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

5283--A

2015-2016 Regular Sessions

I N S E N A T E

May 12, 2015

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

Section 1. Subdivisions 2 and 3 of section 179-f of the state finance law, subdivision 2 as amended and subdivision 3 as added by chapter 153 of the laws of 1984, are amended and a new subdivision 6 is added 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, 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 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;

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

LBD09804-05-5

(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.

3. Each state agency shall have fifteen calendar days after receipt of an invoice by the state agency at its designated payment office, OR IN THE CASE OF AN INVOICE RECEIVED FROM A SMALL BUSINESS, SEVEN CALENDAR DAYS, to notify the contractor of (a) defects in the delivered goods, property, or services, (b) defects in the invoice, or (c) suspected improprieties of any kind; and the existence of such defects or improprieties shall prevent the commencement of the time period specified in subdivision two of this section. When a state agency fails to notify a contractor of such defects or suspected improprieties within fifteen calendar days, OR SEVEN CALENDAR DAYS IF SUCH CONTRACTOR IS A SMALL BUSINESS, of receiving the invoice, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day, OR SEVENTH DAY IF PAYMENT OF SUCH PROPER INVOICE IS FOR A SMALL BUSINESS, and the day that notification was transmitted to the contractor. If the state agency, in such situations, fails to provide reasonable grounds for its contention that a defect or impropriety exists, the required payment date shall be calculated from the date of receipt of an invoice.

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 HUNDRED EMPLOYEES.

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