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Office of the  
Inspector General  
Commonwealth of Massachusetts

**Gregory W. Sullivan**  
Inspector General

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Guide to Bonding  
Requirements Under  
Construction Reform

April 2005

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The Commonwealth of Massachusetts  
Office of the Inspector General

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Dear Public Official:

Contractors and subcontractors on public building construction and public works projects are required, under certain circumstances, to post bonds with the public jurisdiction before they may proceed with their work. Recent construction reform legislation affirmed this requirement.

The Office of the Inspector General prepared this guide to help public officials ensure adequate protection for all public building construction and public works projects through the effective use of construction bonds.

A construction bond is a mechanism for transferring risk. In effect, this is insurance. Construction bonds, also known as performance and payment bonds (and, in some cases, bid bonds), shift the risk of contractor defaults from the public project owner to a surety company, which issues the bond. In the event of a contractor default, the surety company remedies the situation, not the government and the taxpayer. To ensure the best protection possible, public project owners should ensure that due diligence is performed on the surety company before accepting a contractor or subcontractor bond on a project. This will ensure adequate protection and that the taxpayers are getting the coverage they are paying for.

We hope this guide assists public officials to prevent problems before they occur. As always, I welcome your suggestions. Please do not hesitate to contact my staff with any questions you may have.

Sincerely,

*Gregory W. Sullivan*

Gregory W. Sullivan  
Inspector General

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## ***Section One: Public Construction Reform and Construction Bonds***

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The enactment of Chapter 193 of the Acts of 2004, entitled *An Act Further Regulating Public Construction in the Commonwealth* changed, among other things, statutes, thresholds, and procedures to be followed for public building construction and public works projects. This reform law contains some of the most significant revisions to the public procurement process in nearly a quarter century. A significant change brought about through this reform is that filed sub-bid contractors must now furnish payment and performance bonds (also known as construction bonds) on projects where prequalification is required or used by the awarding authority.

Subcontractors who are unable to perform can seriously delay a project or bring it to a halt, particularly if the subcontractor is responsible for a significant portion of the contract or is a specialty contractor that is difficult to replace. Two significant risk factors for a public construction project are the subcontractors' inability to fulfill their contractual obligations and their right to file mechanics' liens.<sup>1</sup> Performance and payment bonds offer substantial protections from both.

Prequalification of both general contractors and subcontractors is now mandatory on all public building construction projects with estimated construction costs of \$10 million or more (unless the project is undertaken by an exempt agency) and certain public works projects. Prequalification is optional at the discretion of the awarding authority where the estimated construction costs are greater than \$100,000 but less than \$10 million.

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<sup>1</sup> An encumbrance or charge on a building and its site to assure priority of payment for labor, services or material. Through "perfecting" a lien, the technical term for establishing an enforceable mechanic's lien, the owner's title to the property is subject to a superior interest that will have to be addressed before the owner can restore clear title.

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## ***Section Two: What is a Construction Bond?***

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A construction bond is a form of insurance. It is a three party agreement where the surety company provides assurance to the owner (such as a public agency) that the principal (contractor or subcontractor) will perform its obligations under a contract. Bonds issued by a surety used in construction are called construction bonds. Through construction bonds, the risk of contractor default is shifted from the project owner (a government or private entity) to a surety company. In the event of a contractor default, the surety company assumes the cost of the default – not the government or the taxpayer. Construction bonds provide some protection by screening out unqualified contractors. Before a surety company issues a bond, it conducts a review, called underwriting, to determine whether the principal is capable of performing a contract.

In the United States, virtually all public construction work is accomplished through private sector firms. This work is generally awarded to the lowest responsible bidder through a competitive bidding process. Construction bonds play a critical role in enabling this system to work. In most cases, bid, performance and payment bonds are required by law on public construction projects. Construction bonds provide protection to nearly all public construction projects across the country. Based on the latest available Dun and Bradstreet *Business Failure Record* report, more than 80,000 construction contractors nationwide failed between 1990 and 1997, which resulted in more than \$21 billion in liabilities for unfinished projects. In most instances of contractor defaults on public construction projects, the taxpayers were protected against losses because surety companies provided the resources necessary to complete the projects.

