

REFERENCE TITLE: **job-order-contracting; bond; waiver**

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2095

Introduced by
Representative Coleman

AN ACT

**AMENDING SECTIONS 34-610 AND 41-2574, ARIZONA REVISED STATUTES; RELATING TO
CONSTRUCTION CONTRACTS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 34-610, Arizona Revised Statutes, is amended to
3 read:

4 34-610. Construction-manager-at-risk, design-build and
5 job-order-contracting construction services surety
6 bond required; suit on bond; limitations

7 A. Except if specifically exempted by statute, before an agent
8 executes any contract with any person or firm for
9 construction-manager-at-risk construction services, design-build construction
10 services or job-order-contracting construction services, the person or firm
11 shall furnish to the agent entering into the contract the following bonds,
12 except that the bonds shall be furnished only on and at the same time as
13 execution of a contract or an amendment to a contract that commits the
14 contractor to provide construction for a fixed price, a guaranteed maximum
15 price or any other fixed amount within a designated time frame:

16 1. A performance bond in an amount equal to the full contract amount
17 conditioned on the faithful performance of the contract in accordance with
18 plans, specifications and conditions of the contract, except that:

19 (a) For job-order-contracting construction services, the performance
20 bond shall cover the full amount of construction under the
21 job-order-contracting construction services contract, shall not include any
22 design services, preconstruction services, finance services, maintenance
23 services, operations services or other related services included in the
24 contract, may be a single bond for the full term of the contract, a separate
25 bond for each year of a multiyear contract or a separate bond for each job
26 order, as determined by the agent, and, if a single bond for the full term of
27 the contract or a separate bond for each year of a multiyear contract, shall
28 initially be based on the agent's reasonable estimate of the amount of
29 construction that the agent believes is likely to actually be done during the
30 full term of the contract or during the particular year of a multiyear
31 contract, as applicable. **THE AGENT MAY WAIVE THE PERFORMANCE BOND REQUIRED**
32 **BY THIS SUBDIVISION IF THE AMOUNT OF CONSTRUCTION UNDER THE**
33 **JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES CONTRACT DOES NOT EXCEED FIVE**
34 **HUNDRED THOUSAND DOLLARS, INCLUDING CHANGE ORDERS.**

35 (b) For construction-manager-at-risk construction services and
36 design-build construction services, the amount of the performance bond shall
37 be the price of construction and shall not include the cost of any design
38 services, preconstruction services, finance services, maintenance services,
39 operations services or any other related services included in the contract.
40 The performance bond shall be solely for the protection of the public body
41 awarding the contract.

42 2. A payment bond in an amount equal to the full contract amount
43 solely for the protection of claimants supplying labor or materials to the
44 contractor or the contractor's subcontractors in the prosecution of the
45 construction and not for the protection of persons providing any design

1 services, preconstruction services, finance services, maintenance services,
2 operations services or other related services provided for in the contract,
3 except that:

4 (a) For job-order-contracting construction services, the payment bond
5 shall cover the full amount of construction under the job-order-contracting
6 construction services contract, shall not include any design services,
7 preconstruction services, finance services, maintenance services, operations
8 services or other related services included in the contract, may be a single
9 bond for the full term of the contract, a separate bond for each year of a
10 multiyear contract or a separate bond for each job order, as determined by
11 the agent, and, if a single bond for the full term of the contract or a
12 separate bond for each year of a multiyear contract, shall initially be based
13 on the agent's reasonable estimate of the amount of construction that the
14 agent believes is likely to actually be done during the full term of the
15 contract or during the particular year of a multiyear contract, as
16 applicable.

17 (b) For construction-manager-at-risk construction services and
18 design-build construction services, the amount of the payment bond shall be
19 the price of construction and shall not include the cost of any design
20 services, preconstruction services, finance services, maintenance services,
21 operations services or any other related services included in the contract.

22 B. Each bond shall include a provision allowing the prevailing party
23 in a suit on the bond to recover as a part of the judgment any reasonable
24 attorney fees as may be fixed by the court.

