

1975 Senate Bill 488

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CHAPTER 390, Laws of 1975

AN ACT to amend 59.96 (6) (m) and 62.15 (10); and to create 16.855 (19) and 66.29 (9) of the statutes, and to amend chapter 304, laws of 1917, section 8, relating to the release of funds to public works and building contractors.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 16.855 (19) of the statutes is created to read:

16.855 (19) As the work progresses under any contract for construction the department, from time to time, shall grant to the contractor an estimate of the amount and proportionate value of the work done, which shall entitle the contractor to receive the amount thereof, less the retainage, from the proper fund. On all construction projects, the retainage shall be an amount equal to 10% of said estimate until 50% of the work has been completed. At 50% completion, no additional amounts shall be retained, and partial payments shall be made in full to the contractor unless the architect or engineer certifies that the job is not proceeding satisfactorily. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, an amount retained may be paid to the contractor. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract.

SECTION 2. 59.96 (6) (m) of the statutes is amended to read:

59.96 (6) (m) Said commission shall not construct any such main sewer nor alter or extend the same without having first submitted complete plans and specifications for the installation, alteration or extension, in writing, to the sewerage commission of such city of the first class and secured its approval thereof. All contracts entered into by said commission for the construction, alteration and extension of any such main sewers shall contain a provision that the final payment, amounting to at least fifteen per cent of the entire cost, shall not be made until the contractor files with the said commission the certificate of the sewerage commission of such city of the first class that said main sewer has been located and constructed in accord with the plan submitted and approved by it comply with s. 66.29 (9) (b).

SECTION 3. 62.15 (10) of the statutes is amended to read:

62.15 (10) ESTIMATES; DEPOSIT; DEFAULT; COMPLETION. As the work progresses under any contract for the performance of which a surety bond has been furnished, ~~the board of public works shall, from time to time, grant to the contractor an estimate of the amount and proportionate value of the work done, withholding in all cases 10% of said estimate, which entitles the holder to receive the amount thereof, less such 10%, from the proper fund s. 66.29 (9) (b) shall apply.~~ All contracts shall contain a provision authorizing such board, in case the work under any contract is defaulted or not completed within the time required, to take charge of or authorize the surety to take charge of the work and finish it at the expense of the contractor and his sureties, and to apply the amounts retained from estimates to the completion of the work. In no

case shall the 5% deposit described in sub. (4) be returned to a successful bidder until the contract is performed; but it, together with the retained amounts, shall be used in whole or in part to complete the work. Any amount remaining from the deposit or from retained estimates after the completion of a contract shall be paid to the contractor.

SECTION 4. 66.29 (9) of the statutes is created to read:

66.29 (9) ESTIMATES AND RELEASE OF FUNDS. (a) *Definition.* In this subsection, "municipality" means the state, except the department of transportation, and any town, city, village, county, school district, vocational, technical and adult education district, board of school directors, sewer district, drainage district, or any other public or quasi-public corporation, officer, board, or other public body.

(b) *Retained percentages.* As the work progresses under any contract involving \$1,000 or more for the construction, execution, repair, remodelling or improvement of any public work or building or for the furnishing of any supplies or materials, whether or not proposals for which are required to be advertised by law, the municipality, from time to time, shall grant to the contractor an estimate of the amount and proportionate value of the work done, which shall entitle the contractor to receive the amount thereof, less the retainage, from the proper fund. On all such contracts, the retainage shall be an amount equal to 10% of said estimate until 50% of the work has been completed. At 50% completion, further partial payments shall be made in full to the contractor and no additional amounts may be retained unless the architect or engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the contractor. At 50% completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, an amount retained may be paid to the contractor. When the work has been substantially completed except for work which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the municipality are valid reasons for noncompletion, the municipality may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed or in the alternative may pay out the entire amount retained and receive from the contractor guarantees in the form of a bond or other collateral sufficient to ensure completion of the job. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract.

