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HOUSE BILL NO. 2017
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Governor
 on March 24, 2017)

(Patron Prior to Substitute—Delegate Villanueva)

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; waiver by localities.

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 \$500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth 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. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317. *However, a locality may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the local governing body that waiving the requirement is in the best interests of the locality. A locality shall not enter into more than 10 such contracts per year.*

C. 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.

D. 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 \$500,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

§ 2.2-4337. Performance and payment bonds.

A. Except as provided in subsection H, upon the award of any (i) public construction contract exceeding \$500,000 awarded to any prime contractor; (ii) construction contract exceeding \$500,000 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; (iii) construction contract exceeding \$500,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding \$350,000 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 Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2, 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 Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body.

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

B. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the ~~bid bond~~ performance and payment bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317. *However, a locality may waive the requirement for prequalification of a contractor with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the local governing body that waiving the requirement is in the best interests of the locality. A*

60 *locality shall not enter into more than 10 such contracts per year.*

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

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

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

68 F. Nothing in this section shall preclude a public body from requiring payment or performance bonds
69 for construction contracts below \$500,000 for nontransportation-related projects or \$350,000 for
70 transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2
71 and partially or wholly funded by the Commonwealth.

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

77 H. The performance and payment bond requirements of subsection A for transportation-related
78 projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by a public
79 body if the bidder provides evidence, satisfactory to the public body, that a surety company has declined
80 an application from the contractor for a performance or payment bond.