

574.26 CONTRACTORS' BONDS FOR PUBLIC WORK.

Subdivision 1. Citation.

(a) Sections 574.26 to 574.32 are the "Public Contractors' Performance and Payment Bond Act," within those sections referred to as "the act."

(b) For the purposes of the act:

(1) "public body" means the state, municipal corporation, school district, or other public board or body; and

(2) "labor and materials" means work, skill, tools, machinery, materials, insurance premiums, equipment or supplies, or taxes incurred under section 290.92, chapter 268, or 297A; and

(3) "contract" means a contract with a public body for the doing of public work.

Subd. 1a. Exemptions: certain manufacturers; commissioner of transportation; road maintenance.

(a) Sections 574.26 to 574.32 do not apply to a manufacturer of public transit buses that manufactures at least 100 public transit buses in a calendar year. For purposes of this section, "public transit bus" means a motor vehicle designed to transport people, with a design capacity for carrying more than 40 passengers, including the driver. The term "public transit bus" does not include a school bus, as defined in section 169.011, subdivision 71.

(b) At the discretion of the commissioner of transportation, sections 574.26 to 574.32 do not apply to any projects of the Department of Transportation (1) costing less than the amount in section 471.345, subdivision 3, or (2) involving the permanent or semipermanent installation of heavy machinery, fixtures, or other capital equipment to be used primarily for maintenance or repair.

(c) Sections 574.26 to 574.32 do not apply to contracts for snow removal, ice removal, grading, or other similar routine road maintenance on town roads.

Subd. 2. Terms.

Except as provided in sections 574.263 and 574.264 or if the amount of the contract is less than the amount in section 471.345, subdivision 3, a contract with a public body for the doing of any public work is not valid unless the contractor gives (1) a performance bond to the public body with whom the contractor entered into the contract, for the use and benefit of the public body to complete the contract according to its terms, and conditioned on saving the public body harmless from all costs and charges that may accrue on account of completing the specified work, and (2) a payment bond for the use and benefit of all persons furnishing labor and materials engaged under, or to perform the contract, conditioned for the payment, as they become due, of all just claims for the labor and materials. Reasonable attorneys' fees, costs, and disbursements may be awarded in an action to enforce claims under the act if the action is successfully maintained or successfully appealed.

Subd. 3. Penalty.

The penalty of each bond must not be less than the contract price, and if after the giving of the bond the contract price is increased, for any reason, the public body may require additional bonds, the penalties of which shall be not less than the amount of the increase, and if the additional bonds are not furnished within ten days after demand, the work on the contract shall cease until the additional bonds are furnished. In contracts made by the commissioner of administration or the Department of Transportation of the state, the commissioner of administration or the commissioner of transportation, respectively, may fix the amount of the bond penalty, but at not less than three-quarters of the contract price.

History:

(9700) RL s 4535; 1909 c 429 s 1; 1923 c 373 s 1; 1929 c 369 s 1; 1931 c 229 s 1; 1975 c 377 s 39; 1976 c 166 s 7; 1985 c 112 s 2; 1986 c 327 s 5; 1986 c 444; 1994 c 419 s 1; 1995 c 54 s 28; 1995 c 200 s 1; 1998 c 403 s 25; 1Sp2001 c 10 art 2 s 83; 2012 c 287 art 4 s 44, 45

574.261 PUBLIC WORK; SECURITY.

Subdivision 1. Certified or cashier's check.

With the approval of the commissioner of administration and if the amount of the contract is not more than \$5,000 a person may make a contract with the state to do public work and in place of giving the bonds required by section 574.26, submit to the commissioner of administration for deposit with the commissioner of management and budget (1) a certified check or cashier's check in the same amount as is required for a performance bond as security to protect the state, and (2) a certified or cashier's check in the same amount as is required for a payment bond for all persons furnishing labor and materials under or to perform the contract. The deposits are security for the payment, as they become due, of all just claims for labor and materials and for the performance and completion of the contract according to its terms.

Subd. 1a. Letters of credit.

Whenever Laws 1994, chapter 419, or other law or home rule charter requires a performance bond from a contractor doing a public work project of under \$50,000 for a public body, the public body may permit the contractor to provide, in place of the performance bond, an irrevocable bank letter of credit in the same amount as required for the bond and subject to the same conditions as the bond.

Subd. 2. Claims.