25 C. Notwithstanding any other statute, each bond shall be executed
26 solely by a surety company or companies holding a certificate of authority to
27 transact surety business in this state issued by the director of the
28 department of insurance pursuant to title 20, chapter 2, article 1. The
29 bonds shall not be executed by an individual surety or sureties, even if the
30 requirements of section 7-101 are satisfied. The bonds shall be payable to
31 the public body concerned.

32 D. The bonds shall be filed in the office of the department, board,
33 commission, institution, agency or other contracting body awarding the
34 contract.

35 E. It is illegal for a request for qualifications or a request for
36 proposals pursuant to section 34-603 or 34-604, or any person acting or
37 purporting to act on behalf of the contracting body, to require that bonds be
38 furnished by a particular surety company, or through a particular agent or
39 broker.

40 F. The conditions and provisions in the payment bond regarding the
41 surety's obligations shall follow the following form:

42 Now, therefore, the condition of this obligation is that if the
43 principal promptly pays all monies due to all persons supplying
44 labor or materials to the principal or the principal's
45 subcontractors in the prosecution of the construction provided

1 for in the contract, this obligation is void. Otherwise it
2 remains in full force and effect. Provided, however, that this
3 bond is executed pursuant to title 34, chapter 6, Arizona
4 Revised Statutes, and all liabilities on this bond shall be
5 determined in accordance with the provisions, conditions and
6 limitations of title 34, chapter 6, Arizona Revised Statutes, to
7 the same extent as if they were copied at length in this
8 agreement. The prevailing party in a suit on this bond shall
9 recover as a part of the judgment reasonable attorney fees that
10 may be fixed by the court.

11 G. The conditions and provisions in the performance bond regarding the
12 surety's obligations shall follow the following form:

13 Now, therefore, the condition of this obligation is that if the
14 principal faithfully performs and fulfills all of the
15 undertakings, covenants, terms, conditions and agreements of the
16 contract during the original term of the contract and any
17 extension of the contract, with or without notice to the surety,
18 and during the life of any guaranty required under the contract,
19 and also performs and fulfills all of the undertakings,
20 covenants, terms, conditions and agreements of all duly
21 authorized modifications of the contract that may hereafter be
22 made, notice of which modifications to the surety being hereby
23 waived, the above obligation is void. Otherwise it remains in
24 full force and effect. Provided, however, that this bond is
25 executed pursuant to title 34, chapter 6, Arizona Revised
26 Statutes, and all liabilities on this bond shall be determined
27 in accordance with title 34, chapter 6, Arizona Revised
28 Statutes, to the extent as if it were copied at length in this
29 agreement. The prevailing party in a suit on this bond shall
30 recover as part of the judgment reasonable attorney fees that
31 may be fixed by the court. The performance under this bond is
32 limited to the construction to be performed under the contract
33 and does not include any design services, preconstruction
34 services, finance services, maintenance services, operations
35 services or any other related services included in the contract.

36 H. If the prime contract or specifications require any persons
37 supplying labor or materials in the prosecution of the work to furnish
38 payment or performance bonds, these bonds shall be executed solely by a
39 surety company or companies holding a certificate of authority to transact
40 surety business in this state issued by the director of the department of
41 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding any
42 other statute, the bonds shall not be executed by an individual surety or
43 sureties, even if the requirements of section 7-101 are satisfied.

1 I. All bonds given by a contractor and surety pursuant to this
2 section, regardless of their actual form, are deemed by law to be in the form
3 required and set forth in this section.

