

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE
Revised

House Bill 600 (Delegate DeCarlo)

Commerce and Government Matters

Procurement - Construction Contracts - Prompt Payments

This bill provides that the amount specified for retainage in a State procurement contract for construction may not exceed 5% of the total amount if the contractor has furnished 100% payment security and 100% performance security. In addition to retainage, a primary procurement unit may withhold any amount that the unit reasonably believes necessary to protect the State's interests. A contractor that has a percentage of progress payments retained may not retain a greater percentage of payments due to a subcontractor than are retained from the contractor. A subcontractor that has a percentage of progress payments retained may not retain a greater percentage of payments due to another subcontractor than are retained from the subcontractor. The bill includes other State procurement units, including the University System of Maryland, in the escrow account retainage provisions applicable to transportation units. The bill requires procurement contracts to include a provision governing prompt payment to subcontractors and requiring a similar provision be included in each subcontract. Such a contract provision must establish procedures and remedies for the resolution of payment disputes similar to the provisions governing disputes between contractors and subcontractors.

Fiscal Summary

State Effect: The bill codifies existing practice for the Department of General Services respecting escrow accounts. The bill's other requirements, including escrow accounts by other procurement units, could be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: Before the State awards a construction contract exceeding \$100,000, the contractor must provide payment security and performance security in the form of a bond, a cash equivalent, or other security. The payment security must be at least 50% of the total amount payable under the contract. The contract may set the performance security at an adequate amount.

Under a construction contract with a transportation unit, a contractor may elect to have retainage deposited into an escrow account. The contractor may require the escrow agent to invest the retainage. Retainage may be released to the contractor only as directed by the transportation unit. At the time of final payment, money from the escrow account must be distributed in the following order: (1) to the transportation unit for any claim it may have under the procurement contract; (2) unless waived by the Board of Public Works, to the Comptroller for any claim exceeding \$50 against the contractor by the State, a unit of State government, or a State controlled governmental entity; and (3) to the contractor.

A contractor must pay a subcontractor any undisputed amount under a State construction contract within ten days of receiving a progress or final payment from the State. If a unit determines that a contractor is delinquent in payment of an undisputed amount to a subcontractor, the unit may withhold further progress payments to the contractor until the subcontractor is paid. If a contractor continues not to pay undisputed amounts to a subcontractor after being ordered to do so, a procurement unit: (1) must order that further payments to the contractor not be processed; (2) may require the contractor pay a penalty of up to \$100 per day to the subcontractor; and (3) may order work on the contract be suspended.

Small Business Effect: It is assumed that most contractors and subcontractors on State construction contracts are small businesses. Subcontractors, when a general contractor has a percentage of payments retained by a primary procurement unit, could receive retainage payments in at least the same percentage as the contractor. Lower tier subcontractors could receive more timely payment for State construction contract work.

Additional Information

Prior Introductions: None.

Cross File: SB 739 (Senator Haines) - Economic and Environmental Affairs.

Information Source(s): Department of General Services, Department of Health and Mental Hygiene, Maryland Department of Transportation (State Highway Administration),

University System of Maryland, Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2000
cm/jr Revised - House Third Reader - April 4, 2000

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