

THIS SUBTITLE, IF:

(1) THERE HAS BEEN ANY CONVICTION OF A CRIME ARISING OUT OF OR IN CONNECTION WITH THE PROCUREMENT OF ANY WORK TO BE DONE OR ANY PAYMENT TO BE MADE UNDER THE CONTRACT; OR

(2) THERE HAS BEEN ANY BREACH OR VIOLATION OF:

(I) ANY PROVISION OF THIS SUBTITLE; OR

(II) THE CONTRACT PROVISION AGAINST CONTINGENT FEES REQUIRED BY §2-314(A) OF THIS SUBTITLE.

(B) PAYMENTS ON TERMINATION OF CONTRACT.

IF A CONTRACT IS TERMINATED UNDER THIS SECTION, THE ARCHITECT OR ENGINEER:

(1) MAY BE PAID ONLY THE EARNED VALUE OF THE WORK DONE TO THE DATE OF TERMINATION, PLUS TERMINATION COSTS;

(2) SHALL REFUND ALL PROFITS OR FIXED FEES REALIZED UNDER THE CONTRACT; AND

(3) IS LIABLE FOR ANY COSTS INCURRED OVER THE MAXIMUM AMOUNT PAYABLE TO THE ARCHITECT OR ENGINEER UNDER THE CONTRACT IN COMPLETING THE WORK UNDERTAKEN.

(C) RIGHTS AND REMEDIES NOT EXCLUSIVE.

THE RIGHTS AND REMEDIES CONTAINED IN THIS SECTION ARE IN ADDITION TO ANY OTHER RIGHT OR REMEDY PROVIDED BY LAW, AND THE EXERCISE OF ANY OF THEM IS NOT A WAIVER OF ANY OTHER RIGHT OR REMEDY PROVIDED BY LAW.

REVISOR'S NOTE: This section is new language derived without substantive change from Art. 41, §231W(a) and (b) and the last sentence of §231V(a).

As to the uncertain scope of this section, see the discussion in the revisor's note to §2-312 of this subtitle.

The Commission suggests that the meaning of and intended relationship between items (1) and (2) of subsection (b) of this section need further clarification. What is "earned value of the work done", particularly as contrasted with "profits or fixed fees"? If all of the latter are to be refunded, how can the former be paid and retained? Is item (2) intended to require refunding of all profits and fixed fees, as presently worded, or only those that exceed the "earned value of the work done"?