SECTION 5. Chapter 304, laws of 1917, section 8 is amended to read:

(Chapter 304, laws of 1917) Section 8. That all work done or supplies or material purchased in carrying out the purpose of this act when involving the expenditures of one thousand dollars, or more shall be by contract awarded to the lowest responsible bidder in accordance with the laws of this state and ordinances then applicable to any such city having reference to the letting of public work by and through the board or commissioner of public works or other proper department in such city except that said commissioners shall discharge the duties imposed by such laws upon the commissioner or board of public works or other department; but said commissioners shall have power to purchase without public advertisement or first receiving competitive bids, or the intervention of a formal contract, any patented article, appliance, apparatus, material or process, or any article, appliance, apparatus, material or process made or manufactured by one party only whenever any bidder for any work to be let by the commissioners shall be, in the judgment of said commissioners, incompetent or otherwise unreliable for the performance of the work

for which he bids, the said commissioners may accept the bid of the person who in their judgment is the lowest competent and reliable bidder for said work, stating their reasons therefor, or relet the same anew. The commissioners may permit a sum of money or a certified check payable to the order of the commission to be filed with any bid or proposal in such an amount as in the judgment of the commissioners will save the city from any loss if the bidder shall fail to execute a contract pursuant to law, in case his bid is accepted and the contract awarded to him. Every contract made by the commission shall contain an agreement on the part of the contractor and his sureties that in case such contractor shall fail to fully and completely perform his contract within the time therein limited for the performance thereof, such contractor shall pay to the city as liquidated damages for such default a certain fixed sum to be named in the contract, which shall be such a sum as in the judgment of the commissioners will save the city from any loss on account of such default and insure the prompt completion of the contract, or in lieu of such an agreement contain an agreement on the part of the contractor and his sureties that in case such contractor shall fail to fully and completely perform his part of the contract within the time therein limited for the performance thereof, such contractor shall pay to the city as liquidated damages for such default a definite sum, to be named in the contract, for each day's delay in completing said contract after the time therein limited for its completion, which daily sum shall be such an amount as in the judgment of the commissioners will save the city from loss in case of such default and insure the prompt completion of the contract. Every contract shall also be executed by at least two sufficient sureties, or a surety company, to be approved by the commission, who shall guarantee the full performance of the contract by the contractor to the satisfaction of the commission, according to the plans and specifications of the commission and be liable for such performance of the contract, as sureties, in an amount equal to the chief engineer's estimate of the aggregate cost of the work. When a contractor shall proceed properly and with due diligence to perform and complete a contract, the commissioners may in their discretion, from time to time, as the work progresses, grant to said contractor an estimate of the amount already earned for the work done, withholding in all cases ~~fifteen per cent of said estimate when said estimate is less than one hundred thousand dollars, and ten per cent of said estimate when said estimate is one hundred thousand dollars or over, which shall entitle the contractor to receive said estimate less the amount withheld~~ the amounts set forth in section 66.29 (9) (b) of the statutes. Said commission shall be empowered if it see fit, to insert in the specifications of any such work reasonable and lawful conditions as to the hours of labor, wages and the residents and character of workmen to be employed by the contractor and especially so far as may be practicable in the judgment of said commission, such reasonable and lawful conditions as will tend to confine employment on such work, in whole or in part, to permanent and bona fide residents of the state of Wisconsin; and provided, however, also that said commission with the consent of four or all its members may itself do any part or parts of any such work under such conditions in every respect as it may prescribe by day labor, whenever the chief engineer, in writing shall recommend that course; any and all bids or parts of bids for any such work or supplies or materials may be rejected by said commission. The commission shall have the power to demand of such bidders and contractors that all contracts shall be let subject to the provisions of chapter 110a of the Wisconsin statutes for 1911 and acts amendatory thereof, entitled "Workmen's Compensation and Industrial Commission," to the end that said commission and such city may be held harmless.
