

ENGROSSED SENATE  
BILL NO. 250

By: Stipe of the Senate  
and  
Adair of the House

An Act relating to public works; amending 61 O.S. 1991, Sections 1, as amended by Section 1, Chapter 239, O.S.L. 1992, 2 and 113.1 (61 O.S. Supp. 1994, Section 1), which relate to bond furnished on public works contracts, filing of bonds and retainage; requiring certain bonds to ensure payment of taxes and certain overpayments; providing for certain claim; requiring time limit; requiring certain notice; limiting retainage amount; providing for statutory construction; modifying language; repealing 69 O.S. 1991, Section 1103, as amended by Section 1, Chapter 203, O.S.L. 1994 (69 O.S. Supp. 1994, Section 1103), which relates to retention of monies due under contract; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 61 O.S. 1991, Section 1, as amended by Section 1, Chapter 239, O.S.L. 1992 (61 O.S. Supp. 1994, Section 1), is amended to read as follows:

Section 1. A. Prior to the award of any contract exceeding the amount of Thirteen Thousand Five Hundred Dollars (\$13,500.00) for

the purpose of making any public improvements or constructing or repairing any public building, the person to whom said contract is awarded shall:

1. Furnish a bond with good and sufficient sureties payable to the state in a sum not less than the total sum of the contract; or

2. Cause an irrevocable letter of credit containing such terms as may be prescribed by the Department of Central Services to be issued for the benefit of the state by a financial institution insured by the Federal Deposit Insurance Corporation in a sum not less than the total sum of the contract.

B. The bond or irrevocable letter of credit shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all state and local taxes accruing as a result of the contract, any overpayment of progressive estimates resulting in a balance due the awarding public entity, and further that the contractor shall pay all indebtedness incurred by said contractor, ~~his~~ the subcontractors, and all materialmen for such labor, material, rental of machinery or equipment, and repair of and parts for equipment as are used or consumed in the performance of said contract. Provided, notice in writing by certified mail must be given to the general contractor where rental of equipment is to be furnished to ~~his~~ the subcontractor. The notice shall include the beginning date, the location where the equipment is to be used, the description of the equipment and the terms of the rental and be mailed so as to be received by the general contractor within ten (10) days of the effective date of said rental.

C. For any contract not exceeding the amount of Thirteen Thousand Five Hundred Dollars (\$13,500.00), in lieu of a bond or irrevocable letter of credit, the contractor shall submit an affidavit of the payment of all taxes incurred by the contractor and all indebtedness incurred by the contractor, subcontractors, and all

materialmen for labor, material, rental of machinery or equipment, and repair of and parts for equipment as are used or consumed in the performance of the contract. The execution of the affidavit with knowledge that any of the contents of the affidavit are false, upon conviction, shall constitute perjury, punishable as provided for by law.

SECTION 2. AMENDATORY 61 O.S. 1991, Section 2, is amended to read as follows:

Section 2. ~~Such bond~~ A. Bonds shall be filed in the office of the agency, institution, department, commission, municipality or government instrumentality that is authorized by law and does enter into contracts for the construction of public improvements or buildings, or repairs to the same; and the officer with whom the bond is filed shall furnish a copy thereof to any person claiming any rights thereunder. Any person to whom there is due any sum for labor, material or repair to machinery or equipment, furnished as stated in the preceding section, his heirs or assigns, may bring an action on said bond for the recovery of said indebtedness, provided that no action shall be brought on said bond after one (1) year from the day on which the last of the labor was performed or material or parts furnished for which such claim is made.

~~Provided, however, that any~~ B. Any person having direct contractual relationship with a subcontractor performing work on said contract, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the said payment bond only upon giving written notice to said contractor and surety on said payment bond within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or parts for which ~~such~~ the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material or parts were furnished or supplied or for whom the labor

was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place ~~he~~ the contractor maintains an office or conducts ~~his~~ business, together with a copy thereof to the surety or sureties on said payment bond.

C. A claim against a payment bond for delinquent taxes shall be made by the public entity to which the tax was payable. The claim shall be made within one (1) year from the date on which the tax became delinquent. Notice of the delinquent tax shall be sent by certified mail to the surety and a copy of such notice shall be sent to the contractor. Nothing in this provision shall be construed to release, at any time, the contractor from responsibility for full payment of all taxes.

D. A claim against a payment bond for overpayment on progressive estimates shall be made by the public entity within one (1) year from the date of final acceptance of the project. Notice of the overpayment shall be sent by certified mail to the surety and a copy of such notice shall be sent to the contractor. Nothing in this provision shall be construed as to release, at any time, the contractor from the responsibility of refunding any amount overpaid on progressive estimates.

SECTION 3. AMENDATORY 61 O.S. 1991, Section 113.1, is amended to read as follows:

Section 113.1 A. A public construction contract shall provide for partial payment based upon work completed. The contract shall provide that up to ten percent (10%) of all ~~such~~ partial payments made shall be withheld as retainage. At any time the contractor has completed in excess of fifty percent (50%) of the total contract amount, the retainage shall be reduced to five percent (5%) of the amount earned to date if the owner or owner's duly authorized representative has determined that satisfactory progress is being made, and upon approval by the surety.

B. The Department of Transportation may prescribe its own policy and procedures for retainage on public construction contracts awarded by said Department. The policy shall provide that the retainage amount be limited to that amount necessary to ensure payment of liquidated damages.

SECTION 4. REPEALER 69 O.S. 1991, Section 1103, as amended by Section 1, Chapter 203, O.S.L. 1994 (69 O.S. Supp. 1994, Section 1103), is hereby repealed.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 20th day of February, 1995.

President of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_, 1995.

Speaker of the House of Representatives