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

7187

I N S E N A T E

May 1, 2012

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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:

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

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

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

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

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

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

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

b. Demobilization of equipment and facilities.

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

d. Travel expenses of officers and employees.

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

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

g. Permanent materials (including steel H piles, drainage structures, reinforced concrete pipe, corrugated plastic pipe, miscellaneous materials for drainage structure, epoxy coated reinforcing steel and various other materials).

h. Temporary materials (including temporary concrete barrier and end sections, glare screen, prefabricated silt dike, architectural patterning of concrete surfaces, temporary seed and mulch tackifier and temporary crane mats.

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

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

there shall be added sixteen percent for the overhead and profit of A. Servidone, Inc./B. Anthony Construction Corp., J.V.

(6) Loss of pending contract to supply excavated materials to old battery plant.

S 3. This act shall take effect immediately.