



Ohio Revised Code

Section 5525.17 Failure of contractor or surety to complete work.

Effective: November 23, 1977

Legislation: Senate Bill 221 - 112th General Assembly

If a contractor has not commenced his work within a reasonable time, or does not carry the same forward with reasonable progress, or is improperly performing his work, or has abandoned, or fails or refuses to complete a contract entered into under Chapters 5501., 5503., 5511., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code, the director of transportation shall make a finding to that effect and so notify the contractor in writing, and the rights of the contractor to control and supervise the work shall immediately cease. The director shall forthwith give written notice to the sureties on the bonds of such contractor of such action. If, within ten days after the receipt of such notice, such sureties on the contract performance bond or any one or more of them notify the director in writing of their intention to enter upon and complete the work covered by such contract, such sureties shall be permitted to do so and the director shall allow them thirty days, after the receipt of such notice in writing, within which to enter upon the work and resume construction, unless such time is extended by the director for good cause shown. If such sureties do not carry the same forward with reasonable progress, or if they improperly perform, abandon, or fail to complete the work covered by any such contract, the director shall complete the same in the manner provided in this section. In the event the sureties on the contract performance bond, or any one or more of them, notify the director in writing of their intention to enter upon and complete the work covered by such contract, and then fail or refuse to so complete, any additional costs reasonably incurred by the director as a result of such failure or refusal shall be computed by the director and become the liability of such surety, which is not limited by the amount of the contract performance bond. If the surety fails to pay such amount, the director shall certify the facts to the attorney general, who shall proceed to collect such additional costs from the surety and the amount so collected shall be paid into the state treasury to the credit of the fund from which the excess cost was originally paid.

If, after receiving notice of the action of the director in terminating the control of the contractor over the work covered by his contract, the sureties on such contract performance bond do not within ten days give the director the written notice provided for in this section, the director shall cause that portion of the work which remains uncompleted to be re-estimated and relet in accordance with the



requirements applicable to original bids; or in the event the director determines with the approval of the controlling board that an extraordinary emergency exists, he may contract for the completion of the work without advertising for bids, if he considers it to be in the best public interest.

Before entering into a contract for the completion of any such improvement, the director shall require a contract performance bond and a payment bond with sufficient sureties each in an amount equal to one hundred per cent of the estimated cost of completing the work, and conditions relating to the bonds of original contractors shall apply to such bonds.

If the cost of completing such work exceeds the amount set aside or apportioned therefor, the remainder of the cost shall be paid from the appropriations from the state highway operating fund available for the use of the department of transportation and against which no contractual obligations exist.

If the cost of completing any such improvement exceeds the portion of the contract price remaining unpaid to the original contractor at the time of his default, such excess shall be computed by the director and becomes the liability of such contractor or surety or both. If either the contractor or surety fails to pay such amount, the director shall certify the facts to the attorney general, who shall proceed to collect such excess cost from the contractor and the sureties upon his contract performance bond, and the amount so collected shall be paid into the state treasury to the credit of the fund from which the excess cost was originally paid.

Where the estimated cost of completing a defaulted contract does not exceed five thousand dollars, the director may complete the same by force account, or by a contract let without advertisement.