

Effective 3/29/2014

63G-6a-1103 Bonds or security necessary when contract is awarded -- Waiver -- Action -- Attorney fees.

- (1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the procurement unit, which shall become binding on the parties upon the execution of the contract:
 - (a) a performance bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit; and
 - (b) a payment bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.
- (2)
 - (a) When a construction contract is awarded under this chapter, the procurement officer or the head of the issuing procurement unit responsible for carrying out the construction project may not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.
 - (b) A person who violates Subsection (2)(a) is guilty of an infraction.
- (3) Rules of the applicable rulemaking authority may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the procurement officer considers any or all of the bonds to be unnecessary to protect the procurement unit.
- (4) A person shall have a right of action on a payment bond under this section for any unpaid amount due to the person if:
 - (a) the person has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section; and
 - (b) the person has not been paid in full within 90 days after the last day on which the person performed the labor or service or supplied the equipment or material for which the claim is made.
- (5) An action upon a payment bond may only be brought in a court of competent jurisdiction in a county where the construction contract was to be performed. The action is barred if not commenced within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based. The obligee named in the bond need not be joined as a party to the action.
- (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to the prevailing party, which fees shall be taxed as costs in the action.

Amended by Chapter 196, 2014 General Session