



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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Ms. Lois Mandell
General Services Administration (GSA)
Regulatory-Secretariat Division (MVCB)
1800 F Street NW, 2nd floor
Washington, DC 20405.

Delivered electronically via <http://www.regulations.gov>

RE: Comments to FAR Case 2017-003, Individual Sureties

Dear Ms. Mandell;

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association whose membership includes firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the United States and its territories, I am writing to express NASBP's strong support of the proposed individual surety rule as outlined in FAR Case 2017-003. This rule will bolster the integrity of the federal bonding process by making certain that the assets supporting non-corporate surety bonds are sufficient and in the care of knowledgeable authorities protecting small businesses and taxpayer funds.

Purpose of Surety Bonds on Federal Construction Projects

Statutory surety bond requirements, such as the Federal Miller Act, provide vital financial security to protect project owners by assuring that interested contractors have been prequalified by a surety to perform the construction contract, that a reputable and knowledgeable surety stands ready to complete the contract in the event of contractor default, and that project subcontractors and suppliers will be paid. Unlike corporate sureties, Individual sureties are not subject to exacting regulatory oversight by the US Department of the Treasury, which certifies them to write bonds on federal contracts. In the absence of such oversight, clear regulations governing the acceptability of assets pledged by individual sureties is necessary and needed.

FAR Case 2017-003—Necessary protection of taxpayers, contracting authorities, and subcontractors

NASBP along with fifteen associations which comprise the members of the Construction Industry Procurement Coalition (CIPC), which includes organizations representing subcontractors, general contractors, and specialty trade contractors, supported the provision included in Section 874 of the 2016 FY National Defense Authorization Act (NDAA), which tightened controls over assets backing individual surety bonds on federal construction projects. The proposed FAR rule implements this law and will ensure that construction businesses, many of whom are small, will have assurance that all bonds pledged for federal construction contracts are legitimate, bolstering the integrity of and confidence in the federal procurement system. Additionally, it will help to certify that adequate and reliable security is in place to guarantee payments to downstream parties in the event that prime contractors default on payment obligations.

Specifically, the proposed FAR rule requires individual sureties to support their bond obligations with stable, U.S.-backed securities defined in 31 CFR Part 225, "Acceptable Collateral for Pledging to Federal Agencies," which is collateral limited to only public debt obligations of the United States government. Those specific federal government assets will then be placed in the care and custody of the federal government until the completion of the contract. Currently, small businesses working on a construction project—either as subcontractors, suppliers, or laborers on the job—have no control over the prime contractor's choice of security provided to the federal government, but they suffer the most harm financially if the security proves illusory or deficient. The result of adopting this rule is that subcontractors and suppliers on federal construction projects will know and have confidence that adequate and reliable security is in place to guarantee that they will be paid for their labor, equipment, and materials. NASBP

believes that the proposed FAR rule will eliminate future instances where bond assets pledged by individual sureties prove to be illusory or insufficient, causing significant financial harm to the federal government, taxpayers, and subcontractors and suppliers. Small businesses often interface with federal construction projects as subcontractors and suppliers, and they no longer will face the possibility of being unwitting victims of payment bonds pledged by individual sureties with insufficient or nonexistent assets.

Moreover, the proposed FAR rule eliminates the burden placed on federal contracting officers of determining the value of assets pledged by individual sureties, such as stocks and real estate, and most importantly, of deciding if the assets are existent and sufficient to support their bond obligations. The proposed FAR rule will assure federal contracting officers that a particular financial document is what it purports to be and that the assets are real and worth the value claimed. As a result, the proposed rule will make the government procurement process more effective and efficient in a way that saves government resources and taxpayer dollars with little or no additional costs. Federal contracting officers, in turn, will be able to direct their attentions to the myriad other tasks that underlay the administration of procurements.

NASBP does not believe that the proposed rule will negatively impact the availability of bonding for small construction businesses. As pointed out in the proposed rule, the U.S. Small Business Administration administers a responsive and robust bonding assistance program for small contractors which otherwise may not qualify for surety credit in the standard market. In addition, the standard surety market for small contractors has significantly expanded in recent years, providing many and varied avenues for small contractors to obtain bonding. The proposed rule also does not eliminate individual surety bonds as an option for surety credit; rather, it simply ensures that individual surety bonds will be backed by stable and secure assets in the control of the federal government.

For these reasons, the 600 member companies of NASBP strongly urge the FAR Council to adopt the proposed FAR Rule 2017-003.

Thank you for your consideration of our comments. NASBP would be happy to answer any questions you might have concerning the points made in this letter.

Sincerely,



Larry LeClair
Director, Government Relations