

**REPORT ON
BONDING TO SMALL BUSINESSES
AND DISADVANTAGED BUSINESSES
REPORTED TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 18

**COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
RICHMOND
1978**

MEMBERS OF SUBCOMMITTEE

IRA M. LECHNER, Chairman

A. VICTOR THOMAS

BONNIE L. PAUL

STAFF

DIVISION OF LEGISLATIVE SERVICES

JOHN A. BANKS, JR., Director

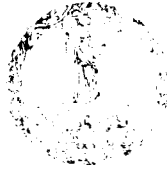
C. WILLIAM CRAMME, III, Staff Attorney

REPORT OF THE
VIRGINIA STATE OFFICE OF MINORITY BUSINESS ENTERPRISE
AND THE
BUREAU OF INSURANCE, STATE CORPORATION COMMISSION
STUDYING CERTAIN SERVICES PROVIDED
TO BUSINESSES IN THE COMMONWEALTH
BY THE FEDERAL GOVERNMENT'S
SMALL BUSINESS ADMINISTRATION
TO THE
HOUSE COMMITTEE ON GENERAL LAWS
OF THE HOUSE OF DELEGATES
GENERAL ASSEMBLY OF VIRGINIA

Prepared By:

John B. Harris, Director
Virginia State Office of Minority
Business Enterprise
Virginia State College
Petersburg, Virginia

Garland L. Hazelwood, Jr.
Assistant Commissioner
Bureau of Insurance
State Corporation Commission
Richmond, Virginia



COMMONWEALTH of VIRGINIA

John B. Harris
Director

VIRGINIA STATE OFFICE OF
MINORITY BUSINESS ENTERPRISE
VIRGINIA STATE COLLEGE
Petersburg, Virginia 23803

(804) 520-5413

January 12, 1979

The Honorable Joseph H. Holleman, Jr.
CLERK OF THE HOUSE OF DELEGATES
General Assembly of Virginia
Commonwealth of Virginia
Richmond, Virginia 23219

Dear Mr. Holleman:

On behalf of the Virginia State OMBE and the Bureau of Insurance, State Corporation Commission, I am pleased to submit this report pursuant to and in compliance with House Joint Resolution Number 72, Acts of the General Assembly 1978. A proposed 1979 Study Resolution resulted from the mandate. We therefore, respectfully request that it be considered by the 1979 General Assembly so that the Agencies involved can report specific courses of action to the 1980 General Assembly for dealing with the bonding question for small, disadvantaged and minority firms in Virginia.

Respectfully submitted,



John B. Harris
Director

JBH/am

Enc:



COMMONWEALTH of VIRGINIA

John B. Harris
Director

VIRGINIA STATE OFFICE OF
MINORITY BUSINESS ENTERPRISE
VIRGINIA STATE COLLEGE
Petersburg, Virginia 23803

(804) 520-5413

November 28, 1978

Mr. Garland L. Hazelwood, Jr.
Assistant Commissioner
State Corporation Commission
Bureau of Insurance
Box 1157
Richmond, Virginia 23209

RE: House Joint Resolution 72, 1978

Dear Mr. Hazelwood:

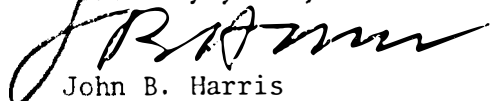
Transmitted herewith is this Agency's report with respect to House Joint Resolution 72, 1978, Acts of the General Assembly. Subsequent to your final input, we feel certain it will be forwarded to the Office of the Secretary of Commerce and Resources for transmittal to the Clerk of the House.

If you feel we should discuss the report further, and provide a conclusion or suggest "next steps" after the recommendations, please advise. I thought possibly your Agency would know exactly how to do these inasmuch as bonding still remains a serious problem for small, disadvantaged and minority firms across the Commonwealth.

SBA has a backlog of work and will be late getting its 1978 Fiscal year results to us. Despite this, very little is being done in Virginia and the Region with bonding. We see little improvement this year versus past years. How might we suggest a reasonable solution to the 1979 General Assembly for action? The recommendations are reasonable when viewed from a historical view. These basic issues are short and long-run and must be approached from a combination of the recommendations. We must, however, start with Education and Training and support of the State OMBE to carry out such specialized work.

Appendix E will be supplied as soon as it is received from Regional SBA. In the meantime, we know you will share with this Agency any additions, deletions, changes, etc., made in the basic report.

Sincerely yours,


John B. Harris
Director

JBH/am

I. Introduction

By adoption of House Resolution No. 40 during the 1977 Session of the General Assembly, the House Committee on General Laws was requested to conduct a study of the ways and means available to provide the necessary bonding for small and disadvantaged business in order that they may bid on, obtain and perform contracts for federal, state and local governments. This request arose out of the difficulty which small and disadvantaged businesses were having in participating significantly in the multi-million dollar capital improvements, procurement and contracting activities of federal, state and local governments. The difficulty encountered was in obtaining adequate bonding of all types, bid, performance and payment bonds, which are required in order to participate. Upon completion of its study the Committee prepared and introduced legislation deemed appropriate, to ease the problem, and for consideration by the 1978 Session of the General Assembly.

A Subcommittee, consisting of members of the full House Committee, was appointed to conduct the study. The Subcommittee held public hearings in Richmond and in Charlottesville, to allow the public the opportunity to offer testimony on the major subjects of the study in order to fulfill the demands of House Resolution 40. The Subcommittee worked with the basic premise that state and local government contracts, whether for construction and public works, or for the procurement of goods and services, should be awarded so as to acquire quality goods and services at minimum costs, having as an objective the protection of the interests of the taxpayers. This result could probably best be obtained through fair and open competition among bidders who have full opportunity to compete on an equal basis. When a contract is awarded to a successful bidder, assurance that the bidder will be able to perform satisfactorily under the contract becomes of vital

importance to the governmental unit whose tax dollars are expended to pay the contractor.

Those who testified before the Subcommittee were heads of State offices and agencies, small businesspersons, heads of State-wide leagues and representatives of the bonding and insurance community. The testimony elicited from the thirty-three witnesses overwhelmingly indicated that there was indeed a problem facing small and minority businesses as they attempt to obtain bonding so that they may participate in contracting activities of the State and its localities.

II. Scope of Testimony

The Subcommittee received the following general testimony:

1. It is generally accepted and well-established practice for contracting governmental units to obtain assurance of the successful bidder's satisfactory performance, or at least protection from his non-performance by requiring him to furnish bond. Cash bonds are relatively simple in operation, involving only the contracting parties, but are not as widely used as are surety bonds.
2. Surety bonds represent a three-party transaction through which the performance of the successful bidder, the contractor is secured to the governmental unit by the surety. The extent of the surety's obligation to the governmental unit is determined by the contract between the parties to the suretyship transaction. A basic question for the surety is the capability of the contractor to successfully perform a given contract without default, and the surety's function of prequalifying contractors is one of the most valuable services which the surety performs.
3. The surety company, in giving a bond to the contractor, lends, its reputation and credit to the contractor. And their behavior is

indeed no different from any bank(s) or other credit institution(s), as suretyship presupposes no loss because the surety company has the right to resort to its contractors for indemnification and expects to be held harmless or recover. If the contractor defaults on the bond, the surety company must move in and take the position of contractor, supervising the completion of the work. The surety company may then seek to recover all or a portion of the funds it has paid off from the assets of the contractor whom it has insured. In this aspect of its activity a surety company resembles a banking institution rather than an insurer and the bond itself has the character of an extension of credit rather than a contract of insurance. This is why the surety company takes an in-depth look into the contractor's financial status. A good financial standing are the key words in obtaining a bond. This also acts like a death nail in the coffin of a small, minority, or disadvantage contractor.

4. Of the five business organizations concerned with the development of small and minority businesses within the Commonwealth (Newport News Office of Human Affairs, Metropolitan Business League of Richmond, Tidewater Area Minority Contractors Association of Norfolk, Roanoke Valley Business League and Minority Business Opportunity Committee of Roanoke and Richmond, respectively, that testified, all agreed that bonding is an issue of pure economics for the State, the locality and the businessperson, and that minority businesses were not obtaining the necessary bonding; all pointed out the difficulties faced by small businesses and made suggestions as to how to remedy the problem. The difficulties encountered included:

a. finding a bondsman willing to help the minority business obtain bonding and underwrite a bond; Blankenship Insurance Agency was the only identifiable one in Virginia at the time of the study;

b. producing a track record which meets the bonding company's subjective criteria;

c. assigning all of the company's assets to obtain bonding - - some companies being cash poor;

d. paying more for bonds than the larger companies, e.g., Walker Village Project;

e. waiting for an answer from the bond company, which can be disastrous to a minority or small business (that has obtained a contract) because of the time involved in showing proof of bond offer being awarded the contract;

f. underbidding a contract in order to keep the company's forces on the job;

g. not receiving notice of denial from the bonding company;

h. Executive Order 1-1246 which requires that minority businesses be given equal opportunity to bid on federally funded contracts is being thwarted by the bonding issue.

5. Some of their solutions suggested to help remedy the problem included:

a. a public sector agency, i.e. if in the insurance field, a private bonding agency is either unable to or unwilling to bond a minority or small business and if the going rate is 1.5% of the contract price, then allow the minority business to go to a public organization to be bonded at a higher rate, such as 1.8% which represents the going rate plus a surcharge. The minority firm would still have to meet the same criteria as it would have to meet with a private agency. This solution does not suggest that the private sector be knocked out of business by the State, but when the private sector controls or limits the advancement of a particular segment of society, then it is incumbent

upon the public sector to step in and assure an equal opportunity for all, by an affirmative action;

b. if there is not a public agency as described above, and if the minority business is turned down by SBA or a private bonding agency, then the procurement or contracting officials of an agency would take a certain percent (of the contract or grant to a locality, e.g., \$1.5 million), and set that percent aside for minority bonding, not to subsidize minority business, but to allow the minority business a chance to go to the locality who receives the contract or grant and get bonding---the minority business would pay the city for the bonding. This money which the locality receives for bonding could go into funding a public agency to form a revolving fund for bonding; this solution suggests no surcharge;

c. eliminate the bonding requirement under a certain amount, which amount would be raised from the present amount;

d. establish a State form of federal SBA guarantee program;

e. encourage some of the other three hundred or more insurance companies licensed in Virginia to do bonding work to offer bonding; an assigned type of arrangement with a pooling arrangement between licensed companies; also numbers a and b above force the issue but it may also be advisable to have within the Bureau of Insurance a review board to review why the insurance company would not issue the bond, keeping in mind the time lag. At present there is no requirement that insurance agencies tell the bureau "why" they turned down the minority business' application for bonding. There are no insurance companies in Virginia that underwrite bonds; Blankenship Agency of Richmond has to go outside the State to obtain bonds for minority and small businesses in the State.

f. prepare paperwork before going to the bonding institution; the

State OMBE or the area business leagues could aid in the preparation of the needed papers to help the insurance companies move the application forward.

g. small business set asides were not considered a solution in that even with set asides bonding is required; so initially set asides are not the immediate answer.

h. a type of on the job training; a program that would give the minority the opportunity to obtain bonding and bid on the contract while receiving management and technical assistance in preparing the necessary forms and business records would help to insure the minimization of risk to the State using State funds.

