

**THE DRAIN CODE OF 1956 (EXCERPT)**  
**Act 40 of 1956**

**280.223 Deposit with bid; purpose; retention of deposit; damages for nonexecuted contract; return of deposit; disposition of forfeited money; security; conditions and limitations of personal surety; failure to complete contract; bond or indemnity insurance; contracts to which section applicable; additional kinds of security.**

Sec. 223. (1) A deposit in the form of a certified check or its equivalent in the amount that the commissioner considers reasonable may be required with each bid, whether on opening bidding or sealed proposals, as evidence of good faith and to reimburse the district in the event of failure on the part of the successful bidder to execute the necessary contracts or to furnish the required security or indemnity insurance. If the successful bidder does not execute the proper contracts or furnish the security or indemnity insurance required of him or her within 10 days after the acceptance of his or her bid, then the commissioner may retain the deposit as stipulated damages for the nonexecution of the contract and proceed to advertise for and let the job anew. If the successful bidder furnishes the security or indemnity insurance required and executes the required contracts, then the deposit shall be returned to him or her. All money forfeited to the commissioner under this subsection shall be deposited with the county treasurer to the credit of the drainage district fund.

(2) The successful bidder shall, within the time stated in subsection (1), file with the commissioner security considered necessary by the commissioner guaranteeing that the contract will be completed in accordance with the terms specified in the contract. The security shall be in a sum fixed by the commissioner, but shall not be less than the contract price. At the option of the commissioner, the security shall consist of 1 or more of the following:

- (a) Cash.
- (b) Certified check.
- (c) Performance bond executed by a surety company authorized to do business in this state.
- (d) Escrow agreement acceptable to the commissioner.
- (e) Irrevocable letter of credit issued by a state or federally regulated financial institution.
- (f) Personal surety acceptable to the commissioner.

(3) If a personal surety is used as security, the commissioner shall require all of the following conditions and limitations:

(a) That the personal surety be a contractor with the experience and ability to perform and complete, in a timely manner, the contract in the event of a default by the successful bidder.

(b) That the personal surety not act as the personal surety for more than 1 other principal during the term of the contract upon which he or she is giving security.

(c) That no more than 2 personal sureties be utilized as security on any 1 contract.

(d) That, the personal surety provide financial information requested by the commissioner and that, after a review of this information, the commissioner be satisfied with the surety's ability to perform the contract upon which he or she is giving security.

(e) That the personal surety provide to the commissioner a list of contracts upon which the surety is required to perform, naming the parties to each contract, the amount of each contract, the work to be performed under each contract and the time during which each contract is to be performed, and that the personal surety revise this listing during the term of the contract upon which he or she is giving security, adding or deleting information as contracts are entered or completed.

(f) That the personal surety agree that in the event the successful bidder defaults on the contract, the personal surety shall enter onto the project and complete the project pursuant to the terms of the contract within the time limitations specified by the commissioner or pay to the drainage district the amount of money specified by the commissioner as necessary to pay another contractor to complete the contract.

(4) If a contract is not completed in accordance with its written terms, the security provided to the commissioner shall be used to complete the contract.

(5) In addition to the security required in subsection (2), the commissioner shall require the successful bidder to furnish a bond or indemnity insurance in the sum required by the commissioner. This bond or indemnity insurance shall run to the people of the state of Michigan and shall be maintained in full force and effect until the contract is terminated to indemnify the commissioner, the drainage district, and the county or other municipality against loss or damage resulting from injury to a worker on the drain, or the negligence or carelessness of the contractor in the construction of the drain. Indemnity insurance that terminates by expiration or cancellation shall be replaced prior to termination in the sum then required by the commissioner.

(6) The provisions of this section apply to contracts in excess of \$100,000.00. For all contracts equal to or less than \$100,000.00, the commissioner may require security that he or she considers adequate and

necessary, consistent with the provisions of this section.

(7) The commissioner, at his or her option, may require the provision of additional kinds of security.

**History:** 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1960, Act 96, Imd. Eff. Apr. 26, 1960;—Am. 1989, Act 61, Imd. Eff. June 16, 1989.

**Popular name:** Act 40