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HOUSE BILL 542

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO PUBLIC WORKS; PROVIDING THAT THE AMOUNT OF A  
REQUIRED PERFORMANCE BOND MAY BE REDUCED UNDER CERTAIN  
CIRCUMSTANCES.

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

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

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

A. When a construction contract is awarded in  
excess of twenty-five thousand dollars (\$25,000), the following  
bonds or security shall be delivered to the state agency or  
local public body and shall become binding on the parties upon  
the execution of the contract. If a contractor fails to  
deliver the required performance and payment bonds, the

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1 contractor's bid shall be rejected, and its bid security shall  
2 be enforced to the extent of actual damages. Award of the  
3 contract shall be made pursuant to the Procurement Code in the  
4 following manner:

5 (1) a performance bond satisfactory to the  
6 state agency or local public body, executed by a surety company  
7 authorized to do business in this state and said surety to be  
8 approved in federal circular 570 as published by the United  
9 States treasury department or the state board of finance or the  
10 local governing authority, in an amount equal to one hundred  
11 percent of the price specified in the contract; and

12 (2) a payment bond satisfactory to the state  
13 agency or local public body, executed by a surety company  
14 authorized to do business in this state and said surety to be  
15 approved in federal circular 570 as published by the United  
16 States treasury department or the state board of finance or the  
17 local governing authority, in an amount equal to one hundred  
18 percent of the price specified in the contract, for the  
19 protection of all persons supplying labor and material to the  
20 contractor or its subcontractors for the performance of the  
21 work provided for in the contract.

22 B. The state purchasing agent or the central  
23 purchasing office may reduce the amount of the performance bond  
24 required prior to solicitation to not less than fifty percent  
25 of the contract price if it is determined to be less costly or

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1 more advantageous to the state agency or local public body to  
2 self-insure a part of the performance of the contractor.

3 C. The state purchasing agent or the central  
4 purchasing office may reduce the amount of the payment bond  
5 required prior to solicitation [~~of~~] to not less than fifty  
6 percent of the contract price if it is determined that it is in  
7 the best interest of the state agency or local public body to  
8 do so. Factors to be considered in order to make such a  
9 determination include, but are not limited to:

10 (1) the value and number of subcontracts to be  
11 awarded by the contractor; and

12 (2) the value of the contract.

13 D. Prior to solicitation, the state purchasing agent  
14 or the central purchasing office may reduce the amount of the  
15 required performance bond to exclude the gross receipts taxes  
16 on payments received under the construction contract awarded to  
17 the contractor for which the bond was issued if the state  
18 purchasing agent or central purchasing office agrees to  
19 indemnify the issuer of the performance bond for any payment  
20 that the issuer of that bond is required to make to the  
21 taxation and revenue department for gross receipts taxes due on  
22 payments received by the contractor under the construction  
23 contract.

24 [~~D-~~] E. Nothing in this section shall be construed to  
25 limit the authority of the state agency or local public body to

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1 require a performance bond or other security in addition to  
2 those bonds, or in circumstances other than specified in  
3 Subsection A of this section.

4 ~~[E.]~~ F. For contracts under twenty-five thousand  
5 dollars (\$25,000), the state agency or local public body may  
6 impose in its sole and complete discretion the requirements of  
7 Subsections A, B and C of this section."

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