

PUBLIC WORKS CONTRACTORS' BOND LAW OF 1967

Act of Dec. 20, 1967, P.L. 869, No. 385

Cl. 62

AN ACT

Establishing a uniform and mandatory system governing the requirement of bonds to be furnished by contractors in the prosecution of any public building, or other public work or public improvement, including road work; the rights and remedies of persons furnishing labor or material in the prosecution of such public building, public work or public improvement, including road work; procedure in connection with suits on payment bonds; rights of persons furnishing labor or materials to a copy of bond; prescribing penalties; and repealing other prior acts or provisions thereof inconsistent herewith.

Compiler's Note: Section 3 of Act 1 of 2004 provided that Act 385 is repealed insofar as it is inconsistent with Act 1.

Compiler's Note: Section 4 of Act 116 of 2001 provided that Act 116 shall not affect the scope, effect or applicability of Act 385.

Compiler's Note: Section 6(b) of Act 57 of 1998 provided that Act 385 is repealed insofar as it relates to Commonwealth agencies as defined in 62 Pa.C.S. § 103.

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

Section 1. This act shall be known and may be cited as the "Public Works Contractors' Bond Law of 1967."

Section 2. As used in this act--(1) "Claimant" includes any individual, firm, partnership, association or corporation.

(2) "Contracting body" means any officer, employe, authority, board, bureau, commission, department, agency or institution of the Commonwealth of Pennsylvania or any State-aided institution, or any county, city, district, municipal corporation, municipality, municipal authority, political subdivision, school district, educational institution, borough, incorporated town, township, poor district, county institution district, other incorporated district or other public instrumentality, which has authority to contract for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement, including highway work.

(3) "State-aided institution" shall mean and include any institution which receives State funds directly or indirectly for the construction, reconstruction, alteration or repair of its buildings, works or improvements, including highway work.

Section 3. (a)--Before any contract exceeding five thousand dollars (\$5,000) for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement, including highway work, of any contracting body is awarded to any prime contractor, such contractor shall furnish to the contracting body the following bonds, which shall become binding upon the awarding of said contract to such contractor:

(1) A performance bond at one hundred percent of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body which awarded the contract.

(2) A payment bond at one hundred percent of the contract amount. Such bond shall be solely for the protection of claimants supplying labor or materials to the prime contractor to whom the contract was awarded, or to any of his subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned for the prompt payment of all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

(b) Each of such bonds shall be executed by one or more surety companies legally authorized to do business in the Commonwealth of Pennsylvania. If the contracting body is the Commonwealth of Pennsylvania or any officer, employe, board, bureau, commission, department, agency or institution thereof, such bond shall be payable to the Commonwealth of Pennsylvania. If the contracting body is other than one of those enumerated in this subsection, such bond shall be payable to such other contracting body.

(c) Each of such bonds shall be filed in the office of the contracting body which awarded the contract for which such bonds were given.

Section 3.1. (a)--Before any contract exceeding ten thousand dollars (\$10,000) for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement, including highway work, of any contracting body is awarded to any prime contractor, such contractor shall furnish to the contracting body the following financial security, which shall become binding upon the awarding of said contract to such contractor:

(1) A performance bond, Federal or Commonwealth chartered lending institution irrevocable letter of credit or restrictive or escrow account in such lending institution, equal to one hundred percent of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such financial security shall be solely for the protection of the contracting body which awarded the contract.

(2) A payment bond, Federal or Commonwealth chartered lending institution irrevocable letter of credit or restrictive or escrow account in such lending institution, equal to one hundred percent of the contract amount. Such financial security shall be solely for the protection of claimants supplying labor or materials to the prime contractor to whom the contract was awarded, or to any of his subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned for the prompt payment of all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

((a) amended Oct. 29, 2020, P.L.727, No.86)

(b) Any bond or other financial security under the provisions of this act shall be executed by one or more surety companies or Federal or Commonwealth chartered lending institutions, chosen by the party posting the financial security and acceptable to the contracting body, legally authorized to do business in the Commonwealth of Pennsylvania.

(c) A duplicate copy of each financial security, including bonds, shall be filed in the office of the contracting body

which awarded the contract for which such bonds or financial security were given.

(d) For purposes of this section, the phrase "contracting body" shall mean any county, school district, intermediate unit, area vocational-technical school, city, borough, incorporated town, township, home-rule municipality and any authority formed under the act of May 2, 1945 (P.L.382, No.164), known as the "Municipality Authorities Act of 1945."

(e) For the contracting body as defined in subsection (d), the provisions of this section supersede the provisions of section 3 of this act.

(f) In the case of contracts of ten thousand dollars (\$10,000) or less, nothing in this section shall be construed as preventing a contracting body, prior to awarding a contract for the construction, reconstruction, alteration or repair of any public building or other public work or public improvement, including highway work, from requiring a prime contractor to furnish financial security in accordance with subsection (a).

(3.1 amended Dec. 20, 2000, P.L.965, No.131)

Section 4. (a)--Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished material in the prosecution of the work provided for in any contract for which a payment bond has been given pursuant to the provisions of subsection (a) of section 3 of this act or for which other financial security has been given pursuant to subsection (a) of section 3.1 of this act, and who has not been paid in full therefor before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payments, may bring an action on such payment bond or other financial security in his own name, in assumpsit, to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment.

