Surety Requirements in Government Procurement Laws

Category: Opinion 6 June 2018
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The Government Procurement Reform Act governs the procurement activities of the government. Under the law, various securities are required for the different stages of the procurement process. From the point of view of surety companies, these are: 1) the Bidder's Bond; 2) the Performance Bond; 3) Warranty Bond for the procurement of infrastructure projects; 4) Advance Payment or Down Payment Bond under Section 4 of Annex "E" of the Implementing Rules and Regulations (IRR); and the 5) Retention Money Bond under Section 6 of Annex "E".

The Insurance Commission has issued Circular Letter No. 2016-32, dated May 30, 2016 providing the guidelines for the issuance of certifications as required under Section 1.1 of Appendix 28 (Guidelines for the Establishment of Negative List of Surety and/ or Insurance Companies) of the IRR.

Bidder's Bond

The Bidder's Bond "shall serve as a guarantee that, after receipt of the Notice of Award, the winning bidder shall enter into contract with the Procuring Entity within the stipulated time and furnish the required performance security". Under the IRR, all bids shall be accompanied by a bid security payable to the Procuring Entity. Bid securities may also be in other forms such as cash or manager's checks, bank draft or irrevocable letter of credit, or a Surety Bond callable upon demand issued by a surety company duly certified by the Insurance Commission. The amount of the bid security shall not be less than 5% of the Approved Budget for the Contract.

In *Padilla v. Zaldivar* it was ruled that "the bidder's proposal bond in a public bidding is deemed to be an indispensable requirement for the validation of a bid proposal. This is no idle requirement. Indeed, its purpose is to insure the good faith of the bidders and bind them to enter into a contract with the Government should their proposal be accepted. The bond is the only hold which the Government has on a bidder."

Performance Bond

The Performance Bond shall be required prior to the signing of the contract “as a measure of guarantee for the faithful performance of and compliance with his obligation under the contract”. Likewise, the performance security may also be in other forms. The amount of the security shall not be less than 30% of the Total Contract Price.

Warranty Bond

In Warranty Bonds, the contractor assumes “full responsibility for the contract work from the time project construction commenced up to a reasonable period”. The contractor assumes full responsibility for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work and shall be required to put up a warranty security in the form of a callable surety bond. The amount of the Warranty Bond shall not be less than 30% of the Total Contract Price.

Advance Payment Bond

The Advance Payment Bond is provided for under Section 4 of Annex “E” of the IRR. Under Section 4, “the procuring entity shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most, two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents.” The “advance payment shall be made only upon the submission to and acceptance by the procuring entity of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the procuring entity.” The purpose of allowing advance payment is “to provide financial help to contractors to expedite the completion of a particular government infrastructure project”. On the other hand, the purpose of the bond is to guarantee the reimbursement of the advance payment made by the Procuring Entity in the event that the contractor fails to comply with the obligations.

Retention Money Bond

Retention Money Bond is provided under Section 6 of Annex “E” of the IRR. Progress payments are subject to retention of ten percent (10%) referred to as the retention money. The total “retention money” shall be due for release upon final acceptance of the works. The contractor may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit of from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted.

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