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HOUSE BILL NO. 1951

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend and reenact §§ 2.2-4336 and 2.2-4337 of the Code of Virginia, relating to the Virginia Public Procurement Act; bid, performance, and payment bonds.*

Patrons—Villanueva, Carr, Herring, James and McClellan

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4336 and 2.2-4337 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4336. Bid bonds.

A. Except in cases of emergency, all bids or proposals for ~~nontransportation-related~~ construction contracts in excess of \$100,000 ~~or transportation-related projects authorized under § 33.1-12 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth \$1 million~~ shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$100,000 ~~for nontransportation-related projects or \$250,000 for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth \$1 million.~~

§ 2.2-4337. Performance and payment bonds.

A. Upon the award of any (i) public construction contract exceeding ~~\$100,000~~ \$1 million awarded to any prime contractor; (ii) construction contract exceeding ~~\$100,000~~ \$1 million 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; (iii) construction contract exceeding ~~\$100,000~~ \$1 million in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding ~~\$250,000~~ \$1 million that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:

1. 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 authorized under § 33.1-12, 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. For transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body.

"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 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth \$1 million.~~

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