

The Law Offices of David Bransdorfer • 8102 Fulton Street East • Ada, Michigan 49301
Phone: (616) 682-5155 • Email: info@bransdorfer.net

[HOME](#) | [eLAW LIBRARY](#) | [FAQ ABOUT SURETY BONDS](#) | [FAQ SOBRE AVALES](#) | [50-STATE LITTLE MILLER ACT LINKS](#) | [NEW MEXICO STATUTES](#)

Notice Regarding Citation of these Laws

[Forward to § 13-4-19 NMS](#) > [§ 13-4-20 NMS](#)

The New Mexico "Little Miller Act"

New Mexico Statutes, Chapter 13, Public Purchases and Property, Article 4, Public Works Contracts, Sections 13-4-18 through 13-4-20

© 2009, State of New Mexico. All rights reserved.

13-4-18. Construction contract performance and payment bonds.

A. When a construction contract is awarded in excess of twenty-five thousand dollars (\$25,000), the following bonds or security shall be delivered to the state agency or local public body and shall become binding on the parties upon the execution of the contract. If a contractor fails to deliver the required performance and payment bonds, the contractor's bid shall be rejected, its bid security shall be enforced to the extent of actual damages. Award of the contract shall be made pursuant to the Procurement Code [13-1-28 NMSA 1978] in the following manner:

(1) a performance bond satisfactory to the state agency or local public body, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract; and

(2) a payment bond satisfactory to the state agency or local public body, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent of the price specified in the contract, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

B. The state purchasing agent or the central purchasing office may reduce the amount of the performance bond required prior to solicitation to not less than fifty percent of the contract price if it is determined to be less costly or more advantageous to the state agency or local public body to self-insure a part of the performance of the contractor.

C. The state purchasing agent or the central purchasing office may reduce the amount of the payment bond required prior to solicitation of not less than fifty percent of the contract price if it is determined that it is in the best interest of the state agency or local public body to do so. Factors to be considered in order to make such a determination include, but are not limited to:

(1) the value and number of subcontracts to be awarded by the contractor; and

(2) the value of the contract.

D. Nothing in this section shall be construed to limit the authority of the state agency or local public body to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection A of this section.

E. For contracts under twenty-five thousand dollars (\$25,000) the state agency or local public body may impose in its sole and complete discretion the requirements of Subsections A, B and C of this section.

13-4-19. Rights of person furnishing labor or material and right of state with respect to taxes due.

A. Every person, firm or corporation who has furnished labor or material in the prosecution of work provided for in such contract, in respect of which a payment bond is furnished under Section 13-4-18 NMSA 1978, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, and the state, in respect of which a payment bond is furnished under Section 13-4-18 NMSA 1978, by a contractor who does not have its principal place of business in New Mexico, for all taxes due arising out of construction services rendered under the contract, shall have the right to sue on such payment bond for the amount of the balance thereof unpaid at the time of the institution of such suit, and to prosecute such action to final execution and judgment for the sum or sums justly due him; provided, however, that any person having direct contractual relationship with a subcontractor, but no contractual relationship, express or implied, with the contractor furnishing such payment bond shall have a right of action upon said payment bond upon giving written notice to said contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed, and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business or his residence, or in any manner in which the service of summons in civil process is authorized by law.

B. Claimant in such suit shall notify the obligee named in the bond of the beginning of such action, stating the amount claimed, and no judgment shall be entered in such action within thirty days after giving such notice. The obligee and any person, firm, corporation or the state having a cause of action on such bond may be admitted on motion as a party to such action, and the court shall determine the rights of all parties thereto. If the amount realized on such bond be insufficient to discharge all claims in full, such amount shall be distributed among the parties entitled thereto pro rata.

C. Except for suits by the state with respect to taxes, which shall be brought in the name of the bureau of revenue [abolished], every suit instituted under this section shall be brought in the name of the state of New Mexico for the use of the person suing in the district court in any judicial district in which the contract was to be performed and executed, or where the claimant resides, but no such suit, including one brought by the bureau of revenue, shall be commenced after the expiration of one year after the date of final settlement of such contract. The date of final settlement herein shall be that date set by the obligee in the final closing and settlement of payment, if any, due the contractor. The state of New Mexico shall not be liable for the payment of any costs or expenses of any such suit.

D. The obligee named in said bond is authorized and directed to furnish to any person, firm or corporation making application therefor who submits an affidavit that he or it has supplied labor or materials for such work and payment therefor has not been made or that he or it is being sued on any such bond, or to the bureau of revenue [abolished], a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution and delivery of the original, and, in case final settlement of such contract has been made, a certified statement of the date of such settlement which shall be conclusive as to such demand upon it. Applicants shall pay for such certified copies and certified statements such fees as the obligee fixes to cover the cost of preparation thereof.

13-4-20. Additional bond in case of insolvency of sureties.

Whenever in its judgment any surety on such bond shall be insolvent, or for any cause is not a proper or sufficient surety, the obligee may require the contractor to furnish a new or additional bond or security within ten days; and thereupon, if the obligee shall so order, all work on said contract shall cease until such new or additional bond or security shall be furnished. If not furnished within said time, the obligee may at its option take over and complete said work as the agent and at the expense of the contractor and sureties, either doing the work on force account or letting the same by contract, and shall be entitled to use any equipment, materials and supplies of the delinquent contractor in completing said work.

[Back to § 13-4-18 NMS](#) < [§ 13-4-19 NMS](#)

[HOME](#) | [eLAW LIBRARY](#) | [FAQ ABOUT SURETY BONDS](#) | [FAQ SOBRE AVALES](#) | [50-STATE LITTLE MILLER ACT LINKS](#) | [NEW MEXICO STATUTES](#)

Website and compilation © 2010 The Law Offices of David Bransdorfer • 8102 Fulton Street East • Ada, Michigan 49301
Phone: (616) 682-5155 • Email: info@bransdorfer.net • No claim to government or other third-party works. All rights reserved.

The above statutory text was last reviewed for accuracy on July 11, 2009.