

By: Corte

H.B. No. 2397

A BILL TO BE ENTITLED

AN ACT

relating to a vendor's or subcontractor's remedy for nonpayment of certain contracts.

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

SECTION 1. Subchapter B, Chapter 2251, Government Code, is amended by adding Sections 2251.031 and 2251.032 to read as follows:

Sec. 2251.031. VENDOR REMEDY FOR NONPAYMENT OF CONTRACT.

(a) A vendor may suspend performance required under a contract with a governmental entity if:

(1) the governmental entity does not pay the vendor an undisputed amount within the time limits provided by Section 2251.021; and

(2) the vendor gives the governmental entity written notice:

(A) informing the governmental entity that payment has not been received; and

(B) stating the intent of the vendor to suspend performance for nonpayment.

(b) The vendor may not suspend performance under this section before the 10th day after the date the vendor gives notice under Subsection (a).

(c) A vendor who suspends performance under this section is not:

1 (1) required to supply further labor, services, or
2 materials until the vendor is paid the amount provided for under
3 this chapter, plus costs for demobilization and remobilization; or

4 (2) responsible for damages resulting from suspending
5 work if the governmental entity with which the vendor has the
6 contract has not notified the vendor in writing before performance
7 is suspended that payment has been made or that a good faith dispute
8 for payment exists.

9 (d) A notification under Subsection (c)(2) that a good faith
10 dispute for payment exists must specify the reasons for nonpayment.
11 If a reason specified is that labor, services, or materials
12 provided by the vendor or a subcontractor are not provided in
13 compliance with the contract, the vendor or subcontractor is
14 entitled to a reasonable opportunity to:

15 (1) cure the noncompliance; or

16 (2) offer a reasonable amount to compensate for listed
17 items for which noncompliance cannot be promptly cured.

18 (e) The rights and remedies provided by this section are in
19 addition to rights and remedies provided by this chapter or other
20 law.

21 (f) A person may not waive any rights or remedies granted by
22 this section, by contract, or by any other means. Any purported
23 waiver of this section is void.

24 Sec. 2251.032. SUBCONTRACTOR REMEDY FOR VENDOR'S
25 NONPAYMENT OF CONTRACT. (a) A subcontractor of a vendor under a
26 contract with a governmental entity may suspend performance
27 required under the contract with the vendor if:

1 (1) the vendor does not pay the subcontractor an
2 undisputed amount within the time provided under the contract
3 between the vendor and subcontractor; and

4 (2) the subcontractor gives the vendor written notice:

5 (A) informing the vendor that payment has not
6 been received; and

7 (B) stating the intent of the subcontractor to
8 suspend performance for nonpayment.

9 (b) The subcontractor may not suspend performance under
10 this section before the 10th day after the date the subcontractor
11 gives notice under Subsection (a).

12 (c) A subcontractor who suspends performance under this
13 section is not:

14 (1) required to supply further labor, services, or
15 materials until the subcontractor is paid the amount provided for
16 under the contract, plus costs for demobilization and
17 remobilization; or

18 (2) responsible for damages resulting from suspending
19 work if the vendor has not notified the subcontractor in writing
20 before performance is suspended that payment has been made or that a
21 good faith dispute for payment exists.

22 (d) A notification under Subsection (c)(2) that a good faith
23 dispute for payment exists must specify the reasons for nonpayment.
24 If a reason specified is that labor, services, or materials
25 provided by the subcontractor are not provided in compliance with
26 the contract, the subcontractor is entitled to a reasonable
27 opportunity to:

1 (1) cure the noncompliance; or

2 (2) offer a reasonable amount to compensate for listed
3 items for which noncompliance cannot be promptly cured.

4 (e) The rights and remedies provided by this section are in
5 addition to rights and remedies provided by this chapter or other
6 law.

7 (f) A person may not waive any rights or remedies granted by
8 this section by contract or by any other means. Any purported
9 waiver of this section is void.

10 SECTION 2. (a) This Act takes effect September 1, 2003.

11 (b) This Act applies only to a contract executed on or after
12 September 1, 2003. A contract executed before September 1, 2003, is
13 governed by the law as it existed on the date the contract is
14 executed, and the former law is continued in effect for that
15 purpose.