6. Of the small and minority businessmen who testified, all agreed that there is definite discrimination by the bonding companies against the small and minority businesses. Testimony elicited from these businessmen revealed the following problems which they encounter in applying for bonds:

a. a discriminatory attitude of bonding a black as a general contractor - putting him in the authority seat - believing that the subcontractors some of whom may be white will be unwilling to be told how to go about their job; thus the bonding companies are discouraging competition by denying bonding;

b. the critical time element, i.e. the time it takes a minority business to receive a bond after it has bid successfully on a contract; also the time that SBA requires in advance for a bid bond, twenty-one days in advance of letting the contract;

c. the attitude of the insurance companies that bonding is not profitable especially on small contracts; bonding companies are not charging higher rates in order to make the bonding business more

profitable because they want to remain competitive; (SCC is now making a study on the rates charged by insurance companies under the Competitive Pricing Act--look at possible skimming and availability of insurance including bonding);

d. the cost of maintaining a bond while the minority business in on the job; many companies require periodically a statement of the job status in order for the minority and small business to be covered by the bond;

e. the bonding company's request or desire to get into the prime or general contractor's business by looking at the books or management counseling.

f. the percentage of jobs bid on and contracts awarded; may need more than one bid bond at a time in order to compete.

The businessmen were in favor of the proposed solutions offered above, especially a State agency or public organization providing bonding.

7. Of the representatives of the insurance and surety community, all recognized the problems that the small businessmen face in obtaining bonding. They offered the following testimony and solutions:

a. Two representatives stated that what needs to be done is for the State to set up funds to educate the small disadvantaged or minority contractor in the bookkeeping, accounting and record keeping end of his business rather than arbitrarily provide him with bonding and thus, hand him business which would create more management and financial difficulties. The problem is not that the contractor cannot perform the actual construction, but that the small or minority contractor has a lack of business acumen. They suggested that the reason minority businesspersons are turned down when applying for bonding is because they do not have the proper total picture of their businesses; that is, the capability to perform work coupled with the proper training

in the financial and management ends of their businesses. They espoused the view that State money would be well spent if it were used to help educate, through State programs, the small contractors in the financial management phase of their businesses. Through this program, they believed that the State would profit by gaining a number of solid businesses that could compete for and help to keep the costs down on State contracts.

b. Surety companies do not set their rates with the expectation to cover losses. In this respect bonding is different from insurance. Insurance is a pooling to cover losses. The cost of the bond is part of the contractor's total cost of doing the job. The fee paid for a bond is a service fee to finance the investigation of the applicant's credit. Each bonding company has its own arrangements with insurers for reinsurance. It was stated that bonding is more akin to banking in that both lend their credit to the applicant. Bonding is only like insurance in that if the principal (debtor) fails to perform his contract of specified obligations owed by the principal to the obligee (creditor), then the surety stands willing to pay the obligations of the principal. The surety is directly liable on the principal's contract. However, upon the payment in full or in part a surety has an absolute right to be reimbursed by the principal. This is the difference between insurance and bonding or suretyship.

c. One representative testified that his association supports the SBA program because it retains the prequalification process so vital to writing bonds. No one is served by bonding a contractor who cannot complete the job. He and his association believed that there has to be some degree of prequalification and it has been long recognized that a disinterested surety underwriter can do a better job in pre-qualifying than a politically oriented official.

d. Bonding companies are writing bonds for small amounts, but they have also tightened the requirements for obtaining bonding. Such tightening includes the requirement of better business organization, more working capital, payment records of the business (whether a slow pay record or not) and there is more careful underwriting. The standards for writing bonds are different from one company to the next. Hopefully, the additional overall monies brought in by the bonding companies from the rate increase on premiums will encourage more companies to participate in writing bonds.

e. As a solution to the problem, one representative suggested that the Commonwealth of Virginia establish a small business set aside program whereby the State would designate jobs as set asides and allow the small businesses to bid on jobs which are sponsored by the federal, state or local governments. The Commonwealth would collect the profits or absorb the losses from the program. The State could continue the prequalifications process, but it would remove the surety companies from writing bonds on the smaller businesses.

f. To eliminate the requirement of bid performance and payment bonds would exacerbate the already existing problem. Many people, in looking at the problem, only consider the surety and the principal; the obligees must also be considered. With bonded work the obligees can feel assured that they will receive the end product free of liens, without bonds the obligees will feel uncertain.

The Subcommittee met before reporting to the full Committee -- a working session in Richmond at which representatives of the insurance and surety companies, members of the Committee, heads of the business leagues, the Director of the Virginia OMBE and select small businessmen were present. The purpose of the working session was to review the testimony elicited and to draw any legislation and recommendations which it deemed necessary; such legislation

and recommendations were reported to the full Committee for its review. After its review, the full Committee prepared and introduced legislation it deemed necessary to the 1978 Session of the General Assembly.

III. Summary

Subsequent to the Richmond meeting, the contents found in Appendix A were presented to the House General Laws Subcommittee on Bonding. The report emphasized the need for improved methods for bonding small businesspersons in the Commonwealth. As a result, the full Committee recommended two pieces of legislation to the 1978 Session of the General Assembly which passed in the final forms shown in Appendixes B and C.

In summary, House Bill No. 565, 1978 amended and reenacted paragraphs 11-17, 11-18, 11-20 and 11-23 of the Code of Virginia, relating to public contracts in general and exempted from the provisions requiring a payment bond and provided further that subcontracts for less than ten thousand dollars each (previously two thousand and five hundred dollars each) also be exempted.

House Joint Resolution No. 72, 1978, resolved that the Virginia State Office of Minority Business Enterprise and the appropriate unit of the State Corporation Commission shall report their determinations and findings to the House Committee on General Laws on or before the first day of December, 1978.

The resolution further stated, be it "RESOLVED by the House of Delegates, the Senate concurring, that it is the sense of this body that the Virginia State Office of Minority Business Enterprise and the appropriate unit of the State Corporation Commission monitor the Small Business Administration's activities in Virginia to determine whether or not the Small Business Administration is improving its services to Virginia businesses. The State Office of Minority Business Enterprise and the State Corporation Commission are also requested to encourage those agents licensed in Virginia to procure surety bonds to participate in the Small Business Administration's surety

bonds program and encourage them to assist those businesses in the Commonwealth which seek the program's services."

IV. Results

The Virginia State Office of Minority Business Enterprise has worked closely with the State Corporation Commission (SCC) and the Richmond District Office of the Small Business Administration (SBA) to carry out the mandate of House Joint Resolution No. 72, 1978. The State Corporation Commission, Bureau of Insurance, assisted the Agency in successfully carrying out the 10% set-aside clause under the Public Works Act of 1977 by issuing a "Policy Statement" to Surety Companies Licensed to Transact Business in Virginia. The "Policy Statement", found in Appendix D, resulted in the Commonwealth meeting and exceeding its 10% goal by mid-1978.

The State Corporation Commission has worked with the Virginia State Office of Minority Business Enterprise in all of its requests with respect to encouraging bonding for minority firms in Virginia. The Richmond District Office of the Small Business Administration has not provided requested data on Virginia minority firms receiving bonding to date. However, personnel of that office state that the Philadelphia Regional Office handles all approvals after they are referred to the Region by the District. Contact with the Regional Office reveals the following information on bonding for Virginia minority firms for Fiscal 1978:

According to Mr. Russell B. Hess, Regional Surety Bond Specialist, SBA Region III, Bala Cynwyd, Pennsylvania, "Approximately 95% or more of all surety bonds approved in Region III, (PA, DE, MD, VA, WVA, DC), for minority and majority contractors are written through the sur-charge bonding market - that most of the major companies are not set up to write bonds for small contractors regardless of race or economic conditions. Small and minority contractors are not receiving bonding because in most cases, their financial

statements and backgrounds do not warrant the granting of surety bonding. Major companies do not get involved because the risk is high and the profit on bonding is low, thus, the reluctance for them to write bonds either on their own or in participation with SBA. Moreover, the bonding market is tight and companies now try to write for zero loss/risk with or without SBA involvement.

Summary; SBA has guaranteed few bonds for small and minority firms during Fiscal 1978 throughout the Region which included Virginia.

He further states that "The Sur-Charge markets are those companies that are licensed by the State Corporation Commission, Bureau of Insurance, Commonwealth of Virginia, to charge higher rates for bonds they write. If it were not for sur-charge companies, there would be very few, if any, bonds written for small minority and disadvantaged business firms in Virginia."

The sur-charge penalizes these firms because they cannot go through normal surety markets for bonding; thus, impeding their business growth or the possibility that they will never become strong, viable, tax-paying firms across the Commonwealth.

Mr. Hess states that, "Because of critical staffing problems in Region III, its involvement with over 1,700 bonding applicants, and the September 30, 1978 closing date for Fiscal 1978, the Region will be unable to issue a final report on completed results until December 11, 1978." Hence, as soon as the final bonding summary is issued and cleared through the Region's Legal Department, the State OMBE will send it as Appendix E to this report on or before December 15, 1978.

Recommendations

1. It is recommended that inasmuch as private and public surety companies and agencies, respectively, have done little in Virginia to relieve the critical bonding problems among small, disadvantaged and minority businesses, that an on the job training program be funded by the Commonwealth through the Virginia State Office of Minority Business Enterprise that would give small, disadvantaged and minority firms the opportunity to obtain bonding and bid on contracts while receiving management, technical and educational assistance in preparing the necessary forms and business records that would help to insure the minimization of risk to the State using State funds, at an annual rate of \$50,000 through 1986.

REASON FOR RECOMMENDATION: The small and minority businessmen who testified, agreed that there is definite discrimination by bonding companies against small and minority businesses.

The representatives of the insurance and surety community, recognized the problems that the small businessmen face in obtaining bonding and recommended management, technical, and educational assistance as a remedy.

In net, what needs to be done is for the State to ear-mark funds to educate the small, disadvantaged or minority contractor in bookkeeping, accounting and record keeping aspects of business. The problem is not that the contractor cannot perform the actual construction but that the small or minority contractor often times has a lack of business acumen.

2. It is recommended that a public sector bonding agency or commission be established by the State, to assure bonding for small, disadvantaged and minority firms.

REASON FOR RECOMMENDATION: In the insurance field a private bonding agency is either unable to or unwilling to bond a minority or small

business and if the going rate is 1.5% of the contract price, then allow the small, disadvantaged or minority business to go to a public organization to be bonded at a higher rate, such as 1.8% which represents the going rate plus a surcharge. The contractor would still have to meet the same criteria as it would have to meet with a private agency. This recommendation does not suggest that the public sector compete with the private sector through the State, but when the private sector controls or limits the advancement of a particular segment of society, then it is incumbent upon the public sector to step in and assure an equal opportunity for all, by an affirmative action program.

3. It is recommended that since there is not a public agency for bonding small, disadvantaged and minority contractors that instrumentalities of the State, quasi units of the State and other agencies and units of State government, having purchasing and contracting authority, assist such firms in resolving the bonding problem.

