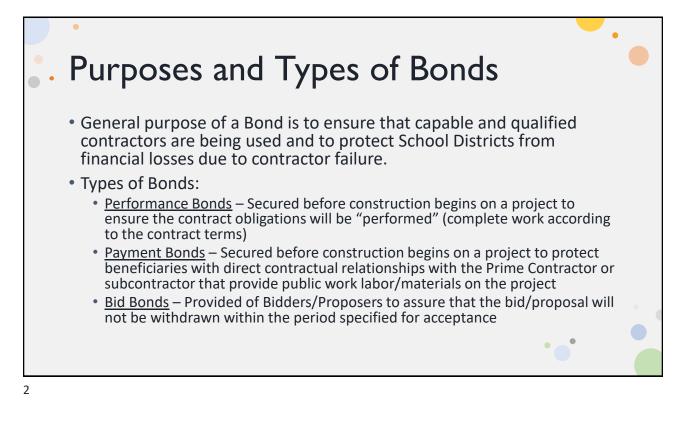


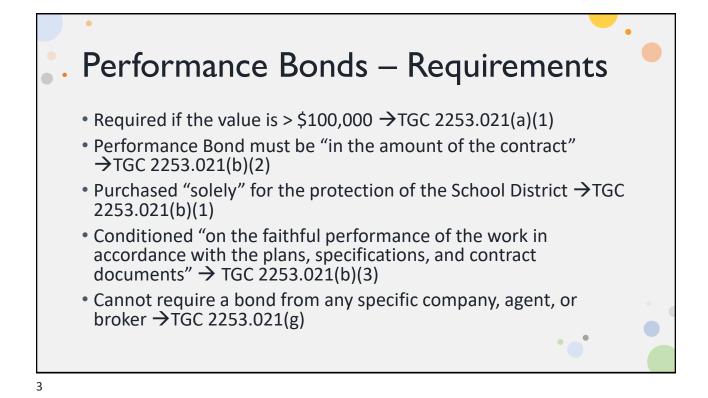
Bond Claims

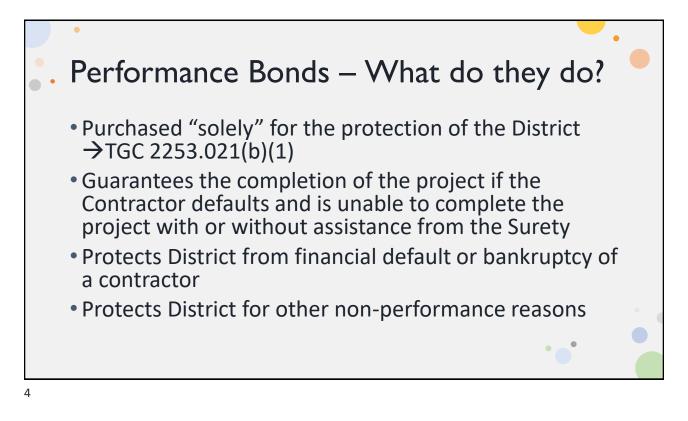
Requirements and Common Issues with Bond Claims Associated with Texas School Construction Projects