(b) Any claimant who has a direct contractual relationship with any subcontractor of the prime contractor who gave such payment bond or other financial security but has no contractual relationship, express or implied, with such prime contractor may bring an action on the payment bond or other financial security only if he has given written notice to such contractor within ninety days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.

Notice shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business or served in any manner in which legal process may be served in the manner now or hereafter provided by law for the service of a summons, except that such service need not be made by a public officer.

(4 amended Dec. 17, 2001, P.L.917, No.106)

Section 5. This act shall apply whether or not the material furnished or labor performed enters into and becomes a component part of the public building or other public work or public improvement, including highway work.

Section 6. (a)--The contracting body shall furnish a certified copy of any payment bond or other financial security and the contract for which such bond or security was given to any person who makes an application for such copy and who submits an affidavit stating that:

(1) He has furnished material or performed labor, for the completion of the work provided for in the contract, and that he has not been fully paid for such labor or material; or

(2) He is a defendant in an action brought on a payment bond or other financial security; or

(3) He is the surety in a payment bond on which an action has been brought or is the representative of a lending institution that has issued or is maintaining financial security on which an action has been brought.

(b) Every such applicant shall pay for each certified copy a fee fixed by the contracting body to cover the actual cost of the preparation of such copy.

(c) A certified copy of any payment bond or other financial security and of the contract for which such bond or security was given shall constitute prima facie evidence of the contents, execution and delivery of the original of such bond and contract.

(6 amended Dec. 17, 2001, P.L.917, No.106)

Section 7. (7 repealed Apr. 28, 1978, P.L.202, No.53)

Section 8. (a)--It is unlawful for any representative of a contracting body, in issuing an invitation for bids, to require that any bond specified in section 3 of this act or authorized under section 3.1 of this act be furnished by a particular surety company or through a particular agent or broker.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding five thousand dollars (\$5,000), or undergo imprisonment for a term not exceeding five years, or both.

(8 amended Dec. 17, 2001, P.L.917, No.106)

Section 9. 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, or any bond given in connection with such a contract, 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.

Section 10. The following acts and parts of acts are repealed in so far as they are inconsistent herewith:

(1) Sections 2408 and 2409, act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929."

(2) The act of June 22, 1931 (P.L.880), entitled "An act making it the duty of counties of the first class, cities, incorporated towns, and poor districts, herein defined as municipalities, to require persons, co-partnerships, associations, and corporations, entering into contracts with such municipalities for the construction, erection, installation, completion, alteration, repair of, or addition to, any public work or improvement, to give (in addition to any other bond which may now or hereafter be required by law) an additional bond conditioned for the payment of material and labor furnished, supplied, or performed in the prosecution of such work or improvement, and providing for suits and recovery on such bonds; and repealing existing laws."

(3) The act of June 22, 1931 (P.L.881), entitled "An act prescribing rights and remedies, and the procedure in connection with suits and recovery on bonds conditioned for the payment of material and labor furnished, supplied, or performed in the prosecution of any public work or improvement."

(4) Section 1905, renumbered section 1907, act of June 23, 1931 (P.L.932), known as "The Third Class City Code," reenacted and amended June 28, 1951 (P.L.662).

(5) The act of June 23, 1931 (P.L.1181), entitled "An act authorizing persons, co-partnerships, associations, and corporations, who, whether as subcontractor or otherwise have furnished material or supplied or performed labor in connection with any public work or improvement, to intervene in or institute actions on certain bonds given to the Commonwealth or to municipal corporations in connection with the performance of public contracts; fixing the time within which such actions must be brought, and the amounts recoverable therein; and providing for distribution of amounts recovered; and prescribing procedure."

(6) Section 1804, act of June 24, 1931 (P.L.1206), known as "The First Class Township Code," reenacted and amended May 27, 1949 (P.L.1955).

(7) Section 803, act of May 1, 1933 (P.L.103), known as "The Second Class Township Code," reenacted and amended July 10, 1947 (P.L.1481).

(8) Section 10, act of May 2, 1945 (P.L.382), known as the "Municipality Authorities Act of 1945."

(9) Section 404, act of June 1, 1945 (P.L.1242), known as the "State Highway Law."

(10) Sections 756 and 757, act of March 10, 1949 (P.L.30), known as the "Public School Code of 1949."

(11) Section 11, act of March 31, 1949 (P.L.372), known as "The General State Authority Act of One Thousand Nine Hundred Forty-Nine."

(12) Section 13, act of April 18, 1949 (P.L.604), known as the "State Highway and Bridge Authority Act."

(13) Section 6, act of May 27, 1953 (P.L.244), entitled "An act relating to and regulating the contracts of incorporated towns and providing penalties."

(14) Section 2518, act of July 28, 1953 (P.L.723), known as the "Second Class County Code."

(15) Section 2318, act of August 9, 1955 (P.L.323), known as "The County Code."

(16) Section 1406, act of February 1, 1966 (P.L.1656), known as "The Borough Code."

Section 11. This act shall be construed to repeal all acts and parts of acts, general, local and special in so far as inconsistent herewith, but only in accordance with section 12 hereof.

Section 12. This act shall take effect in thirty days but shall not apply to any contract awarded pursuant to an invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract.