
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 68

Session of
1977

INTRODUCED BY SCANLON AND EARLY, JANUARY 4, 1977

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 14, 1978

AN ACT

1 Regulating the awarding and execution of certain public
2 contracts; providing for contract provisions relating to the
3 retention, interest, and payment of funds payable under the
4 contracts; and repealing inconsistent acts.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Definitions.

8 The following words and phrases, when used in this section,
9 shall have the following meanings unless the context clearly
10 indicates otherwise:

11 "Contracting body." Any officer, employee, authority, board,
12 bureau, commission, department, agency or institution of the
13 Commonwealth of Pennsylvania or any State-aided institution or
14 any political subdivision, local authority or other incorporated
15 district or public instrumentality, which has authority to enter
16 into a public contract, but excepting the Department of
17 Transportation.

18 "Public contract." A contract exceeding \$50,000 for the

1 construction, reconstruction, alteration or repair of any public
2 building or other public work or public improvement, including
3 heating or plumbing contracts, under the terms of which the
4 contractor is required to give a performance bond and labor and
5 material payment bond as provided by the act of December 20,
6 1967 (P.L.869, No.385) known as the "Public Works Contractors'
7 Bond Law of 1967," but excepting work performed for the
8 ~~Department of Transportation, the Department of Environmental~~ <—
9 ~~Resources, the State Highway and Bridge Authority. and the City~~ <—
10 ~~and County AND SCHOOL DISTRICT of Philadelphia.~~ <—

11 "State-aided institution." Any institution which receives
12 State funds directly or indirectly for the construction,
13 reconstruction, alteration or repair of its buildings, works or
14 improvements, including highway work not performed for the
15 Department of Transportation.

16 "Substantial completion." Construction that is sufficiently
17 completed in accordance with contract documents AND CERTIFIED BY <—
18 THE ARCHITECT OR ENGINEER OF THE CONTRACTING BODY, as modified
19 by change orders agreed to by the parties, so that the project
20 can be used, occupied or operated for its intended use.

21 Section 2. Time for awarding contracts.

22 Every public contract shall be awarded BY THE CONTRACTING <—
23 BODY to the lowest responsible bidder within 60 days of the date
24 of bid opening OR ~~REJECT ALL BIDS.~~ ALL BIDS SHALL BE REJECTED <—
25 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION.

26 IF THE AWARD IS DELAYED BY A REQUIRED APPROVAL OF ANOTHER <—
27 GOVERNMENT AGENCY, THE SALE OF BONDS, THE AWARD OF A GRANT OR
28 GRANTS, THE CONTRACTING BODY SHALL REJECT ALL BIDS OR AWARD THE
29 CONTRACT TO THE LOWEST RESPONSIBLE BIDDER WITHIN 90 DAYS OF THE
30 DATE OF BID OPENING.

1 Thirty-day extensions of the date for the award may be made
2 by the mutual written consent of the contracting body and the
3 lowest responsible bidder.

4 Section 3. Time for executing contract and issuance of notice
5 to proceed.

6 Within 30 days of the date that the contract is awarded, the
7 contract shall be executed by the contracting body, and the
8 successful bidder and the contracting body shall issue a notice
9 to proceed unless the time shall be extended by the mutual
10 written consent of the contracting body and the successful
11 bidder.

12 Section 4. Release of successful bidder.

13 Failure of the contracting body to comply with the
14 requirements of sections 2 and 3 shall, unless the successful
15 bidder waives such noncompliance by written notice to the
16 contracting body, release the successful bidder from any
17 liability in respect to its bid or contract as the case may be,
18 and entitle all bidders to the immediate return of any bonds or
19 security deposits posted in connection with the bid or contract.

20 Section 5. Contract provision for retainage.

21 A public contract may include a provision for the retainage
22 of a portion of the amount due the contractor to insure the
23 proper performance of the contract, except that the sum or sums
24 withheld by the contracting body from the contractor shall not
25 exceed ~~5%~~ 7% of the amount due the contractor ~~and that after~~ <—
26 UNTIL 50% of the contract is completed. ~~no additional sums shall~~ <—
27 ~~be withheld.~~ THE SUM OR SUMS WITHHELD BY THE CONTRACTING BODY <—
28 FROM THE CONTRACTOR AFTER THE CONTRACT IS 50% COMPLETED SHALL
29 NOT EXCEED 3% OF THE AMOUNT DUE THE CONTRACTOR ON THE REMAINING
30 WORK: PROVIDED, HOWEVER, THAT IN THE EVENT A DISPUTE ARISES

1 BETWEEN THE CONTRACTING BODY AND ANY PRIME CONTRACTOR, WHICH
2 DISPUTE IS BASED UPON INCREASED COSTS CLAIMED BY ONE PRIME
3 CONTRACTOR OCCASIONED BY DELAYS OR OTHER ACTIONS OF ANOTHER
4 PRIME CONTRACTOR, ADDITIONAL RETAINAGE IN THE SUM OF ONE AND
5 ONE-HALF TIMES THE AMOUNT OF ANY POSSIBLE LIABILITY MAY BE
6 WITHHELD UNTIL SUCH TIME AS A FINAL RESOLUTION IS AGREED TO BY
7 ALL PARTIES DIRECTLY OR INDIRECTLY INVOLVED, UNLESS THE
8 CONTRACTOR CAUSING THE ADDITIONAL CLAIM FURNISHES A BOND
9 SATISFACTORY TO THE CONTRACTING BODY TO INDEMNIFY SUCH
10 CONTRACTING BODY AGAINST THE CLAIM. However, all such moneys
11 retained by the contracting body may be withheld from the
12 contractor until substantial completion of the contract.

