

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

9944--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, 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 sub
12 contracts and purchase orders in furtherance of the project. It is
13 further found that A. Servidone, Inc./B. Anthony Construction Corp.,
14 J.V. 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 actual, reasonable, and verifiable costs for the loss sustained by
20 A. Servidone, Inc./B. Anthony Construction Corp., J.V. on account of
21 the work performed and the work that it was not able to perform by
22 virtue of the Decision and Order, in the manner set forth in this act.
23 In this connection, A. Servidone, Inc./B. Anthony Construction Corp,

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

LBD15391-05-2

1 J.V. submitted a verified statement of claim in the sum of
2 \$22,323,588.00.

3 S. 2. Notwithstanding any other provision of law, upon submission of
4 claims certified by A. Servidone, Inc./B. Anthony Construction Corp.,
5 J.V. and approved by the Department of Transportation, the Comptroller,
6 after audit, is authorized to make payment to A. Servidone, Inc./B.
7 Anthony Corp., J.V. for any amounts payable under this bill with respect
8 to the construction project known as the reconstruction and bridge
9 replacement on Route 17 at Exit 122 in the Town of Wallkill, Orange
10 County, New York (NYSDOT Contract No. D261655).

11 Notwithstanding any other provision of law, payment under this act
12 shall be made from federal and/or state capital projects funds appropri-
13 ations available to the New York State Department of Transportation and
14 shall include such reasonable and verifiable amounts to pay for the
15 actual and necessary costs incurred by A. Servidone, Inc./B. Anthony
16 Construction Corp., J.V. and its subcontractors, suppliers and material-
17 men in performing construction work, including, but not limited to, the
18 following:

19 (1) The costs incurred in performing work, including work that was
20 extra or additional to the scope of work, and the purchase of material
21 and rental of equipment. This includes, but is not limited to, work
22 performed and requisitioned but not paid, work performed but not paid in
23 full, work completed but not on a pay requisition and the initial office
24 set up cost, but only to the extent not previously paid by the state.
25 Included in the definition of work is the preparation of shop drawings,
26 data sheets, plans and design. The value of any work already paid for by
27 the state in a pay item but not fully performed shall be credited to the
28 state.

29 (2) The costs incurred in the premature cessation of work as follows:

30 a. Demobilization of equipment and facilities.

31 b. Rental payments due under any rental agreement for field offices
32 through the date that any such agreement may be terminated, or, if it
33 cannot be terminated, through the expiration date of such agreement.

34 c. Insurance premiums to the date of cancellation that is authorized
35 in writing by the state and any penalty therefor.

36 d. Documented storage and yard expenses, actual warehousing, moving
37 and freight expenses to hold and/or ship materials scheduled to be
38 delivered to the job site.

39 e. Permanent materials (including steel H piles, drainage structures,
40 reinforced concrete pipe, corrugated plastic pipe, miscellaneous materi-
41 als for drainage structure, epoxy coated reinforcing steel and various
42 other materials) not paid for and incorporated in the work or returned
43 and restocked.

44 f. Temporary materials (including temporary concrete barrier and end
45 sections, glare screen, prefabricated silt dike, architectural pattern-
46 ing of concrete surfaces, temporary seed and mulch tackifier).

47 (3) Profit and overhead applicable to the costs defined in subdivision
48 one in the following amounts:

49 a. For work done directly by A. Servidone, Inc./B. Anthony
50 Construction Corp., J.V., profit and overhead in an amount of sixteen
51 percent shall be added to the cost of labor and materials; provided,
52 however, that no overhead and profit will be paid on completed bid items
53 referenced in NYSDOT Contract No. D261655.

54 b. For work done by a subcontractor, supplier and/or materialman,
55 profit and overhead in an amount of sixteen percent shall be added to
56 the cost of labor and materials and to this amount there shall be added

1 five percent for the overhead and profit of A. Servidone, Inc./B. Antho-
2 ny Construction Corp., J.V.; provided, however, that no overhead and
3 profit will be paid on completed bid items referenced in NYSDOT Contract
4 No. D261655.

5 Any materials paid for by the state and not incorporated in the work
6 shall be delivered to the Department of Transportation.

7 S 3. This act shall take effect immediately.