A person entitled to the protection of the deposit in place of a payment bond and wishing to take advantage of its benefits shall, no later than 120 days after the person's last contribution of labor and materials was furnished to the public work that is the subject of the contract, notify in writing the commissioner of administration and the commissioner of management and budget of the person's claim, giving the names of the parties involved and the amount and nature of the claim. If an action is commenced to obtain the benefit of the deposit in place of a payment bond, a judgment must not be entered within 30 days after

giving the notice of the claim and the state or any person entitled to the protection of the deposit may be admitted on its motion as a party to the action and the court shall determine the rights of all parties in the premises. In such suit in which the commissioner of management and budget is a party, the court may order the commissioner to make payment among the parties to the suit entitled to payment. If the amount of the deposit is insufficient to pay the claims in full, the court may direct that they be paid on a prorated basis. The deposit in place of a payment bond made with the commissioner under this section shall be held by the commissioner for 120 days after the last item of labor and materials was furnished to the public work that is the subject of the contract. If a claim is not filed within the 120-day period, the deposit shall be returned to the person making it. If a claim is filed within the 120-day period, the deposit shall be disbursed by the commissioner of management and budget under an order of the court.

Subd. 3.Appropriation.

Money deposited with the commissioner of management and budget under this section is annually appropriated to the commissioner of management and budget to carry out this section.

History:

1965 c 825 s 1; 1975 c 377 s 40; 1986 c 444; 1994 c 419 s 2; 2003 c 112 art 2 s 50; 2009 c 101 art 2 s 109

574.262 SMALL BUSINESS.

Subdivision 1.Bonds.

To carry out the programs, established elsewhere by law, for awarding certain portions of state construction and procurement contracts and subcontracts to small businesses and small businesses owned by economically and socially disadvantaged persons, the commissioners of administration and transportation may, when deemed appropriate, arrange, through competitive bidding or negotiation, to partially indemnify bonding companies which provide bid, performance, and payment bonds covering all or any part of the construction and procurement contracts or subcontracts which are designated for award to small businesses and small businesses owned by economically and socially disadvantaged persons. The amount of the indemnity for all the bonds on each contract shall not exceed \$100,000. Bonds which are subject to indemnity shall be provided to contractors at a cost which shall not exceed the cost of bid, performance, and payment bonds if purchased in the usual manner by other businesses for similar contract work or procurement.

Subd. 2.Participation limit.

No small business or small business owned and operated by economically and socially disadvantaged persons shall be eligible for bonding pursuant to this section for a period of more than five years from the date that the small business or small business owned and

operated by economically and socially disadvantaged persons received its first bond pursuant to this section.

Subd. 3.

[Repealed, 1989 c 155 s 5]

Subd. 4. **Encumbrance not applicable.**

Agreements of indemnity entered into pursuant to subdivision 1 shall not be subject to encumbrance requirements imposed by other provisions of law.

History:

1977 c 394 s 1; 1982 c 424 s 130; 1994 c 419 s 3

574.263 NATURAL RESOURCE DEVELOPMENT PROJECTS.

Subdivision 1. **Definition.**

For the purposes of this section and section 574.264, "natural resource development project" includes site preparation by discing, shearing, rock raking or piling, patch scarification, or furrowing; prairie restoration; creation of wildlife openings and other wildlife habitat improvements; landscape clearing; tree planting; tree seeding; tree pruning; timber stand improvement by thinning or clearing existing forest trees by manual, mechanical, or chemical techniques; or construction, reconstruction, and maintenance of Department of Natural Resources trails, public accesses, water control structures, fish barriers, sewage treatment systems, roads, and bridges.

Subd. 2. **Contractor's bond.**

A contract with the state for a natural resource development project may require a performance bond at the discretion of the commissioner of natural resources. If the commissioner determines that a performance bond is required, it shall not be less than five percent of the contract price.

Subd. 3. **Bid deposit in place of performance bond.**

For a contract made by the commissioner for a natural resource development project, the commissioner may require a bid deposit in place of a performance bond for charges that may accrue because of doing the specified work and to enforce the terms of the contract. The commissioner may set the amount of the bid deposit, but it may not be less than five percent of the contract price.

Subd. 4. **Payment bond.**

A contract with the state for a natural resource development project may require a payment bond at the discretion of the commissioner of natural resources. If the commissioner determines that a payment bond is required, the commissioner also has the discretion to

decide whether the bond may be in the form of securities in place of a bond as provided in section 574.264. If so, the securities cannot have less value than five percent of the contract price.

