



## National Association of Surety Bond Producers

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Sent via email to [bill.grunloh@illinois.gov](mailto:bill.grunloh@illinois.gov) and [michael.forti@illinois.gov](mailto:michael.forti@illinois.gov)

June 7, 2013

Mr. Bill Grunloh  
Chief Procurement Officer  
Executive Ethics Commission  
Illinois Department of Transportation  
2300 S. Dirksen Parkway, Room 200  
Springfield, IL 62764

Mr. Michael Forti  
Chief Counsel  
Office of Chief Counsel  
Illinois Department of Transportation  
2300 S. Dirksen Parkway  
Springfield, IL 62764

*Re: Request for Information Regarding an Innovative Project Delivery Approach for the Illiana Corridor Project*

Dear Mr. Grunloh and Mr. Forti:

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 Illinois, I am pleased to submit the following recommendations for the Illiana Corridor Project which the Department is considering delivering via public-private partnership (P3). Payment and performance security in the form of surety bonds are essential to the timely completion and execution of this project and must be included. These bonds must be set at 100% of the construction portion of the contract.

By first enacting 30 ILCS 550, "Public Construction Bond Act" requiring the furnishing of payment bonds by contractors performing public construction contracts, the Illinois Legislature recognized the importance of having payment bonds in place to protect the downstream businesses that supply labor and materials on Illinois 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. Recently, the Illinois Legislature recognized the importance of requiring bonds on the Illiana Corridor Project, specifically, by enacting:

*(30 ILCS 550/1.5)*

*Sec. 1.5. Public private agreements. This Act applies to any public private agreement entered into under the Public Private Agreements for the Illiana Expressway Act.*

*(Source: P.A. 96-913, eff. 6-9-10.)*

Further, IDOT has indicated in Section 2 of the RFI that "it is anticipated that the Project will include some element of federal funding." Therefore, a further precedent has been set by the Federal Government when the Department of Transportation issued 49 CFR Part 18, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. This regulation addresses bonding for state level construction projects financed partly by federal grants.

*For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:*

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*(2) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.*

*(3) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.*

Surety bonds provide essential protections to public authorities undertaking or facilitating transportation projects as well as to subcontractors and suppliers furnishing labor or materials on such projects. P3 contracts developed by IDOT, as noted in 30 ILCS 550/1.5 must include requirements stipulating performance and payment bonds in amounts commensurate to the value of the construction portion of the P3 contract.

NASBP appreciates the opportunity to comment on IDOT’s Request for Information Regarding an Innovative Project Delivery Approach for the Illiana Corridor Project. If you have any questions, please do not hesitate to contact me at 202-464-1217 or [lleclair@nasbp.org](mailto:lleclair@nasbp.org).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lawrence E. LeClair". The signature is fluid and cursive, with the first name "Lawrence" being more prominent than the last name "LeClair".

Lawrence E. LeClair

Director, Government Relations