

VIRGINIA ACTS OF ASSEMBLY -- 2012 RECONVENED SESSION

CHAPTER 783

An Act to amend and reenact § 2.2-4337 of the Code of Virginia, relating to Virginia Public Procurement Act requirements for performance and payment bonds on transportation-related projects.

[H 945]

Approved April 18, 2012

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~~ *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 ~~\$250,000~~ *\$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 § 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. 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.

C. 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.

D. 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.

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

F. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below \$500,000 for nontransportation-related projects or ~~\$250,000~~ *\$350,000* for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth.

G. 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.

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

2. That notwithstanding the provisions of §§ 2.2-1839, 2.2-4317, 2.2-4336, and 2.2-4337 of the Code of Virginia, the Commissioner of Highways and the Department of the Treasury shall establish a prequalification program that is agreeable to both agencies, pursuant to the Department of the Treasury, Division of Risk Management, VaWorks Program (self-bonding program). Prospective bidders for transportation-related construction projects authorized under § 33.1-12 of the Code of

Virginia that are valued in excess of \$250,000 but less than \$350,000 who have submitted evidence of denial of a performance or payment bond pursuant to subsection H of § 2.2-4337 shall be required to participate in the prequalification program agreed to by the Commissioner of Highways and the Department of the Treasury.

3. That the Virginia Department of Transportation shall report by December 1 of each year to the Chairmen of the House Committee on General Laws and the Senate Committee on Transportation (i) the number of companies that were unable to procure a performance or payment bond pursuant to subsection H of § 2.2-4337 of the Code of Virginia, (ii) the number of waivers granted by the Department pursuant to subsection H of § 2.2-4337, and (iii) the number of companies that were enrolled in any Department of the Treasury, Division of Risk Management self-bonding program for Department projects.