

AN ACT

relating to alternative dispute resolution of certain contract claims against the state.

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

SECTION 1. Sections 2260.003(a) and (c), Government Code, are amended to read as follows:

(a) The total amount of money recoverable on a claim for breach of contract under this chapter may not, after deducting the amount specified in Subsection (b), exceed an amount equal to the sum of:

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

~~and~~

(2) the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and

(3) any delay or labor-related expense incurred by the contractor as a result of an action of or a failure to act by the unit of state government or a party acting under the supervision or control of the unit of state government.

(c) Any award of damages under this chapter may not include:

(1) consequential or similar damages, except delays or labor-related expenses described by Subsection (a)(3);

(2) exemplary damages;

- (3) any damages based on an unjust enrichment theory;
- (4) attorney's fees; or
- (5) home office overhead.

SECTION 2. Section 2260.005, Government Code, is amended to read as follows:

Sec. 2260.005. EXCLUSIVE PROCEDURE. Subject to Section 2260.007, the procedures contained in this chapter are exclusive and required prerequisites to suit in accordance with Chapter 107, Civil Practice and Remedies Code. This chapter does not prevent a contractor sued by a unit of state government from asserting a counterclaim or right of offset against the unit of state government in the court in which the unit of state government files the suit.

SECTION 3. Section 2260.051(d), Government Code, is amended to read as follows:

(d) A unit of state government must assert, in a writing delivered to the contractor, any counterclaim not later than the 60th ~~90th~~ day after the date of notice under Subsection (b). A unit of state government that does not comply with this subsection waives the right to assert the counterclaim.

SECTION 4. Section 2260.052(a), Government Code, is amended to read as follows:

(a) The chief administrative officer or, if designated in the contract, another officer of the unit of state government shall examine the claim and any counterclaim and negotiate with the contractor in an effort to resolve them. The ~~[Except as provided by Subsection (b), the]~~ negotiation must begin not later than the

1 120th [~~60th~~] day after the [~~later of:~~

2 [~~(1) the date of termination of the contract,~~

3 [~~(2) the completion date in the original contract, or~~

4 [~~(3) the~~] date the claim is received.

5 SECTION 5. Section 2260.056(a), Government Code, is amended
6 to read as follows:

7 (a) Before the 120th [~~270th~~] day after the date the claim is
8 filed with the unit of state government and before the expiration of
9 any extension of time under Section 2260.055, the parties may agree
10 to mediate a claim made under this chapter.

11 SECTION 6. Section 2260.104(e), Government Code, is amended
12 to read as follows:

13 (e) In a contested case hearing under this subchapter:

14 (1) the decision may not be appealed except for abuse
15 of discretion; and

16 (2) the state agency may not change the finding of fact
17 or conclusion of law, nor vacate or modify an order as provided in
18 Section 2001.058(e).

19 SECTION 7. Section 2260.105, Government Code, is amended by
20 adding Subsection (a-1) to read as follows:

21 (a-1) The unit of state government shall pay that part of
22 the claim that is less than \$250,000 if:

23 (1) the administrative law judge finds, by a
24 preponderance of the evidence, that under the laws of this state the
25 claim or part of the claim is valid; and

26 (2) the total amount of the damages, after taking into
27 account any counterclaim, equals or exceeds \$250,000.

1 SECTION 8. Section 2260.052(b), Government Code, is
2 repealed.

3 SECTION 9. The changes in law made by this Act apply only to
4 claims involving a breach of a contract entered into by a unit of
5 state government on or after the effective date of this Act. A
6 claim involving a breach of a contract entered into by a unit of
7 state government before the effective date of this Act is governed
8 by the law in effect immediately before that date, and that law is
9 continued in effect for that purpose.

10 SECTION 10. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 1940 was passed by the House on May 10, 2005, by the following vote: Yeas 142, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1940 on May 27, 2005, by the following vote: Yeas 138, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1940 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor