

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE F. STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT

CHAPTER 2251. PAYMENT FOR GOODS AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2251.001. DEFINITIONS. Except as otherwise provided by this chapter, in this chapter:

(1) "Distribution date" means:

(A) if no payment law prohibits the comptroller from issuing a warrant, the date the comptroller makes the warrant available:

(i) for mailing directly to its payee under Section 2155.382(c); or

(ii) to the state agency that requested issuance of the warrant;

(B) if no payment law prohibits the comptroller from initiating an electronic funds transfer, the date the comptroller initiates the transfer;

(C) if a payment law prohibits the comptroller from issuing a warrant, the date the comptroller would have made the warrant available, in the absence of the payment law:

(i) for mailing directly to its payee under Section 2155.382(c); or

(ii) to the state agency that requested issuance of the warrant; or

(D) if a payment law prohibits the comptroller from initiating an electronic funds transfer, the date the comptroller would have made the warrant prepared under Section 403.0552(b) available, in the absence of the payment law:

(i) for mailing directly to its payee under Section 2155.382(c); or

(ii) to the state agency that requested initiation of the transfer.

(2) "Goods" includes supplies, materials, or equipment.

(3) "Governmental entity" means a state agency or political subdivision of this state.

(4) "Payment" means money owed to a vendor.

(5) "Payment law" means:

(A) Section 57.48 or 57.482, Education Code;

(B) Section 231.007, Family Code;

(C) Section 403.055 or 2107.008; or

(D) any similar statute.

(6) "Political subdivision" means:

(A) a county;

(B) a municipality;

(C) a public school district; or

(D) a special-purpose district or authority.

(7) "Service" includes gas and water utility service.

(8) "State agency" means:

(A) a board, commission, department, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including a river authority and an institution of higher education as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; or

(C) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of appeals, a state judicial agency, or the State Bar of Texas.

(9) "Subcontractor" means a person who contracts with a vendor to work or contribute toward completing work for a governmental entity. The term does not include a state agency. The term includes an officer or employee of a state agency when the officer or employee contracts with a vendor in a private capacity.

(10) "Vendor" means a person who supplies goods or a service to a governmental entity or another person directed by the entity. The term does not include a state agency, except for Texas Correctional Industries. The term includes an officer or employee of a state agency when acting in a private capacity to supply goods or a service.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.40(a), eff. Sept. 1,

1995; Acts 1999, 76th Leg., ch. 1188, Sec. 1.41, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 60, eff. June 15, 2001.

Sec. 2251.002. EXCEPTIONS. (a) Except as provided by Subchapter D, Subchapter B does not apply to a payment made by a governmental entity, vendor, or subcontractor if:

(1) there is a bona fide dispute between the political subdivision and a vendor, contractor, subcontractor, or supplier about the goods delivered or the service performed that causes the payment to be late;

(2) there is a bona fide dispute between a vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late;

(3) the terms of a federal contract, grant, regulation, or statute prevent the governmental entity from making a timely payment with federal funds; or

(4) the invoice is not mailed to the person to whom it is addressed in strict accordance with any instruction on the purchase order relating to the payment.

(b) This chapter does not affect Chapter 2253.

(c) Repealed by Acts 2001, 77th Leg., ch. 1158, Sec. 94(4), eff. June 15, 2001.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.41(a), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1158, Sec. 61, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1158, Sec. 94(4), eff. June 15, 2001; Acts 2003, 78th Leg., ch. 286, Sec. 1, eff. Sept. 1, 2003.

Sec. 2251.003. RULES. The comptroller shall establish procedures and adopt rules to administer this chapter. Before adopting a rule under this section, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b) are met.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1158, Sec. 62, eff. June 15, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [937](#), Sec. 1.73, eff. September 1, 2007.

Sec. 2251.004. WAIVER. A person may not waive any right or remedy granted by this chapter. A purported waiver of any right or remedy granted by this chapter is void.

Added by Acts 2003, 78th Leg., ch. 286, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER B. PAYMENTS AND INTEREST

Sec. 2251.021. TIME FOR PAYMENT BY GOVERNMENTAL ENTITY.

(a) Except as provided by Subsection (b), a payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of:

(1) the date the governmental entity receives the goods under the contract;

(2) the date the performance of the service under the contract is completed; or

(3) the date the governmental entity receives an invoice for the goods or service.

