental period.

29 d. Travel expenses of officers and employees.

30 e. Insurance premiums to the date of cancellation that is authorized
31 in writing by the state and any penalty therefor.

32 f. Storage and yard expenses, equipment, maintenance, warehousing,
33 moving and freight expenses to hold and/or ship materials scheduled to
34 be delivered to the job site.

35 g. Permanent materials (including steel H piles, drainage structures,
36 reinforced concrete pipe, corrugated plastic pipe, miscellaneous materi-
37 als for drainage structure, epoxy coated reinforcing steel and various
38 other materials).

39 h. Temporary materials (including temporary concrete barrier and end
40 sections, glare screen, prefabricated silt dike, architectural pattern-
41 ing of concrete surfaces, temporary seed and mulch tackifier and tempo-
42 rary crane mats.

43 (4) For work done directly by A. Servidone, Inc./B. Anthony
44 Construction Corp., J.V. profit and overhead, including, but not limit-
45 ed to, job-site overhead and actual and projected unabsorbed home office
46 overhead, and anticipated profit. Included in the definition of work is
47 the preparation of shop drawings, data sheets, plans and design.

48 (5) For work done by a subcontractor, supplier and/or materialman, the
49 job-site overhead and actual and projected unabsorbed home office over-
50 head of the subcontractor, supplier and/or materialman, but not less
51 than ten percent shall be added to the cost of labor, equipment and
52 materials, and to the cost of labor, equipment and materials plus over-
53 head there shall be added the profit of the subcontractor, supplier
54 and/or materialman and anticipated profit of not less than ten percent
55 for the subcontractor's profit. Labor and materials shall include the
56 cost of shop drawing, data sheets, plans and design. To this amount

1 there shall be added sixteen percent for the overhead and profit of A.
2 Servidone, Inc./B. Anthony Construction Corp., J.V.
3 (6) Loss of pending contract to supply excavated materials to old
4 battery plant.
5 S 3. This act shall take effect immediately.