



## NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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October 4, 2021

Mr. Steve Boggs

Specifications Engineer

West Virginia Department of Transportation Division of Highways (Division)

Delivered via [DOHSpecifications@wv.gov](mailto:DOHSpecifications@wv.gov)

*RE: Proposed changes to Sections 102, 103, 108, and 109—Contractor Prequalification and Bonding*

Dear Mr. Boggs,

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of firms employing professional surety bond producers licensed and conducting business in West Virginia, I am contacting you concerning the proposed changes the Division seeks to make to Sections 102, 103, 108, and 109—Contractor Prequalification and Bonding. NASBP offers the following points for your consideration, which include: (1) the important role of the surety underwriter, (2) bonding for more or less than the contract amount and the potential impact on the number of bidders, and (3) the likely reluctance of sureties to furnish bonds because of the proposed changes.

### ***Surety Underwriter—prequalification process***

In deciding to grant surety credit and as part of the underwriting process, the surety underwriter conducts an in-depth analysis of the bidder during the prequalification process. Prequalifying the bidder is handled through the requirement of the bid bond, which assures that the contractor intends to enter the contract and to furnish the required performance and payment bonds. The surety's specific obligation under the bid bond also helps to screen out unqualified bidders, as a surety will not issue a bid bond on behalf of a contractor that it believes cannot fulfill the contract obligation. Surety underwriting is an intensive and extensive process, one in which the underwriter examines on an on-going basis the contractor's management, experience, equipment, financial wherewithal, including the contractor's overall work program of bonded and unbonded work.

***103.6-REQUIREMENT OF CONTRACT BOND—Division proposes to require bidders to furnish surety bonds based its performance ratings as described in Section 103.6.***

As proposed, the Division seeks to require bonds in an amount greater to or less than 100% of the contract amount. It is unclear why the Division seeks to make this policy change. It is customary and standard in the construction and surety industries for performance and payment bonds, aka final bonds, each to be 100% of the contract amount, providing 200% coverage. Final bonds in the amount of 100% guarantee payment protection to subcontractors and suppliers, should the general contractor fail to meet its payment obligations, and 100% performance bonds guarantee the public owner that the contractor will meet its contractual obligation.

Bond obligations that are less than 100% percent of the contract amount do not lessen the surety's underwriting scrutiny of the contractor. The surety views the contract risk as the total contract obligation, not simply the face amount of the bond. The surety also bases its bond premiums—fees charged for the bond—on rates filed with the state insurance department. These filed rates are predicated on contract amounts, not bond amounts.

Simply stated, partial bonds do not make it easier to qualify for surety credit nor reduce the cost of the bond premium. However, it does offer less protection coverage to the Division, subcontractor, and suppliers should the contractor default on the project. On the other hand, bonds required in amounts exceeding the contract amount will likely restrict the availability of bonds, because sureties may not be comfortable issuing these types of obligations to some otherwise capable and qualified contractors. Most sureties will be highly reticent to write an obligation that significantly exceeds the scope of the contractor's contractual obligation, and smaller contractors will not be able to assume the higher risk posed by the larger bond penal sum. With less competition and likely a smaller pool of potential bidders, such as disadvantaged business enterprises (DBE's), the Division may not meet necessary small business set-aside requirements. Beyond not meeting set aside goals, the Division also may have to shoulder higher project costs and administrative burdens.

Based upon the proposed language it appears the Division is unnecessarily taking on burdens that will restrict competition and increase project costs. Why would the Division want to supplant some of the many benefits being bestowed by surety prequalification when it is already being done successfully and more efficiently by surety underwriters, which are in the regular business of qualifying construction firms?

It is for the foregoing reasons that NASBP requests the Division to revise its proposed rules to: (1) ensure that small bidders are able to compete for contracting opportunities in West Virginia and (2) that bonds are required for 100% of the contract amount to ensure there is a responsive surety market to write these bond obligations.

I am happy to answer any answer any questions concerning the points raised. Please feel free to contact me should you have further questions at 240-200-1272 or by email at [lleclair@nasbp.org](mailto:lleclair@nasbp.org).

Respectively submitted for your consideration,

A handwritten signature in black ink, appearing to read "Larry LeClair". The signature is fluid and cursive, with a stylized "L" and "C".

Larry LeClair  
Director, Government Relations

cc: Mr. Pat Parsons, Asphalt Pavement Association of West Virginia  
Mr. Mark McCallum, Chief Executive Officer, NASBP  
Ms. Martha Perkins, General Counsel, NASBP