



Bonding in Certain Private Projects Advances in Oklahoma

Oklahoma SB 1053 would apply the existing state bond threshold for public buildings to improvements to private building on public property. As originally introduced, the bill also would have extended bonding to private buildings for which public funds are used. Current law requires a performance and payment bond on public building projects exceeding \$50,000. The bill passed the Senate yesterday, just in time to meet the crossover date.

Under the current law and practice, remote subcontractors, suppliers and workers can make a payment bond claim. In *Richards and Conover Steel Co. v. Nielsons, Inc.*, 755 P2d 644 (Okla. 1988), the Oklahoma Supreme Court held that payment bond coverage was not limited to only those contractors who had direct contractual relationship with prime contractor but extended out to every party who supplied labor and materials on public works project.

Under existing law, any person having a contractual relationship with a subcontractor can make a payment bond claim. In extending the bonding provisions to certain private projects, SB 1053 would amend this provision so that any person having a contractual relationship with a subcontractor, regardless of tier, can make a payment bond claim. Because of the state supreme court decision noted above, this amendment does not generate a remoteness issue in public contracts. In private contracts, however, it could be read to limit the ability of a general contractor to contractually limit the parties that can make a payment bond. In addition, current law remains unchanged in that the bond required is payable to the public contracting entity. Yet, in a private project on public property, the private owner would want the benefit of the bond.

SFAA believes that these are issues that the local contractors need to address as they don't directly impact the bond requirement.