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

7187--B

I N S E N A T E

May 1, 2012

Introduced by Sens. BONACIC, LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT authorizing payment to A. Servidone, Inc./B. Anthony Construction Corp., J.V. 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 sub contracts 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 actual, reasonable, and verifiable costs 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,

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

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

S 2. Notwithstanding any other provision of law, upon submission of claims certified by A. Servidone, Inc./B. Anthony Construction Corp., J.V. and approved by the Department of Transportation, the Comptroller, after audit, is authorized to make payment to A. Servidone, Inc./B. Anthony Corp., J.V. for any amounts payable under this bill with respect to 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).

Notwithstanding any other provision of law, payment under this act shall be made from federal and/or state capital projects funds appropriations available to the New York State Department of Transportation and shall include such reasonable and verifiable amounts to pay for the actual and necessary costs incurred by A. Servidone, Inc./B. Anthony Construction Corp., J.V. and its subcontractors, suppliers and materialmen in performing construction work, 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 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, but only to the extent not previously paid by the state. Included in the definition of work is the preparation of shop drawings, data sheets, plans and design. The value of any work already paid for by the state in a pay item but not fully performed shall be credited to the state.

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

a. Demobilization of equipment and facilities.

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

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

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

e. 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) not paid for and incorporated in the work or returned and restocked.

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

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

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

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

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

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

S 3. This act shall take effect immediately.