(b) A payment under a contract executed on or after September 1, 1993, owed by a political subdivision whose governing body meets only once a month or less frequently is overdue on the 46th day after the later event described by Subsections (a)(1) through (3).

(c) For a contract executed on or after July 1, 1986, and before September 1, 1987, a payment by a governmental entity under that contract is overdue on the 46th day after the later event described by Subsections (a)(1) through (3).

(d) For purposes of this section, the renewal, amendment, or extension of a contract executed on or before September 1, 1993, is considered to be the execution of a new contract.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.42(a), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1158, Sec. 63, eff. June 15, 2001.

Sec. 2251.022. TIME FOR PAYMENT BY VENDOR. (a) A vendor who receives a payment from a governmental entity shall pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the vendor receives the payment.

(b) The appropriate share is overdue on the 11th day after the date the vendor receives the payment.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2251.023. TIME FOR PAYMENT BY SUBCONTRACTOR. (a) A subcontractor who receives a payment from a vendor shall pay a person who supplies goods or a service for which the payment is made the appropriate share of the payment not later than the 10th day after the date the subcontractor receives the payment.

(b) The appropriate share is overdue on the 11th day after the date the subcontractor receives the payment.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2251.024. MAILING OF PAYMENT. A payment is considered to be mailed on the date the payment is postmarked.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2251.025. INTEREST ON OVERDUE PAYMENT. (a) A payment begins to accrue interest on the date the payment becomes overdue.

(b) The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of:

(1) one percent; and

(2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

(c) Interest on an overdue payment stops accruing on the date the governmental entity or vendor mails or electronically transmits the payment. In this subsection, "governmental entity" does not include a state agency.

(d) This subsection applies only if the comptroller is not responsible for issuing a warrant or initiating an electronic funds

transfer to pay the principal amount owed by a state agency to a vendor. The accrual of interest on an overdue payment to the vendor:

(1) stops on the date the agency mails or electronically transmits the payment; and

(2) is not suspended during any period that a payment law prohibits the agency from paying the vendor.

(e) This subsection applies only if the comptroller is responsible for issuing a warrant or initiating an electronic funds transfer to pay the principal amount owed by a state agency to a vendor. Interest on an overdue payment to the vendor:

(1) stops accruing on its distribution date; and

(2) does not stop accruing during any period that a payment law prohibits the comptroller from issuing the warrant or initiating the transfer.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1158, Sec. 64, 65, 66, 67(a), eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 61, eff. July 1, 2004.

Sec. 2251.026. PAYMENT OF INTEREST BY STATE AGENCY. (a) A state agency is liable for any interest that accrues on an overdue payment under this chapter and shall pay the interest from funds appropriated or otherwise available to the agency at the same time the principal is paid.

(b) The comptroller shall issue a warrant or initiate an electronic funds transfer on behalf of a state agency to pay any interest that the agency must pay under Subsection (a) if the comptroller is responsible for issuing a warrant or initiating an electronic funds transfer to pay the principal amount on behalf of the agency.

(c) The comptroller shall determine the amount of interest that accrues on an overdue payment by a state agency under this chapter if the comptroller is responsible for issuing a warrant or initiating an electronic funds transfer to pay the principal amount on behalf of the agency.

(d) A state agency shall determine the amount of interest

that accrues on an overdue payment by the agency under this chapter if the comptroller is not responsible for issuing a warrant or initiating an electronic funds transfer to pay the principal amount on behalf of the agency.

(e) The comptroller or state agency shall submit the interest payment with the net amount due for the goods or services.

(f) Neither the comptroller nor a state agency may require a vendor to request payment of the interest that accrues under this chapter before the interest is paid to the vendor.

(g) The comptroller may require a state agency to submit any information the comptroller determines necessary to administer and comply with Subsections (b) and (c). The information must be submitted at the time and in the manner required by the comptroller.

(h) The comptroller may require a state agency to change its accounting systems or procedure as the comptroller determines necessary to administer and comply with Subsections (b) and (c). Any changes must conform with the comptroller's requirements.

(i) The comptroller may establish procedures and adopt rules to administer Subsections (b), (c), (g), and (h).

(j) No interest accrues or may be paid under this section on a payment if the total amount of interest that would otherwise have accrued is equal to or less than \$5 and the payment is made from the institutional funds of an institution of higher education as defined by Section 61.003, Education Code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 634, Sec. 3(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 118, Sec. 3.03, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1158, Sec. 68, eff. June 15, 2001 ; Acts 2003, 78th Leg., ch. 1275, Sec. 2(85), eff. Sept. 1, 2003.