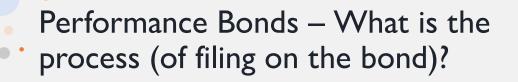
Trey H. Nesloney

Senior Associate

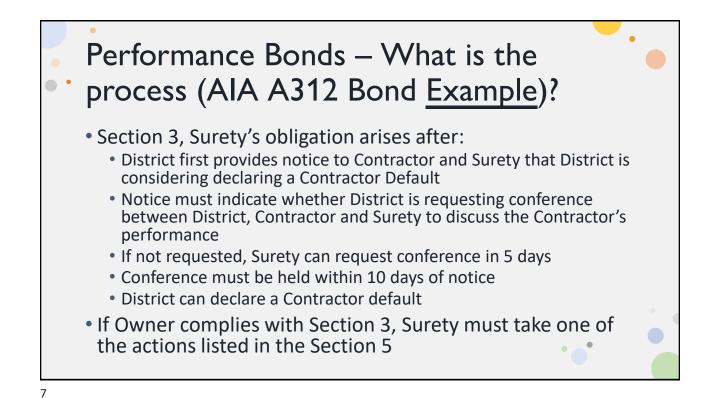


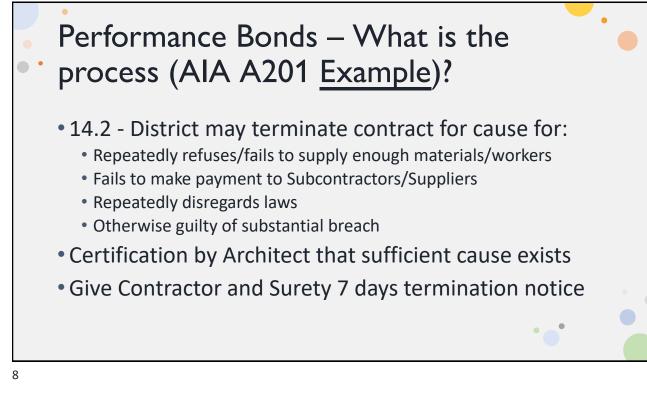


Performance Bond Tip – Keep Track of Your Project Periodically review the status of the project after it commences Be proactive, not reactive Interact with the design professional and contractor Keep records of issues and delays (others may not) Documentation can be used later to provide detail on reasons for filing on the Performance Bond

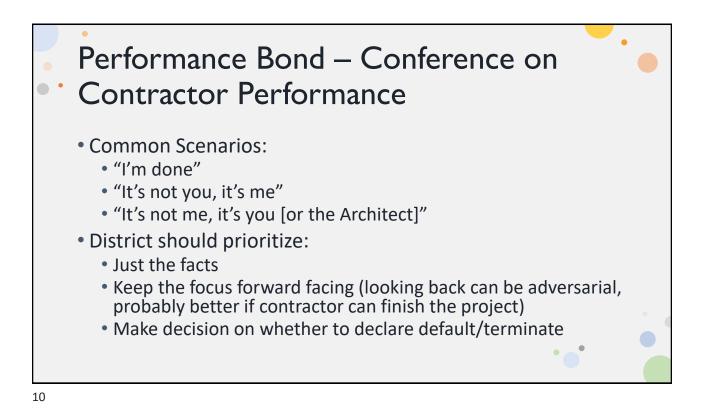


- Start with the language of the Performance Bond
- Many bonds have specific notice procedures and timelines
- Review contract documents for provisions on termination
- Recommendation is to consult legal counsel to secure performance under the bond
- Must take proper steps to invoke obligations of Surety





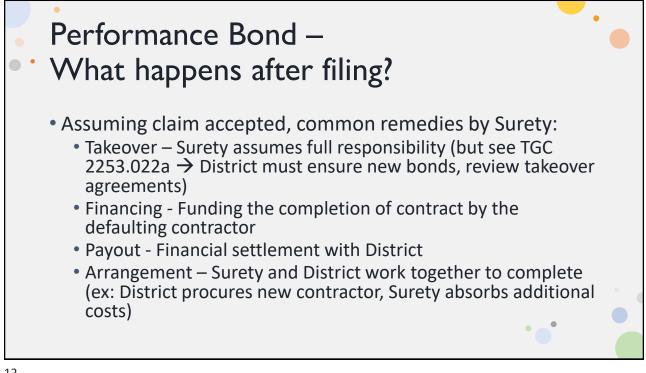
 Performance Bonds – What is the process? 		•
 File Notice of Intent to Declare a Default and Termination of Contract (AIA Example) Dual Notice Cite Contract provisions Give major facts Follow procedures in the Bond and Contract Participate in Conference if required/preferred 	•••	

