



CITY OF WASILLA

290 E. HERNING AVE.
WASILLA, ALASKA 99687
PHONE: (907) 373-9050
FAX: (907) 373-0788

COUNCIL MEMORANDUM NO. 90-60

FROM: Deputy Administrator

DATE: August 7, 1990

RE: Proposed Ordinance No. 90-27 Re: Bonds

The administration has routinely required 100% payment and performance bonds on all construction contracts for less than \$100,000 in order to protect the City's interest. We have been often requested to modify the 100% bond requirement to provide more opportunity to small contractors. The City does not have a code requirement regarding bonding and should establish a formal policy by ordinance.

Ordinance No. 90-27 does two things:

First, it establishes that construction contractors shall provide 100% bonding up to \$150,000 in contract amount. The state does not require bonding for less than \$100,000 contracts. For contracts between \$100,000 and \$1,000,000 the state requires municipalities to obtain minimum bonding of 50% of the contract amount.

Second, the ordinance provides a means for the Mayor to waive all bonding requirements up to \$150,000 provided the contractor meets certain criteria.

As written, the ordinance is consistent with current Borough practices and will provide a means to reduce costs, allow more contractors to bid, and enable the administration to be flexible in bonding requirements.

Recommend introduction and adoption of Ordinance No. 90-27.

Robert E. Harris
Deputy Administrator

§ 36.15.060

§ 36.25.010

PUBLIC CONTRACTS

§ 36.25.010

Collateral references. — 17 Am. Jur. §§ 41-61; 81A C.J.S., States, §§ 172-193. 2d, Contractors' Bonds, §§ 43-138; 64 Am. Jur. 2d, Public Works and Contracts, §§ 105-136. Right of contractor with federal, state, or local public body to latter's immunity from tort liability. 9 ALR3d 382. 72 C.J.S. Supplement, Public Contracts,

Sec. 36.25.010. Bonds of contractors for public buildings or works. (a) Except as provided in AS 44.33.300, before a contract exceeding \$100,000 for the construction, alteration, or repair of a public building or public work of the state or a political subdivision of the state is awarded to a general or specialty contractor, the contractor shall furnish to the state or a political subdivision of the state the following bonds, which become binding upon the award of the contract to that contractor:

(1) a performance bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond; the amount of the performance bond shall be equivalent to the amount of the payment bond;

(2) a payment bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond for the protection of all persons who supply labor and material in the prosecution of the work provided for in the contract; when the total amount payable by the terms of the contract is not more than \$1,000,000, the payment bond shall be in a sum of one-half the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than \$1,000,000 and not more than \$5,000,000, the payment bond shall be in a sum of 40 percent of the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than \$5,000,000, the payment bond shall be in the sum of \$2,500,000.

(b) This section does not limit the authority of a contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in (a) of this section.

(c) When no payment bond has been furnished, the contracting department may not approve final payments to the contractor until the contractor files a written certification that all persons who supplied labor or material in the prosecution of the work provided for in the contract have been paid. (§ 1 ch 49 SLA 1953; am § 1 ch 77 SLA 1964; am § 14 ch 142 SLA 1972; am §§ 1, 2 ch 180 SLA 1976; am § 8 ch 277 SLA 1976; am 34 ch 108 SLA 1982)

if an exception to federal program.

limited to, dairy and products manufactured has been harvested

to municipalities, foundation funding, and state § 1, 2 ch 62 SLA

products harvested or produced in the jurisdiction of the state; in subsection (b) "In" for "As used in" of the subsection, the existing language in paragraph (1) inserted to, dairy product graph (2); and added

in subsection of contracts 1 ch 16

lies.

s.

providing labor or exemption

p. No. 1583 (File 13 (1978).

er to designate account
 payment should be ap-
 r, who is under a duty to
 apply funds he tenders to
 particular account, has
 designate that account as
 payment should be ap-
 r is under a correlative
 money as directed by his
 he does not consent to
 s. This principle does
 misconduct or fraud.
 er Supply Co. v. Walsh
 p. No. 1583 (File No.
 213 (1978).

