



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2463

by Rep. Jaime M. Andrade, Jr.

SYNOPSIS AS INTRODUCED:

30 ILCS 500/20-120
30 ILCS 540/7

from Ch. 127, par. 132.407

Amends the Illinois Procurement Code. Provides that the Capital Development Board and the Department of Transportation shall each, by rule, implement a pilot program under which select construction contracts shall contain provisions that if a subcontractor has performed in accordance with the provisions of the subcontract and the work has been accepted by the State agency, the State agency shall pay the subcontractor directly. Provides that the program shall be implemented by January 1, 2021. Amends the State Prompt Payment Act. Provides that certain provisions concerning payments to subcontractors do not apply to payments to a subcontractor for work performed under a subcontract entered into with a construction contractor if the contract contains a provision that the State agency shall pay the subcontractor directly.

LRB101 04774 RJF 49783 b

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Procurement Code is amended by
5 changing Section 20-120 as follows:

6 (30 ILCS 500/20-120)

7 Sec. 20-120. Subcontractors.

8 (a) Any contract granted under this Code shall state
9 whether the services of a subcontractor will be used. The
10 contract shall include the names and addresses of all known
11 subcontractors with subcontracts with an annual value of more
12 than \$50,000, the general type of work to be performed by these
13 subcontractors, and the expected amount of money each will
14 receive under the contract. Upon the request of the chief
15 procurement officer appointed pursuant to paragraph (2) of
16 subsection (a) of Section 10-20, the contractor shall provide
17 the chief procurement officer a copy of a subcontract so
18 identified within 15 calendar days after the request is made. A
19 subcontractor, or contractor on behalf of a subcontractor, may
20 identify information that is deemed proprietary or
21 confidential. If the chief procurement officer determines the
22 information is not relevant to the primary contract, the chief
23 procurement officer may excuse the inclusion of the

1 information. If the chief procurement officer determines the
2 information is proprietary or could harm the business interest
3 of the subcontractor, the chief procurement officer may, in his
4 or her discretion, redact the information. Redacted
5 information shall not become part of the public record.

6 (b) If at any time during the term of a contract, a
7 contractor adds or changes any subcontractors, he or she shall
8 promptly notify, in writing, the chief procurement officer,
9 State purchasing officer, or their designee of the names and
10 addresses of each new or replaced subcontractor and the general
11 type of work to be performed. Upon the request of the chief
12 procurement officer appointed pursuant to paragraph (2) of
13 subsection (a) of Section 10-20, the contractor shall provide
14 the chief procurement officer a copy of any new or amended
15 subcontract so identified within 15 calendar days after the
16 request is made.

17 (c) In addition to any other requirements of this Code, a
18 subcontract subject to this Section must include all of the
19 subcontractor's certifications required by Article 50 of the
20 Code.

21 (c-5) The Capital Development Board and the Department of
22 Transportation shall each, by rule, implement a pilot program
23 under which select construction contracts granted under this
24 Code and all subcontracts pursuant to those contracts shall
25 contain provisions that if a subcontractor has performed in
26 accordance with the provisions of his or her subcontract and

1 the work has been accepted by the appropriate State agency, the
2 State agency shall pay the amount due the subcontractor
3 directly to the subcontractor pursuant to the proper bill or
4 invoice provided by the contractor to the State agency in
5 accordance with the provisions of the State Prompt Payment Act.
6 If a construction contract granted under this Code contains a
7 provision that the State agency shall pay the subcontractor
8 directly, the contractor shall deliver to the State agency a
9 proper bill or invoice, as defined in the State Prompt Payment
10 Act, for each subcontractor with whom the contractor has a
11 subcontract. The program shall be implemented by January 1,
12 2021.

13 (d) This Section applies to procurements solicited on or
14 after the effective date of this amendatory Act of the 96th
15 General Assembly. The changes made to this Section by this
16 amendatory Act of the 97th General Assembly apply to
17 procurements solicited on or after the effective date of this
18 amendatory Act of the 97th General Assembly.

19 (Source: P.A. 97-895, eff. 8-3-12; 98-1076, eff. 1-1-15.)

20 Section 10. The State Prompt Payment Act is amended by
21 changing Section 7 as follows:

22 (30 ILCS 540/7) (from Ch. 127, par. 132.407)

23 Sec. 7. Payments to subcontractors and material suppliers.

24 (a) When a State official or agency responsible for

1 administering a contract submits a voucher to the Comptroller
2 for payment to a contractor, that State official or agency
3 shall promptly make available electronically the voucher
4 number, the date of the voucher, and the amount of the voucher.
5 The State official or agency responsible for administering the
6 contract shall provide subcontractors and material suppliers,
7 known to the State official or agency, with instructions on how
8 to access the electronic information.

