

Supply—Public Works

Mr. Fleming: Quite so. He has an obligation to them, of course. But by making that provision in the contract it becomes an obligation on his part to the Minister of Public Works. That is the point I was getting at. Apparently the contract so provides.

There has been no reference to this, but I think it is implicit in what the minister said earlier this afternoon, that it is not the practice of the department to require on the part of the contractor a performance bond.

Mr. Fournier (Hull): It is a cash deposit.

Mr. Fleming: Yes. The minister spoke of the 10 per cent cash deposit and also the 10 per cent holdback against current payments. I think what would help to meet the situation here, and would be very useful for the department, as well as of great assistance in cases of this kind in protecting materialmen who are denied the ordinary protection of the mechanics' lien acts of the provinces, would be the requirement that the contractor file a performance bond. If you have a bonding company standing behind a contractor and you have that provision in the contract which would require that the contractor bind himself to the Minister of Public Works to pay the materialmen and the wage earners and his subcontractors, then you have assurance on behalf of your materialmen and your wage earners that they are going to be able to collect. In that way your subcontractors are going to be paid.

It seems to me there is a great gap in the present practice when the department does not require the filing by the contractor of a performance bond by some surety company. That is very general practice in private life with large construction contracts. I think it would be of very great value to the department itself as well as to those who are subcontractors of those who are contractors of the department.

Mr. Fournier (Hull): There is something in that argument of the performance bond. I understand that it was studied by those in this line of business, but in the past those bonds have always been refused. We do not accept them; we ask for a cash deposit of 10 per cent of the amount of the contract or tender from the companies that tender.

I understand that this question of a bond is being studied. I would not see any serious objection, but I do not think the protection would be greater for the government than the cash security deposit. Take this instance where unfortunately the man did not complete the contract. We had the money to go ahead, and we did it. In the contract in question, if we did lack some money to complete it we would have our recourse against

[Mr. Fournier (Hull).]

the contractor for the balance. That would be all right if he were solvent. If he were bankrupt we would lose, probably, but we do not lose very much money in our contracts. I may tell the hon. member that there are not many cases where we lose money.

Mr. Croll: Will the hon. member for Eglinton tell us how a performance bond would be helpful to the Lunam contractors under these circumstances?

Mr. Fleming: In view of the term in the contract about which I asked the minister a question when I rose to my feet. If it were not a provision in the contract the department has with the contractor that the contractor engages to pay his subcontractors and thereby incurs an obligation to the minister to pay them, then the performance bond would be of doubtful value as far as subcontractors are concerned. Even then it would be of value to the department, but in view of the fact that there is a provision in the contract that the contractor undertakes as an obligation to the minister to pay his subcontractors, then the performance bond would be of very definite value. That prompts me to ask another question of the minister.

Mr. Croll: Would you get a performance bond under these conditions?

Mr. Fleming: Yes, I think you would; and I think this, and I speak from some experience in such matters. I think it would be of very definite value also in eliminating people who are tendering who are not potentially solvent. You would not find surety companies agreeing to give performance bonds to people who are not solvent, and I think it would represent another measure of guarantee against a situation of this kind arising in the future.

There is one other aspect to this subject that I should like to raise. I think the minister can see that the materialman who is supplying material to a contractor with his department is not in the same position as a materialman who is supplying material to a contractor on private property. He is denied the normal benefits that flow to the subcontractor, the materialman and the wage earner under the mechanics' lien act. In these circumstances it seems to me that in all fairness something more is required on the part of the department than just to say, "We will take no responsibility. We will just treat this as we would if the structure were being built on private property".

It may be all very well for the owner in a case of that kind, where the land is privately owned, to say, "Well, you materialmen, you must protect yourselves. You have the mechanics' lien act." This is a different situa-