History:

1985 c 112 s 3; 1994 c 419 s 4,5; 1999 c 231 s 189

574.264 NATURAL RESOURCE PROJECT; SECURITY.

Subdivision 1. Natural resource development projects.

In place of a performance or payment bond or bid deposit for a state contract for a natural resource development project less than \$100,000, the person required to file the bond or bid deposit may deposit in a local designated state depository or with the commissioner of management and budget a certified check, a cashier's check, a postal, bank, or express money order, assignable bonds or notes of the United States, or an assignment of a bank savings account or investment certificate or an irrevocable bank letter of credit, in the same amount that would be required for the bond or bid deposit. If securities listed in this section are deposited, their value shall not be less than the amount required for the bond or bid deposit and the person required to file the bond or bid deposit shall submit an agreement authorizing the commissioner to sell or otherwise take possession of the securities in the event of default under the contract or nonpayment of any persons furnishing labor and materials under, or to perform, the contract.

Subd. 2. Claims against securities in place of bid deposits.

Securities in place of payment bonds are subject to claims as provided for other deposits in section 574.261, subdivision 2.

History:

1985 c 112 s 4; 1989 c 50 s 1; 1994 c 419 s 6; 1999 c 231 s 190; 2000 c 495 s 49; 2003 c 112 art 2 s 50; 2009 c 101 art 2 s 109

574.27 BIDDERS TO HAVE RIGHT OF ACTION IN CERTAIN CASES.

A public body may require that a bidder provide a bid bond or other security as a proposal guaranty that the bidder will enter into a contract if its bid is accepted. Any bidder upon any public work or public improvement of any kind in this state where bids are received and where, in connection with such bids, a deposit of money, or a certified check, or bid bond or other security must be provided with the bid, the public body causing such public work or other public improvement to be made or done shall be liable to such bidder for a return of the money, certified check, or other thing of value so deposited if the bidder's bid on such public work or improvement is not accepted, or if the bidder's bid is accepted before the bid expires, after the bidder enters into a contract for the work and provides acceptable security in connection with it. This liability exists even though the failure to return the money, certified check, or other thing of value is due to the defalcation or unlawful

conversion of the thing of value by the officer of the public body charged with the custody of it.

History:

(9701) 1923 c 348 s 1; 1986 c 444; 1994 c 419 s 7

574.28 APPROVAL AND FILING OF BOND.

Before beginning work on the contract for the public work, the contractor on whose behalf the payment and performance bonds were issued must file both bonds with the treasurer, board, or officer having financial management of the public body named in the bonds. The payment and performance bonds must list the address of the contractor on whose behalf the bonds were issued and of the surety providing the bonds. The payment and performance bonds, if acceptable in form and content, must be approved by the board or officer having financial management of the public body, or by the public body's treasurer. The public body must make the payment and performance bonds available for inspection and copying upon request. An assignment, modification, or change of the contract, or change in the work covered by the contract, or an extension of time to complete the contract, does not release the sureties on the bonds.

History:

(9702) RL s 4536; 1907 c 379; 1931 c 157; 1994 c 419 s 8; 1995 c 31 s 3

574.29 FAILURE TO GET PAYMENT BOND.

If the state or other public body fails to get and approve a valid payment bond or securities in place of a payment bond as required by the act, the public body for which work is done under the contract is liable to all persons furnishing labor and materials under or to perform the contract for any loss resulting to them from the failure. The public body is not liable if the bond does not list the proper address of the contractor on whose behalf the bond was issued or of the surety providing the bond.

History:

(9703) RL s 4537; 1986 c 444; 1994 c 419 s 9

574.30 INSOLVENT OR INSUFFICIENT SURETIES.

When, in the public body's judgment, a surety on a bond required by the act is insolvent, or for any cause is no longer a proper or sufficient surety, the public body may require the contractor to furnish a new or additional bond within ten days; and thereupon, if so ordered by the public body, all work on the contract must cease until the new or additional bonds are furnished. If the bonds are not furnished within the ten days, the public body may, at its option, terminate the contract and complete the same as the agent, and at the expense of the contractor and its sureties.

History:

(9704) RL s 4538; 1986 c 444; 1994 c 419 s 10; 1995 c 31 s 4

574.31 LIMIT OF TIME TO BRING ACTION.

Subdivision 1. Claims on performance bonds.

