

Md. State Finance and Procurement Code Ann. § 15-112

Current through all legislation from the 2023 Regular Session of the General Assembly.

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§ 15-112. Change orders.

(a)

(1)

(i) Except as provided in subparagraph (ii) of this paragraph, this section applies to State procurement contracts for:

- 1.** construction;
- 2.** information processing equipment, cloud computing services, and associated services; and
- 3.** in accordance with Title 3.5, Subtitle 3 of this article, information technology system and cybersecurity upgrades and modernization.

(ii) This section does not apply to State procurement contracts for public school construction or public school capital improvements.

(2) For purposes of this section, a written acceptance letter for a State Highway Administration or Maryland Aviation Administration procurement contract for construction shall have the same force and effect as a change order until the State Highway Administration or Maryland Aviation Administration issues a written change order.

(b)

(1) Except as provided in paragraphs (2) and (3) of this subsection, a unit may not require a prime contractor and a prime contractor may not require a subcontractor to begin change order work under a contract until the procurement officer for the unit issues a written change order that specifies whether the work is to proceed, in compliance with the terms of the contract, on:

- (i)** an agreed-to price which may include a preestablished catalog or unit prices based on local prevailing wage rates and equipment and material costs for each task required for the change order as included in the bid documents at the time of bid;
- (ii)** a force account;
- (iii)** a construction change directive; or
- (iv)** a time and materials basis.

(2) If a procurement officer and a prime contractor do not agree that work is included within the original scope and terms of a contract, nothing in this section:

- (i)** prohibits a procurement officer from issuing an order to a prime contractor to perform work or to furnish labor or materials determined by the procurement officer to be required by a contract between a unit and the prime contractor;
- (ii)** authorizes a refusal to perform work or to furnish labor or materials that a procurement officer has ordered the prime contractor to perform or to furnish because the procurement officer has determined that the work or labor is or the materials are required by a contract between a unit and the prime contractor; or
- (iii)** prejudices or impairs the right of a prime contractor to submit a claim or dispute to a procurement officer, in accordance with applicable law and the contract, seeking additional compensation for complying with an order of the procurement officer to perform work or to furnish labor or materials determined by the procurement officer to be required by a contract between the prime contractor and a unit.

(3)

(i) If a unit is to pay for a contract or a part of a contract using a unit price methodology, a change order may not be required for work to continue and be completed beyond the estimated quantities in the contract.

(ii) After work is completed, a unit shall:

1. determine the actual quantity used to complete the contract; and
2. if necessary, issue a final adjustment change order to the contractor.

(c) If the amount to be paid under an approved change order does not exceed \$50,000, a unit shall pay an invoice for work performed and accepted under the change order as provided for in the contract within 30 days after the unit receives the invoice and in accordance with § 15-103 of this subtitle.

(d) Within 5 days after receipt of a written change order, a prime contractor shall provide a subcontractor with a copy of the approved change order and the amount to be paid to the subcontractor based on the portion of the change order work to be completed by the subcontractor.

(e) Before January 1, 2017, the Board shall propose regulations that provide for an expedited change order process for change orders valued at more than \$50,000.

(f)

(1) On or before December 31, 2016, each unit shall issue guidelines for the unit's change order process.

(2) The guidelines issued under paragraph (1) of this subsection shall be updated and reissued when any changes are made to the unit's change order process.

(g) A provision of this section has effect only to the extent that the provision does not conflict with federal law or regulation.

History

2016, chs. 580, 581; 2022, ch. 243, § 1.

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