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Insights

Indiana's "Little Miller Act" Alleviates Concern that Public Works Projects Remain Immune to Mechanic's Liens

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By: Christopher W. Bloomer and Robert S. Schein

Public Works Remain Immune to Mechanic's Liens:

In 1999, Indiana's mechanic's lien law was substantially re-written to include, among other key changes, a prohibition on certain no-lien contracts. A no-lien contract is a construction contract in which the parties agree that the project will not be subject to any mechanic's liens for work performed on the project. Under Indiana law, no-lien contracts and provisions are no longer permitted in the construction, alteration, or repair of commercial, industrial, and business structures.[1]

However, certain projects have been and remain statutorily-immune to the imposition of mechanic's liens irrespective of the parties' contract terms – most notably – all public works projects, which include "the construction, reconstruction, alteration, or renovation of a public building, airport facility or other structure that is paid for out of a public fund or out of a special assessment."[2]

Indiana's protection of public works projects from the burdens of mechanic's liens is a matter of public policy. As the Court of Appeals articulated in City of Evansville v. Verplank Concrete & Supply, Inc., "[i]t requires little imagination to realize how disruptive the attachment and attempted foreclosure of [mechanic's] liens might be to the orderly operation of state and local government."[3] Unsurprisingly, the Verplank Court reaffirmed the general rule that public works projects remain immune to mechanic's liens, as have multiple court decisions since.[4] That's not to say that public works subcontractors, laborers, materialmen, suppliers, or others are without remedy when unpaid for labor and material.

Indiana's "Little Miller Act":

The Miller Act is a federal law that requires general contractors hired on federal public works projects to secure a payment bond for the protection of those supplying labor and material.[5] Indiana's Little Miller Act requires the same, and its protections are twofold for unpaid claimants: a claim for payment can either be paid out of funds that are being retained by the public entity, or a claim can be made against the surety that issued the general contractor's payment bond.[6]

Specifically, Indiana Code § 36-1-12-13 requires the governmental unit to withhold money from the contractor until the contractor has paid those involved on the project. To make a claim for these monies, a subcontractor, supplier, laborer, or person furnishing services must file a claim with the governmental unit not later 60 days after that person performed the last labor, furnished the last material, or performed the last service.[7]

As for bonding, Indiana Code § 36-1-12-13.1 requires public works contractors to execute a payment bond in an amount equal to the contract price if the cost of the public work is estimated to be more than $200,000.[8]

The bond must state it is for the benefit of the subcontractors, laborers, material supplies, and those performing services for the project. Similar to a claim for withheld monies made directly to the governmental unit, a claimant seeking payment under a project payment bond must, within 60 days of completing labor or service or furnishing material, deliver duplicate statements of the amounts due to the local unit, and provide a copy to the contractor.[9] The local unit is responsible for forwarding the same to the surety.

A claimant may not bring an action against the surety until more than 30 days have passed since filing the duplicate statements and providing a copy to the contractor, though the deadline for bringing such an action is no later than 60 days after the date of the final completion and acceptance of the work.[10]

Takeaways for Local Units of Government:

Local and state units of government should remain cognizant that liens are not permitted for work completed on public works projects. Care should be taken to ensure RFPs and other solicitations, pre-bid documents, notices of award, and final contract documents are in conformity with Indiana's public works laws. For instance, contracts must require bonds among other key requirements (adherence with bidding procedures, deadlines for issuing notices of award and notices to proceed, and others).

Takeaways for Unpaid Labor and Material Providers:

Though subcontractors, laborers, and material providers remain unable to lien public projects, Indiana's Little Miller Act provides alternative protections to Indiana's lien statute. In order to preserve its rights under the Little Miller Act, a claimant must ensure it takes certain actions within specified timeframes – including providing requisite notices to the owner, filing appropriate duplicate statements to the owner and general contractor if making a claim against the project's payment bond, and bringing an action in a court of competent jurisdiction before the expiration of the applicable deadline.

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[1] Public utilities and certain one or two dwelling unit projects (think townhomes), commonly known as "Class 2 structures," can also still enter into no-lien contracts so long as the contracts are in writing, recorded, and meet other formalities. Ind. Code §§ 32-28-3-1; 22-12-1-5.
[2] Ind. Code § 36-1-12-2 (defining "Public work").
[3] City of Evansville v. Verplank Concrete & Supply, Inc., 400 N.E.2d 812, 816 (Ind. Ct. App. 1980).
[4] See, e.g., Elec. Specialties, Inc. v. Siemens Bldg. Techs., Inc., 837 N.E.2d 1052, 1055 (Ind. Ct. App. 2005) (reiterating that "liens cannot be filed against public property").
[5] Elec. Specialties, 837 N.E.2d at 1056 (citing 40 U.S.C. § 3131(b)(2)).
[6] Elec. Specialties, 837 N.E.2d at 1056 (citing Ind. Code §§ 4-13.6-7-9; -11); see also Indiana Carpenters Cent. & W. Indiana Pension Fund v. Seaboard Sur. Co., 601 N.E.2d 352, 358 (Ind. Ct. App. 1992).
[7] Ind. Code § 36-1-12-12.
[8] This requirement is also present on state-owned projects, including those in which a construction manager as constructor has been retained. See Ind. Code §§ 4-13.6-7-6; 5-32-6-1.
[9] Ind. Code § 36-1-12-13.1(c).
[10] Ind. Code § 36-1-12-13.1(d).