In addition to fulfilling the contract in the event of contractor default, surety companies can provide other important project related benefits. Surety companies conduct a qualification process that helps determine if a contractor will be able to fulfill required contract obligations. Technical, financial and management assistance may also be provided to contractors by surety companies as a means of preventing default. In some cases surety companies may require a personal or corporate indemnity from the contractor, which in turn makes it more likely that the contractor will complete the



project. This indemnity provides assurance that the surety company can recover its losses from the principal or its assets. Also, in the case of a payment bond, a subcontractor would not need to file a lien on the project, since the subcontractor is guaranteed payment through the surety company in the event the general contractor defaults on his payment agreement with the subcontractor.

### ***Section Three: Types of Construction Bonds***

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The three basic types of construction bonds are highlighted below. The primary purpose of these bonds is to assure project owners that the contractor is qualified to bid and build the project.

<ul style="list-style-type: none"><li>• Bid Bond</li></ul>	<ul style="list-style-type: none"><li>• Provides assurance that the contractor or subcontractor has submitted a bid in good faith, and can and will enter into the contract at the bid price. It also provides assurance that the contractor or subcontractor can provide the required performance and payment bonds.</li></ul>
<ul style="list-style-type: none"><li>• Performance Bond</li></ul>	<ul style="list-style-type: none"><li>• Provides protection from financial loss to the project owner should the contractor or subcontractor fail to perform according to the terms and conditions of the contract.</li></ul>
<ul style="list-style-type: none"><li>• Payment Bond</li></ul>	<ul style="list-style-type: none"><li>• Provides assurance that specified subcontractors, laborers and suppliers associated with the project will be paid in the event of default by the contractor.</li></ul>

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## ***Section Four: Massachusetts Statutory Public Construction Bid Deposit and Bonding Requirements***

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The following listing outlines the Massachusetts requirements for bid deposits and bid bonds during the procurement phase of a public construction project. It also covers public construction bonding requirements for contractors and subcontractors. [Appendix B](#) of this report contains an accompanying chart.

### **M.G.L. c. 149 Public Building Project Contracts**

#### **1. Building construction contracts estimated to cost less than \$10,000.**

In the case of a city or town (or other political subdivision), if the contract exceeds \$2000, the contractor must furnish a payment bond in the amount of at least 50 percent of the contract price. [M.G.L. c. 149, §29]

In the case of the commonwealth, if the contract exceeds \$5,000, the contractor must furnish a payment bond in the amount of at least 50 percent of the contract price. [M.G.L. c. 149, §29]

#### **2. Building construction contracts estimated to cost between \$10,000 and 25,000.**

The selected contractor must furnish a payment bond in the amount of at least 50 percent of the contract price. [M.G.L. c. 149, §29]

#### **3. Building construction contracts estimated to cost between \$25,000 and \$100,000.**

Bidders must submit a five percent bid deposit with their bids. (The bid deposit may be in the form of a bid bond issued by a surety company; a certified, treasurer's or cashier's check drawn on a responsible bank or trust company payable to the awarding authority; or cash.) [M.G.L. c. 149, §44A(2)(C) and M.G.L. c. 30, §39M(a)]

The selected contractor must furnish a payment bond in the amount of at least 50 percent of the contract price. The contractor has ten days from the date of notification of the contract award to obtain the payment bond. The public owner is not required to obtain a performance bond, although you may decide to do so. [M.G.L. c. 149, §29 and M.G.L. c. 30, §39M(a)]

**4. Building construction contracts estimated to cost between \$100,000 and \$10 million (with no prequalification).**

*(Note: Prequalification is optional at the discretion of the public owner where the estimated construction costs are greater than \$100,000 but less than \$10 million. If optional prequalification is implemented, the bonding requirements in Section 5 below must be followed.)*

