

Appendix 1.a.

Chapters 299/300, Acts of 2012

Chapter 299

(Senate Bill 764)

AN ACT concerning

Fraudulent Insurance Acts – Individual Sureties – Contracts of Surety Insurance

FOR the purpose of establishing that it is a fraudulent insurance act for an individual surety to make a certain representation or to issue a contract of surety insurance, except as provided in certain provisions of law; ~~establishing that it is a fraudulent insurance act for a person to knowingly or willfully assist a person to obtain a contract of surety insurance from an individual surety, except as provided in certain provisions of law; establishing that it is a fraudulent insurance act for a person to knowingly or willfully make a certain false or fraudulent statement or representation about certain assets pledged by an individual surety or to knowingly or willfully fail to return certain money or premiums paid for a contract of surety insurance under certain circumstances;~~ establishing certain penalties for certain violations of this Act; defining a certain term; requiring the Maryland Insurance Administration to conduct a certain analysis of certain practices of corporate sureties and individual sureties; requiring the Administration to consult with certain persons or entities; requiring the Administration to consider certain items, make certain determinations, and conduct certain surveys and reviews in a certain analysis; requiring the Administration to submit certain reports to certain committees of the General Assembly on or before certain dates; and generally relating to individual sureties, contracts of surety insurance, and fraudulent insurance acts.

BY adding to

Article – Insurance
Section 27–406.1
Annotated Code of Maryland
(2011 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Insurance
Section 27–408
Annotated Code of Maryland
(2011 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Insurance

27-406.1.

(A) IN THIS SECTION, “INDIVIDUAL SURETY” MEANS A PERSON THAT:

(1) ISSUES ~~CONTRACT~~ SURETY BONDS OR CONTRACTS OF SURETY INSURANCE; AND

(2) DOES NOT HAVE A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER.

(B) ~~EXCEPT AS PROVIDED IN §§ 13-207 AND 17-104 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, IT~~ IT IS A FRAUDULENT INSURANCE ACT FOR AN INDIVIDUAL SURETY TO: SOLICIT OR ISSUE A SURETY BOND OR CONTRACT OF SURETY INSURANCE EXCEPT AS PROVIDED IN:

(1) §§ 13-207 AND 17-104 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND

(2) FOR AN UNCOMPENSATED PERSON, §§ 5-203 AND 5-204 OF THE CRIMINAL PROCEDURE ARTICLE.

~~(1) REPRESENT THAT IT HAS THE LEGAL AUTHORITY TO ISSUE A CONTRACT OF SURETY INSURANCE; OR~~

~~(2) ISSUE A CONTRACT OF SURETY INSURANCE.~~

~~(C) EXCEPT AS PROVIDED IN §§ 13-207 AND 17-104 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, IT IS A FRAUDULENT INSURANCE ACT FOR A PERSON TO KNOWINGLY OR WILLFULLY ASSIST A PERSON TO OBTAIN A CONTRACT OF SURETY INSURANCE FROM AN INDIVIDUAL SURETY.~~

~~(D) IT IS A FRAUDULENT INSURANCE ACT FOR A PERSON TO:~~

~~(1) KNOWINGLY OR WILLFULLY MAKE A FALSE OR FRAUDULENT STATEMENT OR REPRESENTATION AS TO THE EXISTENCE, VALUE, OR MARKETABILITY OF ANY ASSETS PLEDGED BY AN INDIVIDUAL SURETY TO SECURE ITS OBLIGATIONS UNDER A CONTRACT OF SURETY INSURANCE; OR~~

~~(2) KNOWINGLY OR WILLFULLY FAIL TO RETURN ANY MONEY OR PREMIUMS PAID FOR A CONTRACT OF SURETY INSURANCE ISSUED BY AN INDIVIDUAL SURETY IF THE CONTRACT OF SURETY INSURANCE IS REJECTED OR~~

~~NOT ACCEPTED BY THE GOVERNMENTAL ENTITY OR PERSON THAT REQUIRES
THE CONTRACT OF SURETY INSURANCE.~~

27-408.

(a) (1) A person that violates § 27-407 of this subtitle, or another provision of this subtitle in which the claim or act that is the subject of the fraud has a value of \$300 or more is guilty of a felony and on conviction, for each violation, is subject to:

(i) liability for restoring to the victim the property taken or the value of the property taken; and

(ii) 1. for a violation of any provision of § 27-403 of this subtitle, a fine, the maximum of which is the greater of three times the value of the claim or act that is the subject of the fraud and \$10,000 and the minimum of which is \$500, or imprisonment not exceeding 15 years or both; and

2. for a violation of any provision of § 27-404, § 27-405, § 27-406, **§ 27-406.1**, § 27-407, or § 27-407.1 of this subtitle, a fine not exceeding \$10,000 or imprisonment not exceeding 15 years or both.