Sec. 2251.027. PAYMENT OF INTEREST BY POLITICAL SUBDIVISION. (a) A political subdivision shall compute interest imposed on the political subdivision under this chapter.

(b) The political subdivision shall pay the interest at the time payment is made on the principal.

(c) The political subdivision shall submit the interest payment with the net amount due for the goods or service.

(d) The political subdivision may not require a vendor to petition, bill, or wait an additional day to receive the interest due.

(e) The political subdivision may not require a vendor or subcontractor to agree to waive the vendor's or subcontractor's right to interest under this chapter as a condition of the contract between the parties.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 1254, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 69, eff. June 15, 2001.

Sec. 2251.028. PAYMENT OF INTEREST BY VENDOR OR SUBCONTRACTOR. A vendor or subcontractor shall pay interest as a payment is overdue.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2251.029. PARTIAL PAYMENT. (a) The unpaid balance of a partial payment made within the period provided by this chapter accrues interest as provided by Section 2251.025 unless the balance is in dispute.

(b) Section 2251.042 applies to a disputed balance.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2251.030. PROMPT OR EARLY PAYMENT DISCOUNT. (a) The intent of the legislature is that a governmental entity should take advantage of an offer for an early payment discount. A state agency shall when possible negotiate a prompt payment discount with a vendor.

(b) A governmental entity may not take an early payment discount a vendor offers unless the governmental entity makes a full payment within the discount period.

(c) If a governmental entity takes an early payment discount later, the unpaid balance accrues interest beginning on the date the discount offer expires.

(d) A state agency, when paying for the goods or service purchased under an agreement that includes a prompt or early payment discount, shall submit the necessary payment documents or

information to the comptroller sufficiently in advance of the prompt or early payment deadline to allow the comptroller or the agency to pay the vendor in time to obtain the discount.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 1499, Sec. 1.35, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 70, eff. June 15, 2001.

SUBCHAPTER C. CLAIMS AND DISPUTES

Sec. 2251.042. DISPUTED PAYMENT. (a) A governmental entity shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 21st day after the date the entity receives the invoice.

(b) If a dispute is resolved in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance of the invoice submitted by the vendor beginning on the date under Section 2251.021 that the payment for the invoice is overdue.

(c) If a dispute is resolved in favor of the governmental entity, the vendor shall submit a corrected invoice that must be paid in accordance with Section 2251.021. The unpaid balance accrues interest as provided by this chapter if the corrected invoice is not paid by the appropriate date.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2251.043. ATTORNEY FEES. In a formal administrative or judicial action to collect an invoice payment or interest due under this chapter, the opposing party, which may be the governmental entity or the vendor, shall pay the reasonable attorney fees of the prevailing party.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. REMEDY FOR NONPAYMENT

Sec. 2251.051. VENDOR REMEDY FOR NONPAYMENT OF CONTRACT.

(a) A vendor may suspend performance required under a contract with a governmental entity if:

(1) the governmental entity does not pay the vendor an

undisputed amount within the time limits provided by Subchapter B;
and

(2) the vendor gives the governmental entity written notice:

(A) informing the governmental entity that payment has not been received; and

(B) stating the intent of the vendor to suspend performance for nonpayment.

(b) The vendor may not suspend performance under this section before the later of:

(1) the 10th day after the date the vendor gives notice under Subsection (a); or

(2) the day specified by Section 2251.053(b).

(c) A vendor who suspends performance under this section is not:

(1) required to supply further labor, services, or materials until the vendor is paid the amount provided for under this chapter, plus costs for demobilization and remobilization; or

(2) responsible for damages resulting from suspending work if the governmental entity with which the vendor has the contract has not notified the vendor in writing before performance is suspended that payment has been made or that a bona fide dispute for payment exists.

(d) A notification under Subsection (c)(2) that a bona fide dispute for payment exists must include a list of the specific reasons for nonpayment. If a reason specified is that labor, services, or materials provided by the vendor or the vendor's subcontractor are not provided in compliance with the contract, the vendor is entitled to a reasonable opportunity to:

(1) cure the noncompliance of the listed items; or

(2) offer a reasonable amount to compensate for listed items for which noncompliance cannot be promptly cured.