Bidders must submit a five percent bid deposit with their bids. (The bid deposit may be in the form of a bid bond issued by a surety company; a certified, treasurer's or cashier's check drawn on a responsible bank or trust company payable to the awarding authority; or cash.) [M.G.L. c. 149, §44B(2)]

- **General Bidders:** The selected contractor must furnish payment and performance bonds in the amount of 100 percent of the contract price. General bidders have five working days to execute the general contract and furnish the payment and performance bonds. [M.G.L. c. 149, §44E(2) ¶ E]
- **Sub-bidders:** Filed sub-bidders must include a five percent bid deposit with their bids. (The bid deposit may be in the form of a bid bond issued by a surety company; a certified, treasurer's or cashier's check drawn on a responsible bank or trust company payable to the awarding authority; or cash.) [M.G.L. c. 149, §44B(2)] (Building contracts estimated to cost more than \$100,000 are subject to a unique requirement, filed sub-bidding, that does not apply to smaller building contracts or to public works construction contracts. M.G.L. c. 149 contains 17 filed sub-bid categories of work [M.G.L. c. 149, §44F(1)(2)]. A public owner must solicit filed sub-bids when the work in a filed sub-bid category is estimated to cost more than \$20,000.)

The general contractor may require filed sub-bidders to provide payment and performance bonds. Whether the general contractor will require sub-bidders to post a bond is indicated on the general contractor's bid form. The premiums on performance and payment bonds that are requested by the general contractor and not required by statute are payable by the general contractor. [M.G.L. c. 149, §44F(2)(D)]

**5. Building construction contracts estimated to cost between \$100,000 and \$10 million (with prequalification).**

*(Note: For building projects with an estimated cost of between \$100,000 and \$10 million, public owners may implement an optional contractor and subcontractor prequalification process. If the public owner opts to use prequalification, payment and performance bond premium costs are payable by the selected general contractor or subcontractors. )*

Bidders must submit a five percent bid deposit with their bids. (The bid deposit may be in the form of a bid bond issued by a surety company; a certified,

treasurer's or cashier's check drawn on a responsible bank or trust company payable to the awarding authority; or cash.) [M.G.L. c. 149, §44B(2)]

- **General Bidders:** In order to be prequalified as an eligible bidder, a general contractor must submit with its statement of qualifications a commitment letter from a surety company (licensed to do business in the commonwealth and whose name appears on the United States Treasury Department Circular 570) for payment and performance bonds equal to 100 percent of the estimated contract value. [M.G.L. c. 149, §44D½(e)(4)(i)] Upon being awarded a contract, the general contractor shall obtain payment and performance bonds equal to 100 percent of the actual contract value. [M.G.L. c. 149, §44E]
- **Sub-bidders:** In order to be prequalified as an eligible sub-bidder, a subcontractor must submit with its statement of qualifications a commitment letter from a surety company (licensed to do business in the commonwealth and whose name appears on the United States Treasury Department Circular 570) for payment and performance bonds equal to 100 percent of the estimated subcontract value. [M.G.L. c. 149, §44D¾(e)(4)] Upon being awarded a contract, the subcontractors shall obtain payment and performance bonds equal to 100 percent of the actual subcontract value. [M.G.L. c. 149, §44F(2)(D)]

## **6. Building construction contracts estimated to cost over \$10 million.**

*(Note: For building projects with estimated cost of more than \$10 million, public owners must implement a contractor and subcontractor prequalification process. For contracts estimated to cost \$10 million or more you will solicit bids and filed sub-bids only from general bidders and filed sub-bidders that have been prequalified by your jurisdiction using the statutory procedures. Bond premium costs are payable by the selected general contractor or subcontractors.)*

Bidders must submit a five percent bid deposit with their bids. (The bid deposit may be in the form of a bid bond issued by a surety company; a certified, treasurer's or cashier's check drawn on a responsible bank or trust company payable to the awarding authority; or cash.) [M.G.L. c. 149, §44B(2)]

