



National Association of Surety Bond Producers

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August 22, 2013

Kristen Weiss
Regulations Coordinator
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076

Re: COMAR 11.01.17 P3 Program: Emergency Regulations Silent on Statutory Bonding Requirements

Dear Ms. Weiss:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association whose membership includes firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the United States and in Maryland, I am pleased to submit the following recommendations for the Public-Private Partnership Program. The proposed emergency regulations to initiate the state's Public-Private Partnership Program appear to be silent on statutory bonding requirements, a critical component to protect the state taxpayers and the Maryland small businesses that rely on the payment bond for protection. Just recently, the Maryland General Assembly approved and Governor O'Malley signed into law H.B. 560, recognizing the importance of requiring bonds on public-private partnerships (P3s) by specifically stating in Subtitle 4 of the Act as follows:

*(12) Requirements for the private entity to provide **performance and payment security** [emphasis added] in a form and in an amount determined by the responsible public entity, except that requirements for the payment security for construction contracts shall be in accordance with Title 17, Subtitle 1 of this article, including the requirement that payment security shall be established on the value of the construction elements of the public-private partnership agreement and not on the total value of the public-private partnership agreement.*

Payment and performance security in the form of surety bonds are essential to the timely completion and execution of P3 projects in Maryland and must be included in this regulation. Moreover, payment and performance bonds must be set at 100% of the construction portion of the contract to ensure full protection to Maryland taxpayers and the small business who participate on P3 Projects.

By first enacting § 17-103, Maryland's Little Miller Act, requiring the furnishing of payment and performance bonds by contractors performing public construction contracts, the Maryland General Assembly recognized the importance of having payment and performance bonds in place to protect the taxpayers and downstream businesses that supply labor and materials on Maryland public construction projects. Often these business entities, the project subcontractors

or suppliers, are small businesses whose only viable remedy in the event of nonpayment by the prime contractor is to claim on the payment bond.

Surety bonds provide essential protections to public authorities undertaking or facilitating P3 projects as well as to subcontractors and suppliers furnishing labor or materials on such projects. P3 contracts in Maryland, as noted in § 17-103, must include requirements stipulating performance and payment bonds in amounts commensurate to the value of the construction elements of the P3 contract. Clear regulatory guidance on bonding requirements is warranted.

NASBP appreciates the opportunity to comment. If you have any questions, please do not hesitate to contact me at 202-464-1217 or lleclair@nasbp.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry LeClair". The signature is fluid and cursive, with the first name "Larry" and last name "LeClair" clearly distinguishable.

Lawrence E. LeClair
Director, Government Relations