4 Sec. 2. Section 41-2574, Arizona Revised Statutes, is amended to read:
5 41-2574. Contract performance and payment bonds

6 A. The following bonds or security is required and is binding on the
7 parties to the contract if the value of a construction award exceeds the
8 amount established by section 41-2535:

9 1. A performance bond that is executed and furnished as required under
10 title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount
11 equal to one hundred ~~per-cent~~ PERCENT of the price specified in the contract
12 conditioned on the faithful performance of the contract in accordance with
13 the plans, specifications and conditions of the contract, except that:

14 (a) For job-order-contracting construction services, the performance
15 bond shall cover the full amount of construction under the
16 job-order-contracting construction services contract, shall not include any
17 design services, preconstruction services, finance services, maintenance
18 services, operations services or other related services included in the
19 contract, may be a single bond for the full term of the contract, a separate
20 bond for each year of a multiyear contract or a separate bond for each job
21 order, as determined by the purchasing agency, and, if a single bond for the
22 full term of the contract or a separate bond for each year of a multiyear
23 contract, shall initially be based on the purchasing agency's reasonable
24 estimate of the amount of construction that the purchasing agency believes is
25 likely to actually be done during the full term of the contract or during the
26 particular year of a multiyear contract, as applicable. **THE PURCHASING
27 AGENCY MAY WAIVE THE PERFORMANCE BOND REQUIRED BY THIS SUBDIVISION IF THE
28 AMOUNT OF CONSTRUCTION UNDER THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES
29 CONTRACT DOES NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS, INCLUDING CHANGE
30 ORDERS.**

31 (b) For construction-manager-at-risk construction services and
32 design-build construction services, the amount of the performance bond shall
33 be the price of construction and shall not include the cost of any design
34 services, preconstruction services, finance services, maintenance services,
35 operations services and other related services included in the contract.
36 This bond is solely for the protection of this state. The conditions and
37 provisions of the performance bond regarding the surety's obligations shall
38 follow the form required under section 34-222, subsection G or section
39 34-610, subsection G, as applicable.

40 2. A payment bond that is executed and furnished as required by title
41 34, chapter 2, article 2 or chapter 6, as applicable, in an amount equal to
42 one hundred ~~per-cent~~ PERCENT of the price specified in the contract for the
43 protection of all persons supplying labor or material to the contractor or
44 its subcontractors for the performance of the construction provided for in
45 the contract, except that:

1 (a) For job-order-contracting construction services, the payment bond
2 shall cover the full amount of construction under the job-order-contracting
3 construction services contract, shall not include any design services,
4 preconstruction services, finance services, maintenance services, operations
5 services or other related services included in the contract, may be a single
6 bond for the full term of the contract, a separate bond for each year of a
7 multiyear contract or a separate bond for each job order, as determined by
8 the purchasing agency, and, if a single bond for the full term of the
9 contract or a separate bond for each year of a multiyear contract, shall
10 initially be based on the purchasing agency's reasonable estimate of the
11 amount of construction that the purchasing agency believes is likely to
12 actually be done during the full term of the contract or during the
13 particular year of a multiyear contract, as applicable.

14 (b) For construction-manager-at-risk construction services and
15 design-build construction services, the amount of the payment bond shall be
16 the price of construction and shall not include the cost of any design
17 services, preconstruction services, finance services, maintenance services,
18 operations services or other related services included in the contract. The
19 conditions and provisions of the payment bond regarding the surety's
20 obligations shall follow the form required under section 34-222, subsection F
21 or section 34-610, subsection F, as applicable.

22 B. For design-bid-build construction, the bonds prescribed in
23 subsection A of this section shall be provided on and at the same time as
24 execution of the construction contract. For construction-manager-at-risk,
25 design-build and job-order-contracting construction services, the bonds
26 prescribed in subsection A of this section shall be provided only on and at
27 the same time as execution of a contract or an amendment to a contract that
28 commits the contractor to provide construction for a fixed price, guaranteed
29 maximum price or other fixed amount within a designated time frame.

30 C. If the prime contract or specifications require any persons
31 supplying labor or materials in the prosecution of the work to furnish
32 payment or performance bonds, these bonds shall be executed solely by a
33 surety company or companies holding a certificate of authority to transact
34 surety business in this state issued by the director of the department of
35 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding ~~the~~
36 ~~provisions of~~ any other statute, the bonds shall not be executed by an
37 individual surety or sureties, even if the requirements of section 7-101 are
38 satisfied.