- **General Bidders:** In order to be prequalified as an eligible bidder, a general contractor must submit with its statement of qualifications a commitment letter from a surety company (licensed to do business in the commonwealth and whose name appears on the United States Treasury Department Circular 570) for payment and performance bonds equal to 100 percent of the estimated contract value. [M.G.L. c. 149, §44D½(e)(4)(i)] Upon being awarded a contract, the general contractor shall obtain payment and performance bonds equal to 100 percent of the actual contract value. [M.G.L. c. 149, §44E]

- **Sub-bidders:** In order to be prequalified as an eligible sub-bidder, a subcontractor must submit with its statement of qualifications a commitment letter from a surety company (licensed to do business in the commonwealth and whose name appears on the United States Treasury Department Circular 570) for payment and performance bonds equal to 100 percent of the estimated subcontract value. [M.G.L. c. 149, §44D¾(e)(4)] Upon being awarded a contract, the subcontractors shall obtain payment and performance bonds equal to 100 percent of the actual subcontract value. [M.G.L. c. 149, §44F(2)(D)]

### **Public Works Construction Contracts**

#### **7. Public works construction contracts estimated to cost less than \$10,000.<sup>2</sup>**

No bid deposit requirement.

Payment bonds are required for public works projects, with threshold amounts depending on whether the awarding authority is the commonwealth (over \$5,000) or other public agency (over \$2,000). [M.G.L. c. 149, §29] Contractors must post a payment bond in an amount that is not less than 50 percent of the total contract price. (Often public owners use their discretion and require a 100 percent payment bond.)

#### **8. Public works construction contracts estimated to cost more than \$10,000.<sup>3</sup>**

Bidders must submit a five percent bid deposit with their bids. (The bid deposit may be in the form of a bid bond issued by a surety company; a certified, treasurer's or cashier's check drawn on a responsible bank or trust company payable to the awarding authority; or cash.) [M.G.L. c. 30, §39M(a)]

Contractors must post a payment bond in an amount that is not less than 50 percent of the total contract price. [M.G.L. c. 149, §29] (Often public owners use their discretion and require a 100 percent payment bond.)

If the public owner is receiving M.G.L. c. 90 funds and the contract amount is over \$50,000, the contractor must be prequalified by MassHighway and must, within 10

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<sup>2</sup> Bids for public works projects estimated to cost up to \$25,000 may also be obtained under M.G.L. c. 30B, §5, which has no bid deposit requirements. Projects bid under M.G.L. c. 30B, §5, however, still require contractors to furnish a 50 percent payment bond. [M.G.L. c. 149, §29 and M.G.L. c. 30, §39M(d)(4)]

<sup>3</sup> Bids for public works projects estimated to cost up to \$25,000 may also be obtained under M.G.L. c. 30B, §5, which has no bid deposit requirements. Projects bid under M.G.L. c. 30B, §5, however, still require contractors to furnish a 50 percent payment bond. [M.G.L. c. 149, §29 and M.G.L. c. 30, §39M(d)(4)]

days of the notification of the contract award obtain a payment bond in the amount of at least 50 percent of the contract price, issued by a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority. Performance bonds on public works projects are not required by statute but often public owners will use their discretion and require performance bonds in the amount of 100 percent of the bid price. [M.G.L. c. 30, §39M(a) and (c) and M.G.L. c. 29, §8B]

**9. Public works construction contracts estimated to cost more than \$25,000.**

Bidders must submit a five percent bid deposit with their bids. (The bid deposit may be in the form of a bid bond issued by a surety company; a certified, treasurer's or cashier's check drawn on a responsible bank or trust company payable to the awarding authority; or cash.) [M.G.L. c. 30, §39M(a)]

Contractors must post a payment bond in an amount that is not less than 50 percent of the total contract price. [M.G.L. c. 149, §29] (Often public owners use their discretion and require a 100 percent payment bond and performance bond.)

