

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Amend the Public Works Contractors' Surety Bond Law of 1971**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 14 MRSA §871, sub-§3**, as amended by PL 1993, c. 436, §1, is further amended to read:

**3. Surety bonds.** Except as provided in Title 5, section 1745, before any contract exceeding ~~\$100,000~~\$250,000 in amount for the construction, alteration or repair of any public building or other public improvement or public work, including highways, is awarded to any person by the State or by any political subdivision or quasi-municipal corporation, or by any public authority, that person must furnish to the State or to the other contracting body, as the case may be, the following surety bonds:

A. A performance bond in an amount equal to the full contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Such bond is solely for the protection of the State or the contracting body awarding the contract, as the case may be; and

B. A payment bond in an amount equal to the full amount of the contract solely for the protection of claimants supplying labor or materials to the contractor or the contractor's subcontractor in the prosecution of the work provided for in the contract. The term "materials" includes rental of equipment.

When required by the contracting authority, the contractor shall furnish bid security in an amount which the contracting authority considers sufficient to guarantee that if the work is awarded the contractor will contract with the contracting agency.

The bid security may be in the form of United States postal money order, official bank checks, cashiers' checks, certificates of deposit, certified checks, money in escrow, bonds from parties other than bonding companies subject to an adequate financial standing documented by a financial statement of the party giving the surety, bond or bonds from a surety company or companies duly authorized to do business in the State.

The bid security may be required at the discretion of the contracting authority to assure that the contractor is bondable.

The bid securities other than bid bonds must be returned to the respective unsuccessful bidders. The bid security of the successful bidder must be returned to the contractor upon the execution and delivery to the contracting agency of the contract and performance and payment bonds, in terms satisfactory to the contracting agency for the due execution of the work.

In the case of contracts on behalf of the State, the bonds must be payable to the State and deposited with the contracting authority. In the case of all other contracts subject to this section, the bonds must be payable to and deposited with the contracting body awarding the contract.

**Sec. 2. 14 MRSA §871, sub-§3-A** is enacted to read:

**3-A. Letter of credit.** Notwithstanding the surety bond requirements of subsection 3, at the discretion of the State or other contracting authority, a person may provide an irrevocable letter of credit in lieu of the performance bond required by subsection 3, paragraph A or the payment bond required by subsection 3, paragraph B, or both, to the State or the contracting authority, as the case may be.

A. The letter of credit must be:

(1) Issued in favor of the State or other contracting authority by an issuer;

(2) In a form satisfactory to the State or other contracting authority; and

(3) In an amount equal to the full amount of the contract.

B. If the letter of credit has an expiration date that is earlier than the date of acceptance of performance of the contract in accordance with the plans, specifications and conditions of the contract, a replacement letter of credit that meets the specifications of paragraph A must be delivered to the State or other contracting authority not later than 30 days prior to that expiration date.

For purposes of this subsection, "letter of credit" has the same meaning as in Title 11, section 5-1102, subsection (1), paragraph (j).

## SUMMARY

This bill amends the Public Works Contractors' Surety Bond Law of 1971 by:

1. Increasing from \$100,000 to \$250,000 the threshold limit for a contract for the construction, alteration or repair of any public building or other public improvement or public work for which a person must provide a performance bond and a payment bond; and

2. Allowing, at the discretion of the State or other contracting authority, the person to provide an irrevocable letter of credit instead of either or both the performance bond and the payment bond.