(2) A person that violates a provision of this subtitle in which the claim or act that is the subject of the fraud has a value of less than \$300 is guilty of a misdemeanor and on conviction, for each violation, is subject to:

(i) liability for restoring to the victim the property taken or the value of the property taken; and

(ii) 1. for a violation of any provision of § 27-403 of this subtitle, a fine, the maximum of which is the greater of three times the value of the claim or act that is the subject of the fraud and \$10,000 and the minimum of which is \$500, or imprisonment not exceeding 18 months or both; and

2. for a violation of any provision of § 27-404, § 27-405, § 27-406, **§ 27-406.1**, § 27-407, or § 27-407.1 of this subtitle, a fine not exceeding \$10,000 or imprisonment not exceeding 18 months or both.

(b) (1) The penalties imposed under this section may be imposed separately from and consecutively to or concurrently with a sentence for another offense based on the act that constitutes a violation of this subtitle.

(2) Each act of solicitation under § 27-407 of this subtitle constitutes a separate violation for purposes of the penalties imposed under this section.

(3) Notwithstanding any other provision of law, a fine imposed under this section is mandatory and not subject to suspension.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) In accordance with the provisions of § 2–205 of the Insurance Article, the Maryland Insurance Administration shall conduct an analysis of the practices of corporate sureties and individual sureties in the State, as specified under this section.

(b) In conducting the analysis, the Administration shall consult with any person or entity that the Administration determines appropriate, including corporate sureties, individual sureties, insurance producers, contractors, the Department of Transportation, the Department of General Services, and the Maryland Property and Casualty Insurance Guaranty Corporation.

(c) In its analysis, the Administration shall:

(1) consider whether individual sureties should be licensed or otherwise regulated like other surety insurers in order to solicit or issue surety bonds or contracts of surety insurance;

(2) determine whether individual sureties have issued or attempted to issue surety bonds or contracts of surety insurance for the State, counties, or municipalities since authorized to issue surety bonds or contracts of surety insurance under Chapter 299 of the Acts of the General Assembly of 2006, Chapter 266 of the Acts of the General Assembly of 2008, and other applicable provisions of law, and, if so, the number of surety bonds or contracts of surety insurance issued, the number of surety bonds or contracts of surety insurance rejected, and the reasons for any rejection of the surety bonds or contracts of surety insurance;

(3) consider whether and how the law, as enacted under Chapter 299 of the Acts of the General Assembly of 2006 and Chapter 266 of the Acts of the General Assembly of 2008, should be expanded to allow individual sureties to issue surety bonds or contracts of surety insurance to subcontractors;

(4) determine whether individual sureties are authorized to issue surety bonds or contracts of surety insurance in other states and, if so, how individual sureties are regulated in those states;

(5) determine whether corporate sureties or individual sureties have been sanctioned for issuing surety bonds or contracts of surety insurance in the State and other states and the reasons for the sanctions;

(6) conduct a review of:

(i) all corporate sureties that issued surety bonds or contracts of surety insurance in the State and that were declared insolvent or placed under receivership of the Administration within the last 10 years;

(ii) the impact of the insolvency or receivership of the corporate sureties on the availability of surety bonds or contracts of surety insurance in the market;

(iii) the impact of the affected surety bonds on surety bond users and insurance producers; and

(iv) the notice requirements that the Administration provides to surety bond users, insurance producers, and the public in the event of the insolvency or receivership of a corporate surety;

(7) conduct a survey of the Maryland Property and Casualty Insurance Guaranty Corporation to determine:

(i) the number of claims submitted to and paid by the Corporation as a result of an insolvency of a corporate surety in the last 10 years;

(ii) whether contributions provided by surety insurers to the Corporation are adequate for future claims related to insolvent surety insurers;

(iii) the existing statutory requirements of items covered by the Corporation in the event of the insolvency of a corporate surety; and

(iv) whether loss of paid premiums or collateral of surety bond principal and any other covered items should be expanded;

(8) consider whether the laws and regulations for licensing and regulating corporate sureties are adequate, including whether the current risk-based capital standards are adequate to prevent the insolvency of corporate sureties;

(9) consider whether the laws and regulations regulating corporate sureties or individual sureties are adequate to prevent the issuance of fraudulent surety bonds or contracts of surety insurance by corporate sureties or individual sureties;

(10) conduct a survey of the Board of Public Works, the Department of Transportation, the Department of General Services, and a representative sample of corporate sureties and individual sureties, if appropriate, for each year beginning with 2004, that includes:

(i) the percentage of the total surety bonds or contracts of surety insurance that surety insurers issued in the State on construction projects to

minority business enterprises, as compared to the surety bonds or contracts of surety insurance that surety insurers issued on construction projects to nonminority business enterprises; and

(ii) the percentage of the total surety bonds or contracts of surety insurance that surety insurers rejected in the State that would have been issued to minority business enterprises on construction projects, as compared to the surety bonds or contracts of surety insurance that surety insurers rejected that would have been issued to nonminority business enterprises on construction projects;

