



Ohio Revised Code

Section 5525.16 Contract performance bond and payment bond.

Effective: June 30, 2023

Legislation: House Bill 23

(A) Before entering into a contract, the director of transportation shall require a contract performance bond and a payment bond with sufficient sureties, as follows:

(1) A contract performance bond in an amount equal to one hundred per cent of the contract amount, conditioned, among other things, that the contractor will perform the work upon the terms proposed, within the time prescribed, and in accordance with the plans and specifications, will indemnify the state against any damage that may result from any failure of the contractor to so perform, and, further, in case of a grade separation will indemnify any railroad company involved against any damage that may result by reason of the negligence of the contractor in making the improvement.

(2) A payment bond in an amount equal to one hundred per cent of the contract amount, conditioned for the payment by the contractor and all subcontractors for labor or work performed or materials furnished in connection with the work, improvement, or project involved.

(B) After entering into a contract and the initial issuance of a contract performance bond and payment bond in accordance with division (A) of this section, both of the following apply, as applicable:

(1) If the contract amount increases or decreases by forty thousand dollars or more during the term of the contract, the final bond amount shall be adjusted to account for the change from the original contract value to the actual final contract value. The director shall do all of the following:

(a) Determine the final bond premium amount for the contract performance bond and payment bond based on the actual final contract value;

(b) Finalize any bond premium adjustments after receiving written consent from the affected sureties confirming that the sureties increased or decreased the penal sums, as applicable;



(c) Determine what, if any, additional payments or refunds are necessary under the contract as a result of the adjusted final bond premium amount.

(2) A contractor shall provide the director with new surety bonds, in the form and amount required by this section, within twenty-one days of any of the following occurring to a surety providing a surety bond for the project:

(a) It is adjudged bankrupt or has made a general assignment for the benefit of its creditors;

(b) It has liquidated all assets or has made a general assignment for the benefit of its creditors;

(c) It is placed in receivership;

(d) It petitions a state or federal court for protection from its creditors;

(e) It allows its license to do business in this state to lapse or to be revoked.

(C)(1) In no case is the state liable for damages sustained in the construction of any work, improvement, or project under this chapter and Chapters 5501., 5503., 5511., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code.

(2) This section does not require the director to take bonds as described in division (A) or (B) of this section in connection with any force account work, but the director may require those bonds in connection with force account work.

(3) If any bonds taken under this section are executed by a surety company, the director may not approve such bonds unless there is attached a certificate of the superintendent of insurance that the company is authorized to transact business in this state, and a copy of the power of attorney of the agent of the company. The superintendent, upon request, shall issue to any licensed agent of such company the certificate without charge.

(4) The bonds required to be taken under this section shall be executed by the same surety, approved by the director as to sufficiency of the sureties, and be in the form prescribed by the attorney general.



(D) Any person to whom any money is due for labor or work performed or materials furnished in connection with a work, improvement, or project, at any time after performing the labor or furnishing the materials but not later than ninety days after the acceptance of the work, improvement, or project by the director, may furnish to the sureties on the payment bond a statement of the amount due the person. If the indebtedness is not paid in full at the expiration of sixty days after the statement is furnished, the person may commence an action in the person's own name upon the bond as provided in sections 2307.06 and 2307.07 of the Revised Code.

An action shall not be commenced against the sureties on a payment bond until sixty days after the furnishing of the statement described in this section or, notwithstanding section 2305.12 of the Revised Code, later than one year after the date of the acceptance of the work, improvement, or project.

(E) When the total contract amount is greater than five hundred million dollars, the director may authorize either of the following for purposes of meeting the requirements of division (A) of this section:

- (1) The issuance of multiple contract performance bonds or multiple contract payment bonds to meet the requirement that the bonding amount equals one hundred per cent of the contract amount;
- (2) The issuance of contract performance bonds and contract payment bonds in succession to align with the phases of the contract to meet the requirement that the bonding amount equals one hundred per cent of the contract amount.

(F) As used in this section:

- (1) "Improvement," "subcontractor," "material supplier," and "materials" have the same meanings as in section 1311.01 of the Revised Code, and "contractor" has the same meaning as "original contractor" as defined in that section.
- (2) "Actual final contract value" is the final sum of money, excluding any bond premium adjustments, that is paid by the department to the contractor as a result of the contractor completing



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the agreed upon work.