If the public owner is receiving M.G.L. c. 90 funds and the contract amount is over \$50,000, the prospective bidder must be pre-qualified in accordance with the requirements of M.G.L. c. 29, §8B, and the amount of the bidder's work shall be limited to its bonding capacity, as verified by a duly authorized surety company. [M.G.L. c.29, §8B]

**Construction Materials Contracts**

**10. Construction materials contracts.**

M.G.L. c. 30, §39M governs the purchase of construction materials for public works or public building projects in addition to regulating procurement of public works construction services. Alternatively, M.G.L. c. 30, §39M allows a local awarding authority to use M.G.L. c. 30B, §5 to purchase construction materials.

Material suppliers bidding under M.G.L. c. 30, §39M must submit a five percent bid deposit with their bids. (The bid deposit may be in the form of a bid bond issued by a surety company; a certified, treasurer's or cashier's check drawn on a responsible bank or trust company payable to the awarding authority; or cash.) [M.G.L. c. 30, §39M(a)]

There is no bid deposit required for materials suppliers bidding under M.G.L. c. 30B, §5.

There are no performance or payment bond requirements under M.G.L. c. 30, §39M or M.G.L. c. 30B, §5.



## **M.G.L. c. 149A Alternative Construction Delivery Method Contracts**

Construction management at risk (for building construction) and design build (for public works construction) have minimum dollar thresholds of \$5 million. (Use of the alternative delivery methods are not permissible on contracts estimated to cost less than \$5 million and without prior approval from the Office of the Inspector General.) [M.G.L. c. 149A, §1]

### **11. Construction management at risk contracts.**

#### **Construction management at risk firms:**

In the response to the request for qualifications, interested construction management at risk firms must provide a letter from a surety company confirming the ability to provide performance and payment bonds for the building project under consideration. [M.G.L. c. 149A, §5(d)(5)]

In the response to the request for proposals, the construction management at risk firm's technical proposal must contain a commitment letter from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570 stating the surety's willingness to bond the building project in the full sum of the contract at 110 percent of the budget for the building project. [M.G.L. c. 149A, §6(c)(2)(vii)]

Once a guaranteed maximum price is established, the selected construction management at risk firm must, within 5 business days of notification, furnish a performance and payment bond in the full sum of the guaranteed maximum price by a surety company licensed to do business in the commonwealth and whose name appears on the United States Treasury Department Circular 570. [M.G.L. c. 149A, §§5(a) and 7(b)(4)]

#### **Trade contractors:**

In the response to the request for qualifications, interested trade contractors must include a commitment letter for payment and performance bonds at 110 percent of the estimated trade contract value from a surety licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570. [M.G.L. c. 149A, §8(e)(4)]

In the response to the request for bids, interested trade contractors must post a five percent bid bond from a surety company licensed to do business in the commonwealth and whose name appears on U.S. Treasury Department Circular 570. The bid bond shall be returned to the bidder if the bidder is not selected as a trade contractor. (Certified, treasurer's, or cashier's checks and cash are not acceptable, as the statute requires a bond.) Any response submitted without the bid bond must be rejected. [M.G.L. c. 149A, §8(g)(11)]

All selected trade contractors must provide payment and performance bonds equal to 100 percent of the trade contract amount. Selected trade contractors must submit the required performance and payment bonds to the construction management at risk firm within 10 business days of receipt of the trade contract. [M.G.L. c. 149A, §8(a) and (i)]

## **12. Design build contracts.**

Phase one of the two-phase design build entity selection process requires interested design build entities to include a commitment letter from an approved surety evidencing the design build entity's bonding capacity equal to or in excess of the projected design build project budget amount. [M.G.L. c. 149A, §17(c)(3)]

Phase two of the selection process requires that responses from design build entities include a bid deposit in the amount of five percent of the value of the bid. (The bid deposit may be in the form of a bid bond issued by a surety company; a certified, treasurer's or cashier's check drawn on a responsible bank or trust company payable to the awarding authority; or cash.) [M.G.L. c. 149, §19(6)]

The design build entity shall obtain payment and performance bonds equal to 100 percent of the design build contract amount. [M.G.L. c. 149A, § 21]

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## ***Section Five: Construction Bond Due Diligence***

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### **Capabilities and Reputation of Surety Companies**

For public construction projects, construction bonds provide protection to taxpayers from contractor and subcontractor defaults. However, when the surety company defaults, the taxpayer is exposed. The insurance insolvency fund<sup>4</sup> in Massachusetts does not cover surety losses. Therefore it is imperative that before accepting a contractor's or subcontractor's bond, each governmental entity or project owner, verify that the bond is from a capable and reputable surety company. In Massachusetts, the surety company must be licensed to do business in the commonwealth. As with any product, know what you are purchasing and take a few minutes to know with whom you are dealing.

