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April 10, 2007

General Services Administration, Regulatory Secretariat (VIR)
Attn.: Laurieann Duarte
1800 F Street, NW, Room 4035
Washington, DC 20405

Re: **FAR Case 2006-013 (published in the Federal Register on March 16, 2007, Volume 72, Number 51, Page 12584-12585)**

Dear Secretariat:

The Surety and Fidelity Association of America (“SFAA”) is a trade association of insurance companies licensed to write fidelity and surety bonds. The National Association of Surety Bond Producers (“NASBP”) is a national trade association of surety bond producers. The American Insurance Association (“AIA”) is a national trade association representing insurance companies writing all lines of property and casualty insurance, including surety bonds. Together, these three Associations represent the sureties and the agents that write the vast majority of surety bonds in the United States.

The referenced proposed rule would amend the Federal Acquisition Regulation to update the procedures for the acceptance of a surety bond with a security interest in real property. Specifically, the proposed rule would amend section 28.203-3 (“Acceptance of real property”) by revising paragraph (a)(1) and paragraph (d).

The revisions to paragraph (a)(1) would replace the existing requirement that the surety provide evidence of title in the form of a certificate of title prepared by a title insurance company that has been approved by the Department of Justice with a requirement that the evidence of title be “consistent with the requirements of Section 2 of the United States Department of Justice Title Standard 2001.” The proposed rule then proceeds to include a statement that: “[d]epending on the value of the property, contracting officers should consider requesting assistance from the agency-designated legal counsel to determine if the evidence of title is adequate.”

Clearly, the proposed revisions to paragraph (a)(1) will place a significantly greater burden on contracting officers to ascertain whether the evidence of title submitted by a surety is consistent with DOJ Title Standard 2001, a detailed 52-page guide (hereinafter “Guide”). Assessing the adequacy of title evidence is a complex and involved undertaking requiring specialized knowledge. The Guide, in fact, even states that acquiring agencies should have reviewing attorneys with considerable experience review title documentation (see page 7 stating the following: *“It is suggested that a reviewing attorney have at least three years of experience reviewing titles, and that if an attorney with less experience is asked to review titles, her/his work product be reviewed and countersigned by a fully qualified reviewing attorney in her/his own or another office of the agency.”*) Yet, the proposed rule does not mandate that the contracting officer seek and obtain legal review to determine if the evidence of title is adequate.

This non-mandatory requirement stands in stark contrast to other requirements in Subpart 28.2. For example, paragraph 28.203(f) requires that contracting officers must obtain the opinion of legal counsel as to the adequacy of the documents pledging assets supporting bonds furnished by individual sureties. That same standard—mandatory legal review—should apply here. Mandatory legal review would assist contracting officers with this complex burden and would ensure that the government is receiving proper evidence of title. To that end, the Associations strongly urge that the FAR Council consider changing the proposed rule so that, regardless of the value of the property, the contracting officer must seek and must obtain agency legal review regarding the adequacy of the evidence of title.

With respect to paragraph (d), the Associations believe the revisions are helpful clarifications and are in support of the proposed rule.

Respectfully submitted by,

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