

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 694

An Act to amend and reenact § 2.2-4337 of the Code of Virginia, relating to the Virginia Public Procurement Act; performance and payment bonds.

[H 1259]

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4337 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4337. Performance and payment bonds.

A. Upon the award of any (i) public construction contract exceeding \$100,000 awarded to any prime contractor or; (ii) construction contract exceeding \$100,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned *or leased* by a public body; *or (iii) construction contract exceeding \$100,000 in which the performance of labor or the furnishing of materials will be paid with public funds*, the contractor shall furnish to the public body the following bonds:

1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the public body.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

C. If the public body is the Commonwealth, or any agency or institution thereof, the bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds required for the contracts of other public bodies shall be payable to such public body.

D. Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.

E. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below \$100,000.

F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.