REASON FOR RECOMMENDATION: When business is turned down by a private bonding agency, instrumentalities, agencies, localities, and quasi units can take a certain percent of a contract or grant and set that percent aside for small, disadvantaged and minority bonding, not to subsidize these businesses, but to allow them the chance to go to the locality, instrumentality, agency, quasi units, etc., that receives the contract or grant and get bonding--the small, minority and disadvantaged businesses would pay the locality, instrumentality, agency, quasi unit, etc., for the bonding. The funds which the locality, instrumentality, agency, quasi unit, etc., receives for bonding would go into funding a public agency to form a revolving fund for bonding; this recommendation suggests no surcharge and if implemented would effect savings for these firms and allow for competitive bidding because of the reduced cost of bonding.

4. It is recommended, (Provided 2 and 3 above are not acceptable), that there be established within the State a State form of Federal SBA guarantee program, but one that works and eliminates the problems encountered by Federal SBA.

REASON FOR RECOMMENDATION: This recommendation would encourage many of the insurance companies, licensed in Virginia, to provide surety bonds to small, disadvantaged and minority business firms: An assigned type of arrangement with a pooling arrangement between licensed companies. It is also recommended that State law be amended in order to require Virginia firms to notify small, economically disadvantaged, and minority businesses in writing of the reason(s) for denial or rejection of their applications for awarding. At present there is no requirement that the insurance agency tell the bureau "why" it turned down the small, disadvantaged or minority firm applications for bonding.

APPENDIXES

APPENDIX A	1977 BONDING STUDY
APPENDIX B	HOUSE BILL NO. 565, 1978
APPENDIX C	HOUSE JOINT RESOLUTION NO. 72, 1978
APPENDIX D	V SOMBE & SCC POLICY STATEMENT
APPENDIX E	TO BE SUPPLIED BY REGION III SBA ON OR BEFORE DECEMBER 15, 1978

APPENDIX A

1977 BONDING STUDY



COMMONWEALTH of VIRGINIA

DIVISION OF LEGISLATIVE SERVICES

STATE CAPITOL

JOHN A. BANKS, JR.
DIRECTOR

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208
(804) 786-3591

December 27, 1977

Honorable Ira M. Lechner
1207 Potomac Street, N. W.
Washington, D. C. 20007

Dear Mr. Lechner:

Enclosed herewith please find a copy of the Subcommittee's report on bonding of small and disadvantaged businesses to the full Committee on House General Laws. Please review this report as soon as possible and let me know of any changes that you want made. You may also want to confer with Mr. Thomas and Mrs. Paul as to their opinion of the report.

Wishing you a pleasant holiday season, I am

Very truly yours,

A handwritten signature in cursive script that reads "Bill".

C. William Cramme', III
Staff Attorney

CWC:ah

cc: Honorable A. Victor Thomas
Honorable Bonnie L. Paul
Mr. John B. Harris

Report of the
House General Laws Subcommittee
Studying the Ways and Means
Available For Providing Surety
Bonding To Small Businesses
And Disadvantaged Businesses
To
The Committee on General Laws of the House of
Delegates
Richmond, Virginia
December, 1977

INTRODUCTION

By adoption of House Resolution No. 40 during the 1977 Session of the General Assembly, the House Committee on General Laws was requested to conduct a study of the ways and means available to provide the necessary bonding to small businesses and disadvantaged businesses in order that they may bid on, obtain and perform contracts for federal, state and local governments (Appendix I). This request arose out of the difficulty which small and disadvantaged businesses were having and are presently having in participating significantly in the multi-million dollar capital improvements, procurement and contracting activities of federal, state, and local governments. The difficulty encountered is in obtaining adequate bonding of all types, bid, performance and payment bonds, which are required in order to participate. Upon completion of its study the Committee was requested to prepare legislation that it deemed appropriate for introduction in the 1978 Session.

A Subcommittee, consisting of three members, was appointed by the Chairman of the House General Laws Committee to conduct the study. The Subcommittee membership included Ira M. Lechner from Arlington, Chairman, A. Victor Thomas from Roanoke; and Bonnie L. Paul from Harrisonburg. Mr. John B. Harris, director of the State Office of Minority Business Enterprises, worked with and offered invaluable expertise to the Subcommittee as an Ex-officio member.

The Subcommittee held two public hearings, one in Richmond and one in Charlottesville, to allow the public the opportunity to offer testimony on the major subjects of the study in order to fulfill the demands of House Resolution 40. The Subcommittee also held two work sessions to study the testimony elicited and prepare legislation. The Subcommittee worked with the basic premise that state and local government contracts, whether for construction and public works, or for the procurement of goods and services, should be awarded so as to acquire quality goods and services at a minimum cost, having as an objective the protection of the interests of the taxpayers. This result is probably best obtained through fair and open competition among bidders who have full opportunity to compete on an equal basis. When a contract is awarded to a successful bidder, assurance that the bidder will be able to perform satisfactorily under the contract becomes of vital importance to the governmental unit which awards the contract, and to the citizens of such governmental unit whose tax monies will be expended to pay the contractor.

FINDINGS

Those who testified before the Subcommittee were heads of State offices and agencies, small businessmen, heads of area business leagues and representatives of the bonding and insurance community. The testimony elicited from the more than thirty-five witnesses overwhelmingly indicated that there is indeed a problem facing small and minority businesses as they attempt to obtain bonding so that they may participate in contracting activities of the State and its localities.

The Subcommittee received the following general testimony:

1. It is generally accepted and well-established practice for contracting governmental units to obtain assurance of the successful bidder's satisfactory performance, or at least protection from his non performance by requiring him to furnish bond. Cash bonds are relatively simple in operation, involving only the contracting parties, but are not as widely used as are surety bonds.

2. Surety bonds represent a three-party transaction through which the performance of the successful bidder, the contractor (principal) is secured to the governmental unit (obligee) by the surety (obligor). The extent of the surety's obligation to the governmental unit is determined by the contract between the parties to the suretyship transaction. A basic question for the surety is the capability of the contractor to successfully

perform a given contract without default, and the surety's function of prequalifying contractors is one of the most valuable services which the surety performs.

There are three types of bonds in general use which embody the surety's obligations. They are the bid bond, the performance bond, and the payment bond.

The bid bond secures to the governmental unit the good faith of the bidder that he will carry out the terms of the award if he is awarded the contract. The award usually requires the successful bidder, within a time certain to execute the contract at the bid price, to furnish performance and payment bond.

If the successful bidder fails within the time stated in the award to enter into the contract, he would, in the usual situation, become liable to the governmental unit for the difference between his bid and the amount for which the governmental unit may then contract with another party. The surety named in the bid bond would be liable for the successful bidder's obligation to execute the contract in accordance with the terms of the award. When an award contains as a condition the requirement that suitable payment and performance bonds be furnished, a surety will not, in the usual case, issue a bid bond to a bidder unless the surety is prepared to issue performance and payment bonds.

When the contract has been awarded, the successful bidder must post a performance bond when such is required. Under this bond the surety becomes liable for the full and faithful performance of the contract obligations.

The third type of bond is the payment bond, or labor and material bond. Under this bond the surety becomes liable for the payment of all persons who furnish labor or materials toward the completion of the contract. This type of bond protects against the possibility of the filing of liens in connection with the contract, and protects persons who deal with the contractor and his subcontractors, if any, against loss resulting from their failure to pay bills for labor or material.

The performance and payment bond premium is generally one percent of the contract price. For the purpose of determining the premium, performance and payment bonds are treated as though they were a single bond; and in practice, they are frequently written together.

3. The surety company in giving a bond to the contractor lends its reputation and credit to the contractor. And their behavior is indeed no different from any banks or other credit institutions, as suretyship presupposes no loss because the surety company has the right to resort to its contractors for indemnification and expects to be held harmless or recover. If the contractor defaults on the bond, the surety company must move in and take the position of contractor, supervising the completion of the work. The surety company may then seek to recover all or a portion of the funds it has paid off from the assets of the contractor whom it has insured. In this aspect of its activity a surety company resembles a banking institution rather than an insurer and the bond itself has the character of an extension of credit rather than a contract of insurance. This is why the surety company takes an in-depth look into the contractor's financial status. A good financial standing is the key word in obtaining a bond. This also acts like a death nail in the coffin of small or minority contractor.

4. Of the five business organizations concerned with the development of small and minority businesses within the Commonwealth (Newport News Office of Human Affairs, Metropolitan Business League of Richmond, Tidewater Area Business League Association of Norfolk, Roanoke Valley Business League and Minority Business Opportunity Committee of Richmond) that testified, all agreed that bonding is an issue of pure economics for the State, the locality and businessman and that minority businesses were not obtaining the necessary bonding; all pointed out the difficulties faced by small businesses and made suggestions as to how to remedy the problem. The difficulties encountered included:

- a. finding a bondsman willing to help the minority business obtain bonding and underwrite a bond, Blankenship Insurance Agency is the only one in Virginia;
- b. producing a track record which meets the bonding company's subjective criteria;
- c. assigning all of the company's assets to obtain bonding, some companies being cash poor;
- d. paying more for bonds than the larger companies, e.g., Walker Village Project;
- e. waiting for an answer from the bond company, which can be the death kneel to a minority or small business (that has obtained a contract) because of the time involved in showing proof of bond offer being awarded the contract;

- f. underbidding a contract in order to keep the company's forces on the job;
 - g. receiving no notice of denial from the bonding;
 - h. Executive Order 1-1246 which requires that minority businesses be given equal opportunity to bid on federally funded contract being thwarted by the bonding issue.
5. Some of their solutions suggested to help remedy the problem included:
- a. a public sector agency, i.e. if in the insurance field a private bonding agency is either unable to or unwilling to bond a minority or small business and if the going rate is 1.5% of the contract price, then allow the minority business to go to a public organization to be bonded at a higher rate, such as 1.8% which represents the going rate plus a surcharge. The minority would still have to meet the same criteria as it would have to meet with a private agency. This solution does not suggest that the private sector be knocked out of business by the State, but when the private sector controls or limits the advancement of a particular segment of society, then it is incumbent upon the public sector to step in and assure an equal opportunity for all, by an affirmative action;
 - b. if there is no public agency as described above, and if the minority business is turned down by a private bonding agency, then of the contract or grant to a locality take a certain percent and set that percent aside for minority bonding, not to subsidize minority business, but to allow the minority business a chance to go to the locality who receives the contract or grant and get bonding—the minority business to pay the locality for the bonding. This money which the locality receives for bonding could go into funding a public agency to form a revolving fund for bonding; this solution suggests no surcharge;
 - c. eliminate the bonding requirement under a certain amount, which amount would be raised from the present amount;
 - d. establish a State form of federal SBA guarantee program;
 - e. encourage some of the other three hundred insurance companies licensed in Virginia to provide surety bonds to offer bonding; an assigned type of arrangement with a pooling arrangement between licensed companies; also numbers a and b above force the issue but it may also be advisable to have within the Bureau of Insurance a review board to review why the insurance company would not issue the bond, keeping in mind the time lag. At present there is no requirement that the insurance agency tell the bureau “why” they turned down the minority business’ application for bonding. There are no insurance companies in Virginia that underwrite bond; Blankenship has to go outside the State to obtain bonds for minority and small business in the State;
 - f. prepare paper work before going to the bonding institution; the State OMBE or the area business leagues could aid in the preparation of the needed papers to help the insurance companies move the application forward;
 - g. small business set asides; and
 - h. a type of on the job training; a program that would give the minority the opportunity to obtain bonding and bid on the contract while receiving management and technical assistance in preparing the necessary forms and business records would help to insure the minimization of risk to the State using State funds.
6. Of the small and minority businessmen who testified, all agreed that there is definite discrimination by the bonding companies against the small and minority businesses. Testimony elicited from these businessmen revealed the following problems which they encounter in applying for bonds:
- a. a discriminatory attitude of bonding a black as a general contractor - putting him in the authority seat - believing that the subcontractors some of whom may be white, will be unwilling to be told how to go about their job; thus the bonding companies are discouraging competition by denying bonding;
 - b. the critical time element, i.e. the time it takes a minority business to receive a bond after it has bid successfully on a contract; also the time that SBA requires in advance for a bid bond, twenty-one days in advance of letting the contract;
 - c. the attitude of the insurance companies that bonding is not profitable especially on small contracts; bonding companies are not charging higher rates in order to make the bonding business more profitable because they want to remain competitive; (SCC is now making a study on the rates charged by insurance companies under the Competitive Pricing Act—look at possible skimming and availability of insurance including bonding);

d. the cost of maintaining a bond while the minority business is on the job; many companies require periodically a statement of the job status in order for the minority and small business to be covered by the bond;

e. the bonding company's request or desire to get into the prime or general contractor's business by looking at the books on management counseling; and

f. the percentage of jobs bid on and contracts awarded; may need more than one bid bond at a time in order to compete. The businessmen were in favor of the proposed solutions offered above, especially a State agency or public organization providing bonding.