to apply payment to
 — Where there is suffi-
 a creditor knew or at
 know that money re-
 tor came from a third
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 or was under a duty to
 to such account. State
 ly Co. v. Walsh & Co.,
 83 (File No. 2816), 575

g the Miller Act (40
 sq.) hold that when a
 has reason to know,
 id to him is received
 nded project, it is the
 pply the payment re-
 coun' that project.
 Sup. Co. v. Walsh
 . No. 1583 (File No.
 13 (1978).

t to AS 08.18.151. —
 section is subject to,
 of, the express pen-
 51, which prohibits
 o fail to duly register
 ntracts in which they
 red. Smith v. Tyonek
 t. Op. No. 2813 (File
 0 P.2d 1148 (1984).
 ex rel. Smith v.
 . Sup. Ct. Op. No.
 7256), 680 P.2d 1148

required by law, as
 to laborers or mate-

contractor's bond or
 e for labor or mate-
 actor or subcontract-
 ptance from him of
 ALR 342.
 s furnished to sub-

contractor as within the coverage of prin-
 cipal contractor's bond for public improve-
 ments. 70 ALR 308; 111 ALR 311; 92
 ALR2d 1250.

Right of person furnishing material or
 labor to maintain action on contractor's
 bond to owner of public body, or on
 owner's bond to mortgagee. 77 ALR 21;
 118 ALR 57.

Right or duty of obligee of contractor's
 bond to enforce condition thereof for bene-
 fit of laborers and materialmen. 77 ALR
 217.

Claim under subcontract by which sub-
 contractor agrees to furnish a man and
 truck, or other specified instrumentality,
 at an unapportioned compensation, as
 within contractor's bond conditioned for
 payment of claims for labor. 79 ALR 1253.

Material or labor employed in construc-
 tion of concrete forms as basis of me-
 chanics' lien or claim under contractors'
 bond. 84 ALR 460.

Claims for gasoline and oil as within
 contractor's bond. 91 ALR 1027.

Fuel furnished contractor or subcon-
 tractor as within coverage of bond to pay
 for all materials furnished. 96 ALR 553.

Existence and extent of lien or claim for
 labor and materials furnished to subcon-
 tractor, against money due principal con-
 tractor for public improvement. 112 ALR
 815.

Liability of surety on subcontractor's
 bond to principal contractor for public im-
 provement or to his surety, in respect of
 claims for labor or materials furnished to
 subcontractor. 117 ALR 662.

Construction and application of provi-
 sions of statute or public contractor's bond

as to time when action may be brought
 thereon by laborers or materialmen. 119
 ALR 255.

Right of one who contracts with, or fur-
 nishes labor or material to, public contrac-
 tor's surety after latter has taken over
 work, in respect of part of contract price
 retained by public agency. 122 ALR 511.

Value of services or material furnished
 by subcontractor, laborer, or material-
 man, or price fixed by the contract by
 which they were employed, as measure of
 their recovery on bond of principal con-
 tractor, or as against amount earned by
 contractor but withheld by contractee or
 paid into court. 123 ALR 416.

Labor and materials furnished to sub-
 contractor as within coverage of bond of
 principal contractor under nonpublic
 building or construction contract. 128
 ALR 938.

Owner's right to recover from contrac-
 tor or surety on his bond amount paid or
 agreed to be paid by former to third per-
 son, in order to avoid mechanics' liens for
 labor or material furnished to contractor.
 134 ALR 314.

False receipts or the like as estopping
 materialmen or laborers from recovering
 on public work bond. 39 ALR2d 1104.

Relative rights, as between surety on
 public work contractor's bond and unpaid
 laborers or materialmen, in percentage
 retained by obligee. 61 ALR2d 899.

Labor or material furnished subcontractor
 for public work or improvement as
 within coverage of bond of principal con-
 tractor. 92 ALR2d 1250.

Municipal property as subject to me-
 chanic's lien. 51 ALR3d 657.

