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HOUSE BILL NO. 3065

Offered January 15, 2007

A *BILL to amend and reenact § 2.2-4338 of the Code of Virginia, relating to the Virginia Public Procurement Act; bid, payment and performance bonds; alternative forms of security.*

Patron—Marshall, R.G.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4338 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4338. Alternative forms of security.

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

B. If approved by the Attorney General in the case of state agencies, or the attorney for the political subdivision in the case of political subdivisions, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond. An individual surety shall be acceptable for a bid, payment, or performance bond if:

1. The person acting as the individual surety transacts business only through an insurance agency licensed by the Bureau of Insurance of the State Corporation Commission;

2. The person acting as the individual surety provides an affidavit of individual surety in a form acceptable to the Department of General Services; and

3. The person acting as the individual surety pledges one or more assets in an amount equal to 100 percent of the contract value for the total penal amount of the performance and payment bonds or the penal amount of the bid as required by the bid bond, including:

a. Cash or certificates of deposit,

b. Cash equivalents held with a federally insured financial institution or readily marketable assets acceptable to the contracting or procurement officer that are pledged by a security interest, including those pledged by an irrevocable trust receipt issued by the financial institution, by an independent trustee, or other agent in favor of the public body;

c. United States government securities at market value,

d. Stocks and bonds that are (i) actively traded on a national United States security exchange, (ii) accompanied by certificates issued in the name of the individual surety, and (iii) pledged at 90 percent of their 52-week low, as reflected at the time of submission of the bond,

e. Real property that is owned by the individual surety in fee simple or with covenants that all agree to act jointly,

f. Real property that may include, if satisfactory to the public body, the granting of a mortgage or deed of trust on real property located within the state, provided (i) the face amount of the mortgage or deed of trust on the real property does not exceed 75 percent of the contractor's or individual surety's equity interest in the property and (ii) the mortgage or deed of trust accepted by the public body is recorded by the public body, or

g. Irrevocable letters of credit that (i) are issued by a federally insured financial institution in the name of the contracting public body, (ii) identify the agency and the solicitation or contract number for which the irrevocable letter of credit is provided, and (iii) contain a payout clause if that default cannot be remedied.

Any asset that is offered for security under this item shall be pledged only for the intended contract and may not be pledged for any other contract in or outside of the Commonwealth until the bond and asset is released by the public body.

As used in the subsection, "individual surety" means a person who pledges an asset to secure against loss, damage, or default, as distinguished from a business entity. Under an individual surety bond, the individual making the pledge is liable for the entire penal sum guaranteed by the bond.

C. The provisions of this section shall not apply to the Department of Transportation.

INTRODUCED

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