In the event of a claim by the public body on a performance bond, no action shall be maintained later than permitted under the statute of limitations applicable to the claim. Nothing in this subdivision may be construed to otherwise affect the common law or equitable rights of performance bond sureties, principals, or public bodies that are obligees.

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Subd. 2. Claims on payment bonds.

(a) In the event of a claim on a payment bond by a person furnishing labor and materials, no action shall be maintained on the payment bond unless, within 120 days after completion, delivery, or provision by the person of its last item of labor and materials, for the public work, the person serves written notice of claim under the payment bond personally or by certified mail upon the surety that issued the bond and the contractor on whose behalf the bond was issued at their addresses as stated in the bond specifying the nature and amount of the claim and the date the claimant furnished its last item of labor and materials for the public work. The addresses of the contractor and the surety listed on the bond must be addresses at which the companies are authorized to accept service of the notice of the claim. If an agent or attorney-in-fact is authorized to accept service of notice of the claim for the contractor or surety, that fact must be expressly stated in the bond along with the address of the agent or attorney-in-fact at which service of the notice of the claim can be made. For the purpose of this section, notice is sufficient if served personally or via certified mail to the addresses of the contractor and surety listed on the bond. The form of notice is sufficient if it is substantially as follows:

NOTICE OF CLAIM ON PAYMENT BOND FOR PUBLIC WORK

TO:

and

NOTICE IS HEREBY GIVEN that the undersigned claimant has a claim against the above-named surety for labor and materials furnished by the undersigned for the public work described as follows:

The labor and materials were furnished under a contract or agreement with

.....
.....
The nature of the labor and materials furnished is as follows:

.....
.....
The amount of the claim

is:

.....
.....
The date the claimant last furnished labor and materials to this public work is the day of,
Claimant seeks payment of the claim according to the law.

STATE

OF

COUNTY

OF

.....
.....
..... being duly sworn on oath says that
is of the claimant named above and has
knowledge of the claim and that the claim is correct, and no
part of the claim has been paid.

Signed and sworn to before me

on

by

Notary Public

(b) If the contractor providing the payment bond fails to comply with the filing requirements of section 574.28 by failing to state both its address and the address of the surety providing the bond, then a claimant under the bond need not provide either the surety or the contractor written notice of its claim under paragraph (a).

(c) An action to enforce a claim against the surety under the bond must be commenced within one year from the date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work stated in its notice of claim. If no notice of claim was required because the contractor providing the bond failed to comply with the requirements of section 574.28, then any action under the bond must be commenced within one year from the actual date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work. Any other person having a cause of action on a payment bond may be admitted, on motion, as a party to the action, and the court shall determine the rights of all parties. If the amount realized on the bond is insufficient to discharge all the claims in full, the amount must be prorated among the parties.

(d) The claimant can extend the time within which to bring an action to enforce a claim under the bond to beyond that specified in paragraph (c) either by: (1) written stipulation between the claimant and surety stating the extended deadline and executed by both parties before the expiration of one year from the actual date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work; or (2) written notice extending by one year the deadline specified in paragraph (c) sent by the claimant to the surety via certified mail 90 days before the expiration of the deadline specified in paragraph (c), which notice is not objected to in a return written notice sent by the surety to the claimant via certified mail within 30 days after the surety's receipt of claimant's notice. If a claimant's payment is not yet contractually due within one year from the actual date of completion, delivery, or provision by the claimant of its last item of labor and materials, the court shall continue and not dismiss the action until the payment is due.

History:

(9705) RL s 4539; 1909 c 413 s 1; 1929 c 369 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1994 c 419 s 11; 1995 c 31 s 5,6; 1998 c 254 art 1 s 107; 2001 c 52 s 1

574.32 APPLICATION OF PAYMENTS.

If a claimant on a payment bond had actual knowledge or should have known that a payment it received was for labor and materials supplied under, or to perform, public work under which a payment bond was provided, then the claimant must prove that it applied the payment to its account for that public work. Its claim must be reduced to the extent it cannot so prove.

History:

(9705-1) 1929 c 369 s 3; 1971 c 293 s 1; 1973 c 241 s 1; 1978 c 674 s 60; 1979 c 2 s 1; 1983 c 289 s 114 subd 1; 1984 c 592 s 90; 1984 c 655 art 1 s 92; 1986 c 444; 1994 c 419 s 12