Procurement Resource Abstract

IJIS Institute

Title	Leaving Performance Bonds at the Door for Improved IT Procurement
Sponsoring Organization(s)	NASCIO in partnership with NASPO and TechAmerica
Publication Date	9/2012
Synopsis	This short but well-crafted paper addresses the issue of performance bonds in IT contracts. Among other things it describes what performance bonds are and their limitations. It makes the point that Performance Bonds often lead to significantly limited competition because smaller companies suffer from limited bonding ability by the surety market, and bond collateralization can create an adverse impact for smaller businesses. The article points out that even larger suppliers considering competing for IT contracts may be discouraged from competing by high bond percentage requirements because of the requirement that such bonds be disclosed on their balance sheets under new accounting rules which can lead to reduced competition. It makes the case that agencies can use other contractual remedies to ensure contractors meet expectations, or as a remedy to failing projects. It further makes a case that bonds, in high or low amounts, are not an effective means for protecting the agency since performance bonds are rarely, if ever, paid because years of litigation to determine the amount owed and disputes are usually settled. It cites cases where states that have passed legislation that eliminates the requirements for performance bonds have significantly increased competition and improved the timeliness of the procurement process. The article ends by recommending that states should consider the reasons for aligning risk assessments on IT projects and adjusting performance bond requirements if necessary. 1. A reasonable limitation of the application of the performance bond requirement will increase competition. States should seek to attract a sufficient quantity of bidders to ensure innovative solutions within budgeted funds. 2. States have other more effective contractual protections that are more effective than performance bonds, such as service level agreements in appropriate projects, warranties, and acceptance criteria. Some contractual provisions also operate as sufficient incentives for vendors to perform. 3. Performance bonds should not be broadly required because, in addition to changes in the claims surety market, the original intent has changed with emerging technologies: a. Bonds are difficult to secure, time consuming, and expensive to the states. b. Bond collection is rarely triggered under IT services contracts.

	c. Perhaps most importantly, the Federal government and several states have abandoned the requirement of performance bonds in IT service contracts.
Topic Areas	Legal and Contracting Issues
Web Reference	http://www.nascio.org/publications/documents/NASCIO_PerformanceBonds_August2012.pdf