

LAWS OF DELAWARE  
VOLUME 83  
CHAPTER 188  
151st GENERAL ASSEMBLY  
FORMERLY  
SENATE BILL NO. 142

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STATE PROCUREMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6962(c)(12), Chapter 69, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6962. Large public works contract procedures [For application of this section, see 82 Del. Laws, c. 36, § 3].

(c) Bidder prequalification requirements. -

(12) a. A Department of Transportation project, excluding a ~~Community Transportation Fund~~ or municipal street aid contract, must include a performance-based rating system.

b. The Department of Transportation's performance-based rating system must be defined in regulations promulgated by the Secretary of the Department of Transportation.

c. A contractor is eligible to bid as follows:

1. A contractor meeting or exceeding the minimum contractor's performance rating at the time of bid, as determined by the Department's performance-based contractor evaluation system, is eligible to bid.

2. A. A contractor who does not meet or exceed the minimum contractor's performance rating at the time of bid is eligible to bid if the contractor agrees to allow the Department to retain 5% of the payments to be made to the contractor for work performed under the contract under the procedures provided in paragraph (d)(5)a.1. of this section.

B. A contract under paragraph (c)(12)c.2. of this section must contain all of the following provisions:

I. A variable retainage in an amount that does not exceed 5%, that is established at the discretion of the Secretary.

II. When the project is at 50% completion, the contractor may request that the retainage be reduced to 2% after an interim evaluation of the current project.

III. The project completion percentage will be based on the actual work completed, excluding money paid for stored materials.

Approved September 17, 2021