Sec. 36.25.025. Optional municipal exemption. A municipality,
 by ordinance adopted by its governing body, may exempt contractors
 from compliance with the provisions of AS 36.25.010(a) if the esti-
 mated cost of the project does not exceed \$400,000, and

(1) the contractor is, and for two years immediately preceding the
 award of the contract has been, a licensed contractor having its princi-
 pal office in the state;

(2) the contractor certifies that it has not defaulted on a contract
 awarded to the contractor during the period of three years preceding
 the award of a contract for which a bid is submitted;

(3) the contractor submits a financial statement, prepared within a
 period of nine months preceding the submission of a bid for the con-
 tract and certified by a public accountant or a certified public account-
 tant licensed under AS 08.04, demonstrating that the contractor has a

net worth of not less than 20 per cent of the amount of the contract for which a bid is submitted; and

(4) the total amount of all contracts that the contractor anticipates performing during the term of performance of the contract for which a bid is submitted does not exceed the net worth of the contractor reported in the certified financial statement prepared and submitted under (3) of this section by more than seven times. (§ 1 ch 81 SLA 1978)

Cross references. — For related provisions, see AS 29.10.200(18) and AS 29.25.010(a)(10).

Collateral references. — Right of municipal corporation to recover back from contractor payments made under contract violating competitive bidding statute. 33 ALR3d 397.

Liability of municipality on quasi contract for value of property or work furnished without compliance with bidding requirements. 33 ALR3d 1164.

Municipal property as subject to mechanic's lien. 51 ALR3d 657.

Chapter 30. State Procurement Code.

Article

1. Organization of State Procurement (§§ 36.30.005 — 36.30.080)
2. Competitive Sealed Bidding (§§ 36.30.100 — 36.30.190)
3. Competitive Sealed Proposals (§§ 36.30.200 — 36.30.270)
4. Other Procurement Methods (§§ 36.30.300 — 36.30.320)
5. Preference for Alaska Products (§§ 36.30.322 — 36.30.338)
6. Contract Formation and Modification (§§ 36.30.340 — 36.30.480)
7. Procurement Records and Reports (§§ 36.30.500 — 36.30.540)
8. Legal and Contractual Remedies (§§ 36.30.560 — 36.30.699)
9. Intergovernmental Relations (§§ 36.30.700 — 36.30.790)
10. General Provisions (§§ 36.30.850 — 36.30.995)

Cross references. — For statement of legislative purpose in enacting this chapter, see § 1, ch. 106, SLA 1986, in the Temporary and Special Acts.

Effective date of chapter. — Section 69, ch. 106, SLA 1986, as amended by § 27, ch. 65, SLA 1987, provides that this chapter takes effect January 1, 1988.

Editor's notes. — Section 65, ch. 106, SLA 1986, as amended by § 83, ch. 14, SLA 1987 and § 25, ch. 65, SLA 1987, provides: "REPORT. By December 1, 1989, the commissioner of administration and the commissioner of transportation and public facilities shall report to the legislature concerning procurement by state agencies during fiscal year 1988. The report must include

- (1) a summary of the information required under AS 36.30.510;
- (2) recommendations for changes in AS 36.30 or other laws based on implementa-

tion of AS 36.30 during those 12 months; and

(3) a description of any matters that involved litigation concerning AS 36.30 during those 12 months."

Collateral references. — Revocation, prior to execution of formal written contract, of vote or decision of public body awarding contract to bidder. 3 ALR3d 864.

Liability of municipality on quasi contract for value of property or work furnished without compliance with bidding requirements. 33 ALR3d 1164.

Furnishing public official with meals, lodging, or travel, or receipt of such benefits, as bribery. 67 ALR3d 1231.

Duty of public authority to disclose to contractor information, allegedly in its possession, affecting cost or feasibility of project. 86 ALR3d 182.

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Section

- 05. Central authority
- 10. Chief p
- 15. Executi
- 20. Legisla
- 30. Court s

Effective 69, ch. 106

Sec. 3

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