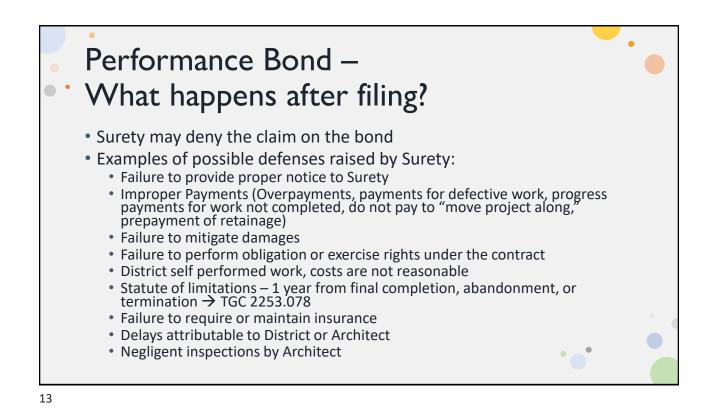


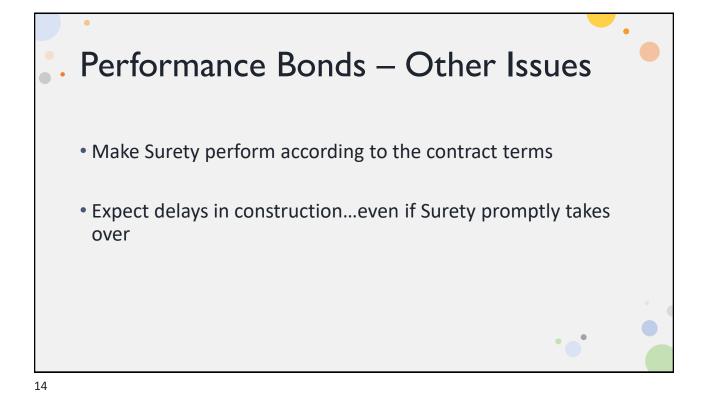
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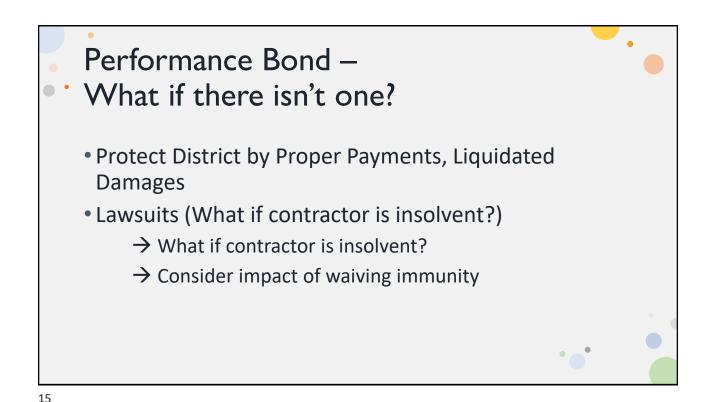
Performance Bond – Surety Investigation

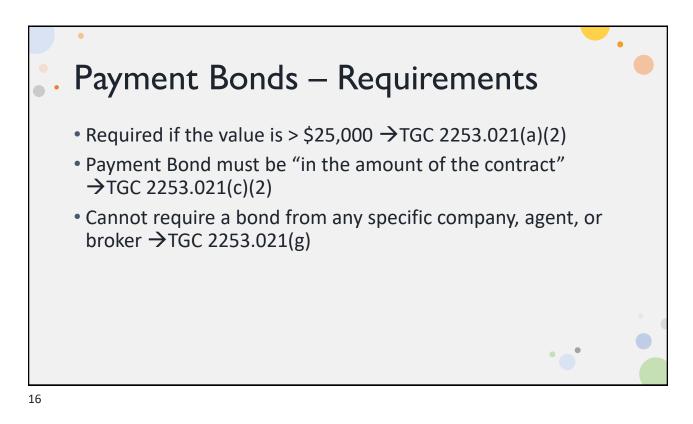
- If you terminate contract and file claim on the performance bond due to default, surety will conduct investigation. Keep in mind:
 - Surety did not cause contractor default
 - Contractor may have insufficient records
 - Surety has not been monitoring the project
 - District's wants Surety to aid in finishing the project (cooperation)
 - Provide access to site, key information, and District's records
 - Encourage design professional to respond
 - Identify time issues, remaining scope of work, critical vendors







