

BONDING AND INSURANCE REQUIREMENTS

The Common Rule

A state or local unit of government receiving a grant from the Federal government which requires contracting for construction or facility improvement shall follow its own requirements relating to bid guarantees, performance bonds and payment bonds, except for contracts or subcontracts exceeding \$100,000. For contracts or subcontracts exceeding \$100,000, the Federal agency must make a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his/her bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Reference 41-16-50 through 41-16-63 of the Code of Alabama of 1975, as amended through the 1981 Regular Session; OMB Circular A-102, Attachment B.

At a minimum a local unit of government or any subdivision thereof receiving a grant from the state/federal government will be required to cause to be furnished the following:

Bid Bonds: All bidders must furnish a bid bond on any contract exceeding \$10,000 and may be required on amounts less than \$10,000 at the discretion of the locality; provided that bonding is available for such services, equipment or materials. The amount of such bond shall be specified in the advertisement for bids except that on contracts exceeding \$100,000 the bid bond shall not be less than five percent of the bid price. See additional requirement for PUBLIC WORKS CONTRACTS.

The bid bond shall consist of a "guarantee" such as a bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his/her bid, execute such contractual documents as may be required within the time specified.

Performance Bonds: All bidders may be required to furnish a performance bond on any contract. The amount of such bond shall be specified in the advertisement for bids except that on contracts exceeding \$100,000 such bond shall be not less than 100 percent of the contract price. See additional requirement for PUBLIC WORKS CONTRACTS.

A performance bond is one executed in connection with a contract to secure fulfillment of all of the contractor's obligations under such contract.

Payment Bond or Surety Bond: All bidders may be required to furnish a surety or payment bond on any contract. The amount of such bond shall be specified in the advertisement for bids except that on contracts exceeding \$100,000 such bond shall be not less than 100 percent of the contract price. See additional requirements for PUBLIC WORKS CONTRACTS.

A payment bond or surety bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Reference 39-1-1 in its entirety, Code of Alabama of 1982 as amended through the 1981 Regular Session.

Public Works Contracts — For Contracts of \$5,000 to \$99,999: While the foregoing information is applicable on all contracts in the minimums and maximums as specified, there are special requirements for contracts on public works setting certain constraints within those minimums and maximums.

Performance Bonds and Surety or Payment Bonds: Any person, firm or corporation entering into a contract with any county or municipal corporation or subdivision thereof for repair, construction or prosecution of any public buildings or public work, highways, or bridges shall be required, before commencing such work, to execute a performance bond for not less than 100 percent of the contract price, and in addition thereto.

A payment bond with good and sufficient surety is also required, payable to the county or Municipal Corporation or subdivisions letting the contract, in an amount not less than 50 percent of the contract price. The contractor or contractors shall be obligated to promptly make payments to all persons supplying him or them with labor, materials or supplies for or in the prosecution of the work provided for in such contract and for the payment of reasonable attorney's fees incurred by successful claimants or plaintiffs in civil actions on said bond.

The contractor shall, immediately after completion of the contract, give notice of said completion by an advertisement in a newspaper of general circulation published within the city or county or town in which the work has been done for a period of four (4) successive weeks.

In no instance shall a final settlement be made upon the contract until the expiration of thirty (30) days after completion of the notice.

Proof of publication shall be made by the contractor to the contracting authority by affidavit of the publisher and a printed copy of the notice published. If there is no newspaper published in the county where the work is done, the notice may be given by posting at the courthouse for thirty (30) days, and proof of same shall be made by the probate judge or sheriff and the contractor.

Bid Bonds: All bidders shall furnish a bid bond in an amount not less than five (5) percent of the bid price.