NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS
7735 Old Georgetown Road, Suite 900
Bethesda, MD 20814
Tel: 240.200.1270
Fax: 240.200.1295
www.nasbp.org

November 22, 2019

Ms. Ellen Robertson
Legislative Liaison and Regulations Coordinator
Maryland Department of General Services (Department)
301 West Preston Street, 15th Floor
Baltimore, MD 21201

Comment letter submitted via email to: ellen.robertson@maryland.gov

Re: COMAR 04.01.05.01 to .10: Requiring Surety Bonds on P3s

Dear Ms. Robertson:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association whose membership includes firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the United States and in Maryland, I am contacting you to express our support of the proposed revision to the Code of Maryland Regulations (COMAR) 04.01.05, Public-Private Partnership Program. Specifically, NASBP is pleased to see that the proposed Regulations require compliance with Maryland's statutory bonding requirements for P3 agreements, as referenced in .10 Delivery, which "requires the Secretary to comply with the provisions established in State Finance and Procurement Article, §10A-40."

While 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 and the sound policy reasons for including payment and performance bonds on P3 agreements, i.e., to ensure vetting of the qualifications of parties performing construction, to provide guarantees of performance and payment bonds and to protect precious taxpayer funds and Maryland small businesses. The Maryland General Assembly and the Governor revised the existing P3 law in 2013 so that P3 agreements are subject to the security requirements of Maryland's Little Miller Act (*Title 17, subsection 1*) as follows:

> *"§10A-401 (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:*
> *(i) requirements for the payment security for construction contracts shall be in accordance with Title 17, Subtitle 1 of this article; and*

(ii) requirements for the amount of the payment security and for any performance security in the form of a performance bond for a construction contract shall be based on the value of the respective construction elements of the public-private partnership agreement and not on the total value of the public-private partnership agreement."

Furthermore, by enacting §17-103, Maryland's Little Miller Act, the Maryland General Assembly recognized the importance of requiring performance and payment bonds in place to protect Maryland taxpayers and the downstream businesses that supply labor and materials on Maryland public construction projects. Often these 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, as other means, such as mechanics' liens, are not available and lawsuits are time-consuming and expensive.

For these reasons, NASBP and its Maryland members support these proposed Regulations, specifically requiring the Department to comply with Maryland's statutory bonding requirements for P3 agreements.

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

Respectfully submitted,

Lawrence E. LeClair
Director, Government Relations