As a first step, contact the Division of Insurance (DOI) at One South Station, 5<sup>th</sup> Floor Boston, MA 02110-2208 or visit the DOI website to confirm that the surety company is licensed to do business in the commonwealth. DOI maintains a list of all insurers licensed in the commonwealth and this list is updated monthly (see [www.mass.gov/doi/Companies/FidelityAndSurety.pdf](http://www.mass.gov/doi/Companies/FidelityAndSurety.pdf)). DOI states that it conducts financial, legal and market reviews for each company as part of the licensing process. DOI also states that on an ongoing basis, it monitors the financial solvency of all insurance companies licensed to transact business in the commonwealth. DOI relies on the state of domicile for financial analyses of foreign companies (not domiciled in Massachusetts), supported by accreditation by the National Association of Insurance Commissioners (NAIC) an organization of insurance regulators. If the surety company is licensed in Massachusetts but is domiciled outside of the commonwealth, you should contact the state insurance department where the company is domiciled to get the most current information on the proposed company since it is this department which is responsible for performing periodic examinations of the company and usually will have the most information about the company.

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<sup>4</sup> An association of state licensed property/casualty insurers who are obligated to cover certain claims against insolvent insurers.

As a second step, check whether the surety company's name appears on the United States Treasury Department's Circular 570 and for any additional information regarding the surety company. The United States Department of the Treasury maintains a list of surety companies that it has qualified to write surety bonds required for federal construction projects. To be included on this list, companies must file financial and other information. One can access the Treasury List through the internet at [www.fms.treas.gov/c570/index.html](http://www.fms.treas.gov/c570/index.html). Note that under construction reform, for projects where contractor prequalification is required the surety company must appear in Circular 570. [M.G.L. c. 149, §§44D½ and 44D¾]

Often in conducting your due diligence on the surety company you may need additional assurance that the bonding company can meet its obligations. Therefore, as part of your review you should determine the solvency status of the proposed surety. By checking public records (through an internet search for example), you will be able to determine whether the company is in receivership and what actions are pending. Note that companies in receivership may still be licensed and authorized to underwrite insurance policies. The NAIC identifies several states (California, Florida, Illinois, New York, Ohio and Texas) which maintain on-line listings of companies in receivership that affect their state. Unfortunately, Massachusetts does not publish a similar reference. However, if you can ascertain that the subject company is also licensed in one of the six states above, you can check that state's website for receivership status.

## **Independent Ratings**

As an added precaution, it is highly recommended that as the project owner, you obtain an evaluation and analysis of the proposed surety company from an independent rating organization. Both the NAIC and the Surety Information Office (an industry sponsored information source) advise consumers to research the financial stability of insurance companies. For example, A.M. Best Company is a private publishing company that analyzes and rates insurance companies. A.M. Best Company provides detailed profiles and financial information on almost every insurance company operating in the United States. These profiles include an alphabetic rating and a financial size category for each

company. Other rating organizations include Dun & Bradstreet, Standard and Poor's, Moody's Investors Service, Fitch Ratings and Weiss Ratings Inc.

## **Bond Form Review**

Carefully review the provisions of the bond form. Ensure that all form data is correct and that the form is signed and dated. At a minimum, the bond form should clearly identify the following:

- Parties to the bond;
- Surety company's maximum financial obligation;
- The surety company's obligations under the bond;
- Reference to the applicable construction contract and specifications;
- A brief description of the project; and
- The location of the project.