7. Of the representatives of the insurance and surety community, all recognized the problems that the small businessmen face in obtaining bonding. They offered the following testimony and solutions:

a. Two representatives stated that what needs to be done is for the State to set up funds to educate the small disadvantaged or minority contractor in the bookkeeping, accounting and record keeping end of his business rather than arbitrarily provide him with bonding and thus hand him business which would create more management and financial difficulties. The problem is not that the contractor can not perform the actual construction but that the small or minority contractor has a lack of business acumen. They suggested that the reason minority businesses were turned down when applying for bonding is because they do not have the proper total picture of their business, that is, the capability to perform work coupled with the proper training in the financial and management ends of his business. They espoused the view that State money would be well spent if it were used to help educate, through State programs, the small contractors in the financial management phase of their business. Through this program, they believed that the State would profit by gaining a number of solid businesses who would compete for and help to keep the costs down on State contracts.

b. Surety companies do not set their rates with the expectation to cover losses. In this respect bonding is different from insurance. Insurance is a pooling to cover losses. The cost of the bond is part of the contractor's total cost of doing the job. The fee paid for a bond is a service fee to finance the investigation of the applicant's credit. Each bonding company has its own arrangements with insurers for reinsurance. It was stated that bonding is more akin to banking in that both lend their credit to the applicant. Bonding is only like insurance in that if the principal (debtor) fails to perform his contract of specified obligations owed by the principal to the obligee (creditor), then the surety stands willing to pay the obligations of the principal. The surety is directly liable on the principal's contract. However, upon the payment in full or in part a surety has an absolute right to be reimbursed by the principal. This is the difference between insurance and bonding or suretyship.

c. One representative testified that his association supports the SBA program because it retains the prequalification process so vital to writing bonds. No one is served by bonding a contractor who can not complete the job. He and his association believed that there has to be some degree of prequalification and it has been long recognized that a disinterested surety underwriter can do a better job in prequalifying than a politically oriented official.

d. Bonding companies are writing bonds for small amounts but they have also tightened the requirements for obtaining bonding. Such tightening includes the requirements of better business organization, more working capital, payment records of the business (whether a slow pay record or not) and there is more careful underwriting. The standards for writing bonds are different from one company to the next. Hopefully, the additional overall monies brought in by the bonding companies from the rate increase on premiums will encourage more companies to participate in writing bonds.

e. As a solution to the problem, one representative suggested that the Commonwealth of Virginia establish a small business set aside program whereby the State would designate jobs as set asides and allow the small businesses to bid on jobs which are sponsored by the federal, state or local governments. The Commonwealth would collect the profits or absorb the losses from the program. The State could continue the prequalification process but it would remove the surety companies from writing bonds on the smaller businesses.

f. To eliminate the requirement of bid performance and payment bonds would exacerbate the already existing problem. Many people, in looking at the problem only consider the surety and the principal, the obligees must also be considered. With bonded work the obligees can feel assured that they will receive the end product free of liens; without bonds the obligees will feel uncertain.

The Subcommittee in reviewing the testimony cited found unanimously that there were difficult problems facing small businesses and disadvantaged businesses in their attempts to secure surety bonding.

CONSIDERATIONS AND RECOMMENDATIONS

In its review of the testimony and findings presented it, the Subcommittee considered carefully several solutions to the problems offered by the testimony. Also the Resolution directed that the study include an examination of two particular methods by which bonding could be offered to such businesses.

The Subcommittee began its considerations by first studying the feasibility of creating an authority patterned after the Virginia Housing Authority. The Subcommittee determined that such a method would necessarily entail the recommending of new legislation to create and establish a political subdivision of the Commonwealth, such as the Virginia Bonding Authority, with such politic and corporate powers necessary or appropriate to carry out and effectuate its corporate purposes, including the power to provide bonding to small and minority businesses. The Subcommittee considered similar legislation introduced in Ohio and West Virginia and determined that the creation of a new agency in State Government, especially one which would require a large and expertise staff, in this day and age of sunset proposals would be practically and politically unfeasible.

The Subcommittee next studied the desirability and feasibility of requiring all fidelity and surety companies as a condition of retaining their license to do business in this Commonwealth to join a pooling arrangement to provide bonding to such businesses. The State Corporation Commission worked with the Committee in this aspect of the study. The Subcommittee considered this approach to be unsound for the following reasons: (1) A pooling arrangement lends a degree of financial security to the obligee but would do nothing to assure the obligee that any of the other traditional bonding prequalifications are present. (2) The Subcommittee believes that an obligee's interest would not be served by a proposed pooling arrangement or "Assigned Risk" type of approach to handling bonds for otherwise unbondable contractors, and Surety companies certainly would not be receptive to any such legislation. In many ways it would be similar to asking all banks in the State to participate in loans, regardless of the amount, to businesses that would not ordinarily qualify for such loans. Whereas, this proposed bonding approach might help a few contractors, it is more likely to put many more out of business by encouraging them to bid on work they are not qualified to handle. Please remember, that under the laws of Suretyship, the Surety has the right to fully recover any losses from the Principal on the bond.

A third solution which the Subcommittee considered was that of the small business set aside program. The Subcommittee looked at statutes in California, Indiana and Pennsylvania where agencies in those States' governments were empowered with the authority to designate as "small business set aside" specified purchase requests or contracts for which bids are to be invited and accepted only from a business designated by the agency as a small business. The Subcommittee determined that the set aside program was not a solution for the reason that even in set asides bonding is required and so initially set asides are not the immediate answers.

The Subcommittee next explored the feasibility of drafting legislation that would permit contracting boards, officers, and agents the discretion to waive in full or in part bonding requirements as established by State law in the case of minority contractors for certain jobs specified by the locality. This legislation could enable contracting officers to negotiate an agreement with a contractor whereby the interests of the public agency would be protected by means other than that of a surety bond. The law could permit contracting officers to require cash deposits, increase the amount of money retained by the public body, or limit or eliminate the periodic payments made by the public agency to the contractor. This legislation could also place a limitation on the number of times that the bonding requirements may be waived for a single contractor, and establish a maximum dollar amount for which any one contract could be made pursuant to this provision. In considering this proposal the Subcommittee looked at a New Jersey statute establishing such a program. The Subcommittee, however, determined that such legislation leaves too much subjective discretion with the contracting officer and increases the contracting officer's liability. Also, it was determined that such a program provides little assurance that the successful bidder will be able to perform satisfactorily under the contract and jeopardizes the taxpayers' monies.

The Subcommittee considered the possibility of establishing a state program similar to the Federal Small Business Administration's surety bond guarantee program where the SBA is authorized to guarantee and enter into commitments to guarantee any surety against loss resulting from the breach of the terms of a

guaranteed bond covering a contract valued up to a certain amount. Up to a certain percent of the losses incurred by the surety are assumed by SBA in return for a certain percent of the bond premiums. However, in reviewing this proposal, the Subcommittee found that SBA had incurred losses in excess of 64 million dollars. It became obvious to the Subcommittee that to establish a state program similar to SBA may invite the same unfortunate result and that such a program would probably result in a considerable expense to the State. Testimony revealed that if SBA can improve its services to Virginia contractors in the substandard surety market as promised by the Director of SBA's surety guarantee program and can become more accessible to the small businessman by providing better assistance, it would be folly for Virginia to establish its own form of SBA program and duplicate the work. The Subcommittee recommends that the Commonwealth of Virginia through the State Office of Minority Business Enterprises monitor SBA's activities in Virginia to determine whether or not SBA is improving its services. The Subcommittee also recommends that in monitoring these activities it should be noted whether or not SBA is living up to its primary purpose that being a stepping stone or temporary program for the small businessman from the substandard to the standard market with the interim serving as a period in which the small businessman improves his track record. The Subcommittee determined that SBA is not providing better service if they prevent a small businessman from moving into the standard surety market. In making these recommendations, the Subcommittee also recommends that Virginia surety agents should be encouraged to participate in obtaining standard bonds for small businesses if they qualify or after the small business has demonstrated a good track record with SBA. They should also be encouraged to participate in the SBA program and assist the small businessman with his paperwork. This would allow the surety agent to get to know the small businessman and then, once he is ready for standard bonding, they could move him from the substandard market into their company's standard market. This would be an investment for both the surety and the small businessman and for business in Virginia. The Subcommittee therefore recommends the adoption of the resolution which is attached hereto as Appendix III.

The Subcommittee considered the fact that some small and minority businesses are in need of technical assistance, that is, such assistance as record keeping, financial data and management skills. To provide this assistance, the Subcommittee recommends that the Virginia General Assembly should be encouraged to provide more money to the State OMBE and to provide support money to the area business leagues around the Commonwealth. This Subcommittee would support an increase appropriation to these offices so that they can provide increased assistance.

Finally, the Subcommittee explored the feasibility of amending present statutory provisions which provide exemptions from bonding certain public contracts that do not exceed a certain dollar amount. The Subcommittee considered raising the present statutory amount from twenty-five hundred dollars to thirty-thousand dollars. The Subcommittee agreed that this figure should be raised to reflect inflation and the rise in costs from the time the statutes were enacted. The Subcommittee believes such a provision would enable small and minority owned businesses to compete and qualify for State and local contracts and to obtain a more equitable share of such contracts. An increase in the number of contractors capable of qualifying would promote freer and more open competition in bidding for such contracts and help to keep the costs of such jobs to a minimum. Similar legislation has been enacted in California and Michigan; and the United States House of Representatives during its last session passed identical legislation.

