



Director's Office

One Capitol Hill | Providence, RI 02908 | (401) 222-2280
Jonathan Womer, Director

February 1, 2024

The Honorable Representative Arthur J. Corvese
Chairman, House Labor Committee
Rhode Island House of Representatives
82 Smith Street
Providence, RI 02903

RE: House Bill No. 7057 – Public Property and Works – Contractors Bonds

Dear Chairman Corvese and Members of the House Labor Committee:

Thank you and the Committee for providing the Rhode Island Department of Administration (“Department”) the opportunity to submit comments on House Bill No. 7057.

This legislation seeks to supplement existing provisions for prompt payment pursuant to R.I. Gen. Laws § 42-11.1-3 by imparting upon the State the obligation to pay a deposit to prime contractors prior to the commencement of work by certified MBE/WBE subcontractors for the scope and duration of that subcontractor’s engagement. Thereafter, the prime contractor would issue prearranged, scheduled payments to the subcontractor within seven calendar days and pursuant to the payment schedule based on percentage of work completed. Should the prime contractor fail to issue such payments in a timely manner, the proposed legislation decrees that the State shall pay such eligible subcontractors directly and seek reimbursement from the prime contractor thereafter from the deposit amount, less any administrative costs to the State.

The State recognizes that issuance of prompt payment to all vendors is of paramount importance within the regular course of business and certainly to the entities by whom services are rendered in adherence with all established contractual principles and applicable frameworks, including remedies at equity and law. Engagement of MBE/WBE businesses in this respect, and the related, critical charge of ensuring that contractual opportunities are extended to such eligible entities, remains a high priority and key mission of the Department. However, creating a statutory obligation to monitor or supersede contractual relationships between contractors and subcontractors is not an appropriate role for the State. This change fundamentally shifts the roles and priorities of the parties and creates an inherent conflict of interest for the State by putting the State in a potentially adversarial position with its direct contract parties.

If this legislation is adopted as proposed, the Department and the respective contract manager agency shall be required to oversee and intervene in the contractor/subcontractor relationship,



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effectively creating a contractual relationship between awarding authorities and subcontractors. Under this legislation, then, awarding authorities would become guarantors of subcontractor payments, which will ultimately involve the State in potential contract disputes and litigation between contractors and subcontractors. Awarding authorities enter into contracts with a primary contractor to provide goods and services, so there is no privity of contract between awarding authorities and the subcontractors. Awarding authorities should neither monitor nor mediate the relationship between general contractors and subcontractors.

It is the position of the Department that existing regulatory provisions, and the extensive remedies described therein, are appropriate, prudent, and satisfactory to ensure that vendors are held accountable with respect to State contracts. As such, the Department has already promulgated the following regulations under existing authority which require prompt payment of subcontractors (emphasis added):

- 220-RICR-30-00-13.25(G) Prompt Payment of Subcontractors. In accordance with R.I. Gen. Laws § 42-11.1-3(b), Vendors shall make prompt payment for satisfactory subcontract work for which the State has made partial or full payment. The State reserves the right to determine whether a Vendor, who repeatedly fails to make prompt payment to subcontractors, is responsible relative to future procurements, and may suspend, debar, or otherwise remove such Vendors from the State Bidders List.
- 220-RICR-30-00-13.3(C)(2). Failure to pay subcontractors on previous Vendor Contracts may be considered with respect to award of new engagements (also see § 13.5 of this Part herein).
- 220-RICR-30-00-13.5 Relationship of Parties. The selected Vendor must be fully qualified and capable in all material respects to provide the specified goods and/or services. Unless specifically provided for in the solicitation, the Vendor shall be an independent contractor and not an employee, agent, partner or joint venturer with the State. Nothing herein shall be construed as creating any contractual relationship or obligation between the State and any sub-bidder, subcontractor, supplier of the Vendor, and/or employee of the Vendor. With that said, the State may consider Vendor nonpayment of subcontractors or suppliers in determining whether an award to the Vendor is in the best interest of the State. If the solicitation allows, and the Vendor is a joint entity consisting of more than one individual, partnership or corporation or other business organization, all such entities shall be jointly and severally liable for performing the Contract; however, one entity shall be designated as the lead Vendor for contracting purposes.
- 220-RICR-30-00-14.5 Suspension and Debarment
 - ...
 - B. Just cause for suspension shall be:
 - ...



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9. Failure to pay subcontractors for work performed and accepted in accordance with the Prompt Payment Statute, R.I. Gen. Laws § 42-11.1-3.

These regulations require contractors to pay subcontractors promptly under its contract with the State and not withhold payments inappropriately. Thus, if a contractor inappropriately withholds or delays payment to a subcontractor, the contractor would be in breach of contract with the State, and the State could take appropriate action. Moreover, these regulations already allow the State to consider non-payment of subcontractors in awarding future business to a contractor and even suspend a prime contractor from bidding.

Beyond and notwithstanding the comprehensive existing requirements and remedies imposed on all State procurements, implementing this prepayment/deposit structure would require significant dedication of personnel resources by the Division of Equity, Diversity, and Inclusion to draft regulations and implement a new program in this manner (with some intersections and related input/action steps by the Division of Purchases and Office of Accounts & Control, particularly in the context of processing deposit payments and receiving/reconciling any amounts reimbursed by prime contractors in accordance with the proposed legislation). The respective offices are not currently equipped to take on such additional responsibilities without causing significant impact and potential delay to existing operations. Without additional resources, the Department is therefore not in a position to serve as a regulatory party between contractors and subcontractors.

The Department recognizes State contracts' importance to successful agency operations and service delivery and their impact on Rhode Island's economy and residents alike; to yield positive results on both fronts, all vendors must be paid accurately and timely. Creating purchasing and accounting systems that are more efficient and accessible while bolstering access and participation of MBE and WBE firms is a key goal of this administration, and the Department continues to explore and implement ways to achieve those goals.

The Department appreciates the opportunity to share these concerns with the Committee. If there are any questions, please feel free to contact my office at your convenience.

Sincerely,



Jonathan Womer, Director of Administration

cc: The Honorable Representative Cherie Cruz
The Honorable Members of the House Committee on Labor
James DeCastro, Committee Clerk
Nicole McCarty, Chief Legal Counsel, House Speaker's Office