CONTRACTOR'S BOND FOR PUBLIC BUILDINGS OR WORKS

Act 213 of 1963

AN ACT to provide a procedure for bonding contractors for public buildings and public works of governmental units; and to repeal certain acts and parts of acts.

History: 1963, Act 213, Eff. Sept. 6, 1963

The People of the State of Michigan enact:

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129.201 Bonds of principal contractor on public building, work, or improvement; irrevocable letter of credit.

Sec. 1.

Before any contract, exceeding $50,000.00 for the construction, alteration, or repair of any public building or public work or improvement of the state or a county, city, village, township, school district, public educational institution, other political subdivision, public authority, or public agency hereinafter referred to as the "governmental unit", is awarded, the proposed contractor, hereinafter referred to as the "principal contractor", shall furnish at his or her own cost to the governmental unit a performance bond and a payment bond which shall become binding upon the award of the contract to the principal contractor. However, if the principal contractor is a common carrier as defined in section 3 of Act No. 300 of the Public Acts of 1909, as amended, being section 462.3 of the Michigan Compiled Laws, or the designated operator of a state subsidized railroad, the principal contractor may provide an irrevocable letter of credit from a state or national bank or a state or federally chartered savings and loan association instead of the bonds. Neither the invitation for bids, nor any person acting, or purporting to act, on behalf of the governmental unit shall require that the bonds be furnished by a particular bank or surety company, or through a particular agent or broker, or through a bank, company, agent, or broker in any particular locality.

History: 1963, Act 213, Eff. Sept. 6, 1963 ;-- Am. 1972, Act 351, Imd. Eff. Jan. 9, 1973 ;-- Am. 1982, Act 11, Imd. Eff. Feb. 17, 1982

129.202 Performance bond; amount; condition; purpose.

Sec. 2.

The performance bond shall be in an amount fixed by the governmental unit but not less than 25% of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and terms thereof. The bond shall be solely for the protection of the governmental unit awarding the contract.

History: 1963, Act 213, Eff. Sept. 6, 1963 ;-- Am. 1972, Act 351, Imd. Eff. Jan. 9, 1973

129.203 Payment bond; amount; purpose.

Sec. 3.

The payment bond shall be in an amount fixed by the governmental unit but not less than 25% of the contract amount solely for the protection of claimants, as defined in section 6, supplying labor or materials to the principal contractor or his subcontractors in the prosecution of the work provided for in the contract.

History: 1963, Act 213, Eff. Sept. 6, 1963 ;-- Am. 1972, Act 351, Imd. Eff. Jan. 9, 1973

129.204 Bond, surety, obligee.

Sec. 4.

A bond shall be executed by a surety company authorized to do business in this state. In the case of a contract of the state or a department, board, commission, institution or agency thereof the bonds shall be payable to the people of the state. In the case of all other contracts the bonds shall be payable to the governmental unit.

History: 1963, Act 213, Eff. Sept. 6, 1963

129.205 Filing of bond.

Sec. 5.

The bonds shall be filed in the office of the governmental unit awarding the contract.

History: 1963, Act 213, Eff. Sept. 6, 1963

129.206 Public works, contractor's bond; definitions.

Sec. 6.

A "claimant" means a person having furnished labor, material, or both, used or reasonably required for use in the performance of the contract. "Labor and material" includes that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the contract.

History: 1963, Act 213, Eff. Sept. 6, 1963

129.207 Enforcement of claims; notice of supplier to principal contractor or governmental unit; payment to subcontractor.

Sec. 7.

A claimant who has furnished labor or material in the prosecution of the work provided for in such contract in respect of which payment bond is furnished under the provisions of section 3, and who has not been paid in full therefor before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which claim is made, may sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of the civil action, prosecute such action to final judgment for the sum justly due him and have execution thereon. A claimant not having a direct contractual relationship with the principal contractor shall not have a right of action upon the payment bond unless (a) he has within 30 days after furnishing the first of such material or performing the first of such labor, served on the principal contractor a written notice, which shall inform the principal of the nature of the materials being furnished or to be

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furnished, or labor being performed or to be performed and identifying the party contracting for such labor or materials and the site for the performance of such labor or the delivery of such materials, and (b) he has given written notice to the principal contractor and the governmental unit involved within 90 days from the date on which the claimant performed the last of the labor or furnished or supplied the last of the material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Each notice shall be served by mailing the same by certified mail, postage prepaid, in an envelope addressed to the principal contractor, the governmental unit involved, at any place at which said parties maintain a business or residence. The principal contractor shall not be required to make payment to a subcontractor of sums due from the subcontractor to parties performing labor or furnishing materials or supplies, except upon the receipt of the written orders of such parties to pay to the subcontractor the sums due such parties.

History: 1963, Act 213, Eff. Sept. 6, 1963

129.208 Copies of bonds and contracts; fees.

Sec. 8.

The agent in charge of the office of the governmental unit shall furnish to anyone making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made, or that he is being sued on any such bond, or that it is the surety thereon, a certified copy of the bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. An applicant shall pay such reasonable fees for such certified copies as the agent in charge of the office of the governmental unit fixes to cover the actual cost of preparation thereof.

History: 1963, Act 213, Eff. Sept. 6, 1963

129.209 Venue; statute of limitations.

Sec. 9.

An action instituted on the payment bond shall be brought only in the appropriate court in the political subdivision in which the contract was to be performed. No action shall be commenced after the expiration of 1 year from the date on which final payment was made to the principal contractor.

History: 1963, Act 213, Eff. Sept. 6, 1963

129.210 Application of statute.

Sec. 10.

This act shall not apply to any contract awarded pursuant to an invitation for bids issued on or before the effective date hereof, or to any person or bonds in respect to any such contract. The rights, duties, and obligations of parties arising under, or incidental to, bonds executed prior to the effective date of this act shall continue to be governed by the statutes heretofore applicable to such bonds.

History: 1963, Act 213, Eff. Sept. 6, 1963

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129.211 Repeal; restriction on other statute.

Sec. 11.

Section 64 of Act No. 59 of the Public Acts of 1915, as amended, being section 247.464 of the Compiled Laws of 1948 is repealed. The provisions of Act No. 187 of the Public Acts of 1905, as amended, being sections 570.101 to 570.105 of the Compiled Laws of 1948, shall not apply to contracts for public buildings or other public works except construction and maintenance contracts of the state highway commissioner.

History: 1963, Act 213, Eff. Sept. 6, 1963

129.212 Act inapplicable to contracts awarded under MCL 280.1 to 280.630.

Sec. 12.

This act does not apply to a contract awarded under the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws.

History: Add. 1989, Act 62, Imd. Eff. June 16, 1989

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