In exploring this proposal, the Subcommittee also considered the provisions set forth in Chapter 7 of Title 54 of the Code of Virginia relating to contractors. The Subcommittee determined that the proposed amendments to §§11-17, 11-20 and 11-23 to raise the amount from twenty-five hundred dollars to thirty thousand dollars make a perfect tie in with the registration requirements of contractors and subcontractors in Chapter 7 of Title 54. The Subcommittee has determined that the proposed amendments make uniform the State and local bonding requirements and registration requirements for persons engaged in contraction and construction work. Also, the Subcommittee believes that the proposed legislation allows the governmental units protection through their licensing powers and at the same time updates the bonding requirements so as to give the small contractors, working in a tight bonding market the ability to bid on and perform contracts with the State and local jurisdictions. The Subcommittee therefore recommends the adoption of the legislation which is attached hereto as Appendix III.

Respectfully submitted

Ira. M. Lechner, Chairman

A. Victor Thomas

Bonnie L. Paul

APPENDIX I

HOUSE RESOLUTION NO. 40

Requesting the House Committee on General Laws to conduct a study of bonding for small businesses and disadvantaged businesses.

WHEREAS, small business persons and disadvantaged business persons find it difficult to participate significantly in the multi-million dollar capital improvements, procurement and contracting activities of federal, State and local governments; and

WHEREAS, a major part of this difficulty is encountered in obtaining adequate bonding of all types including bid bonds and performance bonds and surety bonds; and

WHEREAS, ways and means need to be found to allow such small and disadvantaged business persons to obtain bonding to bid on and obtain these contracts; and

WHEREAS, suggestions have been made to solve this problem including creating a State bonding authority patterned along the lines of the Virginia Housing Development Authority which has proved to be an excellent entity to provide low interest mortgage money for housing; now, therefore, be it

RESOLVED by the House of Delegates, that the House Committee on General Laws is requested to conduct a study of the ways and means available to provide the necessary bonding for small disadvantaged contractors, suppliers and vendors to bid on, obtain and perform contracts for federal, State and local governments. The committee shall specifically study the feasibility of creating a Virginia Bonding Authority patterned after the Virginia Housing Development Authority to provide such bonds to such business persons, and, be it

RESOLVED FURTHER, That the Committee shall study the desirability and feasibility of requiring all fidelity and surety companies as a condition of retaining their licenses to do business in this Commonwealth to join a pooling arrangement to provide bonding for such small business persons and disadvantaged business persons. The State Corporation Commission shall assist the Committee in this aspect of its study.

No funds shall be allocated for the purposes of this study but existing resources shall be utilized to include the contractor's associations across the commonwealth, the National Office of Minority Business Enterprise, and the State Office of Minority Business Enterprise.

The Committee, upon completion of its study, shall prepare and introduce any legislation as it deems appropriate.

APPENDIX II.

HOUSE JOINT RESOLUTION NO.....

Expressing the sense of the General Assembly concerning the certain services provided to businesses in the Commonwealth by the federal government's Small Business Administration.

WHEREAS, the Small Business Administrator is authorized to administer a surety guarantee program through which it is authorized to guarantee any surety against loss resulting from the breach of the terms of a bonded contract up to a certain amount; and

WHEREAS, the Small Business Administration offers these services usually to small businesses and disadvantaged businesses that cannot secure the necessary bonding in a standard bond market; and

WHEREAS, the Small Business Administration's services are sought by many of the Commonwealth's businesses that meet the requirements necessary to apply for substandard bonding; and

WHEREAS, a Subcommittee from the House General Laws Committee on General Laws, pursuant to House Resolution No. 40 passed in the 1977 General Assembly, has concluded a study on the problems that small and disadvantaged businesses have in securing bonding, a part of which concerned the Small Business Administration's program; and

WHEREAS, this Subcommittee found that many of Virginia's businesses that have sought to take advantage of this program have incurred difficulties in receiving these services expeditiously, and have incurred difficulty in receiving aid from Virginia's licensed bonding agents to pursue this program to their benefit; and

WHEREAS, the Virginia State Office of Minority Business Enterprise works with the small businesses and disadvantaged businesses in the Commonwealth in their efforts to secure the necessary bonding; now therefor, be it

RESOLVED by the House of Delegates, the Senate concurring, that it is the sense of this body that the Virginia State Office of Minority Business Enterprise monitor the Small Business Administration's activities in Virginia to determine whether or not the Small Business Administration is improving its services to Virginia businesses. The State Office of Minority Business Enterprise is also requested to encourage those agents licensed in Virginia to procure surety bonds to participate in the Small Business Administration's surety bond program and encourage them to assist those businesses in the Commonwealth which seek the program's services.

APPENDIX III

A BILL to amend and reenact § 11-17, 11-20 and 11-23 of the Code of Virginia, relating to public contracts in general.

Be it enacted by the General Assembly of Virginia: 1. That §§ 11-17, 11-20 and 11-23 of the Code of Virginia are amended and reenacted as follows:

§ 11-17. Advertising for bids.—Every contract ~~of thirty thousand dollars or in excess of twenty-five hundred dollars~~ thereof, except in a case of emergency and except also contracts for the purchase of stone, soil, lumber, borrow pits, gravel, sand, hay, grain, repairs and supplies for standard equipment, and other materials bought locally from farmers agribusinesses and property holders, to which the State of Virginia, or any department, institution, agency or water, sewer or sanitation authority thereof is a party, for the construction, improvement or repair of any building, highway, bridge, street, sidewalk, culvert, sewer, reservoir, dam, dock, wharf, draining, dredging, excavation, grading, or other such construction work, shall be let by the State, or such department, institution, agency or water, sewer or sanitation authority thereof, only after advertising for bids for the work at least ten days prior to the letting of any contract therefor. The advertisement shall state the place where bidders may examine the plans and specifications for the work, and whether the contract will be let for a lump sum or on a cost plus per centum or fee basis, and the time and place where bids for the work will be opened.

Notwithstanding the provisions of this section and of the sections following, all bids for work on the highways shall be governed by §§ 33-99 through 33-107 (§§ 33.1-185 through 33.1-192) whenever any provision of these sections is applicable.

§ 11-20. Letting contract to lowest bidder; bond required.—The contract shall be let to the lowest responsible bidder for the particular work covered in the bid when the contract is to be let for a lump sum, or to the responsible bidder naming the lowest per centum of fee if the contract is to be let on a cost-plus basis.

Except as provided in §11-23, upon the letting of such contract, the contractor who is the successful bidder shall thereupon enter into the following bonds, each with surety thereon payable to the Commonwealth of Virginia, each in a sum not less than one half the estimated cost of the work and each approved by the Attorney General:

(a) A performance bond solely for the protection of the Commonwealth of Virginia conditioned upon the faithful performance of the work in strict conformity with the plans, specifications and conditions for the same.

(b) A payment bond conditioned upon the payment of all persons who have, and fulfill, contracts which are directly with the contractor for performing labor or furnishing materials in the prosecution of the work provided for in said contract.

Certified copies of the bonds hereinabove provided for shall be delivered to and kept on file in the office of the Comptroller.

No contractor, as the lowest responsible bidder, shall subcontract any work required by the contract except under the following conditions: Each subcontractor shall furnish and the contractor shall require as a part of the agreement between the subcontractor and the contractor, a payment bond with surety thereon in the amount of fifty percent of the work sublet to the subcontractor which shall be conditioned upon the payment to all persons who have, and fulfill, contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract. Every such bond shall be construed regardless of its language, as incorporating, within its provisions, the obligation to pay those persons who furnish labor or materials as aforesaid; provided, however, that subcontracts between the contractor and a manufacturer or a fabricator shall be exempt from the provision requiring a payment bond and provided further that subcontracts for less than ~~two-thirty~~ two-thirty thousand-five hundred dollars ~~each~~ are also exempt hereunder. Provision for such payment bonds shall be made a part of each agreement between the owner and contractor. In the event a contractor fails to require from a subcontractor the bond provided for herein, any person who has and fulfills contracts directly with such subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract shall have a direct right of action against the obligors and sureties or the payment bond required of the contractor under subparagraph (b) above.

Persons who have, and fulfill, contracts which are directly with the contractor for performing labor and

furnishing materials in the prosecution of the construction work defined in §11-17 shall have a direct right of action against the obligors and sureties on the payment bond required of the contractor under subparagraph (b) above. Persons who have, and fulfill, contracts which are directly with subcontractors for performing labor and furnishing materials in the prosecution of the work provided for in the subcontracts shall have a direct right of action against the obligors and sureties on the bond required herein of the subcontractors.

No action on any bond required under subparagraph (a) hereof shall be brought unless within one year after (1) completion of the contract, including the expiration of all warranties and guarantees, or (2) defect or breach of warranty, if the action be for such, is discovered. No action on any payment bond required of a contractor under subparagraph (b) hereof or required for a subcontractor shall be brought unless within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials. Every action brought under this section shall be brought in a Virginia court of competent jurisdiction and the venue therefor shall be as specified in subdivision 6 of §8.01-261, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

All bonds required herein shall be executed by a surety company authorized to transact business in the Commonwealth of Virginia as surety.

§ 11-23. Bonds on public contracts to which county, city, town, school board, or agency thereof, is party: conditions of such bonds.—No contract, ~~in excess of two thirty thousand five hundred dollars~~ or in excess thereof, except in a case of emergency and except also contracts for the purchase of stone, soil, lumber, borrow pits, gravel, sand, hay, grain, repairs and supplied for standard equipment, and other materials bought locally from farmers, agribusinesses and property holders, to which any authority, county, city, town, school board, or any agency thereof, is a party, for the construction, improvement, or repair of any dwelling, school, auditorium, or other building, highway, bridge, street, sidewalk, sewer, water main, reservoir, dam, dock, wharf, draining, dredging, excavation, or other construction work, shall be entered into unless and until the person contracting to construct, improve or repair the work shall have entered into the following bonds with surety thereon payable to such authority, county, city, town, school board, or agency thereof, each in sums not less than one half the estimated cost of the work, and each approved by the attorney for such authority, county, city or town:

(a) A performance bond solely for the protection of such authority, county, city, town, school board, or agency thereof, conditioned upon the faithful performance of the work in strict conformity with the plans, specifications and conditions for the same.

(b) A payment bond conditioned upon the payment of all persons who have, and fulfill, contracts which are directly with the contractor for performing labor or furnishing materials in the prosecution of the work provided for in said contract.

No contractor, as the lowest responsible bidder, shall subcontract any work required by the contract except under the following conditions: Each subcontractor shall furnish, and the contractor shall require as a part of the agreement between the subcontractor and the contractor, a payment bond with surety thereon in the amount of fifty percent of the work sublet to the subcontractor which shall be conditioned upon the payment to all persons who have, and fulfill, contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract. Every such bond shall be construed, regardless of its language, as incorporating, within its provisions, the obligation to pay those persons who furnish labor or materials as aforesaid; provided, however, that subcontracts between the contractor and a manufacturer or a fabricator shall be exempt from the provision requiring a payment bond and provided further that subcontracts for less than ~~two thirty thousand dollars~~ two thirty thousand dollars are also exempt hereunder. Provision for said payment bonds shall be made a part of each agreement between the owner and the contractor. In the event a contractor fails to require from a subcontractor the bond provided for herein, any person who has and fulfills contracts directly with such subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract shall have a direct right of action against the obligors and sureties on the payment bond required of the contractor under subparagraph (b) above.

