

Subdivision bonds Part 1: What they are

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When a construction contractor – and for the purpose of this article, one that specializes in paving (concrete/asphalt, etc.) and utilities construction – is presented with bid specifications to either bid or negotiate a private construction contract for a new and/or ongoing development, it is arguable that in today's economy not many contractors will forgo said opportunity. It is prudent also for the contractor to confirm financing for this project by securing a funding set-aside letter from the developer's lending institution.

As a requirement under the contract, the contractor will generally be obligated to provide performance and payment bonds in the full amount of the contract. However, unlike performance/payment bonds, which carry a specific obligation, i.e., the contractor (principal) and surety agree to a) complete the contract pursuant to the contractual terms established and b) pay all material subcontractors and suppliers, subdivision bonds, also known as completion bonds, have the following characteristics:

- The bond guarantees to the obligee (generally a county or municipality) the completion of the project (paving, utilities, etc.), and generally incorporates the following language: the subdivision bond "constitutes a contract between the public entity and the principal, and it is understood by the principal that the approval of said map or plat of the above subdivision was obtained only by the undertaking of the principal to so comply with said regulations... Now therefore if the principal keeps and complies with all rules and regulations in the construction and maintenance of all streets, roads and/or drainage improvements in the above named subdivision, and that upon the approval of the construction of said streets, roads and/or drainage construction by the engineer (of the county or municipality), and upon the expiration of

1 year thereafter and the approval of such maintenance by said engineer, then this obligation shall be null and void; otherwise to remain in full force and effect."

- Unlike a performance bond, in which the principal contractor may either lien the project on a private development or sue for payment in the event of non-payment, a subdivision bond differs in that the principal contractor is bound to the municipality or other governmental entity and must complete the project and adhere to the language of the subdivision bond whether the principal contractor is paid or not.

- Lastly, the bond is generally renewed annually by the surety until all requirements (plat filed, maintenance period, etc.) have been met. This can generally span a period of years, making subdivision bonds even less attractive to the surety and contractor because they are difficult to cancel. –ld

Next month: Subdivision bonds Part II – Real-world issues

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Got excess materials?

The City of Houston's newest recycling jewel, **The Building Materials Reuse Warehouse**, held a grand opening Jun. 23.

Speakers at the event were representatives from the Mayor's Office of Environment

