



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

1140 19th Street, NW, Suite 800

Washington, DC 20036

Tel: 202.686.3700

Fax: 202.686.3656

www.nasbp.org

January 19, 2017

Delivered to: DelTGilbert@house.virginia.gov; DelCPeace@house.virginia.gov

Delegate C. Todd Gilbert
Chair, General Laws
General Assembly Building, Room 511
Capitol Square
Richmond, Virginia 23219

Delegate Christopher K. Peace
Vice Chair, General Laws
General Assembly Building, Room 820
Capitol Square
Richmond, Virginia 23219

Re: Opposition to HB 2017 (Villanueva)

Dear Chairman Gilbert and Vice Chairman Peace:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association whose membership includes firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout Virginia and the United States, I am contacting you in opposition to HB 2017, legislation that seeks to allow a local governing body the ability to waive prequalification requirements set forth under § 2.2-4317, “Prequalification generally; prequalification for construction.”

Even though surety bonds, in the form of the payment bond to protect subcontractors and suppliers, and the performance bond to protect taxpayer funds, are not statutorily required for non-transportation public construction contracts for less than \$500,000, the Commonwealth created a safety net under § 2.2-4317, to ensure that contractors performing on those contracts are qualified, financially sound, and have the capacity to perform. Specifically, § 2.2-4317(C) provides that “a public body may deny prequalification to any contractor only if the public body finds one of the following such as: the contractor does not have sufficient financial ability or the contractor does not have appropriate experience to perform the construction project in question.”

Given that the legislature already made the prudent fiscal policy decision to establish the necessary safeguards in § 2.2-4317, why should a local governing body be permitted to remove these protections to allow contractors which may not be financially sound or sufficiently experienced receive contract awards? Further, why should subcontractors and suppliers, which will not have payment bond protections in place, be placed at risk by public bodies which waive prequalification protections? Such waivers also will jeopardize the investment of taxpayers funds in such projects should the contractor default.

NASBP is very concerned of the potential consequences and financial harm HB 2017 may place on the downstream parties, the subcontractors and material suppliers, which participate in projects where prequalification was waived of the prime contractor. When local governing bodies waive

prequalification requirements under § 2.2-4317, those local governing bodies should be required to waive their sovereign immunity and reimburse subcontractors and suppliers for amounts unpaid as a result of contractor default.

For the foregoing reasons, NASBP opposes HB 2017 in the absence of including any meaningful protections of the payment rights of downstream parties furnishing labor or materials on contracts. NASBP respectfully asks that the House Committee on General Rules vote no on HB 2017.

Thank you for your consideration of our concerns and comments. Please feel free to contact me at 202-686-3700 or at lleclair@nasbp.org should you wish further information or to discuss this matter further.

Yours sincerely,



Lawrence E. LeClair
Director, Government Relations

cc: Members of the House Committee on General Laws