

CHAPTER 67. EMERGENCY CONSTRUCTION REPAIRS

Sec.	
67.1.	Definitions.
67.2.	Applicability.
67.3.	Purpose.
67.4.	General.
67.5.	Competitive bidding.
67.6.	Disqualifications.
67.7.	Pennsylvania Prevailing Wage rates.
67.8.	Separation proposals and bids.
67.9.	Surety performance, surety and material bonds.
67.10.	Contracts awards.
67.11.	Provisions of the contract.

Source

The provisions of this Chapter 67 adopted May 13, 1977, 7 Pa.B. 1274, unless otherwise noted.

§ 67.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The act of July 22, 1975 (P. L. 75, No. 45) (71 P. S. §§ 61, 62, 63, 66, 158, 188, 631.1, 631.2, 632, 633.1, 638, 641, 642, 643 and 645).

Department—The Department of General Services of the Commonwealth.

Emergency—A state existing only if the situation is of such a nature that its failure to be corrected immediately will result in additional damages to the Commonwealth or affect the public safety and welfare of the people of the Commonwealth.

Pennsylvania Prevailing Wage—The Pennsylvania Prevailing Wage Act (43 P. S. §§ 165-1—165-17).

§ 67.2. Applicability.

This chapter applies to projects in excess of \$25,000 and over which the Department has jurisdiction.

§ 67.3. Purpose.

This chapter establishes procedures for the expeditious processing of contract awards in excess of \$25,000 on completed construction projects in emergency situations where conditions hazardous to the Commonwealth and its citizens require an immediate response.

§ 67.4. General.

This chapter applies to a detrimental situation or occurrence which, if not corrected immediately, will result in additional damages to the Commonwealth or affect the public safety and welfare of the people of the Commonwealth. Before

the procedures enumerated in this chapter are invoked, the Director of the Bureau of Construction, Engineering, and Architecture, or the Bureau of Research and Development of the Department must certify to the existence of the situation and the Secretary or Deputy Secretary for Public Works and the Chief Counsel of the Department must approve the certification.

§ 67.5. Competitive bidding.

(a) Upon the preparation of the bid proposal by the Department or the appointed design professional, competitive bids for demolition, repairs or replacement may be solicited from at least three responsible bidders.

(b) Bids received in response to the proposal specified in subsection (a) will be publicly opened and announced at the time and place as specified in the proposal.

(1) The bid proposal will state the time of completion which will be of essence to the contract.

(2) Bids will be tabulated and made available to the public as soon thereafter as practicable.

(c) Where the extent of the emergency work is unascertainable within a reasonable period of time, depending on the type of extreme urgency of the condition to be remedied, bids may be requested on a reimbursement basis. Costs will be reimbursed as follows:

(1) Labor costs based upon not less than the current prevailing minimum wage rate per hour.

(2) Actual cost of material and equipment plus a competitive percentage of that cost for overhead and profit.

§ 67.6. Disqualification.

The contractor, if any, whose conduct is responsible for the defect causing the emergency condition, which conduct shows him to be irresponsible, shall be disqualified from consideration for an award to correct the emergency condition at issue.

§ 67.7. Pennsylvania Prevailing Wage rates.

(a) If the estimated total cost of the emergency project is in excess of \$25,000, not less than the Pennsylvania Prevailing Wage rates will be included in the proposal by reference and incorporated in the contract with the lowest responsible bidder.

(b) During the preparation stage of the proposal, the Department of Labor and Industry will be requested to supply the Pennsylvania Prevailing Wage rates for inclusion in the contract.

§ 67.8. Separation proposals and bids.

If the estimated total cost of the project is in excess of \$25,000, separate proposals will be prepared for the plumbing, mechanical, and electrical work, with separate bids to be received for such branches of work.

§ 67.9. Surety performance, surety, and material bonds.

Within 10 days of the award of any contract exceeding \$5,000, the following bonds shall be submitted:

- (1) A surety performance bond at 100% of the contract amount.
- (2) A labor and material bond including public utility services and reasonable rentals of equipment at 100% of the contract amount.
- (3) A surety bond in the amount of 10% of the contract price as surety against defective or inferior materials or workmanship which may develop during the period of 1 year from the date of total completion and acceptance of all work under the contract.

§ 67.10. Contract awards.

Award of the contract will be made by letter signed by the Secretary or Deputy Secretary of the Department to the lowest responsible bidder in accordance with the proposal, authorizing the contractor to proceed with the emergency work pending execution of the following formal contract.

§ 67.11. Provisions of the contract.

