

HOUSE BILL No. 5799

September 16, 2014, Introduced by Rep. McMillin and referred to the Committee on Transportation and Infrastructure.

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 SPECIFICATIONS THAT COMPLY WITH SUBSECTION (5).**
4 **(B) DESIGNATE** a person representing the contractor who will
5 submit written requests for progress payments, and a person
6 representing the public agency to whom request for progress
7 payments are to be submitted. The written requests for progress
8 payments shall be submitted to the designated person in a manner
9 and at such times as provided in the construction contract.

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

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

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

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

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

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

23 **(A) THE BID SPECIFICATIONS ARE WRITTEN BY THE ARCHITECT OR**
24 **PROFESSIONAL ENGINEER, DESIGNER, OR DRAFTSMAN WHO PROVIDES DESIGN**
25 **SERVICES OR WRITES SPECIFICATIONS, DIRECTLY OR INDIRECTLY, FOR**
26 **MATERIALS TO BE USED IN PERFORMING THE CONSTRUCTION CONTRACT. THE**
27 **PERSON WHO WRITES THE BID SPECIFICATIONS SHALL NOT BE AN EMPLOYEE**

1 OR REPRESENTATIVE OF A MANUFACTURER OF ANY MATERIAL TO BE USED IN
2 PERFORMING THE CONSTRUCTION CONTRACT.

3 (B) SUBJECT TO SUBDIVISION (C), THE BID SPECIFICATIONS INCLUDE
4 PERFORMANCE STANDARDS FOR THE MATERIALS TO BE USED IN PERFORMING
5 THE CONSTRUCTION CONTRACT.

6 (C) IF IT IS IMPOSSIBLE OR IMPRACTICAL TO SPECIFY PERFORMANCE
7 STANDARDS UNDER SUBDIVISION (B), THE BID SPECIFICATIONS MEET ALL OF
8 THE FOLLOWING REQUIREMENTS:

9 (i) LIST 3 OR MORE EXAMPLES OF MATERIALS THAT ESTABLISH A RANGE
10 FOR AN ACCEPTABLE MATERIAL OF SIMILAR OR EQUIVALENT PERFORMANCE
11 CHARACTERISTICS. THE MATERIALS LISTED 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 LISTED.

17 (ii) STATE THAT A MATERIAL IS NOT REQUIRED TO BE MANUFACTURED
18 BY A SPECIFIED MANUFACTURER, WHICH IS IDENTIFIED ONLY TO DENOTE THE
19 PERFORMANCE STANDARD FOR THE MATERIAL, AND THAT EQUIVALENT
20 MATERIALS ARE ACCEPTABLE.

21 (D) THE BID SPECIFICATION DO NOT DESIGNATE 1 OR MORE PREFERRED
22 MANUFACTURERS UNLESS THE SPECIFICATIONS ALSO IDENTIFY THE
23 PERFORMANCE STANDARDS THAT SUPPORT THE PREFERENCE. A MATERIAL THAT
24 MEETS THE PERFORMANCE STANDARDS SPECIFIED FOR A DESIGNATED,
25 PREFERRED MANUFACTURER IS CONSIDERED EQUIVALENT TO THE MATERIAL
26 FROM A DESIGNATED MANUFACTURER.