9 (a-5) When a contractor receives any payment, the
10 contractor shall pay each subcontractor and material supplier
11 in proportion to the work completed by each subcontractor and
12 material supplier its application or pay estimate, plus
13 interest received under this Act. When a contractor receives
14 any payment, the contractor shall pay each lower-tiered
15 subcontractor and material supplier and each subcontractor and
16 material supplier shall make payment to its own respective
17 subcontractors and material suppliers. If the contractor
18 receives less than the full payment due under the public
19 construction contract, the contractor shall be obligated to
20 disburse on a pro rata basis those funds received, plus
21 interest received under this Act, with the contractor,
22 subcontractors and material suppliers each receiving a
23 prorated portion based on the amount of payment each has
24 earned. When, however, the State official or agency does not
25 release the full payment due under the contract because there
26 are specific areas of work or materials the State agency or

1 official has determined are not suitable for payment, then
2 those specific subcontractors or material suppliers involved
3 shall not be paid for that portion of work rejected or deemed
4 not suitable for payment and all other subcontractors and
5 suppliers shall be paid based upon the amount of payment each
6 has earned, plus interest received under this Act.

7 (a-10) For construction contracts with the Department of
8 Transportation, the contractor, subcontractor, or material
9 supplier, regardless of tier, shall not offset, decrease, or
10 diminish payment or payments that are due to its subcontractors
11 or material suppliers without reasonable cause.

12 A contractor, who refuses to make prompt payment, in whole
13 or in part, shall provide to the subcontractor or material
14 supplier and the public owner or its agent, a written notice of
15 that refusal. The written notice shall be made by a contractor
16 no later than 5 calendar days after payment is received by the
17 contractor. The written notice shall identify the Department of
18 Transportation's contract, any subcontract or material
19 purchase agreement, a detailed reason for refusal, the value of
20 the payment to be withheld, and the specific remedial actions
21 required of the subcontractor or material supplier so that
22 payment may be made. Written notice of refusal may be given in
23 a form and method which is acceptable to the parties and public
24 owner.

25 (b) If the contractor, without reasonable cause, fails to
26 make full payment of amounts due under subsection (a) to its

1 subcontractors and material suppliers within 15 calendar days
2 after receipt of payment from the State official or agency, the
3 contractor shall pay to its subcontractors and material
4 suppliers, in addition to the payment due them, interest in the
5 amount of 2% per month, calculated from the expiration of the
6 15-day period until fully paid. This subsection shall further
7 apply to any payments made by subcontractors and material
8 suppliers to their subcontractors and material suppliers and to
9 all payments made to lower tier subcontractors and material
10 suppliers throughout the contracting chain.

11 (1) If a contractor, without reasonable cause, fails to
12 make payment in full as provided in subsection (a-5) within
13 15 calendar days after receipt of payment under the public
14 construction contract, any subcontractor or material
15 supplier to whom payments are owed may file a written
16 notice and request for administrative hearing with the
17 State official or agency setting forth the amount owed by
18 the contractor and the contractor's failure to timely pay
19 the amount owed. The written notice and request for
20 administrative hearing shall identify the public
21 construction contract, the contractor, and the amount
22 owed, and shall contain a sworn statement or attestation to
23 verify the accuracy of the notice. The notice and request
24 for administrative hearing shall be filed with the State
25 official for the public construction contract, with a copy
26 of the notice concurrently provided to the contractor.

1 Notice to the State official may be made by certified or
2 registered mail, messenger service, or personal service,
3 and must include proof of delivery to the State official.

4 (2) The State official or agency, within 15 calendar
5 days after receipt of a subcontractor's or material
6 supplier's written notice and request for administrative
7 hearing, shall hold a hearing convened by an administrative
8 law judge to determine whether the contractor withheld
9 payment, without reasonable cause, from the subcontractors
10 or material suppliers and what amount, if any, is due to
11 the subcontractors or material suppliers, and the
12 reasonable cause or causes asserted by the contractor. The
13 State official or agency shall provide appropriate notice
14 to the parties of the date, time, and location of the
15 hearing. Each contractor, subcontractor, or material
16 supplier has the right to be represented by counsel at a
17 hearing and to cross-examine witnesses and challenge
18 documents. Upon the request of the subcontractor or
19 material supplier and a showing of good cause, reasonable
20 continuances may be granted by the administrative law
21 judge.