13 Section 6. Payment of retainage to subcontractors.

14 In the absence of good and sufficient reasons, within 20 days
15 of the receipt of payment by the contractor, the contractor
16 shall pay all subcontractors with whom he has contracted their
17 earned share of the payment the contractor received.

18 Section 7. Final payment under contract.

19 A public contract containing a provision for retainage as
20 provided in section 5 shall contain a provision that the
21 contractor shall be paid in full, EXCEPT AS PROVIDED IN SECTION <—
22 5, within 30 days following the date of substantial completion,
23 less only 1 AND 1/2 TIMES such amount as is required to complete <—
24 any then remaining, uncompleted, minor items, which amount shall
25 be certified by the architect or engineer AND UPON RECEIPT BY <—
26 THE CONTRACTING BODY OF ANY GUARANTEE BONDS WHICH MAY BE
27 REQUIRED, IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, TO INSURE
28 PROPER WORKMANSHIP FOR A DESIGNATED PERIOD OF TIME. The
29 certificate given by the architect or engineer shall list in
30 detail each and every uncompleted item and a reasonable cost of

1 completion. Final payment of any amount so withheld for the
2 completion of the minor items shall be paid forthwith upon
3 completion of the items in the certificate of the engineer or
4 architect.

5 Section 8. Interest payable on final payment.

6 The final payment due the contractor from the contracting
7 body after substantial completion of the contract shall bear
8 interest at a rate of ~~8%~~ 6% PER ANNUM after the date that such
9 payment shall become due and payable to the contractor.

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10 Section 9. Provisions for arbitration.

11 If a dispute should arise between the contractor and the
12 contracting body over the payment of such retainages and final
13 payment, then such dispute shall be arbitrated under the
14 applicable terms of the contract. ~~or if the contract contains no~~
15 ~~such provisions for arbitration, then by arbitration under the~~
16 ~~American Arbitration Association Rules then obtaining.~~ IF THE
17 CONTRACT CONTAINS NO SUCH PROVISIONS FOR ARBITRATION, THEN BOTH
18 PARTIES MAY MUTUALLY AGREE TO ARBITRATE THE DISPUTE THROUGH THE
19 CONSTRUCTION INDUSTRY ARBITRATION PANEL OF THE AMERICAN
20 ARBITRATION ASSOCIATION RULES THEN OBTAINING, OR, IN ACCORDANCE
21 WITH THE ACT OF APRIL 25, 1927 (P.L.381, NO.248), REFERRED TO AS
22 THE ARBITRATION BY CONTRACT LAW. IN ANY EVENT, EITHER PARTY
23 SHALL HAVE THE RIGHT OF APPEAL FROM ANY DECISION AND AWARD AS
24 PROVIDED BY LAW.

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25 Section 10. Construction of act.

26 The purpose of this act is to establish a uniform and
27 mandatory system governing public contracts to the extent of the
28 requirements set forth in this act and shall be construed to
29 effectuate such purpose. The provisions of this act shall in no
30 way affect the provisions of the act of August 15, 1961

1 (P.L.987, No.442), known as the "Pennsylvania Prevailing Wage
2 Act," as amended, nor the regulations promulgated pursuant
3 thereto, NOR SHALL ANY REQUIREMENTS OF THIS ACT AFFECT ANY <—
4 PROVISIONS OF A CONTRACT TO BE AWARDED PURSUANT TO ANY FEDERAL
5 LAWS, OR REGULATIONS PROMULGATED PURSUANT THERETO, CONTAINING
6 SPECIFIC PROVISIONS WHICH ARE DIFFERENT FROM THE PUBLIC CONTRACT
7 REQUIREMENTS OF THIS ACT.

8 Section 11. Application to existing contracts.

9 All rights, duties and obligations arising under any contract
10 awarded pursuant to an invitation for bids issued prior to the
11 effective date of this act shall continue to be governed by the
12 provisions of the law in effect at the time of the execution of
13 such contract by all of the parties thereto.

14 Section 12. Repeals.

15 All acts and parts of acts, general, local and special, are
16 repealed insofar as inconsistent herewith.

17 Section 13. Effective date.

18 This act shall take effect in ~~30~~ 90 days but shall not apply <—
19 to any contract awarded pursuant to an invitation for bids
20 issued on or before the effective date of this act.