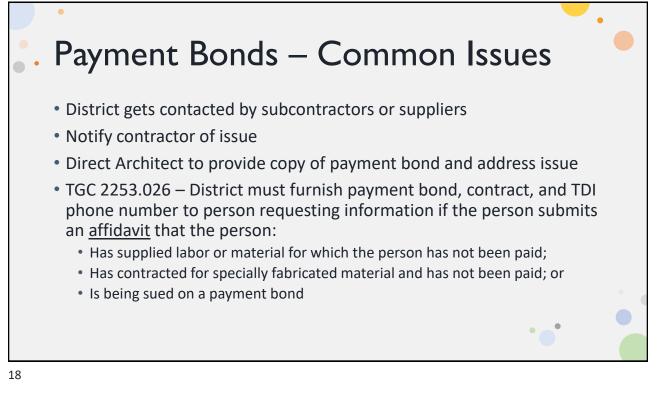




Payment Bonds – What do they do?

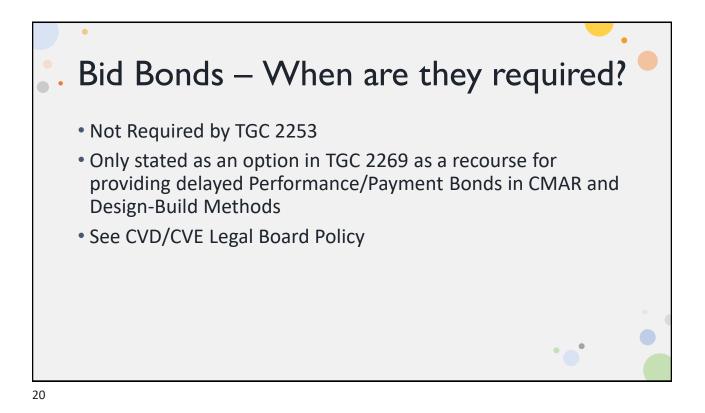
- Purchased "solely" for the protection and use of "payment bond beneficiaries who have direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material" →TGC 2253.021(c)(1)
- No liens on public property; provides substitute for liens by protecting subcontractors and suppliers working on public works jobs
- Relief provided by payment bond is the sole remedy available to the payment bond beneficiary

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Payment Bond – What if you don't have one? Not Required → No liens on public property Not Required → Retainage (see TPC 53.101) Not Required → Liens allowed on funds held by District due to the contractor for improvements (TPC 53.231) Required → District has the same liability that a surety would have if the payment bond had been properly issued by a surety and obtained by the District, TGC 2253.027(a)(1) Required → Payment bond beneficiary is entitled to a lien on money due to the prime contractor, TGC 2253.027(a)(2)



Bid Bonds – What do they do?

- Bond required of bidders/proposers to protect the District if a low bidder or selected proposer attempts to withdraw its bid/proposal or fails to agree to a contract on those terms
- Ensures capable and qualified contractors are submitting bids/proposals
- All bidders/proposers will have been vetted by a surety (some initial level of financial, credit, history, and project backlog scrutiny)
- Protects District from Financial Loss Due to Contractor Failure
- Prevents the following:
 - Contractors from failing to honor terms of its bids/proposals
 - Bids/Proposals on multiple projects by Contractors when they only have resources for one
 - Additional costs to District by having to repeat the bidding, review, selection processes