Added by Acts 2003, 78th Leg., ch. 286, Sec. 3, eff. Sept. 1, 2003.

Sec. 2251.052. SUBCONTRACTOR REMEDY FOR VENDOR'S NONPAYMENT OF CONTRACT. (a) A subcontractor of a vendor under a contract with a governmental entity may suspend performance

required under the contract with the vendor if:

(1) the governmental entity with whom the subcontractor's vendor has a contract does not pay the vendor an undisputed amount within the time limits provided by Subchapter B; or

(2) the governmental entity with whom the subcontractor's vendor has a contract has paid the vendor undisputed amounts and the vendor does not pay the subcontractor an undisputed amount within the time limits provided by Subchapter B.

(b) A subcontractor who suspends performance under Subsection (a) must give the vendor written notice, a copy of which the subcontractor may provide the governmental entity with whom the vendor has a contract:

(1) informing the vendor that payment has not been received; and

(2) stating the intent of the subcontractor to suspend performance for nonpayment.

(c) The subcontractor may not suspend performance under this section before the later of:

(1) the 10th day after the date the subcontractor gives notice under Subsection (b); or

(2) the date specified by Section 2251.053(b), if applicable.

(d) A subcontractor who suspends performance under this section is not:

(1) required to supply further labor, services, or materials until the subcontractor is paid the amount provided for under the contract, plus costs for demobilization and remobilization; or

(2) responsible for damages resulting from suspending work if the vendor has not notified the subcontractor in writing before performance is suspended that payment has been made or the governmental entity has notified the vendor that a bona fide dispute for payment exists.

(e) A notification under Subsection (d)(2) that a bona fide dispute for payment exists must include a list of the specific reasons for nonpayment. If a reason specified is that labor,

services, or materials provided by the subcontractor are not provided in compliance with the contract, the subcontractor is entitled to a reasonable opportunity to:

- (1) cure the noncompliance of the listed items; or
- (2) offer a reasonable amount to compensate for listed items for which noncompliance cannot be promptly cured.

Added by Acts 2003, 78th Leg., ch. 286, Sec. 3, eff. Sept. 1, 2003.

Sec. 2251.053. HIGHWAY-RELATED CONTRACTS. (a) This section applies only to a contract entered into by the Texas Department of Transportation for the construction or maintenance of a highway or a related facility.

(b) A vendor or subcontractor may not suspend performance under Section 2251.051 or 2251.052 before the 20th day after the date:

- (1) the vendor gives written notice under Section 2251.051(a); or
- (2) the subcontractor gives written notice under Section 2251.052(b).

(c) A notice required under this subchapter and relating to a contract described by Subsection (a) must be sent by certified mail to:

- (1) the executive director of the Texas Department of Transportation;
- (2) the director of construction of the Texas Department of Transportation; or
- (3) the person designated in the contract as the person to whom notices must be sent.

Added by Acts 2003, 78th Leg., ch. 286, Sec. 3, eff. Sept. 1, 2003.

Sec. 2251.054. NOTICES. (a) This section applies only to a notice or other written communication required by this subchapter.

(b) A notice or other written communication to a governmental entity must be delivered to:

- (1) the person designated in the contract as the person to whom a notice or other written communication must be sent;
- or

(2) if the contract does not designate a person to whom a notice or other written communication must be sent, the executive director or chief administrative officer of the governmental entity.

(c) Any notice or other written communication may be personally delivered to a person described by Subsection (b) or the person's agent, regardless of any other manner of delivery prescribed by law.

(d) If a notice or other written communication is sent by certified mail, the notice is effective on the date the notice or other written communication is deposited in the United States mail.

(e) If a notice or other written communication is sent by electronic means, the notice or other written communication is effective on the date the person designated or entitled to receive the notice or other written communication receives the notice or other written communication.

(f) If a notice or other written communication is received by the person designated or entitled to receive the notice or other written communication, the method of delivery of the notice or other written communication is immaterial.

Added by Acts 2003, 78th Leg., ch. 286, Sec. 3, eff. Sept. 1, 2003.

Sec. 2251.055. RIGHTS AND REMEDIES NOT EXCLUSIVE. The rights and remedies provided by this subchapter are in addition to rights and remedies provided by this chapter or other law.

Added by Acts 2003, 78th Leg., ch. 286, Sec. 3, eff. Sept. 1, 2003.