



National Association of Surety Bond Producers

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September 28, 2016

Ms. Judy Piazza
Executive Director
Office of Legislative & Inter-governmental Affairs, Finance and Administration Cabinet
392 Capitol Annex
Frankfort, Kentucky 40601

Delivered via email to: Judith.Piazza@ky.gov.

RE: Proposed Rule 200 KAR 5:355 Public-Private Partnerships (P3s)

Dear Ms. Piazza:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of firms employing professional surety bond producers, including those licensed and conducting business in Kentucky, I am contacting you in support of the Proposed Rule 200 KAR 5:355 Public-Private Partnerships (P3s), specifically concerning Section 4 (3), which requires performance and payment bonds set forth in KRS 45A.190, 45A.435.

As the Kentucky Legislature and Governor recognized by including surety bond requirements in HB 309, bond requirements are sound public policy. Kentucky law has long required performance and payment bonds to be in place on all public construction projects at 100% of the contract amount. (See Kentucky Revised Statute 45A.190, 45A.435). The payment bond guarantees that covered subcontractors, suppliers, and laborers on the job will get paid. Generally, mechanics liens cannot be asserted against public property. Subcontractors, suppliers, and laborers on public works projects must rely on the general contractor's payment bond for protection in the event of nonpayment. If no payment bond is required, these parties are left with little or no means to collect for their services and supplies if the contractor is unable or unwilling to pay them.

These same critical public policy reasons exist in the context of public private partnerships that involve construction and infrastructure. A P3 is simply another method to finance and to deliver a public works project. Although the public works project in a P3 may not be financed initially with public funds, public funds in the form of some future revenue stream (e.g. tolls; availability payments; tax credits; loans) are committed to the private partner upfront in the P3 agreement and ultimately are the source of funding and the profits/return on investment for the private partner and the investors. Governmental authorities and taxpayers continue to have the same expectation that the construction portions of privately-financed public works projects will be undertaken by qualified companies and are completed according to the construction contract. Moreover, downstream parties, such as subcontractors and suppliers, must be protected against nonpayment and prime contractor insolvency. In short, bonding requirements on P3 contracts offer contracting authorities proper prequalification of entities performing construction services; guarantees of performance from regulated third-party corporate sureties; and payment remedies for unpaid subcontractors and suppliers.

For these reasons, NASBP and its Kentucky members strongly support Proposed Rule 200 KAR 5:355 Public-Private Partnerships. Thank you for your consideration.

Please feel free to contact me should you have any questions.

Sincerely,

Lawrence E. LeClair
Director, Government Relations