

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1085

(Senator McFadden)

Rules

Procurement - Accelerated Payments to Subcontractors

This bill authorizes a State agency to pay a subcontractor an “undisputed amount” on a State contract for construction or goods and services if a contractor does not pay the subcontractor. Payments by the State to a subcontractor can be made only if a representative of the agency requests that the procurement officer direct the agency to make the payment. If a State agency pays a subcontractor under the bill, the agency may withhold or otherwise recover from the contractor the amount of the payment.

Fiscal Summary

State Effect: The bill has no direct fiscal effect on State agencies as it only authorizes but does not require direct payments to subcontractors. However, to the extent that an agency opts to make a payment to a subcontractor and then is unable to recoup the payment, or must pursue legal remedies to do so, State finances are adversely affected.

Local Effect: None. The bill applies only to State contracts.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law: An “undisputed amount” is defined in current law as an amount owed by a contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld. This definition currently applies only to State construction contracts, but the bill applies this definition to all State contracts for goods and services.

For construction contracts, it is the policy of the State that a contractor must promptly pay to a subcontractor any undisputed amount to which the subcontractor is entitled within 10 days of receiving a progress or final payment from the State, and that subcontractors must promptly pay lower tier subcontractors any undisputed amount to which they are entitled. If a contractor does not pay a subcontractor within the time that payment is usually made, the contractor must notify the subcontractor in writing of the reason why payment is being withheld and provide a copy of the notice to the procurement officer.

If a subcontractor on a construction contract does not receive payment within the required time, the subcontractor may notify the procurement officer in writing. When notification is made, statute specifies a dispute resolution process. If a representative of the agency selected by the procurement officer determines that the contractor is delinquent in payment of the undisputed amount, the agency *may* withhold further payments until the subcontractor is paid. If payment is still not made and the representative determines, after a meeting with all the parties, that the contractor is still delinquent, the representative *must* order that further payments to the contractor not be processed until the subcontractor is paid. The representative may also order that the contract be suspended, and may order the contractor to pay a penalty to the subcontractor of up to \$100 per day. The bill adds the optional direct payment by the State to the subcontractor to the list of options available to the agency in this instance. A decision by a procurement officer or an agency representative in these matters is not subject to judicial review or appeal to the State Board of Contract Appeals.

Small Business Effect: Small subcontractors on State contracts may have a vehicle to be paid undisputed amounts when a prime contractor does not make timely payments.

Additional Comments: Several agencies noted that, since the State does not have a contractual relationship with subcontractors, there is no mechanism within the State's contract and financial management system to make direct payments to them.

Additional Information

Prior Introductions: None.

Cross File: HB 499 (Delegate Sydnor, *et al.*) - Health and Government Operations.

Information Source(s): University System of Maryland, Public School Construction Program, Department of Budget and Management, Department of General Services, Board of Public Works, Maryland Department of Transportation, Department of Legislative Services

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