Persons who have, and fulfill, contracts which are directly with the contractor for performing labor and furnishing materials in the prosecution of construction work defined herein shall have a direct right of action against the obligors and sureties on the payment bond required of the contractor under subparagraph (b) above. Persons who have, and fulfill, contracts which are directly with subcontractors for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract shall have a direct

right of action against the obligors and sureties on the bond required herein of the subcontractors. No action on any bond required under subparagraph (a) hereof shall be brought unless within one year after (1) completion of the contract, including the expiration of all warranties and guarantees, or (2) defect or breach of warranty, if the action be for such, is discovered. No action on any payment bond required of a contractor under subparagraph (b) hereof or required of a subcontractor shall be brought unless within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials. Every action brought under this section shall be brought in a Virginia court of competent jurisdiction and the venue therefor shall be as specified in subdivision 6 of §8.01-261, or in the United States District court for the district in which the project, or any part thereof, is situated, and not elsewhere.

All bonds required herein shall be executed by a surety company authorized to transact business in the Commonwealth of Virginia as surety.

APPENDIX B

HOUSE BILL NO. 565

ENGROSSED

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HOUSE BILL NO. 565

House Amendments in [] - February 16, 1978

A BILL to amend and reenact §§ 11-17, 11-18, 11-20 and 11-23 of the Code of Virginia, relating to public contracts in general.

Patrons—Paul, Thomas, Axelle, Murray, McClanan, Giesen, Christian, Moss, Miller, C., Diamonstein, Scott, R. C., Lambert, Robinson, O'Brien, J. W., Leafe, and Garland

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 11-17, 11-18, 11-20 and 11-23 of the Code of Virginia are amended and reenacted as follows:

§ 11-17. Advertising for bids.—Every contract in excess of twenty-five hundred dollars, except in a case of emergency and except also contracts for the purchase of stone, soil, lumber, borrow pits, gravel, sand, hay, grain, repairs and supplies for standard equipment, and other materials bought locally from farmers . *agribusinesses* and property holders, to which the State of Virginia, or any department, institution, agency or water, sewer or sanitation authority thereof is a party, for the construction, improvement or repair of any building, highway, bridge, street, sidewalk, culvert, sewer, reservoir, dam, dock, wharf, draining, dredging, excavation, grading, or other such construction work, shall be let by the State, or such department, institution, agency or water, sewer or sanitation authority thereof, only after advertising for bids for the work at least ten days prior to the letting of any contract therefor. The advertisement shall state the place where bidders may examine the plans and specifications for the work, and whether the contract will be let for a lump sum or on a cost plus per centum or fee basis, and the time and place where bids for the work will be opened.

Notwithstanding the provisions of this section and of the sections following, all bids for work on the highways shall be governed by ~~§§ 33-00 through 33-107~~ *§§ 33.1-185 through 33.1-192* whenever any provision of these sections is applicable.

§ 11-18. Certified check to accompany bid.— A. Each such bidder

1 shall accompany his bid with a certified check payable to the State
2 Treasurer, or, if appropriate the treasurer of the authority, for a
3 reasonable sum to be fixed by the department, institution, agency or
4 water, sewer or sanitation authority letting the contract as a
5 guarantee that if the contract is awarded to such bidder he will
6 enter into contract with such department, institution, agency or
7 water, sewer or sanitation authority, for the work mentioned in the
8 bid.

9 *B. Notwithstanding the provisions of subsection A. of this*
10 *section, each such bidder shall not be required to accompany his*
11 *bid with a certified check when the [~~contract bid~~] is for less than*
12 *[~~thirty ten~~] thousand dollars.*

13 § 11-20. Letting contract to lowest bidder; bond required.—The
14 contract shall be let to the lowest responsible bidder for the
15 particular work covered in the bid when the contract is to be let
16 for a lump sum, or to the responsible bidder naming the lowest per
17 centum of fee if the contract is to be let on a cost-plus basis.

18 Except as provided in § 11-23, *and except when the contract let*
19 *is for less than [~~thirty ten~~] thousand dollars,* upon the letting of
20 such contract, the contractor who is the successful bidder shall
21 thereupon enter into the following bonds, each with surety thereon
22 payable to the Commonwealth of Virginia, each in a sum not less
23 than one-half the estimated cost of the work and each approved by
24 the Attorney General:

25 (a) A performance bond solely for the protection of the
26 Commonwealth of Virginia conditioned upon the faithful performance
27 of the work in strict conformity with the plans, specifications and
28 conditions for the same.

29 (b) A payment bond conditioned upon the payment of all persons
30 who have, and fulfill, contracts which are directly with the
31 contractor for performing labor or furnishing materials in the
32 prosecution of the work provided for in said contract.

33 Certified copies of the bonds hereinabove provided for shall be
34 delivered to and kept on file in the office of the Comptroller.

35 No contractor, as the lowest responsible bidder, shall subcontract
36 any work required by the contract except under the following
37 conditions: Each subcontractor shall furnish and the contractor shall

1 require as a part of the agreement between the subcontractor and
2 the contractor, a payment bond with surety thereon in the amount
3 of fifty percent of the work sublet to the subcontractor which shall
4 be conditioned upon the payment to all persons who have, and
5 fulfill, contracts which are directly with the subcontractor for
6 performing labor and furnishing materials in the prosecution of the
7 work provided for in the subcontract. Every such bond shall be
8 construed regardless of its language, as incorporating, within its
9 provisions, the obligation to pay those persons who furnish labor or
10 materials as aforesaid; provided, however, that subcontracts between
11 the contractor and a manufacturer or a fabricator shall be exempt
12 from the provision requiring a payment bond and provided further
13 that subcontracts for less than ~~two~~ [~~thirty ten~~] thousand five
14 ~~hundred~~ dollars each are also exempt hereunder. Provision for such
15 payment bonds shall be made a part of each agreement between
16 the owner and contractor. In the event a contractor fails to require
17 from a subcontractor the bond provided for herein, any person who
18 has and fulfills contracts directly with such subcontractor for
19 performing labor and furnishing materials in the prosecution of the
20 work provided for in the subcontract shall have a direct right of
21 action against the obligors and sureties on the payment bond
22 required of the contractor under subparagraph (b) above.

23 Persons who have, and fulfill, contracts which are directly with
24 the contractor for performing labor and furnishing materials in the
25 prosecution of the construction work defined in § 11-17 shall have a
26 direct right of action against the obligors and sureties on the
27 payment bond required of the contractor under subparagraph (b)
28 above. Persons who have, and fulfill, contracts which are directly
29 with subcontractors for performing labor and furnishing materials in
30 the prosecution of the work provided for in the subcontracts shall
31 have a direct right of action against the obligors and sureties on the
32 bond required herein of the subcontractors.

33 No action on any bond required under subparagraph (a) hereof
34 shall be brought unless within one year after (1) completion of the
35 contract, including the expiration of all warranties and guarantees,
36 or (2) defect or breach of warranty, if the action be for such, is
37 discovered. No action on any payment bond required of a contractor

1 under subparagraph (b) hereof or required of a subcontractor shall
2 be brought unless within one year after the day on which the
3 person bringing such action last performed labor or last furnished or
4 supplied materials. Every action brought under this section shall be
5 brought in a Virginia court of competent jurisdiction and the venue
6 therefor shall be as specified in subdivision 6 of § 8.01-261, or in
7 the United States District Court for the district in which the project,
8 or any part thereof, is situated, and not elsewhere.

9 All bonds required herein shall be executed by a surety
10 company authorized to transact business in the Commonwealth of
11 Virginia as surety.

12 § 11-23. Bonds on public contracts to which county, city, town,
13 school board, or agency thereof, is party; conditions of such bonds.—
14 No contract, ~~in excess of two~~ [*thirty ten*] thousand ~~five hundred~~
15 *dollars or in excess thereof , except in a case of emergency and*
16 *except also contracts for the purchase of stone, soil, lumber, borrow*
17 *pits, gravel, sand, hay, grain, repairs and supplies for standard*
18 *equipment, and other materials bought locally from farmers,*
19 *agribusinesses and property holders,* to which any authority, county,
20 city, town, school board, or any agency thereof, is a party, for the
21 construction, improvement, or repair of any dwelling, school,
22 auditorium, or other building, highway, bridge, street, sidewalk,
23 sewer, water main, reservoir, dam, dock, wharf, draining, dredging,
24 excavation, or other construction work, shall be entered into unless
25 and until the person contracting to construct, improve or repair the
26 work shall have entered into the following bonds with surety thereon
27 payable to such authority, county, city, town, school board, or
28 agency thereof, each in sums not less than one-half the estimated
29 cost of the work, and each approved by the attorney for such
30 authority, county, city or town:

31 (a) A performance bond solely for the protection of such
32 authority, county, city, town, school board, or agency thereof,
33 conditioned upon the faithful performance of the work in strict
34 conformity with the plans, specifications and conditions for the
35 same.

36 (b) A payment bond conditioned upon the payment of all persons
37 who have, and fulfill, contracts which are directly with the

1 contractor for performing labor or furnishing materials in the
2 prosecution of the work provided for in said contract.

3 No contractor, as the lowest responsible bidder, shall subcontract
4 any work required by the contract except under the following
5 conditions: Each subcontractor shall furnish, and the contractor shall
6 require as a part of the agreement between the subcontractor and
7 the contractor, a payment bond with surety thereon in the amount
8 of fifty percent of the work sublet to the subcontractor which shall
9 be conditioned upon the payment to all persons who have, and
10 fulfill, contracts which are directly with the subcontractor for
11 performing labor and furnishing materials in the prosecution of the
12 work provided for in the subcontract. Every such bond shall be
13 construed, regardless of its language, as incorporating, within its
14 provisions, the obligation to pay those persons who furnish labor or
15 materials as aforesaid; provided, however, that subcontracts between
16 the contractor and a manufacturer or a fabricator shall be exempt
17 from the provision requiring a payment bond and provided further
18 that subcontracts for less than ~~two~~ [*thirty ten*] thousand ~~five~~
19 ~~hundred~~ dollars each are also exempt hereunder. Provision for said
20 payment bonds shall be made a part of each agreement between
21 the owner and the contractor. In the event a contractor fails to
22 require from a subcontractor the bond provided for herein, any
23 person who has and fulfills contracts directly with such
24 subcontractor for performing labor and furnishing materials in the
25 prosecution of the work provided for in the subcontract shall have a
26 direct right of action against the obligors and sureties on the
27 payment bond required of the contractor under subparagraph (b)
28 above.

29 Persons who have, and fulfill, contracts which are directly with
30 the contractor for performing labor and furnishing materials in the
31 prosecution of construction work defined herein shall have a direct
32 right of action against the obligors and sureties on the payment
33 bond required of the contractor under subparagraph (b) above.
34 Persons who have, and fulfill, contracts which are directly with
35 subcontractors for performing labor and furnishing materials in the
36 prosecution of the work provided for in the subcontract shall have a
37 direct right of action against the obligors and sureties on the bond

1 required herein of the subcontractors. No action on any bond
 2 required under subparagraph (a) hereof shall be brought unless
 3 within one year after (1) completion of the contract, including the
 4 expiration of all warranties and guarantees, or (2) defect or breach
 5 of warranty, if the action be for such, is discovered. No action on
 6 any payment bond required of a contractor under subparagraph (b)
 7 hereof or required of a subcontractor shall be brought unless within
 8 one year after the day on which the person bringing such action
 9 last performed labor or last furnished or supplied materials. Every
 10 action brought under this section shall be brought in a Virginia
 11 court of competent jurisdiction and the venue therefor shall be as
 12 specified in subdivision 6 of § 8.01-261, or in the United States
 13 District Court for the district in which the project, or any part
 14 thereof, is situated, and not elsewhere.

