



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4650/1
JPC:skw&wlj

2023 ASSEMBLY BILL 913

January 4, 2024 - Introduced by Representative WITTKE, cosponsored by Senator WANGGAARD. Referred to Committee on State Affairs.

AN ACT relating to: expenditure of \$8,630,650.62 from the general fund for payment of a claim against the state made by Walsh Construction.

Analysis by the Legislative Reference Bureau

This bill directs the expenditure of \$8,630,650.62 from the general fund in payment of a claim against the Department of Transportation by Walsh Construction. The claimant entered into a contract with DOT to perform work on the I-94 Freeway North Package Project associated with DOT project 1030-20-84. The claimant asserted that the topsoil was significantly thicker than what was shown in the contract documents, that several topographical errors in the project plans necessitated the purchase of additional fill material, and that these differing site conditions comprised an excusable, compensable delay under the contract. The claimant asserted that it provided DOT with written notice of the differing site conditions and that the Dispute Resolution Board unanimously recommended that the claimant receive additional compensation for the differing site conditions and for acceleration costs associated with 83 days of delay. DOT agreed to compensate the claimant for the direct costs associated with the differing site conditions but refused to provide additional compensation for the cost of acceleration, relief from liquidated damages and disincentive pay, or additional time to complete the project. DOT maintains that there is no language in the contract allowing for acceleration and that DOT neither accepted the claimant's claim for acceleration nor directed the claimant to accelerate at any stage. DOT asserted that acceleration was

ASSEMBLY BILL 913**SECTION 1**

unnecessary because DOT allowed numerous time and efficiency modifications to the contract. Further, DOT disagreed with the Dispute Resolution Board's finding that the claimant was not barred from seeking acceleration costs due to severe weather and noted that the Dispute Resolution Board acknowledged that the contract did not provide time extensions for severe weather. DOT maintains that it has met its obligations under the contract by compensating the claimant for costs associated with differing site conditions and providing appropriate schedule relief. On July 21, 2022, the claims board denied the claim because it concluded that the claim raises questions of fact regarding whether the claimant was entitled to a contract extension under the circumstances that are better evaluated by a court of law. (See 2021 *Senate Journal*, p. 976.)

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Claim against the state.

(1) There is directed to be expended from the appropriation under s. 20.505 (4) (d) \$8,630,650.62 in payment of a claim against the state brought by Walsh Construction Company II, LLC, Chicago, IL 60607, as reimbursement for work performed on the department of transportation project 1030-20-84. Acceptance of this payment releases this state and its officers, employees, and agents from any further liability resulting from work performed by the claimant on department of transportation project 1030-20-84.

(END)