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SENATE BILL 22

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Leonard Lee Rawson

AN ACT

RELATING TO PUBLIC WORKS; PROVIDING THAT CERTAIN SECURITY REQUIREMENTS MAY BE IN THE FORM OF AN IRREVOCABLE LETTER OF CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 13-1-148.1 NMSA 1978 (being Laws 2005, Chapter 99, Section 1) is amended to read:

"13-1-148.1. BONDING OF SUBCONTRACTORS.--A subcontractor shall provide a performance and payment bond or other security on a public works building project if the subcontractor's contract for work to be performed on a project is fifty thousand dollars (\$50,000) or more. The security may be either a bond satisfactory to the central purchasing office, executed by a surety company, authorized to do business in this state and approved in federal circular 570 as published by the United

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[bracketed material] = delete

1 States treasury department or approved by the state board of
2 finance or the local governing authority or may be an
3 irrevocable letter of credit."

4 Section 2. Section 13-4-18 NMSA 1978 (being Laws 1987,
5 Chapter 109, Section 1) is amended to read:

6 "13-4-18. CONSTRUCTION CONTRACT PERFORMANCE AND PAYMENT
7 BONDS.--

8 A. When a construction contract is awarded in
9 excess of twenty-five thousand dollars (\$25,000), the following
10 bonds or security shall be delivered to the state agency or
11 local public body and shall become binding on the parties upon
12 the execution of the contract. If a contractor fails to
13 deliver the required performance and payment bonds or other
14 security, the contractor's bid shall be rejected, and its bid
15 security shall be enforced to the extent of actual damages.
16 Award of the contract shall be made pursuant to the Procurement
17 Code in the following manner:

18 (1) either a performance bond satisfactory to
19 the state agency or local public body, executed by a surety
20 company authorized to do business in this state and [~~said~~
21 ~~surety to be~~] approved in federal circular 570 as published by
22 the United States treasury department or approved by the state
23 board of finance or the local governing authority, or an
24 irrevocable letter of credit. The performance bond or letter
25 of credit shall be in an amount equal to one hundred percent of

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1 the price specified in the contract; and

2 (2) either a payment bond satisfactory to the
3 state agency or local public body, executed by a surety company
4 authorized to do business in this state and [~~said surety to be~~]
5 approved in federal circular 570 as published by the United
6 States treasury department or approved by the state board of
7 finance or the local governing authority, or an irrevocable
8 letter of credit. The payment bond or letter of credit shall
9 be in an amount equal to one hundred percent of the price
10 specified in the contract, for the protection of all persons
11 supplying labor and material to the contractor or its
12 subcontractors for the performance of the work provided for in
13 the contract.

14 B. The state purchasing agent or the central
15 purchasing office may reduce the amount of the performance bond
16 or other security required prior to solicitation to not less
17 than fifty percent of the contract price if it is determined to
18 be less costly or more advantageous to the state agency or
19 local public body to self-insure a part of the performance of
20 the contractor.

21 C. The state purchasing agent or the central
22 purchasing office may reduce the amount of the payment bond or
23 other security required prior to solicitation [~~of~~] to not less
24 than fifty percent of the contract price if it is determined
25 that it is in the best interest of the state agency or local

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1 public body to do so. Factors to be considered in order to
2 make such a determination include, but are not limited to:

3 (1) the value and number of subcontracts to be
4 awarded by the contractor; and

5 (2) the value of the contract.

6 D. Nothing in this section shall be construed to
7 limit the authority of the state agency or local public body to
8 require a performance bond or other security in addition to
9 those bonds, or in circumstances other than specified in
10 Subsection A of this section.

11 E. For contracts under twenty-five thousand dollars
12 (\$25,000), the state agency or local public body may impose in
13 its sole and complete discretion the requirements of
14 Subsections A, B and C of this section."