

# Lang, Baker & Klain, PLC

## Arizona Prompt Payment Rights and Requirements: Private vs. Public Projects

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	<b>Private Projects</b> A.R.S. § 32-1129, et seq.	<b>Public Projects</b> A.R.S. § 34-221 <sup>1</sup>	<b>ADOT Highway Construction</b> A.R.S. § 28-6924
Billing Cycle	30 days	30 days	Previous month
Interest Rate	18%	12%	12%
Attorney fees and costs provided for in statute?	Yes	No	No
Time until invoice is deemed approved and certified unless, before that time, owner/public agency makes written objection	14 days	7 days	7 days
Deadline for owner/public agency to pay invoice after certification and approval	7 days	14 days	14 days
Deadline for general contractor to pay subcontractors and suppliers	7 days	7 days	7 days
Deadline for subcontractors to pay subcontractors and suppliers	7 days	7 days	7 days
Timing can be altered?	Yes, if noted conspicuously in contract and plans	No	No
Owner/Public agency required to withhold retention?	No	Yes (10%)	No
Deadline to release retention	Same as for any invoice (14 + 7 = 21 days)	60 days after completion or filing notice of completion, unless before that time the public agency issues specific writing justifying withholding	Same as for any invoice (7 + 14 = 21 days)
Amount of retention owner/public agency may withhold after final invoice	150% of expenses owner reasonably expects to incur as a result of contractor's failure to complete work per contract	An amount necessary to pay the expenses the public agency reasonably expects to incur as a result of contractor's failure to complete work per contract	A reasonable amount that does not exceed annual percentage retained by department
Right to suspend work due to late payment?	Yes	Not addressed in statute	Not addressed in statute
Contractor can provide substitute security in lieu of retention?	No	Yes	No

<sup>1</sup> With regard A.R.S. § 34-221, when a contract is fifty percent complete, **one-half of the amount retained** must be paid to the contractor upon the contractor's request **provided the contractor is making satisfactory progress**. After the contract is fifty percent completed, no more than **five percent** of the amount of any subsequent progress payments may be retained **provided the contractor is making satisfactory progress** on the project, except that **if at any time the public agency decides satisfactory progress is not being made, ten per cent retention may be reinstated** for all subsequent progress payments.

Not addressed in this summary are prompt payment provisions that are specific to projects for the State of Arizona's university system.