22 (3) Upon a finding by the administrative law judge that
23 the contractor failed to make payment in full, without
24 reasonable cause, as provided in subsection (a-10), then
25 the administrative law judge shall, in writing, order the
26 contractor to pay the amount owed to the subcontractors or

1 material suppliers plus interest within 15 calendar days
2 after the order.

3 (4) If a contractor fails to make full payment as
4 ordered under paragraph (3) of this subsection (b) within
5 15 days after the administrative law judge's order, then
6 the contractor shall be barred from entering into a State
7 public construction contract for a period of one year
8 beginning on the date of the administrative law judge's
9 order.

10 (5) If, on 2 or more occasions within a 3-calendar-year
11 period, there is a finding by an administrative law judge
12 that the contractor failed to make payment in full, without
13 reasonable cause, and a written order was issued to a
14 contractor under paragraph (3) of this subsection (b), then
15 the contractor shall be barred from entering into a State
16 public construction contract for a period of 6 months
17 beginning on the date of the administrative law judge's
18 second written order, even if the payments required under
19 the orders were made in full.

20 (6) If a contractor fails to make full payment as
21 ordered under paragraph (4) of this subsection (b), the
22 subcontractor or material supplier may, within 30 days of
23 the date of that order, petition the State agency for an
24 order for reasonable attorney's fees and costs incurred in
25 the prosecution of the action under this subsection (b).
26 Upon that petition and taking of additional evidence, as

1 may be required, the administrative law judge may issue a
2 supplemental order directing the contractor to pay those
3 reasonable attorney's fees and costs.

4 (7) The written order of the administrative law judge
5 shall be final and appealable under the Administrative
6 Review Law.

7 (c) This Section shall not be construed to in any manner
8 diminish, negate, or interfere with the
9 contractor-subcontractor or contractor-material supplier
10 relationship or commercially useful function.

11 (c-5) The provisions of this Section do not apply to
12 payments to a subcontractor for work performed under a
13 subcontract entered into with a construction contractor if the
14 contract contains a provision that the State agency shall pay
15 the subcontractor directly as required under a pilot program
16 implemented by the Capital Development Board or the Department
17 of Transportation under subsection (c-5) of Section 20-120 of
18 the Illinois Procurement Code.

19 (d) This Section shall not preclude, bar, or stay the
20 rights, remedies, and defenses available to the parties by way
21 of the operation of their contract, purchase agreement, the
22 Mechanics Lien Act, or the Public Construction Bond Act.

23 (e) State officials and agencies may adopt rules as may be
24 deemed necessary in order to establish the formal procedures
25 required under this Section.

26 (f) As used in this Section:

1 "Payment" means the discharge of an obligation in money or
2 other valuable consideration or thing delivered in full or
3 partial satisfaction of an obligation to pay. "Payment" shall
4 include interest paid pursuant to this Act.

5 "Reasonable cause" may include, but is not limited to,
6 unsatisfactory workmanship or materials; failure to provide
7 documentation required by the contract, subcontract, or
8 material purchase agreement; claims made against the
9 Department of Transportation or the subcontractor pursuant to
10 subsection (c) of Section 23 of the Mechanics Lien Act or the
11 Public Construction Bond Act; judgments, levies, garnishments,
12 or other court-ordered assessments or offsets in favor of the
13 Department of Transportation or other State agency entered
14 against a subcontractor or material supplier. "Reasonable
15 cause" does not include payments issued to the contractor that
16 create a negative or reduced valuation pay application or pay
17 estimate due to a reduction of contract quantities or work not
18 performed or provided by the subcontractor or material
19 supplier; the interception or withholding of funds for reasons
20 not related to the subcontractor's or material supplier's work
21 on the contract; anticipated claims or assessments of third
22 parties not a party related to the contract or subcontract;
23 asserted claims or assessments of third parties that are not
24 authorized by court order, administrative tribunal, or
25 statute. "Reasonable cause" further does not include the
26 withholding, offset, or reduction of payment, in whole or in

1 part, due to the assessment of liquidated damages or penalties
2 assessed by the Department of Transportation against the
3 contractor, unless the subcontractor's performance or supplied
4 materials were the sole and proximate cause of the liquidated
5 damage or penalty.

6 (Source: P.A. 100-43, eff. 8-9-17; 100-376, eff. 1-1-18;
7 100-863, eff. 8-14-18.)