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## ***Appendix A: List of Selected Resources for Construction Bonds***

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- **Massachusetts Division of Insurance**  
One South Station, 5<sup>th</sup> Floor  
Boston, MA 02110-2208  
Telephone: (617) 521-7794

Licenses companies that write surety bonds in the commonwealth and monitors the solvency of these licensees.

[www.mass.gov/doi/](http://www.mass.gov/doi/)

Companies Licensed for Fidelity and Surety in Massachusetts

[www.mass.gov/doi/companies/FidelityAndSurety.pdf](http://www.mass.gov/doi/companies/FidelityAndSurety.pdf)

- **Other State Insurance Websites**

California	<a href="http://www.insurance.ca.gov"><u>www.insurance.ca.gov</u></a>
Florida	<a href="http://www.fldfs.com"><u>www.fldfs.com</u></a>
Illinois	<a href="http://www.idfpr.com"><u>www.idfpr.com</u></a>
New York	<a href="http://www.ins.state.ny.us"><u>www.ins.state.ny.us</u></a>
Ohio	<a href="http://www.ohioinsurance.gov"><u>www.ohioinsurance.gov</u></a>
Texas	<a href="http://www.tdi.state.tx.us"><u>www.tdi.state.tx.us</u></a>

- **Surety Association of America (SAA)**

A non-profit trade association consisting of companies engaged in the business of suretyship. SAA represents approximately 500 companies that collectively underwrite the overwhelming majority of surety bonds written in the United States.

[www.surety.org](http://www.surety.org)

- **Surety Information Office (SIO)**

SIO is an information source for contract surety bonds. SIO is supported by the National Association of Surety Bond Producers (NASBP) and the Surety Association of America (SAA). SIO distributes information on the benefit of contract surety bonds in public and private construction.

[www.sio.org](http://www.sio.org)



- **National Association of Insurance Commissioners (NAIC)**

NAIC is an organization of insurance regulators from the 50 states, the District of Columbia and the four U.S. territories. NAIC provides a forum for the development of uniform policy.

[www.naic.org](http://www.naic.org)

- **U. S. Department of the Treasury**

The United States Department of the Treasury maintains a list of surety companies that it has qualified to write surety bonds on federal government projects. Companies must file financial and other information to be included on the list. This “Treasury List” may be accessed directly from the internet at:

[www.fms.treas.gov/c570/index.html](http://www.fms.treas.gov/c570/index.html)

- **Rating Organizations**

These organizations provide analyses and ratings for almost every insurance company operating in the United States.

A.M. Best Company

[www.ambest.com](http://www.ambest.com)

Dun & Bradstreet

[www.dunandbradstreet.com](http://www.dunandbradstreet.com)

Fitch Ratings

[www.fitchratings.com](http://www.fitchratings.com)

Moody's Investors Service

[www.moody's.com](http://www.moody's.com)

Standard & Poor's

[www.standardandpoors.com](http://www.standardandpoors.com)

Weiss Ratings Inc.

[www.weissratings.com](http://www.weissratings.com)

***Appendix B: Massachusetts Statutory Public Construction  
Bid Deposit and Bonding Requirements Chart***

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## Massachusetts Public Construction Bid Deposit and Bonding Requirements

M.G.L. c. 149 Public Building Projects							
	<\$2,000	\$2,000-\$25,000 (\$5,000 threshold for commonwealth contracts)	\$25,000-\$100,000 (c.30, 39M)	\$100,000 - \$10 million if prequalification option <u>not</u> used		\$100,000 - \$10 million if prequalification option used and \$10 million and over (prequalification mandatory)	
				<b>General contractor requirements</b>	<b>Filed sub-bidder requirements if contract &gt;\$20,000</b>	<b>General contractor requirements</b>	<b>Filed sub-bidder requirements if contract &gt;\$20,000</b>
<b>Bid Deposits</b>	Not required	Not required	5% bid deposit	5% bid deposit	5% bid deposit	5% bid deposit	5% bid deposit
<b>Payment Bonds</b>	Not required	50% payment bond	50% payment bond	100% payment bond	General contractor's option to require posting of bond.	<ul style="list-style-type: none"> <li>A commitment letter for 100% payment bond must be submitted with the statement of qualifications.</li> <li>100% payment bond.</li> </ul>	<ul style="list-style-type: none"> <li>A commitment letter for 100% payment bond must be submitted with the statement of qualifications.</li> <li>100% payment bond.</li> </ul>
<b>Performance Bonds</b>	Not required	Not required	Not required	100% performance bond	General contractor's option to require posting of bond.	<ul style="list-style-type: none"> <li>A commitment letter for 100% performance bond must be submitted with the statement of qualifications)</li> <li>100% performance bond.</li> </ul>	<ul style="list-style-type: none"> <li>A commitment letter for 100% performance bond must be submitted with the statement of qualifications.</li> <li>100% performance bond.</li> </ul>

