S T A T E O F N E W Y O R K

9174

I N A S S E M B L Y

February 1, 2016

Introduced by M. of A. BLAKE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the state finance law, in relation to requiring state agencies to pay small businesses within fifteen days of receipt of an invoice; and to amend a chapter of the laws of 2015 amending the state finance law relating to requiring state agencies to pay small businesses within fifteen days of receipt of an invoice, as proposed in legislative bills numbers S.5283-A and A.6902-B, in relation to making technical corrections

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 2 and 6 of section 179-f of the state finance law, subdivision 2 as amended and subdivision 6 as added by a chapter of the laws of 2015 amending the state finance law relating to requiring state agencies to pay small businesses within fifteen days of receipt of an invoice, as proposed in legislative bills numbers S.5283-A and A.6902-B, are amended to read as follows:

2. The required payment date shall be thirty calendar days, excluding legal holidays, provided, however, that for a small business the required payment date shall be fifteen calendar days, excluding legal holidays, ABSENT A SHOWING BY THE CONTRACTING AGENCY OF CIRCUMSTANCES BEYOND ITS CONTROL, PROVIDED THAT THE SMALL BUSINESS SUBMITS ITS INVOICE ELECTRONICALLY, IN CONFORMANCE WITH THE POLICIES AND PROCEDURES OF THE ACCOUNTING AND FINANCIAL MANAGEMENT SYSTEM OF STATE GOVERNMENT AND IDENTIFIES THAT IT IS SEEKING EXPEDITED PAYMENT AS A SMALL BUSINESS, or in the case of final payments on highway construction contracts seventy-five calendar days, excluding legal holidays, after receipt of an invoice for the amount of the contract payment due; except when:

(a) the state comptroller in the course of his or her audit determines that there is reasonable cause to believe that payment may not properly be due, in whole or in part;

(b) in accordance with specific statutory or contractual provisions, payment must be preceded by an inspection period or by an audit to

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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determine the resources applied or used by a contractor in fulfilling the terms of the contract;

(c) the necessary state government appropriation required to authorize payment has yet to be enacted;

(d) the cash balance of the fund or sub-fund from which the payment is to be made is insufficient to finance the payment;

(e) a proper invoice must be examined by the federal government prior to payment;

(f) the goods or property have not been delivered or the services have not been rendered by the contractor in compliance with the terms or conditions of the contract;

(g) the required payment date is modified in accordance with subdivision three of this section; or

(h) in the case of final payments on highway construction contracts the commissioner of transportation determines that the contractor has failed to properly submit the necessary documents and other submissions prescribed by the contract specifications and requirements, by the provisions of subdivision eight of section thirty-eight of the highway law, and by all other applicable state and federal laws in order to enable the department of transportation to process the final payment properly and expeditiously.

Any time taken to satisfy or rectify any of the types of conditions described in paragraphs (a) through (f) or (h) of this subdivision shall extend the required payment date by an equal period of time, provided, however, that for small businesses, the required payment date shall be fifteen calendar days, excluding legal holidays, after such conditions have been satisfied or rectified, and provided further that all reasonable and practicable efforts shall be taken to satisfy or rectify such conditions as soon as possible.

6. As used in this section, "small business" shall mean a business whose primary place of business is in New York state, has a significant business presence in the state, is independently owned and operated, not dominant in its field, and employs no more than [three] TWO hundred employees AT THE TIME OF THE AWARD CONTRACTING AND PAYMENT. THE "SMALL BUSINESS" SHALL, UPON REQUEST, PROVIDE THE CONTRACTING ENTITY WITH SUFFICIENT DOCUMENTATION TO REFLECT AND CONFIRM ITS STATUS AS A SMALL BUSINESS.

S 2. Section 2 of a chapter of the laws of 2015 amending the state finance law relating to requiring state agencies to pay small businesses within fifteen days of receipt of an invoice, as proposed in legislative bills numbers S.5283-A and A.6902-B, is amended to read as follows:

S 2. This act shall take effect on the [one] THREE hundred [eightieth] SIXTY-FIFTH day after it shall have become a law and shall apply only to invoices received after such date.

S 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2015 amending the the state finance law relating to requiring state agencies to pay small businesses within fifteen days of receipt of an invoice, as proposed in legislative bills numbers S.5283-A and A.6902-B, takes effect.