



HB 454
State and Local Procurement - Payment Practices
Health and Government Operations Committee
Position: Favorable

Maryland AGC, the Maryland Chapter of the Associated General Contractors of America, provides professional education, business development, and advocacy for commercial construction companies and vendors, both open shop and union. AGC of America is the nation's largest and oldest trade association for the construction industry. AGC of America represents more than 26,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty-contracting firms, all through a nationwide network of chapters. Maryland AGC supports HB 454 and respectfully urges the bill be given a favorable report.

HB 454 would address one of the most challenging aspects of construction contracting with state and local governments – getting paid in a timely manner. Although current law requires the state to pay invoices within 30 days, this virtually never happens. There are two basic problems affecting timely payment: first, there are issues about whether the invoice submitted is correct in all respects, and second, at least in the instance of the State of Maryland, the state's financial accounting and payment systems are archaic, and it is virtually impossible to get a completely correct and agreed upon invoice paid in less than 60 days or longer. At the county and municipal level, there typically is no statutory requirement for prompt payment, so the urgency to pay vendors promptly is attenuated to say the least.

The first issue is one that occurs at all levels of government. In many cases, the disagreements about the adequacy or accuracy of the invoice are resolved after discussion and review of documentation. In other cases, the agency simply drags its feet in making payment in the interest of managing its own cash flow or, in some cases, uses slow payment as a lever to get contractors to take only a portion of what they are due just to get paid. This is especially a problem at the end of a job, where the contractor is anxious to move on. In some cases, Maryland AGC members have concluded work, turned over the project, the agency has taken possession and is using the completed work, but payment lags for a year or more even though there is no dispute. This happens at every level of government, but is more of a problem at the county and municipal level.

The second issue relates to inadequacies in the accounting processes and software being used. In some cases, this is compounded by employees who are inadequately trained or motivated. In the case of the State of Maryland, we have been told informally that the State's accounting software and processes are inadequate and a source of great frustration for the capable employees who are trying diligently to make the system work as intended. To the best of our knowledge, the same issue exists at the county and local levels in varying degrees.

Most construction contracts have a "pay when paid" provision, so that a general contractor is not obligated to pay a subcontractor until the GC is paid. Section 9-302 of the Real Property Article sets payment terms for private construction contracts and requires a GC to pay a subcontractor within 7 days of the GC's receipt of payment. As a result, once the GC is paid, subcontractors are paid promptly.

Delays in payment are a serious problem for all contractors. They are especially difficult for small contractors that typically do not have the reserves to endure prolonged late payments. One of the ways that M/WBE contractors build capability and a record of delivering good work is by filling the set-asides that are a part of government contracting. However, it makes delays in invoice payment that jeopardize their solvency ironically more painful, because it is the government client that is the cause of slow payment.

HB 454 is a beacon of hope to contractors, especially small contractors. Government at all levels should have a sense of urgency to pay promptly for work and goods received out of concern for the providers, who are most often their constituents. Maryland AGC respectfully urges the committee to give the bill a favorable report.

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