## Massachusetts Public Construction Bid Deposit and Bonding Requirements, continued

Public Works Projects						
M.G.L. c. 30, §39M				M.G.L. c. 30B, §5		
	<\$2,000	\$2,000-\$10,000 (\$5,000 threshold for commonwealth contracts)	>\$10,000	<\$2,000	\$2,000- \$25,000	You may <u>not</u> use c. 30B, §5 to procure public works projects >\$25,000.
Bid Deposits	Not required	Not required	5% bid deposit	Not required	Not required	NOT APPLICABLE
Payment Bonds	Not required	50% payment bond for projects.	50% payment bond for projects.	Not required	50% payment bond for projects.	NOT APPLICABLE
Performance Bonds	Not required			Not required		NOT APPLICABLE
Construction Materials						
M.G.L. c. 30, §39M				M.G.L. c. 30B, §5		
	<\$10,000		\$10,000 or more	You may use c. 30B, §5 to procure construction materials. No threshold limit.		
Bid Deposits	Not required		5% bid deposit	Not required		
Payment Bonds	Not required			Not required		
Performance Bonds	Not required			Not required		

## Massachusetts Public Construction Bid Deposit and Bonding Requirements, continued

<b>M.G.L. c. 149A Construction Management at Risk (\$5 million or more, prequalification mandatory)</b>		
	<b>Construction Management at Risk Firm Requirements</b>	<b>Trade Contractor Requirements if contract &gt;\$20,000</b>
<b>Bid Bond</b>	Not required	5% bid bond
<b>Payment Bonds</b>	<ul style="list-style-type: none"> <li>▪ A letter from a surety company confirming the ability to provide a payment bond must be submitted with the statement of qualifications.</li> <li>▪ A commitment letter for 100% payment bond at 110% of project budget must be submitted with the technical proposal.</li> <li>▪ 100% of the guaranteed maximum price.</li> </ul>	<ul style="list-style-type: none"> <li>▪ A commitment letter for 110% of estimated trade contract value must be submitted with the RFQ response.</li> <li>▪ 100% payment bond.</li> </ul>
<b>Performance Bonds</b>	<ul style="list-style-type: none"> <li>▪ A letter from a surety company confirming the ability to provide a performance bond must be submitted with the statement of qualifications.</li> <li>▪ A commitment letter for 100% performance bond at 110% of project budget must be submitted with the technical proposal.</li> <li>▪ 100% of the guaranteed maximum price.</li> </ul>	<ul style="list-style-type: none"> <li>▪ A commitment letter for 110% of estimated trade contract value must be submitted with the RFQ response.</li> <li>▪ 100% performance bond.</li> </ul>
<b>M.G.L. c. 149A Design Build (\$5 million or more)</b>		
	<b>Design Build Entity Requirements</b>	
<b>Bid Deposits</b>	5% bid deposit (submitted with RFP response).	
<b>Payment Bonds</b>	<ul style="list-style-type: none"> <li>▪ A commitment letter for 100% payment bond must be submitted with the RFQ response.</li> <li>▪ 100% payment bond.</li> </ul>	
<b>Performance Bonds</b>	<ul style="list-style-type: none"> <li>▪ A commitment letter for 100% performance bond must be submitted with the RFQ response.</li> <li>▪ 100% performance bond.</li> </ul>	