



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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July 29, 2019

Ms. Jennifer Keyes-Maloney
New Jersey Department of the Treasury
225 W State Street, 4th Floor
Trenton, NJ 08625-0211
Delivered via email to: Jennifer.maloney@treas.nj.gov

RE: Proposal Number: PRN 2019-086 Public-Private Partnership (P3) Rule

Dear Ms. Maloney;

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 New Jersey, I am contacting you in support of Proposed Rule—(PRN 2019-086), pertaining to Public-Private Partnerships (P3s), agreements, which requires the “general contractor, construction manager, or design-build contractor to post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with and conforming to the requirements of N.J.S.A. 2A:44-143 et seq.”

As the New Jersey Legislature and Governor recognized by including surety bond requirements in SB 865, bond requirements are sound public policy. New Jersey law has long required performance and payment bonds to be in place on all public construction projects (state and local) at 100% of the contract amount. (*See N.J. Stat. Ann. §2A:44-143*). 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 New Jersey members strongly support the proposed Public-Private Partnership rule.

Please feel free to contact me should you have any questions concerning the points raised.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence E. LeClair". The signature is written in a cursive style with a large initial "L".

Lawrence E. LeClair
Director, Government Relations