CONTRACT BONDS

What are they and how do they work.

What is a bond?

- A bond is a contract between the surety and the prime contractor for the benefit of subcontractors and MoDOT.
- For subcontractors and material suppliers it ensures that they will be paid for work performed.
- For MoDOT it ensures that, in the event of default of the contractor, the job will be completed.

Bid Bond

- A bid bond ensures that the contractor will honor its bid and take on the job.
- If a contractor submits a bid and is the lowest responsible bidder and refuses to sign the contract they will forfeit their bid bond.
- A bid bond must be submitted with a bid or the bid is automatically rejected.
- The bid bond is a minimum of 5% of the bid amount. A check can be submitted in lieu of the bid bond.

Payment Bond

- A payment bond is required to ensure all subcontractors and suppliers are paid.
- A subcontractor or material supplier cannot file a lien on state property.
- A surety company is the entity that provides the bond.
- The bond ensures payment when the prime refuses to pay for completed work.

Performance Bond

- This bond ensures that in the event the prime contractor is unable to complete the job, the surety will ensure that the job is completed.

Combination Bond

- MoDOT’s required bond form combines the payment and performance bond into a single document to reduce paperwork.

Payment for Bond

- The contract bond cost is included in the contractors bid. It is part of the contractors mobilization.
- The contractor may submit a request for an upfront reimbursement for the cost of the contract bond.
- The RE will issue a no cost change order to add a payment for this cost and reduce the cost of mobilization by an equal amount.

What is a surety?

- The definition of a surety is: a person who takes responsibility for another's performance of an undertaking, for example their appearing in court or the payment of a debt.
- A surety company is the entity that provides the bond. It is basically like an insurance company.
- The surety agent is who your correspondence goes through. They are similar to your local insurance agent who sells and administers your insurance policy.

Who can file a claim against the Surety?

- If a supplier or subcontractor is not paid for work or materials supplied they can file a claim with the surety.
- The pay dispute can be resolved between these parties and the prime contractor.
- MoDOT should not intervene in these pay disputes but should provide the surety information to any party contacting MoDOT about non or insufficient payments.

When does MoDOT engage a contractor's surety company?

- If a contractor is given a notification of default under any of the circumstances outlined in 108.10. Then a letter is sent to the surety agent and contractor to advise them of the actions required to remedy the default violation.
- If there is no remedy within 10 days a letter is sent to the surety agent and contractor declaring the contractor in default.

When does a surety take over the contract?

- The surety has 10 days after the declaration of default to take over the contract.
- The contractor and surety shall be liable for all expenses incurred in completing the work.
- Often the surety will retain the services of the original contractor to complete the work.
- If the surety does not proceed with the work MoDOT can contract to others and file a claim against the surety.

Liability for Costs

- The contractor and surety shall be liable for all cost and expenses incurred in completing the work, and for all liquidated damages in conformity with the contract.

What if the surety is non-responsive?

- A surety failing to proceed within ten days after declaration of default may be required to show cause why the surety should continue to be accepted for future bonds.
- The commission would decide if this surety is no longer allowed to bond MoDOT projects.