



National Association of Surety Bond Producers

1140 19th Street NW, Suite 800. Washington, DC 20036-5104

Phone: (202)686-3700

Fax: (202)686-3656

Web Site: <http://www.nasbp.org>

E-mail: info@nasbp.org

Delivered via email to: pfleming2@mdta.maryland.gov

September 16, 2015

Mr. Patrick A. Fleming
Maryland Transportation Authority (MTA)
Manager of Government Relations
2310 Broeing Highway
Baltimore, MD 21224

Re: *Proposed Regulations/COMAR 11.01.17 Public-Private Partnership Program*

Dear Mr. Fleming:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association whose membership includes firms employing licensed resident and non-resident surety bond producers placing bid, performance, and payment bonds throughout the United States and in Maryland, I am writing to provide comments concerning the Maryland Transportation Authority Public-Private Partnership (P3) Program Proposed Regulations. NASBP notes and is concerned that these proposed regulations are silent on statutory bonding requirements for P3 agreements, a critical component to protect taxpayer funds and Maryland small businesses which rely on the presence of payment bonds for payment remedies.

Although procurement methods have evolved—including the increased use of P3s—construction risks remain the same, making surety bonds just as relevant when employing such methods. Bonding is a tool that protects taxpayer and investor dollars and supports economic empowerment, sustainability and job creation for contractors and subcontractors. Recognizing the shift in state procurement methods, the General Assembly and the Governor enacted H.B. 560 (Bush) and H.B. 936 (Jones) to ensure adequate payment protection and performance security for P3 agreements.

State Finance and Procurement Article 10A-401(a),(12) states:

a) Whenever applicable, a public–private partnership agreement shall include the following provisions:

*(12) Requirements for the private entity to provide **performance and payment security** 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.*

Furthermore, 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.

Few, if any, P3 projects are wholly private; rather, they involve some level of public funding and resources, mandating that proper financial security be in place. 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 MTA regulation. 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 10A-401 must include requirements stipulating performance and payment bonds in amounts commensurate to the value of all construction work under the P3 contract. NASBP strongly recommends that MTA implements bonding requirements as mandated by statute.

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,



Lawrence E. LeClair
Director, Government Relations

cc: The Honorable Michael E. Busch, Speaker michael.busch@house.state.md
The Honorable Kumar Barve, Chair, Environment and Transportation Committee
kumar.barve@house.state.md.us
The Honorable Adrienne Jones, Speaker Pro Tem adrienne.jones@house.state.md.us