§ 139-f. Payment on public work projects. Notwithstanding the provisions of any other law to the contrary, except the provisions of section thirty-eight of the highway law, all contracts made and awarded by the state, or by any public department, or by any public benefit corporation or by any public corporation or official thereof, hereafter referred to as the public owner, for construction, reconstruction or alteration of any public work project shall provide for payment by the public owner to the contractor and payment by the contractor to the subcontractor in accordance with the following:

1. Payment by public owners to contractors. The contractor shall periodically, in accordance with the terms of the contract, submit to the public owner and/or his agent a requisition for a progress payment for the work performed and/or materials furnished to the date of the requisition, less any amount previously paid to the contractor. The public owner shall in accordance with the terms of the contract approve and promptly pay the requisition for the progress payment less an amount necessary to satisfy any claims, liens or judgments against the contractor which have not been suitably discharged and less any retained amount as hereafter described. The public owner shall retain not more than five per centum of each progress payment to the contractor except that the public owner may retain in excess of five per centum but not more than ten per centum of each progress payment to the contractor provided that there are no requirements by the public owner for the contractor to provide a performance bond and a labor and material bond both in the full amount of the contract. The public owner shall pay, upon requisition from the contractor, for materials pertinent to the project which have been delivered to the site or off-site by the contractor and/or subcontractor and suitably stored and secured as required by the public owner and the contractor provided, the public owner may limit such payment to materials in short and/or critical supply and materials specially fabricated for the project each as defined in the contract. When the work or major portions thereof as contemplated by the terms of the contract are substantially completed, the contractor shall submit to the public owner and/or his agent a requisition for payment of the remaining amount of the contract balance. Upon receipt of such requisition the public owner shall approve and promptly pay the remaining amount of the contract balance less two times the value of any remaining items to be completed and an amount necessary to satisfy any claims, liens or judgments against the contractor which have not been suitably discharged. As the remaining items of work are satisfactorily completed or corrected, the public owner shall promptly pay, upon receipt of a requisition, for these remaining items less an amount necessary to satisfy any claims, liens or judgments against the contractor which have not been suitably discharged. Any claims, liens and judgments referred to in this section shall pertain to the project and shall be filed in accordance with the terms of the applicable contract and/or applicable laws.

1-a. Notwithstanding any other provision of this section to the contrary, payment of the moneys due under a contract awarded (i) by a state agency as defined in article eleven-A of this chapter or (ii) by a corporation as defined in subdivision one of section twenty-eight hundred eighty of the public authorities law which is subject to the provision of this section shall be made in accordance with the provisions of such article eleven-A, in the case of such state agencies, or such section twenty-eight hundred eighty, in the case of such corporations, provided failure to make such payment, as heretofore prescribed, shall not be due to any fault, neglect, or omission on the part of the contractor or by reason of the filing of any lien,
attachment, or other legal process against the money due such contractor.

2. Payment by contractors to subcontractors. Within seven calendar days of the receipt of any payment from the public owner, the contractor shall pay each of his subcontractors and materialmen the proceeds from the payment representing the value of the work performed and/or materials furnished by the subcontractor and/or materialman and reflecting the percentage of the subcontractor's work completed or the materialman's material supplied in the requisition approved by the owner and based upon the actual value of the subcontract or purchase order less an amount necessary to satisfy any claims, liens or judgments against the subcontractor or materialman which have not been suitably discharged and less any retained amount as hereafter described. Failure by the contractor to pay any subcontractor or materialman within seven calendar days of the receipt of any payment from the public owner shall result in the commencement and accrual of interest on amounts due to such subcontractor or materialman for the period beginning on the day immediately following the expiration of such seven calendar day period and ending on the date on which payment is made by the contractor to such subcontractor or materialman. Such interest payment shall be the sole responsibility of the contractor, and shall be paid at the rate of interest in effect on the date payment is made by the contractor. Notwithstanding any other provision of law to the contrary, interest shall be computed at the rate established in paragraph (b) of subdivision one of section seven hundred fifty-six-b of the general business law. The contractor shall retain not more than five per centum of each payment to the subcontractor and/or materialman except that the contractor may retain in excess of five per centum but not more than ten per centum of each payment to the subcontractor provided that prior to entering into a subcontract with the contractor, the subcontractor is unable or unwilling to provide a performance bond and a labor and material bond, both in the full amount of the subcontract, at the request of the contractor. However, the contractor shall retain nothing from those payments representing proceeds owed the subcontractor and/or materialman from the public owner's payments to the contractor for the remaining amounts of the contract balance as provided in subdivision one of this section. If the contractor has failed to submit a requisition for payment of the remaining amounts of the contract balance within ninety days of substantial completion as provided in subdivision one of this section, then any clause in the subcontract between the contractor and the subcontractor or materialman which states that payment by the contractor to such subcontractor or materialman is contingent upon payment by the owner to the contractor shall be deemed invalid. Within seven calendar days of the receipt of payment from the contractor, the subcontractor and/or materialman shall pay each of his subcontractors and materialmen in the same manner as the contractor has paid the subcontractor, including interest as herein provided above. Nothing provided herein shall create any obligation on the part of the public owner to pay or to see to the payment of any moneys to any subcontractor or materialman from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor or materialman and the public owner.

3. In the event that the terms of payment on a public works project as provided in this section are pre-empted or superseded as a result of the provisions of any federal statute, regulation or rule applicable to the project, the terms of this section shall not apply.
4. Notwithstanding any other provision of this section or other law, requirements for the furnishing of a performance bond or a payment bond may be dispensed with at the discretion of the head of the state agency or corporation, or his or her designee, where the public owner is a state agency or corporation described in subdivision one-a of this section and the aggregate amount of the contract awarded or to be awarded is under fifty thousand dollars and, in a case where the contract is not subject to the multiple contract award requirements of section one hundred thirty-five of this article, such requirements may be dispensed with where the head of the state agency or corporation finds it to be in the public interest and where the aggregate amount of the contract awarded or to be awarded is under two hundred thousand dollars. Provided further, that in a case where a performance or payment bond is dispensed with, twenty per centum may be retained from each progress payment or estimate until the entire contract work has been completed and accepted, at which time the head of the state agency or corporation shall, pending the payment of the final estimate, pay not to exceed seventy-five per centum of the amount of the retained percentage.