

By: Davis of Dallas

H.B. No. 1780

A BILL TO BE ENTITLED

1 AN ACT

2 relating to payment to a subcontractor under a public work
3 contract.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 2253, Government Code, is amended by
6 adding Subchapter E to read as follows:

7 SUBCHAPTER E. RESOLUTION OF CERTAIN PAYMENT CLAIMS AGAINST PRIME
8 CONTRACTOR

9 Sec. 2253.101. APPLICABILITY OF SUBCHAPTER TO PRIME
10 CONTRACTOR. This subchapter applies only to a prime contractor
11 that enters into a public work contract with a governmental entity.

12 Sec. 2253.102. RIGHT TO ALTERNATIVE DISPUTE RESOLUTION. In
13 a dispute between a subcontractor and prime contractor involving
14 payment for the provision of any public work labor or material under
15 a public work contract, the parties may engage in negotiations and
16 mediation under this subchapter to attempt to resolve the dispute
17 without litigation. The alternative dispute resolution remedy
18 provided by this subchapter is not an exclusive remedy.

19 Sec. 2253.103. REQUIRED CONTRACT PROVISION. (a) Each
20 prime contractor that enters into a written contract with a
21 subcontractor for the provision of public work labor or material
22 shall include as a term of the contract a provision stating that the
23 dispute resolution process established under this subchapter may be
24 used to attempt to resolve any dispute for payment arising under the

1 contract.

2 (b) The attorney general on request shall provide
3 assistance to a prime contractor in developing the contract
4 provision required by this section.

5 (c) The contract provision required by this section is
6 considered to be part of the contract without regard to whether the
7 provision is included in the contract.

8 Sec. 2253.104. CLAIM FOR PAYMENT; NOTICE. (a) To initiate
9 negotiation and mediation under this subchapter, a subcontractor
10 who has a written agreement with a prime contractor to provide
11 public work labor or material under a public work contract must make
12 a claim against the prime contractor for payment of any balance due
13 and owing for any labor performed or material delivered under the
14 contract. The prime contractor may assert a counterclaim against
15 the subcontractor.

16 (b) A subcontractor must provide written notice of a claim
17 under this section to the prime contractor and to the governmental
18 entity that awarded the public work contract not later than the
19 120th day after the date on which the claimed labor was performed or
20 the claimed material was delivered.

21 (c) The notice for a claim under this section must contain:

22 (1) a copy of the written agreement between the
23 subcontractor and prime contractor;

24 (2) a sworn statement of the amount claimed; and

25 (3) the information required to be provided by a
26 payment bond beneficiary under Section 2253.043(a).

27 (d) A prime contractor must assert any counterclaim in a

1 writing delivered to the subcontractor and governmental entity not
2 later than the 14th day after the date of notice under Subsection
3 (b). A prime contractor that does not comply with this subsection
4 waives the right to assert the counterclaim in a negotiation and
5 mediation under this subchapter and in any proceeding subsequent to
6 the negotiation and mediation.

7 Sec. 2253.105. RULES TO GOVERN DISPUTE RESOLUTION. (a) The
8 governing body of each governmental entity with rulemaking
9 authority shall develop rules to govern the negotiation and
10 mediation of a claim under this subchapter. If a governmental
11 entity does not have rulemaking authority, the governmental entity
12 shall follow the model rule adopted under Subsection (b).

13 (b) A model rule for negotiation and mediation under this
14 subchapter shall be provided for voluntary adoption by the
15 governing bodies of governmental entities through the coordinated
16 efforts of the State Office of Administrative Hearings and the
17 office of the attorney general.

18 (c) Rules for mediation adopted under this section at a
19 minimum must provide that:

20 (1) the mediation process is nonbinding;

21 (2) the mediator shall be neutral and impartial and
22 controls the procedure of the mediation;

23 (3) the parties shall cooperate fully with the
24 mediator;

25 (4) each party must be represented by at least one
26 officer with authority to negotiate a resolution of the dispute;

27 (5) the mediation shall be conducted expeditiously

1 with as little delay as possible;

2 (6) the mediation procedure and the statements made by
3 the participants shall be treated as offers of settlement under the
4 applicable rules of evidence and are inadmissible for any purpose,
5 including impeachment, in any judicial, administrative, or other
6 similar proceeding;

7 (7) the mediator shall be disqualified as a witness,
8 consultant, or expert in any proceeding relating to the subject
9 matter of the mediation; and

10 (8) at the beginning of the mediation the parties
11 should agree in writing to all provisions and rules of the mediation
12 procedure as modified by the mediator and further agreement of the
13 parties.

14 (d) In developing rules under this section, the governing
15 body of a governmental entity may use any alternative dispute
16 resolution procedures developed by the governing body under Section
17 2009.051 to the extent those procedures do not conflict with this
18 subchapter.

19 Sec. 2253.106. NEGOTIATION. Not later than the 14th day
20 after the date a claim under Section 2253.104 is received, the chief
21 administrative officer of the governmental entity shall examine the
22 claim and any counterclaim received and shall direct negotiations
23 between the prime contractor and subcontractor, including the
24 scheduling of a meeting between the two parties, in an effort to
25 resolve the dispute. The negotiations must begin not later than the
26 14th day after the date on which the prime contractor and
27 subcontractor are directed to begin negotiations.

1 Sec. 2253.107. PARTIAL RESOLUTION OF CLAIM. (a) If the
2 negotiation under Section 2253.106 results in the resolution of
3 some disputed issues by agreement or in a settlement, the parties
4 shall reduce the agreement or settlement to writing and each party
5 shall sign the agreement or settlement.

6 (b) A partial settlement or resolution of a claim does not
7 waive a party's rights under this chapter as to the parts of the
8 claim that are being negotiated or mediated and that are not
9 resolved.

10 (c) If a claim is not entirely resolved under Section
11 2253.106 on or before the 180th day after the date notice of the
12 claim is filed with the prime contractor under Section 2253.104,
13 the subcontractor may file a request for a mediation under this
14 subchapter with the governing body of the governmental entity that
15 directed the negotiations under Section 2253.106.

16 Sec. 2253.108. MEDIATION; EARLY AGREEMENT TO MEDIATE. (a)
17 Before the 180th day after the date notice of the claim is filed
18 with the prime contractor under Section 2253.104, the parties may
19 agree to mediate a claim made under this subchapter.

20 (b) The mediation shall be conducted in accordance with
21 rules adopted under Section 2253.105.

22 Sec. 2253.109. AMOUNTS RECOVERABLE. (a) The total amount
23 of money recoverable on a claim under this subchapter may not, after
24 deducting the amount specified in Subsection (b), exceed an amount
25 equal to the sum of:

26 (1) the balance due and owing on the contract price;
27 and

1 (2) the amount or fair market value of orders or
2 requests for additional work made by a prime contractor to the
3 extent that the orders or requests for additional work were
4 actually performed.

5 (b) Any amount that would be owed the subcontractor for work
6 not performed under a contract or in substantial compliance with
7 its terms shall be deducted from the amount recoverable under
8 Subsection (a).

9 Sec. 2253.110. ADDITIONAL REMEDIES. If a resolution
10 resulting in a settlement between the parties is not reached
11 through the alternate dispute resolution procedure established by
12 this subchapter, or if the parties elect not to engage in
13 negotiations or mediation under this subchapter, a subcontractor
14 may pursue any other applicable remedy available under this chapter
15 or state or federal law.

16 SECTION 2. This Act takes effect September 1, 2003, and
17 applies only to a contract entered into on or after that date.