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HOUSE BILL NO. 1381

Offered January 24, 2000

A BILL to amend and reenact § 11-62.11 of the Code of Virginia, relating to the Public Procurement Act; payment clauses.

Patrons—Baskerville, Christian, Crittenden and Van Landingham; Senator: Miller, Y.B.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 11-62.11 of the Code of Virginia is amended and reenacted as follows:

§ 11-62.11. Payment clauses to be included in contracts.

Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with § 11-62.10, shall include:

1. A payment clause which obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. A payment clause that requires the contractor to pay his employees a living wage. For the purposes of this subdivision, "living wage" means a wage equal to (i) 125 percent of the federal poverty level or (ii) 100 percent of the federal poverty level if fully paid, comprehensive family medical coverage is provided to the employee.

4. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1 b of this section.

5. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the state agency or agency of local government. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

INTRODUCED

HB1381