



The Surety & Fidelity
Association of America

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May 26, 2010

Mr. John Harte
Policy Director
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Subject: Draft Indian Country Jobs Bill—Surety Bond Guarantees

Dear Mr. Harte:

Thank you for sharing the Indian Country Jobs Bill Draft and giving us an opportunity to comment on it. The Surety & Fidelity Association of America (“SFAA”) is a trade association of over 450 insurance companies that are licensed to write surety and fidelity bonds. The vast majority of performance and payment bonds that secure construction projects in the United States are provided by SFAA companies. The National Association of Surety Bond Producers (“NASBP”) is a trade association of professional surety bond producers, who specialize in providing surety bonds for construction contracts and other purposes to companies and individuals throughout the United States.

Of interest to us is the provision in the Indian Country Jobs Bill that would authorize the Secretary of the Department of Interior (Secretary) to “issue a guarantee of up to 100 percent of amounts covered by a surety bond” issued to an Indian individual or Indian economic enterprise in connection with a federal construction project. SFAA and NASBP wholeheartedly support and are substantially engaged in efforts to assist small and emerging and historically disadvantaged contractors in obtaining the bonding necessary to participate in federal construction contracts. We want to support the Committee on Indian Affairs and the Department of Interior in their efforts to assist its constituents with bonding.

We question, however, the need for a bond guarantee program in the Department of Interior when the Small Business Administration (SBA) already has a bond guarantee program in operation available to small contractors. With the enactment of enhancements and improvements to the SBA Program, establishing a program within the Department of Interior would not necessary, even if the program provides only a supplemental (20%) guarantee as the Department of Interior currently is authorized under the law.

Under Public Law 10-442, 102 Stat. 1764, enacted in 1988, Congress authorized the Secretary to provide a supplemental bond guarantee, not to exceed 20 percent of any loss, in connection with a bond guarantee from the SBA bond guarantee program so that the aggregate total of the two guarantees is 100 percent. To the best of our knowledge, no regulations have been promulgated and the Department of Interior has not issued any supplemental bond guarantees.

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Currently, the SBA bond guarantee program can issue guarantees of up to 70 percent in Plan B (preferred surety) program and 80 percent in its Plan A (prior approval) program. The latter guarantee can be increased to 90 percent for projects under \$100,000 and for socially and economically disadvantaged contractors and HUB zone contractors.

SFAA and NASBP prefer that the existing SBA bond guarantee program be utilized as the vehicle for your goals, particularly in light of the fact that use of the SBA program previously was envisioned under Public Law 10-442. SFAA and NASBP are working with SBA and congressional staff to streamline the program to enhance participation by sureties, bond producers, and contractors. Proliferation of bond guarantee programs among the federal and state agencies only duplicates and taxes resources that might otherwise be used elsewhere to assist small and disadvantaged construction firms. An improved SBA program can meet any unique needs of Indian individuals and businesses, and we would be happy to work with the Committee staff and the Department of Interior to ensure that this is achieved. Support for the needed changes to the SBA Program by the Senate Committee on Indian Affairs and the Department of Interior would move these changes forward and ensure greater access to surety bonding for Indian construction businesses more expeditiously, without the need to recreate and fund a new bond guarantee program.

Another way that the surety industry can provide assistance is through bonding education for contractors to help them become bondable in the private insurance market. For the last 10 years SFAA has implemented actively its Model Contractor Development Program (MCDP). The MCDP provides workshops with information to the contractors related to improving their company's operations and thereby making it easier to be bonded or to increase their bonding capacity. It also gives the contractors one-on-one interactions with surety bond producers, underwriters and other professionals who work with them to assemble the materials necessary for a complete bond application and to address any omissions and/or deficiencies that might deter the successful underwriting of a bond.

SFAA has implemented this program in various cities and counties, and on a statewide basis in New York and Mississippi. Recently, we signed an agreement with the U.S. Department of Transportation (DOT) to conduct a nationwide bonding education program for it through DOT's regional small business resource centers. NASBP and its member bond producers are prominent among the volunteers that make the MCDP successful, and NASBP member bond producers presently work with Indian individuals and Indian business enterprises to prepare them to meet the requirements for surety credit. We would be happy to discuss establishing a similar program in the Department of Interior.

We look forward to meeting you and talking further about the surety bonding issues in this bill draft and how we might help Indian individuals and businesses obtain surety bonding.

Sincerely,

Lenore Marema
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SFAA

Larry LeClair
Director, Government Relations
NASBP