

CHAPTER 865

H.B. No. 31

AN ACT

relating to government contracts for which a performance or payment bond is required; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section A, Article 5160, Revised Statutes, is amended to read as follows:

A. Any person or persons, firm, or corporation, hereinafter referred to as "prime contractor," entering into a formal contract in excess of *the amounts specified by this section* [~~\$25,000~~] with this State, any department, board or agency thereof; or any county of this State, department, board or agency thereof; or any municipality of this State, department, board or agency thereof; or any school district in this State, common or independent, or subdivision thereof; or any other governmental or quasi-governmental authority whether specifically named herein or not, authorized under any law of this State, general or local, to enter into contractual agreements for the construction, alteration or repair of any public building or the prosecution or completion of any public work, shall be required before commencing such work to execute to the aforementioned governmental authority or authorities, as the case may be, the statutory bonds as hereinafter prescribed~~[, but no governmental authority may require a bond if the contract does not exceed the sum of \$25,000]~~. Each such bond shall be executed by a corporate surety or corporate sureties in accordance with Section 1; Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code). In the case of contracts of the State or a department, board, or agency thereof, the aforesaid bonds shall be payable to the State and shall be approved by the Attorney General as to form. In case of all other contracts subject to this Act, the bonds shall be payable to the governmental awarding authority concerned, and shall be approved by it as to form. Any bond furnished by any prime contractor in an attempted compliance with this Act shall be treated and construed as in conformity with the requirements of this Act as to rights created, limitations thereon, and remedies provided. Any provision in any bond furnished by a prime contractor in attempted compliance with this Act that expands or restricts the rights or liabilities provided under this Act shall be disregarded and the provisions of this Act shall be read into that bond.

(a) *For a contract in excess of \$100,000, a [A] Performance Bond shall be executed* in the amount of the contract conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely for the protection of the State or the governmental authority awarding the contract, as the case may be.

(b) *For a contract in excess of \$25,000, a [A] Payment Bond shall be executed*, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided for in said contract, for the use of each such claimant.

Notwithstanding any provision in this Act or in Chapter 252 or 262, Local Government Code, if the governmental authority fails to obtain from the prime contractor a payment bond in compliance with this Act covering a contract in excess of \$25,000, the authority is subject to the same liability as that of a surety who had issued a valid bond if the authority had complied with this section, and a claimant is entitled to a lien on funds due the prime contractor in the same manner and to the same extent as if the contract were subject to Subchapter J, Chapter 53, Property Code.

SECTION 2. Section 252.044(b), Local Government Code, is repealed.

SECTION 3. This Act takes effect September 1, 1993, and applies only to a contract entered into on or after that date. A contract entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 12, 1993, by a non-record vote; the House refused to concur in Senate amendments on May 28, 1993, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on May 30, 1993, by a non-record vote; passed by the Senate, with amendments, on May 26, 1993, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on May 29, 1993, by a viva-voce vote.

Approved June 18, 1993.

Effective Sept. 1, 1993.