



Enterprise Services Procedure No. PRO-DES-190-00

Using Goods and Services Performance Bonds

Applies to: All decisions to obtain goods and services procurement bonds when conducted by state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in [RCW 28B.10.016](#) and correctional and other types of institutions in accordance with DES revised Policy #[POL-DES-190-00](#).

Effective date: April 26, 2021

Last update: N/A

Sunset review: 5 years from effective date

Approved by:  Chris Liu, Director

Related Policy No: [POL-DES-190-00](#)

Related FAQ No: [Agency Contract Reporting Frequently Asked Questions](#)

Required Form(s) No: N/A

Summary of Tasks

Action By	Action
Agency Staff	<p>1. Conduct a Risk Assessment to determine if a bond requirement is appropriate.</p> <p>a. Decide if a bond requirement is appropriate by balancing the separate considerations concerning the costs and benefits of requiring a bond, including analysis of the following questions:</p> <ul style="list-style-type: none"> i. Does the bond hinder or further the Agency’s operational need for <u>cost-effective and efficient procurement</u> (impact on the Agency); ii. Does the bond hinder or further bidder participation in <u>fair and open procurements</u> (impact on the bidder pool); iii. Does the bond hinder or further <u>state procurement priorities</u> (impact on the State); and iv. Does the bond hinder or further meaningful <u>opportunities</u> for innovative businesses, including small businesses, to participate in state procurement opportunities (impact on small and innovative businesses)? v. In addition, in considering whether to require bonds, procuring agencies should evaluate alternative operational and contractual options to secure timely, faithful contractual performance. vi. If the decision is made to use a bond, procedures pertinent to each bond type follow.
Agency Staff	<p>2. Steps to take if using a Bid Bond.</p>

Action By	Action
	<ul style="list-style-type: none"> a. <u>Inclusion in Solicitation</u> If the Agency requires a bid bond, the competitive solicitation must include a <u>specific requirement</u> for bidders to submit, as a responsive element, a bid bond. b. <u>Time Period</u> The competitive solicitation must specify the time period in which the bidder, if awarded, must execute the contract or forfeit the bid bond to the Agency. c. <u>Posting</u> If such a bond is required, the competitive solicitation must be posted for a minimum of twenty-one (21) calendar days before bids are due. d. <u>Amount</u> The amount of any required bid bond must be stated in the competitive solicitation either as a specified amount in dollars or as a percentage of the bidder's total bid, in dollars. Because bid bonds limit bidder participation and because the Agency's risk is limited (i.e., if the lowest responsive, responsible awarded bidder fails to enter into the contract and/or fails to timely provide a performance bond, if required, the Agency may contract with the next eligible bidder), in no event shall a competitive solicitation require a bid bond that exceeds ten percent (10%) of the bidder's bid or the stated contract value. e. <u>Accompany the Bid</u> If required, bid bonds must accompany the bid, reference the bid, and be made payable to the Agency. The bid bond must be irrevocable for the period of time set forth in the competitive solicitation. f. <u>Rejection</u> Bids submitted without a required bid bond must be rejected. g. <u>Forfeiture</u> In the event the awarded bidder does not timely execute the contract or fails to timely provide a performance bond, if required, its bid bond shall be forfeited to and become the property of the Agency. h. <u>Possession</u> The Agency shall hold the bid bonds. The Agency must promptly return all bid bonds to all bidders no later than the date of contract execution.
Agency Staff	<p>3. Steps to take if using a Protest Bond.</p> <ul style="list-style-type: none"> a. <u>Inclusion in Solicitation</u> If the Agency requires a protest bond, the competitive solicitation must include a specific requirement for bidders to submit, as a responsive element, a protest bond. b. <u>Posting</u> If such a bond is required, the competitive solicitation must be posted for a minimum of twenty-one (21) calendar days before bids are due. c. <u>Amount</u> The amount of any required protest bond must be stated in the competitive solicitation as a specified amount, in dollars. In no event shall a competitive solicitation require a protest bond that exceeds two percent (2%) of the stated contract value. d. <u>Accompany the Bid</u> If required, the protest bond must accompany the bid, reference the competitive procurement, and be made payable to the Agency. The protest bid bond must be irrevocable for the period of time set forth in the competitive solicitation. e. <u>Rejection</u> Bids submitted without a required protest bond must be rejected. f. <u>Forfeiture</u> Any bidder may protest a procurement decision for any valid basis. If, however, if a bidder files a protest that is not based on the criteria set forth in the solicitation (i.e., that is not based on the criteria listed in the Enterprise Procurement Policy for Complaints and Protests, DES-170-00), and the protest is denied because it did not comply with DES-170-00, the bidder's Protest Bond shall be forfeited to the Agency. g. <u>Possession</u> The Agency shall hold the protest bonds. Unless forfeited as set forth herein, the Agency must promptly return all protest bonds to all bidders no later than the date of contract execution.

Action By	Action
Agency Staff	<p>4. Steps to take if using a Performance Bond.</p> <ul style="list-style-type: none"> a. <u>Inclusion in Solicitation</u> If the Agency requires a performance bond, the competitive solicitation must include a specific requirement that, if awarded, the bidder must timely provide a performance bond in the amount specified in the competitive solicitation. b. <u>Posting</u> If such a bond is required, the competitive solicitation must be posted for a minimum of twenty-one (21) calendar days before bids are due. c. <u>Proof of Ability</u> If a performance bond is required, proof of ability to provide a performance bond must accompany the bid. d. <u>Rejection</u> Bids submitted without such confirmation must be rejected. e. <u>Amount</u> If required, the performance bond shall be in an amount of up to 100% of the bidder's bid (the contract value) at the Agency's discretion and, unless the Agency makes a written determination that it is in the Agency's best interest to grant an extension, the performance bond must be in the possession of the Agency, or its designee, at or before contract execution. The performance bond must reference the contract and be payable to the Agency. f. <u>Possession</u> The Agency must promptly return the performance bond upon satisfactory contract completion. g. <u>Forfeiture</u> In the event the contractor does not complete satisfactory performance, the Agency will give notice of its intent to terminate the contract, following the procedures as described in its contract. If the contractor still does not provide satisfactory performance, the Agency may redeem the performance bond and the contract will be terminated. h. <u>Annual Filing Option</u> Bidders who regularly do business with the state must be permitted to file an annual performance bond in an amount established by the Agency in lieu of furnishing individual bonds.
Agency Staff	<p>5. Fulfilling financial requirements for bonds and alternative forms of security to a bond requirement.</p> <ul style="list-style-type: none"> a. Bonds must be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management service list of approved bonding companies which is published annually in the Federal Register, or by a Washington domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide licensed to write surety bonds. b. In addition, the bond must be written by a surety or insurance company that is currently licensed to do business in the State of Washington.

History

Adopted

April 26, 2021