



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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Chairperson Mary Cheh
The Committee on Government Operations and the Environment
1350 Pennsylvania Avenue NW, Suite 108
Washington, DC 20004

Dear Chairperson Cheh,

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers and brokers, representing over 5,000 personnel, which place or underwrite bid, payment, and performance bonds for the Nation's construction and infrastructure projects, I am contacting you to express our concern about and strong opposition to a provision contained in Bill (B) 18-635, the "Procurement Reform Act of 2010."

Specifically, Section 701(a), Title VII — "Bonds and Other Forms of Security," would increase the current threshold for bid, performance, and payment bond from \$100,000 to \$500,000. Such an increase makes the District of Columbia bonding threshold the highest in the nation. In fact, the DC threshold would be five times higher than the current bonding threshold of the Federal Government.

All jurisdictions require surety bonds on public works projects of a certain size to protect contracting agencies, taxpayer funds, and the many subcontractors and suppliers furnishing labor and materials on those projects. The laws of the District of Columbia expressly recognize the importance of bond protection.

For example, § 2-305.04 states that the required payment bond "shall be for the protection of all businesses supplying labor and materials, including lessors of equipment to the extent of the fair rental value of the equipment, to the contractor or a subcontractor in the performance of work provided for by the contract." Clearly, the DC Council recognized that payment bonds are vital to protecting the downstream businesses that supply labor and materials on DC 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. Moreover, if the prime contractor becomes insolvent, the payment bond furnishes protection to these subcontractors and suppliers. If you raise the bonding threshold to \$500,000, many more projects will be bid without payment bond protection for the many subcontractors and suppliers on those projects. This could be disastrous for those firms.

Furthermore, § 2-305.03 notes the important protection the performance bond offers to contracting agencies and DC taxpayers. It states that the performance bond "shall be in an amount to ensure the protection of the District government." Quite simply, taxpayer dollars are at risk when construction projects are awarded without the protection of performance bond guarantees. In the absence of a performance bond, additional

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taxpayer funds will be required to complete projects where prime contractors default in their performance of construction contracts.

You should note that, under existing DC laws, the Mayor already has discretion to reduce the level of bonding in appropriate circumstances. § 2-305.01(d) gives statutory discretion to the “Director to reduce the level or change the types of bonding normally required (\$100,000) or accept alternative forms of security to the extent reasonably necessary to encourage procurement from businesses certified by the District of Columbia Small and Local Business Opportunity Commission, women-owned businesses, and small District-based businesses.” Given this statutory flexibility already in place, it makes little sense to increase the bonding threshold, thereby endangering the protection of taxpayer dollars and the payment remedies of the myriad subcontractors and suppliers on DC public construction projects.

When deciding on your position on B18-635, please keep in mind:

- **Removing or raising the bonding threshold requirement for public construction projects takes away vital payment bond protections for many small businesses that perform as subcontractors and suppliers on public construction projects.**
- **Without performance bonds in place, additional taxpayer funds will be required to complete projects where prime contractors default in the performance of their contract obligations.**
- **Removing or raising the surety bond threshold requirement will further mean that the District’s contracting agencies will have to shoulder a significantly higher burden of screening and pre-qualifying more contractors, diverting their resources and energies away from other important functions.**
- **The Federal Miller Act requires a payment and performance bond for 100% of the contract price for projects in excess of \$100,000.**
- **All 50 states require surety bonds on state and local public works projects. Thus, state bond thresholds vary, but most of the states have thresholds of \$50,000 or less. If the federal government requires bonding protections at \$100,000, can the District of Columbia afford to do any less for its agencies and citizens on DC public construction projects?**

The District of Columbia government, its taxpayers, and its many businesses performing as subcontractors and suppliers on projects have too much at risk to permit passage B18-635.

We urge you to keep the bonding threshold at its current level. NASBP would appreciate the opportunity to meet with you in person to answer any questions you may have of surety bonding and to discuss this matter further.

Yours sincerely,



Mark McCallum
Chief Executive Officer