



**NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS**

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January 11, 2007

Ms. Mary Jo Childs  
General Counsel  
Maryland Board of Public Works  
Goldstein Treasury Building  
80 Calvert Street, Room 117  
Annapolis, MD 21401

Re: Comments on draft regulations implementing 2006 Maryland Laws Ch. 299 (H.B. 169).

Dear Ms. Childs:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of surety bond producers, whose membership includes licensed resident and nonresident bond producers and agents in the State of Maryland, I am contacting you to express our strong interest in the promulgation of regulations implementing 2006 Maryland Laws Ch. 299 (H.B. 169). Our hope is that the regulatory process will result in guidance on a number of matters that are left unaddressed or unclear in the new law pertaining to the use of bid, payment, and performance bonds provided by individual sureties and the types of acceptable assets backing such bond obligations to protect the interests of Maryland taxpayers and to ease the administrative burden of state contracting officers. Based on a review of an early draft of the regulations, which were provided by the Maryland Board of Public Works to an NASBP member and forwarded to me for comment, you are a long way down the path of developing such clear guidance.

We believe that the principal intent of the new law addressing bid, payment and performance security is to permit contracting officers to accept bonds provided by individual sureties for state and local public procurements, *but only in limited, defined circumstances*—specifically, when the contractor has been declined corporate surety credit; when the individual surety transacts business through an insurance agency licensed by the Maryland Insurance Administration; when the individual surety completes and signs under oath an Affidavit of Individual Surety; and when the individual surety pledges only permitted assets. Unless all of these factors are met, a state agency may not accept a bond provided by an individual surety or individual sureties.

Such a reading of the new law underscores a critical distinction between individual sureties and corporate sureties. To transact business in Maryland, corporate sureties must be authorized to do business by the Maryland Insurance Administration, a state agency which maintains oversight of and carefully scrutinizes the financial soundness of such companies. Individual sureties are not subject to such oversight and scrutiny. Rather, each contracting agency must make particularized

determinations about individuals acting as sureties and the assets pledged by such individuals. In such an environment, the regulations must be specific and must ensure that contracting agencies can verify without difficulty the actual assets that have been pledged. The draft regulations accomplish that aim by, for example, requiring perfected security interests in pledged assets to the state *and* by requiring deposit of those assets in escrow accounts with only federally insured financial institutions in the name of the appropriate state contracting agency. Such an approach is consistent with federal requirements found in FAR Subpart 28.203 and ensures that state contracting officers have the ability to verify the existence and authenticity of pledged assets and to gain access to such assets when needed. *We note that, for purposes of clarity, it would be beneficial to include a provision in the regulations that states that each use of the term “the financial institution” shall mean “federally insured financial institution.”*

We also note that the regulations do not address any requirements pertaining to the qualifications of a person (or entity) who acts as an “independent trustee” under the new law. *As it is important to receive information about the character and qualifications of individuals acting as sureties, so is it important to receive such information pertaining to an “independent trustee” who may issue trust receipts. Does the term “independent trustee” mean a person, or an entity, or both? Are there safeguards in place with respect to the performance of the independent trustee to protect the interests of taxpayers? Would the independent trustee be bonded to protect the State?*

In addition, the draft regulations are very general or are silent on two important factors in the new law that have particular resonance for surety bond producers. The new law establishes that the contractor “has been denied corporate surety credit,” but otherwise is silent as to the meaning of that language. The draft regulations attempt to address this aspect of the new law by stating that the “offeror...shall provide evidence in a form satisfactory to the unit that the contractor has been denied by a corporate surety within the past year based on a good faith application by the contractor.” We believe that this is an important threshold requirement that merits further regulatory guidance. *To that end, NASBP respectfully requests that the Board of Public Works consider a regulation requiring that the contractor and the contractor’s bond producer provide evidence, such as through a certification with attached documentation, that:*

- *the contractor made application for surety credit to at least two surety companies authorized to do business in the State of Maryland;*
- *such surety credit applications were bona fide and complete;*
- *the contractor received written, unqualified declinations from such surety companies; and*
- *the written declinations are dated no more than 60 days from the date of bid or proposal submission for the project for which the contractor now offers bonds provided by an individual surety or individual sureties.*

The new law also specifies that “the individual surety only transacts business through an insurance agency licensed by the Maryland Insurance Administration.” *To that end, NASBP*

Letter to Ms. Childs  
January 11, 2007  
Page 3 of 3

*respectfully requests consideration of a regulation to require documentation of the current licensure of the bond producer and of the bond producer's agency through which the individual surety is conducting business and that such documentation accompany the bond forms of that individual surety.*

Lastly, the draft regulation mentions that each contracting agency shall report on the use of individual surety bonds. *NASBP is interested in the format and content of the report and recommends that, at a minimum, such report would detail the number of individual surety bonds offered, accepted, and rejected and the reasons for rejections, whether such individual surety bonds were offered by small or minority contractors or by others, and the approximate project size on which individual surety bonds were used.*

NASBP appreciates the opportunity to provide these comments and would welcome the opportunity for further discussion on this matter. I may be reached at (202) 464-1173 should you have questions or wish additional information from NASBP.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. McCallum", with a long horizontal flourish extending to the right.

Mark H. McCallum  
General Counsel & Director of Government Relations

cc: Richard A. Foss, NASBP  
John C. Plate, USI DC Metro