

October 7, 2016

Ms. Lesley Field
Acting Administrator for Federal Procurement Policy
Office of Federal Procurement Policy
Office of Management and Budget
NEOB Room 9013
Washington, DC 20503

Delivered via U.S. Mail and email to: lfield@omb.eop.gov

RE: Statutory changes to assets pledged by individual sureties on federal contracts directly impacting current FAR Regulations

Dear Acting Administrator Field:

We are contacting you to urge that the FAR Council implement an important statutory change regarding the types of assets that individual sureties can pledge to support their surety bonds on federal construction contracts. Section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year 2016 amends Title 31 USCA § 9304 to require individual sureties to use only “eligible obligations” as defined in 31 CFR Part 223, as collateral for their obligations to the federal agencies and to deposit such assets in the care and custody of the federal government. The signatory associations request that the current FAR regulations, specifically FAR 28.203-2(b)(3), be revised and made consistent with the statutory changes adopted in the FY 2016 NDAA prior to the November 30, 2016, effective date of the new requirements.

The changes will streamline the procurement process for federal contracting officers. Under the new requirements, federal contracting officers will no longer have to determine whether the assets that individual sureties pledge actually exist and/or are worth the actual value claimed. After the changes are implemented in the FAR Regulations, federal contracting officers will receive known and reliable assets, backed by the federal government, with a known face value. They also will have such assets under their control for the duration of the construction contract, which will make Standard Form 28 (SF28-03a) obsolete. This makes it all the more important for the regulations to be revised in a timely manner.

The changes adopted in the NDAA for individual sureties are the same requirements already in place for construction contractors wishing to post their own assets in lieu of a bond set forth in Title 31 USCA § 9303. Under the current federal regulations, a contractor pledging assets to the federal government is subject to more stringent rules than an individual surety, acting for profit, who pledges his or her own assets on the contractor’s behalf. The changes made in the NDAA require any person or entity that pledges collateral to the federal government to play by the same rules.

The signatory associations request that Federal Acquisition Regulatory Council assure that the process to amend the applicable sections of the FAR and the forms in place to conform with the effective statutory changes regarding assets backing individual surety bond assets be completed by the November 30 effective date.

Respectfully,

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