

COMMISSION

VIRGINIA



JOHN G. DAY
COMMISSIONER OF INSURANCE

JAMES W. NEWMAN
DEPUTY COMMISSIONER OF INSURANCE

BOX 1157
RICHMOND, VA. 2320
TELEPHONE (804) 786 -

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

November 14, 1977

1977-16

TO: THE PRESIDENT
EACH COMPANY LICENSED TO WRITE SURETY INSURANCE IN VIRGINIA

RE: 10% SET-ASIDE CLAUSE
LOCAL PUBLIC WORKS ACT OF 1977

Attached hereto is a Background and Policy Statement concerning the above captioned advising of the support of the Bureau of Insurance of the intent of Public Law 95-28.

As indicated in the Statement, this Company and its Virginia Surety Bond Agents are expected and urged to diligently assist applicants for bonding under the 1977 Local Public Works Act.

Because of the short time frame involved in Local Public Works contract projects approved by the Economic Development Administration, your Virginia Agents should be advised immediately concerning this matter, in order that adequate bonding to comply with the 10% Set-Aside Clause is made available.

Should you have any questions concerning this matter, kindly communicate same to this office.

Very truly yours,

John G. Day
Commissioner of Insurance

JGD:mra

Enclosure

10% SET-ASIDE CLAUSE

LOCAL PUBLIC WORKS ACT OF 1977

BACKGROUND AND POLICY STATEMENT

I. INTRODUCTION:

As the Guidelines for Round II of the Public Works Employment Act (LPW Program) state, the Economic Development Administration of the U. S. Department of Commerce (EDA) "ascribes a high priority to the development and support of minority business enterprises (MBE) 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 abiguities associated with their use. Therefore, these terms are 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 American 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 a concern's eligibility, please contact the nearest Small Business Administration (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 provides the Surety Company with up to 90 percent guarantee for those contracts in the \$250,000, and with 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 each 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.

VI. POLICY STATEMENT:

The State Office of Minority Business Enterprise (OMBE), and Metropolitan Business League (MBL), Richmond; the Tidewater Area Business and Contractors Association (TABCA), Norfolk; and the Roanoke Valley Business League (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 of Virginia. Ninety days subsequent to EDA's approval, construction starts on these projects. Because of the short time frame, it is the policy of the Bureau of Insurance, State Corporation Commission, to support the intent of Public Law 95-28 and we, therefore, urge all domicile and foreign Surety Companies and their respective Agents and Agencies, doing business in the Commonwealth of Virginia to participate in the bonding aspects of said Public Law, required of prime contractors and subcontractors on EDA/LPW Projects now in progress in Virginia.

This circular is urgent, it merits your immediate attention, and should immediately be disseminated to your Virginia Surety Bond Agents, 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 and their Agents 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)

Grantees can obtain assistance through the State OMBE indicated above, or through:

Mr. Allen Roots, Executive Director Metropolitan Business League (MBL) 615 North Second Street Richmond, Virginia 23219	Mr. Leroy S. Gaillard, Exec. Di. Tidewater Area Business and Contractors Assoc. Inc. (TABCA) 727 East Brambleton Avenue Norfolk, Virginia 23504
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Mr. Joseph Cason, Executive Director
Roanoke Valley Business League (RVBL)
720 Fairfax Avenue, N. W.
Roanoke, Virginia 24016