



***Conway, Londregan,
Sheehan & Monaco, P.C.***
ATTORNEYS AT LAW

MUNICIPAL FINANCIAL OFFICIALS BEWARE

By Conway Londregan Sheehan & Monaco, P.C.

Each public works contract that exceeds \$100,000 must be secured by a bond obtained by the general contractor, "with a surety or sureties satisfactory to the officer awarding the contract, for the protection of [subcontractors]", see CONN. GEN. STAT. section 49-41(a). Failure by the municipality to comply with this requirement makes the municipality liable to the subcontractors for payment under section 49-41(d).

A Superior Court judge has outlined the two circumstances under which a municipality can become liable under these statutes. The first circumstance is when the municipality has actual knowledge that the bonding company is deficient and still accepts the bond. The second circumstance is when the

municipality fails in its obligation to, at a minimum, verify that the surety named by the general contractor is an existing corporate entity and has been properly registered with the Department of Insurance. It is not enough to merely confirm that the bond is in form and substance correct. There is a clear mandatory component of investigation required. If the municipality or its agency fails to conduct such verification, it shall be directly liable to subcontractors who are unable to obtain compensation on a bond following the financial failure of a non-registered surety. In this case, the general contractor changed the bonding company from a prequalified company by Connecticut Department of Administrative Services to a different company when providing the bond. The Court ruled that failure by the municipality to inquire after the change was evidence of a failure to perform a satisfactory review. See, M & L Construction, Inc. v. Town of Darien, FST-CV-136022914-S, Superior Court, Stamford/Norwalk, September 27, 2016., Judge Provodator, Kenneth.

The municipal officer awarding a contract must confirm that the company is registered with the State of Connecticut Department of Insurance to issue bonds and that it is an active corporation.