

**Highways—Bonds, Surety, Highway Commission May Determine Amount of for Contractors.**

The Highway Commission may determine the amount of a surety bond to be furnished by a contractor.

March 5, 1920.

State Highway Commission,  
Helena, Montana.

Gentlemen:

I am in receipt of your letter with reference to rates for surety bonds on construction contracts.

The state cannot assume the responsibility for contractors' performance, Sec. 7 (a) of Chap. 170,, Sess. Laws 1917, as amended by Chap. 2 Sess Laws, Extra. Sess. 1919, containing the following provision:

“A contractor being awarded a contract for construction, improvement or maintenance work upon a State Highway, and before entering upon such work, shall execute to the State of Montana a bond to be approved by the President and to be conditioned for the faithful discharge of his duties under such contract.”

This provision cannot be waived, and under it a contractor must furnish the state with a bond conditioned for the faithful discharge of his duties under his contract.

However there is no statutory provision fixing the amount of the bond to be given, and unquestionably your commission may fix the amount of bond which the contractor must give, and in fixing the amount thereof may take into consideration the location of the work, its nature, etc. Under some conditions it might be advisable to require the contractor to give a bond for the full amount of his contract, while under other conditions the amount of the bond might be fixed at some percentage of the contract price, this being a matter wholly within the discretion of the commission.

If the commission has been in the practice of requiring the bond to be for the full amount of the contract price, the reducing of the amount of the bond would operate to reduce the amount of the premium, thus reducing the cost to the state.

I might suggest also that if your commission will advise me of the different surety companies giving bonds to the state under highway contracts, I will be glad to take the matter up with them and see if a reduction in rates cannot be secured.

Respectfully,

S. C. FORD,

Attorney General.