

No. 1978-317

AN ACT

SB 68

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

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

Section 1. Definitions.

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

“Contracting body.” Any officer, employee, authority, board, bureau, commission, department, agency or institution of the Commonwealth of Pennsylvania or any State-aided institution or any political subdivision, local authority or other incorporated district or public instrumentality, which has authority to enter into a public contract.

“Public contract.” A contract exceeding \$50,000 for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement, including heating or plumbing contracts, under the terms of which the contractor is required to give a performance bond and labor and material payment bond as provided by the act of December 20, 1967 (P.L.869, No.385) known as the “Public Works Contractors’ Bond Law of 1967,” but excepting work performed for the State Highway and Bridge Authority.

“State-aided institution.” Any institution which receives State funds directly or indirectly for the construction, reconstruction, alteration or repair of its buildings, works or improvements.

“Substantial completion.” Construction that is sufficiently completed in accordance with contract documents and certified by the architect or engineer of the contracting body, as modified by change orders agreed to by the parties, so that the project can be used, occupied or operated for its intended use. In no event shall a project be certified as substantially complete until at least 90% of the work on the project is completed.

Section 2. Time for awarding contracts.

Every public contract shall be awarded by the contracting body to the lowest responsible bidder within 60 days of the date of bid opening or all bids shall be rejected except as otherwise provided in this section.

If the award is delayed by a required approval of another government agency, the sale of bonds, the award of a grant or grants, the contracting body shall reject all bids or award the contract to the lowest responsible bidder within 120 days of the date of bid opening.

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

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

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

Section 4. Release of successful bidder.

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

Section 5. Contract provision for retainage.

A public contract may include a provision for the retainage of a portion of the amount due the contractor to insure the proper performance of the contract, except that the sum or sums withheld by the contracting body from the contractor shall not exceed 10% of the amount due the contractor until 50% of the contract is completed. The sum or sums withheld by the contracting body from the contractor after the contract is 50% completed shall not exceed 5% of the amount due the contractor on the remaining work: Provided, however, That in the event a dispute arises between the contracting body and any prime contractor, which dispute is based upon increased costs claimed by one prime contractor occasioned by delays or other actions of another prime contractor, additional retainage in the sum of one and one-half times the amount of any possible liability may be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the contractor causing the additional claim furnishes a bond satisfactory to the contracting body to indemnify such contracting body against the claim. However, all such moneys retained by the contracting body may be withheld from the contractor until substantial completion of the contract.

Section 6. Payment of retainage to subcontractors.

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

Section 7. Final payment under contract.

A public contract containing a provision for retainage as provided in section 5 shall contain a provision that the contractor shall be paid in full, except as provided in section 5, within 30 days following the date of substantial completion, less only 1 and ½ times such amount as is required to complete any then remaining, uncompleted, minor items, which amount shall be certified by the architect or engineer and upon receipt by the contracting body of any guarantee bonds which may be required, in

accordance with the contract documents, to insure proper workmanship for a designated period of time. The certificate given by the architect or engineer shall list in detail each and every uncompleted item and a reasonable cost of completion. Final payment of any amount so withheld for the completion of the minor items shall be paid forthwith upon completion of the items in the certificate of the engineer or architect.

Section 8. Interest payable on final payment.

The final payment due the contractor from the contracting body after substantial completion of the contract shall bear interest at a rate of 6% per annum after the date that such payment shall become due and payable to the contractor.

Section 9. Provisions for arbitration.

If a dispute should arise between the contractor and the contracting body over the payment of such retainages and final payment, then such dispute shall be arbitrated under the applicable terms of the contract. If the contract contains no such provisions for arbitration, then both parties may mutually agree to arbitrate the dispute through the construction industry arbitration panel of the American Arbitration Association Rules then obtaining, or, in accordance with the act of April 25, 1927 (P.L.381, No.248), referred to as the Arbitration by Contract Law. In any event, either party shall have the right of appeal from any decision and award as provided by law.

Section 10. Construction of act.

The purpose of this act is to establish a uniform and mandatory system governing public contracts to the extent of the requirements set forth in this act and shall be construed to effectuate such purpose. The provisions of this act shall in no way affect the provisions of the act of August 15, 1961 (P.L.987, No.442), known as the "Pennsylvania Prevailing Wage Act," as amended, nor the regulations promulgated pursuant thereto, nor shall any requirements of this act affect any provisions of a contract to be awarded pursuant to any Federal laws, or regulations promulgated pursuant thereto, containing specific provisions which are different from the public contract requirements of this act.

Section 11. Application to existing contracts.

All rights, duties and obligations arising under any contract awarded pursuant to an invitation for bids issued prior to the effective date of this act shall continue to be governed by the provisions of the law in effect at the time of the execution of such contract by all of the parties thereto. This act shall not operate to permit any contracting body to increase any retention provisions or to increase the time for awarding public contracts as contained in its standard contract documents in effect on the effective date of this act.

Section 12. Repeals.

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

Section 13. Effective date.

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

APPROVED—The 26th day of November, A. D. 1978.

MILTON J. SHAPP