15 All bonds required herein shall be executed by a surety
 16 company authorized to transact business in the Commonwealth of
 17 Virginia as surety.

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Official Use By Clerks	
Passed By The House of Delegates without amendment <input type="checkbox"/> with amendment <input type="checkbox"/> substitute <input type="checkbox"/> substitute w/amdt <input type="checkbox"/>	Passed By The Senate without amendment <input type="checkbox"/> with amendment <input type="checkbox"/> substitute <input type="checkbox"/> substitute w/amdt <input type="checkbox"/>
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

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APPENDIX C

HOUSE JOINT RESOLUTION NO. 72

ENGROSSED

1 **HOUSE JOINT RESOLUTION NO. 72**

2 House Amendments in [] - February 16, 1978

3 *Expressing the sense of the General Assembly concerning the*
4 *certain services provided to businesses in the Commonwealth by*
5 *the federal government's Small Business Administration.*

6

7 Patrons—Paul, Thomas, Robinson, Scott, R. C., Lambert, Christian,
8 Washington, Hobson, Marks, Hailey, Moss, White, Heilig, Leafe,
9 Diamonstein, Robrecht, and Garland

10

11 Referred to the Committee on General Laws

12

13 WHEREAS, the Small Business Administration is authorized to
14 administer a surety guarantee program through which it is
15 authorized to guarantee any surety against loss resulting from the
16 breach of the terms of a bonded contract up to a certain amount;
17 and

18 WHEREAS, the Small Business Administration offers these
19 services usually to small businesses and disadvantaged businesses
20 that cannot secure the necessary bonding in a standard bond
21 market; and

22 WHEREAS, the Small Business Administration's services are
23 sought by many of the Commonwealth's businesses that meet the
24 requirements necessary to apply for substandard bonding; and

25 WHEREAS, a Subcommittee of the House Committee on General
26 Laws, pursuant to House Resolution No. 40 passed in the 1977
27 General Assembly, has concluded a study on the problems that
28 small and disadvantaged businesses have in securing bonding, a part
29 of which concerned the Small Business Administration's program;
30 and

31 WHEREAS, this Subcommittee found that many of Virginia's
32 businesses that have sought to take advantage of this program have
33 incurred difficulties in receiving these services expeditiously, and
34 have incurred difficulty in receiving aid from Virginia's licensed
35 bonding agents to pursue this program to their benefit; and

36 WHEREAS, the Virginia State Office of Minority Business
37 Enterprise works with the small businesses and disadvantaged

1 businesses in the Commonwealth in their efforts to secure the
2 necessary bonding; now, therefore, be it

3 **RESOLVED** by the House of Delegates, the Senate concurring,
4 That it is the sense of this body that the Virginia State Office of
5 Minority Business Enterprise and the appropriate unit of the State
6 Corporation Commission monitor the Small Business Administration's
7 activities in Virginia to determine whether or not the Small Business
8 Administration is improving its services to Virginia businesses. The
9 State Office of Minority Business Enterprise and the State
10 Corporation Commission are also requested to encourage those
11 agents licensed in Virginia to procure surety bonds to participate in
12 the Small Business Administration's surety bond program and
13 encourage them to assist those businesses in the Commonwealth
14 which seek the program's services [; and, be it

15 **RESOLVED FURTHER**, That the Virginia State Office of
16 Minority Business Enterprise and the appropriate unit of the State
17 Corporation Commission shall report their determinations and
18 findings to the House Committee on General Laws on or before
19 December one, nineteen hundred seventy-eight.]

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Official Use By Clerks	
Agreed to By	Agreed to By The Senate
The House of Delegates	
without amendment <input type="checkbox"/>	without amendment <input type="checkbox"/>
with amendment <input type="checkbox"/>	with amendment <input type="checkbox"/>
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Date: _____	Date: _____
_____	_____
Clerk of the House of Delegates	Clerk of the Senate

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APPENDIX D

VSOMBE - SCC POLICY STATEMENT



COMMONWEALTH of VIRGINIA

John B. Harris
Director

VIRGINIA STATE OFFICE OF
MINORITY BUSINESS ENTERPRISE
VIRGINIA STATE COLLEGE
Petersburg, Virginia 23803

(804) 520-5413

November 7, 1977

Mr. Garland L. Hazelwood, Jr.
Assistant Commissioner
State Corporation Commission
Bureau of Insurance
Box 1157
Richmond, Virginia 23209

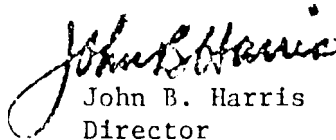
RE: 10% Set-Aside Clause
EDA/LPW Act 1977;
Policy Statement from SCC,
Bureau of Insurance to Surety
Companies Licensed to Transact
Business in Virginia

Dear Mr. Hazelwood:

We are in receipt of your letter of October 31, 1977, reference above. Lately, we have had considerable trouble with telephone service in the Petersburg Office. Hence, we could not receive incoming calls, either from outside or through the Richmond Office. Because of this, we are sorry we did not receive your calls.

As per your request, I have drafted a Policy Statement for Commissioner Day's consideration. In the meantime, if you need additional information on the EDA/LPW Provisions, please call me or Mr. Stanley L. Jeffress, Assistant Director, at once.

Sincerely yours,


John B. Harris
Director

JBH:dy

Enclosures

cc: Mr. James B. Spurlock, Jr.
Dr. Richard H. Dunn
Mr. Stanley L. Jeffress

BACKGROUND AND SUGGESTED POLICY STATEMENT

I. INTRODUCTION:

As the Guidelines for Round II of the LPW Program state, EDA "ascribes a high priority to the development and support of minority business enterprises and will enforce the 10% MBE participation requirement strictly."

II. DEFINITION OF MINORITY GROUP MEMBER:

13 CFR 317.2 defines a minority group member as "a citizen of the United States who is Negro, Spanish-speaking, Oriental, Indian, Eskimo, or Aleut." Further definition of these minority groups is required to clarify the many ambiguities associated with their use. Therefore, these terms shall be interpreted by EDA in the following manner:

- a. Negro - An individual of the black race of African origin.
- b. Spanish-speaking - An individual of a Spanish-speaking culture and origin or parentage.
- c. Oriental - An individual of a culture, origin or parentage traceable to the areas south of the Soviet Union, East of Iran, inclusive of islands adjacent thereto, and out to the Pacific including but not limited to Indonesia, Indochina, Malaysia, Hawaii and the Philippines.
- d. Indian - An individual having origins in any of the original people of North America and who is recognized as an Indian by either a tribe, tribal organization or a suitable authority in the community. (A suitable authority in the community may be: educational institutions, religious organizations, or state agencies.)
- e. Eskimo - An individual having origins in any of the original peoples of Alaska.
- f. Aleut - An individual having origins in any of the original peoples of the Aleutian Islands.

III. EDA POLICY:

EDA ascribes a high priority to the development and support of minority business enterprise and will strictly enforce the 10% MBE participation requirement. In areas with relatively high minority populations, such as large cities, EDA encourages Grantees to spend substantially more than 10% of grant funds for minority firms to make up for the lower than 10% participation which may take place in those areas with small minority populations.

IV. FEDERAL BONDING REQUIREMENTS:

If the contract under a federal grant is for \$100,000 or less, the grantee shall follow its own bonding requirements. For those contracts exceeding \$100,000 for construction or facility improvement, EDA may accept the bonding requirements of the grantee, if EDA determines that the Federal Government's interests are adequately protected. If such determination has not been made, the minimum bonding requirements shall be as follows:

- a. A bid guarantee from each bidder equivalent to five percent of the bid prices.
- b. A performance bond on the part of the contractor for 100 percent of the contract price.
- c. A payment bond on the part of the contractor for 100 percent of the contract price.
- d. Required bonds shall be obtained from companies holding certificates of authority as acceptable sureties.

V. BOND GUARANTEES:

Any contractor required to have a bid, performance, or payment bond(s) in order to obtain a contract, including but not limited to firms in construction, repair, maintenance, service, supply and janitorial work, may apply for a bond guarantee. If there are any questions as to your concern's eligibility, please contact your nearest SBA Office.

The SBA can guarantee bonds for contracts up to \$1,000,000; however, there is no limit to the number of bonds that can be guaranteed for one contractor.

In consideration of the Surety Company's paying the SBA 20 percent of the gross bond premium, SBA guarantees the Surety Company up to 90 percent guarantee for those contracts in the \$250,000 and 80 percent guarantee for those contracts in the \$250,000 - \$1,000,000 range. These guarantees are subject to a \$500 maximum deductible to the Surety Company regardless of the contract amount.

The contractor must make application to HIS LOCAL SURETY BOND AGENT/ BROKER for a specific bond by providing various background, credit and financial information required by both the Surety Company and the SBA. In order to do so, there are certain forms which must be completed, including those of the SBA.

The agent is responsible for obtaining and submitting all of the data provided by the contractor together and at one time to the Surety Company accompanied by the contractor's fees in separate checks and the agent's check for the net premium.

The Surety Company reviews data received from the agent and decides:

- i) to execute the bond without SBA's Guarantee
- ii) to execute the bond only with SBA's Guarantee, or
- iii) to decline the bond even with SBA's Guarantee

However, if the Surety Company decides to execute the bond on the basis of SBA's Guarantee, it prepares appropriate forms and forwards the same with supporting data (including contractor's fees) to the appropriate SBA Office, requesting SBA's Guarantee.

SBA, upon receipt of the Surety Company's submission, applies its own underwriting criteria. If the decision is favorable, SBA completes, executes and returns the Guarantee Agreements to the Surety Company; otherwise, the SBA signifies its disapproval and returns the submission to the Surety Company, less the contractor's \$10.00 application fee, which is not refundable.

The contractor must pay the SBA a fee of .2% (\$2.00 per \$1,000) of the contract amount. The contractor must also pay the Company a premium charge for the bond which is a maximum allowable of 1 1/2% (\$15.00 per \$1,000) on the first \$250,000 of contract amount and 1% (10.00 per \$1,000) on the excess.

SBA District Offices serving your area will provide counseling to contractors in compiling the necessary data required by the Surety Company, in addition to certain financial, management and technical assistance either sought by the contractor or recommended by the Surety.

IV. RECOMMENDED POLICY STATEMENT:

The State OMBE, MBL, Richmond; TABCA, Norfolk; and the RVBL, Roanoke, are responsible to Regional and National OMBE to assist Grantees in complying with the 10% Set-Aside Clause of the Local Public Works Act of 1977. Many minority subcontractors and majority prime contractors are encountering problems in securing bonds for LPW contract projects across the Commonwealth. Ninety days subsequent to EDA's approval, construction starts on these

projects. Because of the short time frame, it shall be the Policy of the Bureau of Insurance, State Corporation Commission, to support the intent of Public Law 95-28 and, thereby, urge all domicile and foreign surety companies and their respective agents and agencies, doing business in the Commonwealth, to participate in the bonding aspects of said Public Law, required of prime contractors and sub-contractors on EDA/LPW Projects now in progress in Virginia.

