



Understanding Public Construction Surety Bonds

Seminar Topic: This material explains the role of surety bonds in federal, state and local government construction project. Covers federal Miller Acts bonds, state bid bonds, and state performance and payment bonds. Explains the process for government agencies to pursue performance bond claims, and for unpaid trade subcontractors and suppliers to assert payment bond claims. Also discusses the rights, defenses and remedies of performance and payment bond sureties against both government agencies and the bonded principals.

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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About the Author and Presenter

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James G. McConnell concentrates in public and private construction contracting, arbitration and litigation. In his career of over 40 years, he has handled land acquisition, site remediation, zoning, contract drafting, financing, negotiations, arbitrations and lawsuits on major construction projects valued at more than \$19.2 billion. During these years he has represented public and private owners, developers, lenders, contractors, suppliers, and title insurers. He has performed legal work on projects in Illinois, California, Nevada, New York and Texas.

He received his law degree from Northwestern University School of Law in Chicago in 1973. He was admitted to practice in state and federal courts in Illinois in 1973, and he has been a member of the Northern District of Illinois Trial Bar since it was created in 1982. He was admitted to practice before the United States Court of Appeals in Chicago in 1973, and the United States Supreme Court in 1977. He has tried many civil jury cases in state and federal courts in Illinois, and he has been specially admitted as trial counsel in courts in seven other jurisdictions. He has handled numerous appeals, in the Illinois Appellate Court, the Illinois Supreme Court, United States Court of Appeals for the Seventh Circuit, and the United States Supreme Court.

Across his career as a trial lawyer, Mr. McConnell has represented clients in hundreds of cases involving complex construction claims, and other international commercial, financial and insurance issues, including the British Overseas Trade Board, J. C. Decaux, the Consul General of Mexico, the Public Building Commission of Chicago, Blue Cross/Blue Shield, Exelon Corporation, Bethlehem Steel, American Bridge Company, United States Steel, Youngstown Sheet & Tube, and Zenith Radio. He has handled litigation concerning such familiar construction projects as Chicago's Millennium Park, the John Hancock building, and the Sears Tower. He has served as an attorney and as an arbitrator in international construction and insurance claims.

Mr. McConnell is a national and international author and lecturer on public, private and international construction contracting. Most recently, he has been

involved in construction negotiations and disputes concerning Millennium Park's mixed public and private funded construction, Kennedy King Community College, Blue Cross/Blue Shield's Vertical Completion, homeland security improvements at the Port of Chicago, the Mexican Consulate in Chicago, the Illinois International Port District, Chicago's Central Police Headquarters, Harborside International Golf Center, Soldier Field, the Midwest Center for Green Technology, the Chicago Center for Children's Advocacy, Bronzeville Military Academy, and Chicago's Deep Tunnel storm runoff and flood control project. He has also handled litigation involving redevelopment of the former Glenview Naval Air Station property, the South Campus development of the University of Illinois at Chicago Circle, and the historic landmark Carson, Pirie, Scott & Company flagship store at State and Madison streets in Chicago.

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Table of Contents

Contents

Table of Contents	5
Timed Agenda:	6
Understanding Public Construction Surety Bonds.....	7
All Public Projects Are Bonded	7
Miller Act Bond Deadlines	7
Miller Act Bond Coverage	7
Illinois Bond Deadlines	7
Illinois Bond Coverage	8
Miller Act Claim Notice Information	8
Miller Act Lawsuit Information.....	8
Illinois Bond Claim Information.....	8
Illinois Bond Lawsuit Information.....	9
Types of Bonds	9
Bid Bonds.....	9
Performance Bonds	9
Payment Bonds.....	9

Timed Agenda:

Time	Description
00:00:00	Program Start
00:00:21	Introduction
00:01:35	Understanding Public Construction Surety Bonds
00:02:42	All Public Projects Are Bonded
00:03:12	Miller Act Bond
00:04:36	Miller Act Bond Deadlines
00:10:58	Miller Act Bond Coverage
00:13:50	Illinois Bond Deadlines
00:17:33	Illinois Bond Coverage
00:24:11	Miller Act Claim Notice Information
00:28:49	Miller Act Lawsuit Information
00:30:46	Illinois Bond Claim Information
00:34:34	Illinois Bond Lawsuit Information
00:38:43	Bid Bonds
00:50:04	Performance Bonds
01:10:11	Payments Bonds
01:17:52	Program End

Understanding Public Construction Surety Bonds

- Bid Bonds
- Performance And Payment Bonds
- Miller Act Bonds

All Public Projects Are Bonded

- Federal Ownership – Miller Act Bond
 - 40 United States Code Sections 270a-270d
- State or Local Ownership – Statutory Bond
 - 30 ILCS 550/0.01 *et. seq.*

Miller Act Bond Deadlines

- Notice to contractor – 90 days after last work – 40 USC 270b(a)
- Suit on Miller Act Bond – 1 year after last work – 40 USC 270b(b)
- Completing surety appeal to Board of Contract Appeals – 90 days after claim denial – 41 USC 606
- Completing surety Court of Claims suit – one year after claim denial – 41 USC 609(a)(3)

Miller Act Bond Coverage

- Costs of Completion
- Labor
- Construction materials
- Equipment fuel and repair parts
- Food for workers on site
- Rental cost for equipment and tools
- Consequential damages for interfering with subcontractor performance

Illinois Bond Deadlines

- Notice to government - 180 days after last labor or material – 30 ILCS 550/2



- Notice to contractor - 10 days after notice to government – 30 ILCS 550/2
- Suit on bond - six months after project accepted by government – 30 ILCS 550/2
- Completing surety – State project – 5 years after acceptance – 705 ILCS 505/22
- Completing surety – local project – 10 years after acceptance – 735 ILCS 5/13-206

Illinois Bond Coverage

- Costs of completion
- Unpaid labor and materials
- Repair of defective work
- Diminished value of completed project
- Delay damages
- Statutory damages for vexatious claims practices

Miller Act Claim Notice Information

- Surety identity and bond number
- Copies of contract, subcontract and bond
- Date last labor or materials supplied at site
- Amount received to date
- Balance Due

Miller Act Lawsuit Information

- Venue – Only in the United States District Court where the work was performed – 40 USC 270b(a)
- Trumps bankruptcy venue in a different District – *In re Gates Engineering* 104 B.R. 655 (Bankr. D. Del.1989)

Illinois Bond Claim Information

- Surety identity and bond number
- Copies of contract, subcontract and bond
- Date last labor or materials supplied at site
- Amount received to date

- Balance Due

Illinois Bond Lawsuit Information

- Venue:
 - Subcontractor and supplier claims: Judicial circuit where the work was performed
 - Completing surety claims: county in which contracting local entity has its “principal office.” 735 ILCS 5/2-103

Types of Bonds

Bid Bonds

- A guarantee that you provide to the project owner stating that you have the capability to take on and implement the project once you are selected during the bidding process.

Performance Bonds

- Promises an owner against the failure of the other party to meet obligations specified in the contract.
- Capua v. WE O'Neil Construction Co., 367 NE 2d 669 - Ill: Supreme Court 1977

Payment Bonds

- A surety bond posted by a contractor to guarantee that its subcontractors and material suppliers on the project will be paid.
- Board of Education of the Chicago of Chicago ex rel. Weil v Chicago Bonding and Surety Co., 218 Ill. App. 20 (1st Dist. 1920): 40 U.S.C. 270 b(a)