

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

Senate Bill 487 (Senator Stone)

Economic and Environmental Affairs

Commerce and Government Matters

Procurement - University System of Maryland - Construction Contracts

This bill applies the provisions of the State Finance and Procurement Article for retainage and prompt payment of subcontractors to a procurement contract by the University System of Maryland (USM).

Fiscal Summary

State Effect: Any increase in USM administrative expenditures would be minimal and could be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: A procurement contract by USM is not subject to the State procurement provisions related to retainage and prompt payment of subcontractors.

Under the retainage and prompt payment to subcontractors provisions, if a contractor has furnished 100% of the payment security and 100% of the performance security, the contract cannot have a percentage for retainage greater than 5%. A procurement unit can, in addition to retainage, withhold from payments any amount the unit believes necessary to protect the State's interest. For a project not funded by tax-exempt financing, a contractor can elect to have the retainage placed in an interest-bearing escrow account.

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. Procurement contracts must 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. The prompt payment of subcontractors provisions were enacted as part of Chapter 621 of the Acts of 2000.

Small Business Effect: It is assumed that most contractors and subcontractors on USM construction contracts are small businesses. When a general contractor has a percentage of payments retained by a primary procurement unit, subcontractors 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: None.

Information Source(s): University System of Maryland, Department of General Services, Department of Legislative Services

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