

HOUSE BILL No. 4694

May 31, 2011, Introduced by Reps. McMillin, Kowall, Goike, Foster, Shirkey, Rogers and MacGregor and referred to the Committee on Commerce.

A bill to amend 1980 PA 524, entitled

"An act to provide for the terms of certain construction contracts with certain public agencies; to regulate the payment and retainage of payments on construction contracts with certain public agencies; and to provide for the resolution of certain disputes,"

by amending section 2 (MCL 125.1562).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) ~~The~~**A** construction contract shall ~~designate~~**DO**

2 **BOTH OF THE FOLLOWING:**

3 **(A) CONTAIN BID SPECIFICATIONS THAT COMPLY WITH SUBSECTION**
4 **(5).**

5 **(B) DESIGNATE** a person representing the contractor who will
6 submit written requests for progress payments, and a person
7 representing the public agency to whom request for progress
8 payments are to be submitted. The written requests for progress

1 payments shall be submitted to the designated person in a manner
2 and at such times as provided in the construction contract.

3 (2) The processing of progress payments by the public agency
4 may be deferred by the public agency until work having a prior
5 sequence, as provided in the contract documents, is in place and is
6 approved.

7 (3) Each progress payment requested, including reasonable
8 interest if requested under subsection (4), shall be paid within 1
9 of the following time periods, whichever is later:

10 (a) Thirty days after the architect or professional engineer
11 has certified to the public agency that work is in place in the
12 portion of the facility covered by the applicable request for
13 payment in accordance with the contract documents.

14 (b) Fifteen days after the public agency has received the
15 funds with which to make the progress payment from a department or
16 agency of the federal or state government, if any funds are to come
17 from either of those sources.

18 (4) Upon failure of a public agency to make a timely progress
19 payment pursuant to this section, the person designated to submit
20 requests for progress payments may include reasonable interest on
21 amounts past due in the next request for payment.

22 **(5) A PUBLIC AGENCY SHALL NOT ENTER INTO A CONSTRUCTION**
23 **CONTRACT UNLESS IT CONTAINS BID SPECIFICATIONS THAT MEET ALL OF THE**
24 **FOLLOWING REQUIREMENTS:**

25 **(A) THE BID SPECIFICATIONS ARE WRITTEN BY THE ARCHITECT OR**
26 **PROFESSIONAL ENGINEER, DESIGNER, OR DRAFTSMAN WHO PROVIDES DESIGN**
27 **SERVICES OR WRITES SPECIFICATIONS, DIRECTLY OR INDIRECTLY, FOR**

1 MATERIALS TO BE USED IN PERFORMING THE CONSTRUCTION CONTRACT. THE
2 PERSON WHO WRITES THE BID SPECIFICATIONS SHALL NOT BE AN EMPLOYEE
3 OR REPRESENTATIVE OF A MANUFACTURER OF ANY MATERIAL TO BE USED IN
4 PERFORMING THE CONSTRUCTION CONTRACT.

5 (B) THE BID SPECIFICATIONS SPECIFY PERFORMANCE STANDARDS FOR
6 THE MATERIALS TO BE USED IN PERFORMING THE CONSTRUCTION CONTRACT.
7 HOWEVER, IF IT IS IMPOSSIBLE OR IMPRACTICAL TO SPECIFY THE
8 PERFORMANCE STANDARDS, THEN THE BID SPECIFICATIONS SHALL SPECIFY 3
9 OR MORE EXAMPLES OF MATERIALS THAT ESTABLISH A RANGE FOR AN
10 ACCEPTABLE MATERIAL OF SIMILAR OR EQUIVALENT PERFORMANCE
11 CHARACTERISTICS. THE MATERIALS USED AS EXAMPLES SHALL BE PRODUCED
12 BY DIFFERENT MANUFACTURERS WHOSE OWNERSHIP IS COMPLETELY
13 INDEPENDENT OF EACH OTHER. IF 3 OR MORE MATERIALS MEETING THE
14 REQUIREMENTS OF THIS SUBDIVISION ARE NOT AVAILABLE, THEN AS MANY
15 MATERIALS MEETING THESE REQUIREMENTS AS ARE AVAILABLE SHALL BE
16 SPECIFIED.

17 (C) THE BID SPECIFICATIONS STATE THAT BIDS DO NOT REQUIRE THE
18 SPECIFIED MANUFACTURER OF A MATERIAL, WHICH IS LISTED ONLY TO
19 DENOTE THE PERFORMANCE STANDARD FOR THE MATERIAL, AND THAT
20 EQUIVALENT MATERIALS ARE ACCEPTABLE. A BID SPECIFICATION MAY
21 DESIGNATE 1 OR MORE PREFERRED MANUFACTURERS IF THE SPECIFICATION
22 ALSO IDENTIFIES THE PERFORMANCE STANDARDS THAT SUPPORT THE
23 PREFERENCE. A MATERIAL THAT MEETS THE PERFORMANCE STANDARD
24 SPECIFIED FOR THE DESIGNATED, PREFERRED MANUFACTURER IS CONSIDERED
25 EQUIVALENT TO THE MATERIAL FROM THE DESIGNATED MANUFACTURER.