

New Construction

Financing

Performance Assurance Requirements and Waiver Procedures

The performance and payment assurance requirements and waiver standards set forth below apply to contracts with the Watertown Unified School District for the performance of labor or furnishing of materials for public improvement or public work (construction and remodeling) projects. They shall be administered in accordance with state law. The Director of Business Services, in consultation with the Superintendent, has the authority to waive payment and performance bonds in applicable situations. The Board of Education will be notified in a timely manner when this occurs.

In the event of any conflict between the requirements and standards set forth below and state law, state law provisions shall control.

A. Performance and Payment Assurance Requirements

The following dollar limitations on contract thresholds became effective February 1, 2011. Adjustments to these dollar limitations are promulgated from time to time by the Wisconsin Department of Workforce Development (WDW). When such adjustments are made by the WDW, the District shall strive to comply with the adjusted dollar limitations on contract thresholds.

1. For a contract price of \$16,000 or less, the prime contractor shall not be required to provide any performance or payment assurances unless the District specifies otherwise.
2. For a contract price in excess of \$16,000, but not exceeding \$74,000, the contract with the prime contractor shall:
 - a. Allow the District to make direct payments to subcontractors or to pay the prime contractor with checks that are payable to the prime contractor and to one or more subcontractors, subject to the exceptions for contracts with other municipalities set forth in state law (i.e. for construction, extension, repair, replacement or removal of a bikeway or parking lot); and
 - b. Require that the prime contractor provide to the District payment and performance assurances, such as payment and performance bonds, an irrevocable letter or credit, a bond, or an escrow account, unless such assurances are waived by the District in accordance with the standards outlined below.
3. For a contract price exceeding \$74,000, but not exceeding \$148,000, the contract with the prime contractor shall:
 - a. Allow the District to make direct payments to subcontractors or pay the prime contractor with checks that are payable to the prime contractor and to one or more subcontractors, subject to the exceptions for contracts with other municipalities set forth in state law; and
 - b. Require that the prime contractor provide to the District payment and performance bonds, except as otherwise provided. The District may allow the prime contractor to provide different form of payment assurance, such as an irrevocable letter of credit, a bond, or an escrow account, in accordance with the standards outlined below for accepting alternative forms of assurance. In such instances, the alternative form of payment and performance assurance(s) must be for an amount at least equal to the contract price.

4. For a contract price exceeding \$148,000, the contract with the prime contractor shall require payment and performance bonds that satisfy state law requirements, as amended from time to time.

B. Standards for Waiving Payment of Performance Bonds and Accepting Alternative Forms of Assurance

In circumstances identified above, the District may waive the requirement for payment and performance assurances and/or may accept alternative forms of assurances when such action is deemed to be in the interest of the District. In making such determinations, some or all of the following factors will be considered, in addition to any other relevant factors as determined by the Board in its discretion:

1. Whether the prime contractor has a bonding capacity of at least three times the amount of the proposed contracts;
2. Whether the prime contractor has at least five years' experience as a prime contractor in the construction industry;
3. Whether any meritorious claims for nonpayment for labor performed or materials furnished have been asserted or liens filed against the prime contractor within the prior three years with respect to any contract;
4. Whether any meritorious claims have been asserted against any performance bond or payment bond furnished by the prime contractor in the last three years with respect to any contract;
5. Whether the prime contractor is a party to any litigation or administrative proceeding, or so far as is known to the prime contractor, has been threatened with any litigation or administrative proceeding, which would, if adversely determined, cause any material adverse change in its assets, financial condition, or the conduct of its business;
6. Whether the prime contractor is a party to or is bound by an agreement, instrument, or undertaking, or subject to any other restriction which would materially adversely affect or may in the future so affect the assets, financial condition, or business operations of the prime contractor;
7. Whether the prime contractor is presently and has been authorized to do business in the State of Wisconsin for at least the prior three years, and if the prime contractor is a corporation of similar entity, whether the prime contractor is in good standing under the laws of the State of Wisconsin and has complied with all certifications, filings, and other requirements necessary to continue doing construction work with the District and in Wisconsin; and
8. Whether the prime contractor is financially able to meet the terms of the contract, as verified by the current financial statement of the contractor submitted to the District, and has evidence of available credit limits from a lender acceptable to the District.

The District may require the prime contractor to provide contract warranties, written representations, current financial statements, evidence of the prime contractor's available credit from a lender and/or other relevant information in connection with any or all of the considerations set forth above.

As noted in the Board policy, the District shall retain its full discretion and authority to determine whether or not to waive performance or payment assurances or to accept alternative forms of assurances. Nothing contained in Board policy or these procedures shall obligate the District to grant any waiver, to accept any alternative form of assurance, or take any action whatsoever.

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