



New Mexico Considers a New P3 Bill Draft With SFAA's Amendments on Bonding

At its last meeting in 2013, the New Mexico Transportation Infrastructure Revenue Subcommittee had a P3 bill draft on its agenda. Unlike some of the legislation introduced in New Mexico in 2013, the current bill draft would require bonding on the construction portion of any P3 project.

In Section 7 of the attached bill draft, procurements pursuant to the Public-Private Partnerships Act are subject to the provisions of the Procurement Code in Chapter 14 of the New Mexico Revised Statutes. The resident preference, minimum wage act, subcontractors' fair practices act and other provisions of Article 4 in Chapter 13 are specifically cited as applicable to P3s. The Little Miller Act is in Article 4 of Chapter 13 at 13-4-18. In addition, Section 9 provides that in the P3 agreement, the public partner must require the private partner to provide bonds as required by the Little Miller Act in Section 13-4-18 for those components of a public project that involve construction. Parent company guarantees, letters of credit or other acceptable forms of security may be accepted for components that do not involve construction. Such security in the non-construction components also may be less than 100% of the value of the contact, based on the public partner's determination of what is required to adequately protect the public partner.

The Subcommittee member that presented this draft legislation was the bill sponsor of legislation in 2013 that did not require bonding on P3s. In 2013, SB 273 would have authorized P3s for transportation projects. HB 405 was a similar bill but it was not limited to transportation projects. Under both bills, the public partner could have included a requirement in the P3 agreement requiring the private partner to provide performance and payment bonds, parent company guarantees, letters of credit, or other acceptable forms of security or a combination of any of these. The 2013 legislation provided that the penal sum or amount of the security could be less than 100% of the value of the contract based on the public partner's determination of what is required to adequately protect it. Such assessments would have been made on a facility-by-facility basis.

AIA state counsel met with the bill sponsor in 2013 and explained the bonding issues and the need to amend SB 273. SB 273 got a triple committee referral, and the bill stalled and died in the committee process last year. The same bill sponsor now has come back with a bill draft for the Subcommittee that includes the bonding language that SFAA gave to AIA to use last year.

The P3 bill draft this year also applies broadly to state and local public infrastructure. This is a good first step to what SFAA anticipates will be a favorable resolution of the issue of bonding in P3s in New Mexico.