



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Washington, D.C. 20590

Subject: Payment and Performance Bonds

Date: **JUL 13 1987**

From: Chief, Construction and Maintenance Division
Office of Highway Operations

Reply to
Attn of: HHO-32

To: Mr. Louis N. MacDonald
Regional Federal Highway Administrator (HEO-08)
Lakewood, Colorado

Your memorandum of June 5, 1987, requested guidance regarding the Utah Division's concerns relative to the difficulty contractors are experiencing in obtaining bonding.

Conventional payment and performance bond coverage is becoming increasingly costly and difficult to obtain, particularly by small, less experienced, and minority contractors. However, under current practices all States but one continue to require the prime contractors to post a payment and performance bond for projects where the cost exceeds \$100,000. The only exception we are aware of is Wisconsin.

Wisconsin has implemented, on a trial basis, an alternate procedure to its normal bonding requirements. Under the alternate procedure, the payment and performance bond is not required for projects that cost less than \$1,000,000. Instead, the contractor's bid guarantee check (normally 3 percent) is held by Wisconsin Department of Transportation (WisDOT) as a "bond guarantee" in lieu of payment and performance bonds. The WisDOT also relies on contract retainage as additional assurance of protection to the State or subcontractors in the event of a default on a contract. A copy of WisDOT's alternate procedure is attached for your information.

Relative to the use of letters of credit in lieu of payment and performance bonds, we have in the past discouraged their use since they do not adequately protect the State and Federal interests.

The bonding issue is of great concern to everyone. In order, to gain a better understanding of this problem, the American Association of State Highway and Transportation Officials has proposed that a research project be developed

under the National Cooperative Highway Research Program. The project is proposed to be titled "Innovative and Alternate Bond and Insurance Coverage for Highway Construction Contracts." We support this initiative, and if funded, we hope that it will provide meaningful information which may be used to mitigate the bonding problem.



William A. Weseman

Attachment

Archived