

## No. 4

## AN ACT

## SB 793

Prescribing the procedure, after the opening of bids, for the withdrawal of bids on certain public contracts, setting forth the rights of the parties involved and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. As used in this act:

(1) "Contracting body" means any officer, employe, authority, board, bureau, commission, department, agency or institution of the Commonwealth of Pennsylvania, or any State-aided institution, or any county, city, district, municipal corporation, municipality, municipal authority, political subdivision, school district, educational institution, borough, incorporated town, township, poor district, county institution district, other incorporated district or other public instrumentality, which has authority to contract for the construction, reconstruction, demolition, alteration or repair of any public building, or other public work or public improvement or for the provision of services to or lease of real or personal property whether by lease or concession from such contracting body, excepting highway work.

(2) "State-aided institutions" shall mean and include any institution which receives State funds directly or indirectly for the construction, reconstruction, demolition, alteration or repair of its buildings, works or improvements, excepting highway work.

Section 2. A bidder to any construction contract for the construction, reconstruction, demolition, alteration or repair of any public building or other public improvement or for the provision of services to or lease of real or personal property whether by lease or concession from such contracting body, excepting highway work, may withdraw his bid from consideration after the bid opening without forfeiture of the certified check, bank cashier's check, surety bid bond or other security filed with the bid if the price bid was submitted in good faith, and the bidder submits credible evidence that the reason for the price bid being substantially lower was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetical error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid; provided, (i) notice of a claim of the right to withdraw such bid is made in writing with the contracting body within two business days after the opening of bids; and (ii) the withdrawal of

the bid would not result in the awarding of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has a substantial interest. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or other work agreement for any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted, without the written approval of the contracting body. The contracting body may prepare regulations to carry out the intent and purposes of the act.

Section 3. If a bid is withdrawn in accordance with the provisions of this act, the contracting body may award the contract to the next lowest bidder or reject all bids and resubmit the project for bidding. In the event the contracting body resubmits the project for bidding the withdrawing bidder shall pay the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, if the contracting authority finds that such costs would not have been incurred but for such withdrawal. In no event shall the withdrawing bidder be permitted to resubmit a bid for the project.

Section 4. (a) If the contracting body intends to contest the right of a bidder to withdraw a bid, it shall hold a hearing thereon within ten business days after the opening of such bids and issue an order allowing or denying the claim of such right within five days after the hearing. The contracting body shall give to the withdrawing bidder timely and reasonable notice of the time and place of any such hearing. The contracting body shall make a stenographic record of all testimony and other evidence presented at the hearing. Such order may be arbitrated under the applicable terms of the bidding documents or, if the bidding documents contain no such provision for arbitration, the then current rules of the American Arbitration Association.

(b) If the contracting body denies the claim for withdrawal and the bidder elects to arbitrate the matter or otherwise refuses to perform, the contracting body may proceed immediately in accordance with the provisions of this act. If it is finally determined in accordance with the provisions of this section that the bidder did not have the right to withdraw the bid pursuant to the provisions of this act the certified check, bank cashier's check, surety bid bond or other security furnished as the proposal guaranty shall be forfeited as liquidated damages.

Section 5. Neither the contracting body nor any elected or appointed official, employe, representative or agent of such contracting body shall incur any liability or surcharge, in the absence of fraud or collusion, by permitting the withdrawal of a bid pursuant to the provisions of this act.

Section 6. Whoever violates section 2 of this act prohibiting a withdrawing bidder from supplying any labor or material or performing any subcontract for any person performing work on the construction

project without the approval of the contracting body is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than twenty-five thousand dollars (\$25,000) or undergo imprisonment for not less than one nor more than two years, or both.

Section 7. All acts and parts of acts, general, local and special, are repealed in so far as inconsistent herewith.

Section 8. This act shall not be applicable to any contract awarded pursuant to an invitation for bids issued on or before its effective date.

Section 9. This act shall take effect thirty days after its enactment.

APPROVED—The 23rd day of January, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 4.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style with a large initial "C" and a prominent "T" at the end.

*Secretary of the Commonwealth.*