

New Jersey League of Municipalities'
104th Annual Conference

Bid Bonds, Consent of Surety & Procurement:
All You Need to Know

NJLM Joint Session With The GPANJ

Location:
Atlantic City Convention Center
Room 403
Atlantic City, NJ
November 20, 2019

Prepared and Presented By:
Mark S. Anderson, Esq.
Gary Kohan
Joseph A. Valenti

CONTRACT SURETYSHIP

I. Introduction

A. Contract Surety Bonds - Protecting Taxpayer Dollars

1. Local contracting units including boards of education and various public authorities should always have concerns for managing risk and exposure in public works and construction projects
2. The need to protect general public funds (state and federal grants and loans) and taxpayer dollars is paramount
3. Contract bonds (bid, performance and payment bonds) provide financial security and construction assurance to public project owners by affirming that contractors are qualified to perform

II. Application of Applicable Statutes

A. Local Public Contracts Law

1. LPCL surety provisions most recognized by local public officials, purchasing agents and A/E service providers are:
 - a. Guarantee to be furnished with bid (N.J.S.A. 40A:11-21)
 - b. Surety company certificate (N.J.S.A. 40A:11-22)
 - c. Required mandatory items for bid plans, specifications (N.J.S.A. 40A:11-23.2)
2. Other surety provisions in the LPCL:
 - a. "Prior Negative Experience" (N.J.S.A. 40A:11-4) - Bidder defaults on a contract thereby requiring the local unit to look to the bidder's surety [N.J.S.A. 40A:11-4b(3)]
 - b. Form of contracts (N.J.S.A. 40A:11-14) - Governing body's approval of all guarantee, indemnity, fidelity and other bonds

- c. Separate plans for various types of work; bids; contracts (N.J.S.A. 40A:11-16a) - Contracting unit shall require evidence of performance security ...evidence of performance security equaling, but in no event exceeding, the total amount bid
- d. Withholding of payments (N.J.S.A. 40A:11-16.3) - Requirement of a maintenance bond, no longer than two years, and no more than 100% of the project costs (N.J.S.A. 40A:11-16.3b)
- e. Public-private partnership agreements (N.J.S.A. 40A:11-52) - The general contractor, construction manager, or design-build team shall be required to post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of monies due pursuant to N.J.S.A. 2A:44-143 et seq. [N.J.S.A. 40A:11-52e(3)]

III. Public Project Owner's Relationship With The General Contractor

A. A Public Project Owner's "To-Do" List

1. Review contract documents - pay close attention to defining what constitutes default
2. Maintain adequate insurance
3. Communicate with the surety company to inform it of progress and potential problems
4. Notify the surety company of important changes in the contract

IV. Summary

A. Surety Bonds - A Long History

1. First known account of contract suretyship was carved on a clay tablet around 2750 B.C.
2. The Roman Empire "legislated" a surety law around 150 A.D.