

# VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

## CHAPTER 211

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

[H 1490]

Approved March 22, 2023

**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) nontransportation-related public construction contract exceeding \$500,000 awarded to any prime contractor or (ii) transportation-related project authorized pursuant to Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 exceeding \$350,000 that is 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, *unless the contract is an indefinite delivery or quantity contract with a local public body and the local public body adopts an ordinance pursuant to subsection G.*

2. A payment bond in the sum of the contract amount, *unless the contract is an indefinite delivery or quantity contract with a local public body and the local public body adopts an ordinance pursuant to subsection G.* 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.

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 \$500,000 for nontransportation-related projects or \$350,000 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.

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.

G. *For indefinite delivery or quantity contracts awarded pursuant to subsection A, any locality may by ordinance allow the contractor awarded such contract to furnish to the local public body a performance bond and a payment bond, each of which shall be equal to the dollar amount of the individual tasks identified in the underlying contract. Such contractor shall not be required to pay the performance bond and payment bond in the sum of the contract amount if the contracting locality has adopted such an ordinance pursuant to this subsection. For purposes of this section, "indefinite delivery or quantity contract" means a contract that only requires performance of contractual obligations upon the request of the locality and which establishes an annual cap for the total work that may be authorized for such contract.*