The formal contract shall contain all items of the proposal and shall also include the following terms:

- (1) The Contractor agrees to furnish and deliver materials, water, tools, equipment, light, power, and transportation and secure all permits and licenses, and to do and perform all labor, superintendence, and all means of construction necessary to execute, construct, and finish in an expeditious, substantial, and workmanlike manner all the work necessary under this contract; all of said work to be done to the satisfaction of the Department.
- (2) Contractor further covenants and agrees that all of said work and labor shall be done and performed in the best and most workmanlike manner and that all and every of said materials and labor shall be in strict and entire conformity, in every respect with the Proposal dated _____ and entitled _____, and shall be subject to the inspection and approval of the Department, and in case any of said materials or labor shall be rejected by the Department as defective or unsuitable, then said materials shall be removed and replaced with other approved materials and said labor shall be done anew to the satisfaction and approval of the Department at the cost and expense of the Contractor.
- (3) All questions or disputes respecting any matter pertaining to this contract or any part thereof, or any breach of said contract, shall be referred to the

Board of Arbitration of Claims created by Act No. 193, approved May 20, 1937 (P. L. 728) (72 P. S. § 4651-1), its supplements and amendments in the manner and under the terms and conditions as provided therein.

(4) This contract shall be binding on the parties hereto, their heirs, executors, administrators, successors, and assigns, but it may not be assigned by the Contractor without express written consent of the Department, first had and obtained.

(5) The Contractor agrees to abide and be bound by the law of the Commonwealth relating to and regulating the laws and conditions of employment by Acts of Assembly in such case made and provided.

(6) It is distinctly understood and agreed under this contract that the Contractor shall perform only such work and furnish such materials as are specifically requested and ordered by the Department. In no event shall the contractor incur any liability by reason of any unconfirmed verbal directions or instructions that may be given by the Department, nor will the Department be liable for any materials furnished or for any work or labor done, unless materials, work or labor are required of said company on confirmed order furnished by the Department. Any such work or materials which may be done or furnished by the Contractor without such confirmed order first being given shall be at contractor's sole risk, cost and expense, and he hereby covenants and agrees that without such confirmed order he shall make no claim for compensation for work or materials so done or furnished.

(7) It is also agreed and understood that the acceptance of the final payment by the Contractor shall be considered as a release in full of all claims against the Department arising out of, or by reason of, the work done and materials furnished under this contract.

(8) The Department shall pay the Contractor for the performance of the work, the contract sum of _____ which is the total payable by the Department to the Contractor for the performance of the work as provided in the Proposal dated _____ and titled as _____.

(9) Contractor covenants and agrees to remedy without cost to the Department, any defect which may develop within 1 year from the date of completion and acceptance of the work performed under this contract, provided said defects in the judgment of the Department, or its successors having jurisdiction in the premises, are caused by defective or inferior materials, equipment, and workmanship; and the bond hereto attached and made a part hereof shall provide a guarantee in the sum of (10%) of the total contract price of the work done for the correction and remedy of such defect.

(10) The Contract Bond given by the Contractor conditioned upon the faithful performance of the Contract; the payment of labor, material, equipment rental, and public utility service claims; and the correction of defective installation or non-conforming materials and equipment is attached hereto and made

a part hereof; however, no third party shall acquire any rights against the Department under the Contract Documents.

(11) Any person, co-partnership, association or corporation furnishing labor, material, equipment or renting equipment or rendering public utility services in connection with performance of this contract shall have a right of action to recover the cost thereof from the contractor and the surety on the bond given to secure the payment for such labor, material, equipment or equipment rental and services rendered by public utility as though such person or corporation had been named as obligee in such bond; subject to the provisions of the act of December 20, 1967 (P. L. 869, No. 385) (8 P. S. §§ 191—202). It is hereby agreed that no third party rights arise against the Department for any reason under this section and Contractor hereby agrees to so inform all subcontractors in writing.

(12) Included in and made a part of this Contract is Exhibit a clause prohibiting discriminatory practices by the Contractor. Also included in and made a part of this Exhibit “B,” a copy of 16 Pa. Code Ch. 49, Human Relations Commission Chapter 49, Contract Compliance Regulations.

(13) The formal contract shall not be valid or effective unless a certified copy thereof, and the contract price of the work involved, shall have been filed in the offices of the State Treasurer, and the department, board or commission, agency, or Commonwealth-supported institution for which the work is to be done, promptly after execution of the contract.

(14) In Witness Whereof, The Department of General Services has caused these presents to be executed and its departmental seal affixed thereto and the Contractor, if incorporated, has caused these presents to be executed in a like manner, or if not incorporated, has set his or their hand(s) and seal(s) the day and year above written.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA
Acting through the Department of
General Services:

_____ By _____
Secretary

_____ (SEAL)
Contractor-Individual

_____ Contractor-Partnership

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)
Contractor Corporation

_____ By _____
Secretary President

Approved as to legality and form:

Counsel for Department of General Services

[Next page is 68-1.]