

Using Goods and Services Procurement Bonds

Related Policy: [POL-DES-190-00](#)

Related Procedure: [PRO-DES-190-00](#)

Required Form: N/A

PUBLISH DATE: April 26, 2021

- 1. Question:** What is a bond?
Answer: A bond is an agreement between three parties: the Agency, the bidder, and a third party (the surety). The surety accepts liability and guarantees that something will occur – either that a bidder will behave in a particular way (bid bond), or that a protestor will present a valid protest (protest bond), or that a contractor will perform as promised (performance bond).
- 2. Question:** When and why would you use a bond?
Answer: A bond is useful as a method for managing risks associated with certain elements of a procurement and to assure that they will occur as anticipated. However, bonds must be used with caution because they can be anticompetitive in their effect and can add costs to the procurement. A risk assessment tool for analyzing whether to use a bond is included in the [Procurement Bond Procedure](#).
- 3. Question:** Performance bonds can add to the cost of a contract. Are agencies required to use them?
Answer: No. Agencies must conduct a cost-benefit analysis to determine whether it is appropriate to use a performance bond to ensure a contractor's performance.
- 4. Question:** Does an Agency have discretion to determine the amount of a performance bond?
Answer: Yes. In addition to performing a cost-benefit analysis to determine whether or not to require a performance bond (see FAQ #3 above), agencies should also conduct a cost-benefit analysis to determine what amount is appropriate for the performance bond. This cost-benefit analysis must take into consideration the possible anti-competitive effect of a large bond requirement.
- 5. Question:** What is the resource used for making a “Responsible bidder determination” as referenced in paragraph #6 of the policy?
Answer: “Responsible bidder determination” is defined in [RCW 39.26.160](#)(2) and (3):
(2) In determining whether the bidder is a responsible bidder, the agency must consider the following elements:
(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
(c) Whether the bidder can perform the contract within the time specified;
(d) The quality of performance of previous contracts or services;
(e) The previous and existing compliance by the bidder with laws relating to the contract or services;

- (f) Whether, within the three-year period immediately preceding the date of the bid solicitation, the bidder has been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in [RCW 49.48.082](#), any provision of chapter [49.46](#), [49.48](#), or [49.52](#) RCW; and
- (g) Such other information as may be secured having a bearing on the decision to award the contract.

- (3) In determining the lowest responsive and responsible bidder, an agency may consider best value criteria, including but not limited to:
 - (a) Whether the bid satisfies the needs of the state as specified in the solicitation documents;
 - (b) Whether the bid encourages diverse contractor participation;
 - (c) Whether the bid provides competitive pricing, economies, and efficiencies;
 - (d) Whether the bid considers human health and environmental impacts;
 - (e) Whether the bid appropriately weighs cost and non-cost considerations; and
 - (f) Life-cycle cost.

6. Question: What is “escrow”?

Answer: “Escrow” is a financial instrument. An escrow can be anything of value (such as money, securities, funds, and other assets) that is held by a third party on behalf of two other parties that are in the process of completing a transaction. The third parties are typically banks, escrow companies, or financial services companies.

7. Question: Are there agencies that have separate statutory authority to use bonds?

Answer: Yes. Below is a partial list of such agencies, compiled on October 2, 2020.

- Department of Natural Resources - [RCW 79.10.480](#)
- Utilities and Transportation Commission - [RCW 80.36.350](#) (telecom), [RCW 80.28.375](#) (solar), [RCW 78.60.130](#) (geothermal)
- Washington State Department of Transportation - [RCW 47.28.030](#), [.170](#) (highways)
- Office of Minority and Women’s Business Enterprises - [RCW 39.19.170](#) (prohibits performance bonds for capital projects costing <\$25k)
- Department of Ecology - [RCW 90.58.030](#) (site restoration), [RCW 70A.500.290](#) (Electronic Product recycling)
- Irrigation Districts - [RCW 90.58.030](#)
- Department of Fish and Wildlife - [RCW 77.65.320](#) (wholesale fish sellers - \$2k max)
- Water-Sewer Districts - [RCW 57.08.120](#)
- Public Utility Districts - [RCW 54.04.080](#)
- Electricity-Generating Districts - [RCW 43.52.612](#)
- Public Works Contractor Bonds - [RCW 39.08.010](#)
- Public Works Small Works Roster - [RCW 39.04.155](#)
- Solid Waste Disposal - [RCW 36.58.090](#)
- City Monorail Authority - [RCW 35.95A.050](#)
- City Solid Waste Disposal - [RCW 35.21.156](#)
- Drainage Districts - [RCW 85.06.180](#)
- Diking Districts - [RCW 85.05.180](#)

These statutes (other than the DFW regulation of fish sellers) are related to construction projects.