This circular is urgent and it merits your immediate attention because if minority and majority contractors, specifically the former, cannot get bonding necessary to participate in EDA/LPW Projects, Virginia stands to lose a significant share of the nearly \$40,000,000 earmarked for it under the 1977 LPW Act. Finally, the Commonwealth and its Grantees do not intend to be cited for non-compliance because of inadequate business bonding to comply with the 10% Clause.

Hence, all surety companies licensed to transact business in Virginia are expected and urged to diligently assist applicants for bonding. This is in the best interest of the State's economy and its people. If bonding is not forthcoming, the Commonwealth will lose millions of dollars because many firms are not getting bonding necessary to participate in EDA Projects.

Please advise, this Office and the following State Agency of your Minority Bonding Activity quarterly so that questions regarding such can be answered with dispatch.

John B. Harris, Director
Virginia State Office of Minority
Business Enterprise (OMBE)
Box 61
Virginia State College
Petersburg, Virginia 23803

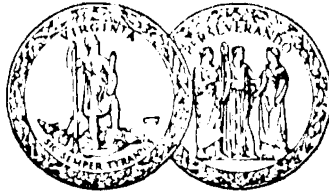
(804) 520-5413 (Petersburg)
(804) 786-5560 (Richmond)

Mr. Allen Roots, Executive Director
Metropolitan Business League (MBL)
615 North Second Street
Richmond, Virginia 23219

Mr. Leroy S. Gaillard, Exec. Director
Tidewater Area Business and Contractors
Association, Inc. (TABCA)
727 East Brambleton Avenue
Norfolk, Virginia 23504

Mr. Joseph Cason, Executive Director
Roanoke Valley Business League (RVBL)
720 Fairfax Avenue, N. W.
Roanoke, Virginia 24016

COMMONWEALTH OF VIRGINIA



JOHN G. DAY
COMMISSIONER OF INSURANCE

JAMES W. NEWMAN
DEPUTY COMMISSIONER OF INSURANCE

BOX 1157
RICHMOND, VA. 23200
TELEPHONE (804) 786 -

STATE CORPORATION COMMISSION BUREAU OF INSURANCE

October 31, 1977

Mr. John B. Harris, Director
Virginia State Office of Minority Business Enterprise
Virginia State College
Petersburg, Virginia 23803

Dear John:

I wish to acknowledge receipt of your letter of October 20, 1977, (received in this office on October 25), concerning the 10% Set-Aside Clause of the Local Public Works Act of 1977.

In this regard, I attempted to contact you on Friday October 28, at both your Petersburg and Richmond Offices, and again on Monday, October 31, but was unable to do so.

I wanted to advise you that both Commissioner Day and I had just returned to the office on late Thursday, October 27, and that on Friday morning, had had the opportunity to discuss your letter, which prompted my attempts to contact you.

With regard to your request for a policy statement from this office, to be addressed to surety companies and registered (?) agents, urging participation through the writing of bonds for minority sub-contractors and majority prime contractors on LPW contract projects, please be advised that we will be happy to assist your office in this manner.

Commissioner Day requested me to contact you, and request you to forward to this office a draft of the policy statement deemed appropriate by you, in order that he might give consideration thereto.

Upon receipt of the draft policy statement from you, I will proceed to prepare an appropriate circular to the surety companies licensed to transact business in Virginia, and will place same before Commissioner Day for appropriate action.



Mr. John B. Harris, Director
Virginia State Office of Minority Business Enterprise
Virginia State College
Petersburg, Virginia 23803

Page 2

If we can assist you further in this regard, or in any other manner, please do not hesitate to so advise us.

Sincerely,



Garland L. Hazelwood, Jr.
Assistant Commissioner

GLHJ:mra



COMMONWEALTH of VIRGINIA

John B. Harris
Director

VIRGINIA STATE OFFICE OF
MINORITY BUSINESS ENTERPRISE
VIRGINIA STATE COLLEGE
Petersburg, Virginia 23803

(804) 520-5413

October 20, 1977

Mr. John G. Day
Commissioner of Insurance
State Corporation Commission
Commonwealth of Virginia
Blanton Building
Richmond, Virginia 23214

Dear Commissioner Day:

The State OMBE is responsible to National OMBE to assist Grantees in complying with the 10% Set-Aside Clause of the Local Public Works Act of 1977. Many minority subcontractors and majority prime contractors are encountering problems in securing bonds for LPW contract projects across the Commonwealth. Ninety days subsequent to EDA's approval, construction starts on these projects. Because of the short time frame, we are respectfully requesting your Office to issue a policy statement to surety companies, in Virginia, asking them to participate in the bonding aspects required of "subs" and "primes" on LPW Projects.

A conference today with Mr. Robert Kyle in the Attorney General's Office with Messrs. Elvin P. Pierce, Assistant Regional Director, SBA, Philadelphia Regional Office and Willie Poe, Assistant District Director, SBA, Richmond, revealed that State statutes are not conflicting with the Federal requirement of the 10% Set-Aside. Accordingly, a policy statement from your Office to surety companies and registered agents, urging participation, would be appropriate to assure that the Commonwealth get full benefit of the nearly \$40 million earmarked for it. This would be in the best interest of the State's economy and its people. If bonding is not forthcoming, the Commonwealth will lose millions of dollars because many firms are not getting bonding necessary to participate in EDA Projects. This constitutes non-compliance.

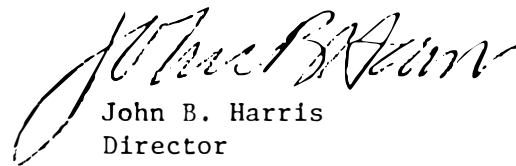
The State OMBE would gladly assist in drafting the policy statement in conjunction with you and the Attorney General's Office, if appropriate.

Mr. John G. Day
Page 2
October 20, 1977

We hope that you will, at your convenience, arrange a meeting on one of the following days so that the Attorney General's Office, the SBA and this Office might fully discuss this matter with you: October 24, October 25 in the PM, October 27 in the AM, and October 28.

Inasmuch as this urgent request merits immediate attention, we are assured of your affirmative response. We would be pleased to meet at your Office or in Mr. Kyle's Conference Room. Thank you.

Sincerely yours,



John B. Harris
Director

JBH:dy

cc: The Honorable Maurice B. Rowe
Dr. Thomas M. Law
Dr. Richard H. Dunn
Mr. James B. Spurlock, Jr.
Mr. Elvin P. Pierce (215) 596-5911
Mr. Willie E. Poe (804) 782-2381
Mr. Carroll Mason
Mr. Freddie Jones
Mr. Harry E. Jones
Mr. Stanley L. Jeffress

APPENDIX E

TO BE SUPPLIED BY
REGION III SBA,
ON OR BEFORE DECEMBER 15, 1978

LD9038368
Original

HOUSE JOINT RESOLUTION NO.....

Continuing the request of the 1978 Session of the General Assembly to the Virginia State Office of Minority Business Enterprise and the State Corporation Commission to monitor certain activities of the Small Business Administration in Virginia.

DATE: _____
(For Clerk's Use Only)

COMMITTEE REFERENCE: _____
(For Clerk's Use Only)

CHIEF PATRON: _____
(Signature)

PATRONS

PATRONS

HOUSE JOINT RESOLUTION NO.....

4 Requesting the Bureau of Insurance of the State Corporation Commission and the Virginia State
5 Office of Minority Business Enterprise to conduct a study of suggestions for bringing about
6 certain changes in State activity related to small, economically disadvantaged, and minority
7 businesses, etc.

8 WHEREAS, through the passage of House Joint Resolution No. 72, the nineteen hundred seventy-
9 eight Session of the Virginia General Assembly requested the Virginia Office of Minority Business
10 Enterprise and the appropriate unit of the State Corporation Commission to monitor activities of the
11 Small Business Administration relating to its surety guarantee program, through which it is
12 authorized to guarantee any surety against loss resulting from the breach of terms of a bonded
13 contract up to a certain amount; and

14 WHEREAS, in the course of their study, the Bureau of Insurance of the State Corporation
15 Commission and the Virginia State Office of Minority Business Enterprise formulated a number of
16 recommendations for State action based on the needs of small, economically disadvantaged, and
17 minority businesses; and

18 WHEREAS, the scope and time available for the conduct of the nineteen hundred seventy-eight
19 study did not permit the refinement of these recommendations or the selection of optimally suited
20 programs from among possible alternatives; and

21 WHEREAS, among those alternatives still under consideration are recommendations that: (1)
22 inasmuch as private and public surety companies and agencies, respectively, have done little to
23 relieve the critical bonding problems of small, economically disadvantaged, and minority busi-
24 nesses, that an on-the-job training program be funded through the Virginia State Office of Minority
25 Business Enterprise at an annual rate of \$75,000 through 1986, in order to give these firms an
26 improved opportunity to obtain bonding and bid on contracts while obtaining assistance in preparing
27 the necessary forms and records to help ensure the minimization of the risk of the State's use of its
28 funds; (2) a public sector bonding agency or commission be established by the Commonwealth, in
29 order to ensure bonding for small, economically disadvantaged and minority firms; (3) provided (2)
30 above is not acceptable, instrumentalities, agencies, and political subdivisions of the Commonwealth
31 having purchasing and contracting authority do more to assist small, economically disadvantaged,
32 and minority enterprises in resolving their bonding problems; (4) provided neither (2) nor (3) above
33 is acceptable, there be established, at the State level, some form of surety guarantee program
34 similar to that conducted at the federal level by the Small Business Administration, but one which
35 would function more effectively and eliminate the problems encountered by the federal program;
36 (5) State law be amended in order to require Virginia firms to notify small, economically
37 disadvantaged, and minority businesses in writing of the reasons for denial or rejection of their
38 applications for bonding; and

39 WHEREAS, other aspects of the nineteen hundred seventy-eight study requesting further
40 exploration or attention include: (1) the formulation of additional educational and training
41 programs that may assist in eliminating problems of small, economically disadvantaged, and
42 minority businesses in obtaining bonding; (2) the recommendation to the Committees on General
43 Laws of the General Assembly of specific legislation that would ease other business-related
44 difficulties of small, economically disadvantaged, and minority firms, making them more viable

1 taxpaying entities; and (3) the continued monitoring of the surety guarantee program and related
2 activities of the Small Business Administration; now, therefore, be it

3 RESOLVED by the House of Delegates, the Senate concurring, that the Bureau of Insurance of the
4 State Corporation Commission and the Virginia State Office of Minority Business Enterprise are
5 hereby requested to conduct a study of suggestions for bringing about certain changes in State
6 activity related to small, disadvantaged, and minority businesses. Such study shall include, but shall
7 not necessarily be limited to matters hereinabove discussed, together with their environmental and
8 economic impacts. The findings and recommendations of the study shall be reported to the
9 Governor and General Assembly not later than December fifteen, nineteen hundred seventy-nine.
10 The costs of such study shall be borne by the Bureau of Insurance of the State Corporation
11 Commission and the Virginia State Office of Minority Business Enterprise.

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