(11) conduct a survey of a representative sample of contractors that have held a surety bond or contract of surety insurance issued by an insolvent surety insurer to determine the method each contractor used to acquire a new surety bond or contract of surety insurance and any additional costs or difficulties the contractor experienced in acquiring a new surety bond or contract of surety insurance;

(12) consider whether there are any programs, including the Maryland State Bond Development and Financing Authority and the United States Small Business Administration Bond Guaranty and Lending Program, that enhance the availability of surety bonds or contracts of surety insurance for new, emerging, and small businesses, including businesses that qualify as minority business enterprises; and

(13) consider the need to establish licensure requirements that are specific for surety insurance producers who sell surety bonds or contracts of surety insurance.

(d) (1) On or before December 1, 2012, the Administration shall submit an interim report, in accordance with § 2-1246 of the State Government Article, on its findings and recommendations to the Senate Finance Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Economic Matters Committee, and the House Health and Government Operations Committee.

(2) On or before December 1, 2013, the Administration shall submit a final report, in accordance with § 2-1246 of the State Government Article, on its findings and recommendations to the Senate Finance Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Economic Matters Committee, and the House Health and Government Operations Committee.

SECTION ~~2~~ 3, AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2012.

Approved by the Governor, May 2, 2012.

Chapter 300

(House Bill 885)

AN ACT concerning

Fraudulent Insurance Acts – Individual Sureties – Contracts of Surety Insurance

FOR the purpose of establishing that it is a fraudulent insurance act for an individual surety to make a certain representation or to issue a contract of surety insurance, except as provided in certain provisions of law; ~~establishing that it is a fraudulent insurance act for a person to knowingly or willfully assist a person to obtain a contract of surety insurance from an individual surety, except as provided in certain provisions of law; establishing that it is a fraudulent insurance act for a person to knowingly or willfully make a certain false or fraudulent statement or representation about certain assets pledged by an individual surety or to knowingly or willfully fail to return certain money or premiums paid for a contract of surety insurance under certain circumstances;~~ establishing certain penalties for certain violations of this Act; defining a certain term; requiring the Maryland Insurance Administration to conduct a certain analysis of certain practices of corporate sureties and individual sureties; requiring the Administration to consult with certain persons or entities; requiring the Administration to consider certain items, make certain determinations, and conduct certain surveys and reviews in a certain analysis; requiring the Administration to submit certain reports to certain committees of the General Assembly on or before certain dates; and generally relating to individual sureties, contracts of surety insurance, and fraudulent insurance acts.

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(B) ~~EXCEPT AS PROVIDED IN §§ 13-207 AND 17-104 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, IT~~ IT IS A FRAUDULENT INSURANCE ACT FOR AN INDIVIDUAL SURETY TO: SOLICIT OR ISSUE A SURETY BOND OR CONTRACT OF SURETY INSURANCE EXCEPT AS PROVIDED IN:

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(i) liability for restoring to the victim the property taken or the value of the property taken; and

(ii) 1. for a violation of any provision of § 27-403 of this subtitle, a fine, the maximum of which is the greater of three times the value of the claim or act that is the subject of the fraud and \$10,000 and the minimum of which is \$500, or imprisonment not exceeding 18 months or both; and

2. for a violation of any provision of § 27-404, § 27-405, § 27-406, **§ 27-406.1**, § 27-407, or § 27-407.1 of this subtitle, a fine not exceeding \$10,000 or imprisonment not exceeding 18 months or both.

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(c) In its analysis, the Administration shall:

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(2) determine whether individual sureties have issued or attempted to issue surety bonds or contracts of surety insurance for the State, counties, or municipalities since authorized to issue surety bonds or contracts of surety insurance under Chapter 299 of the Acts of the General Assembly of 2006, Chapter 266 of the Acts of the General Assembly of 2008, and other applicable provisions of law, and, if so, the number of surety bonds or contracts of surety insurance issued, the number of surety bonds or contracts of surety insurance rejected, and the reasons for any rejection of the surety bonds or contracts of surety insurance;

(3) consider whether and how the law, as enacted under Chapter 299 of the Acts of the General Assembly of 2006 and Chapter 266 of the Acts of the General Assembly of 2008, should be expanded to allow individual sureties to issue surety bonds or contracts of surety insurance to subcontractors;

(4) determine whether individual sureties are authorized to issue surety bonds or contracts of surety insurance in other states and, if so, how individual sureties are regulated in those states;

(5) determine whether corporate sureties or individual sureties have been sanctioned for issuing surety bonds or contracts of surety insurance in the State and other states and the reasons for the sanctions;

(6) conduct a review of:

(i) all corporate sureties that issued surety bonds or contracts of surety insurance in the State and that were declared insolvent or placed under receivership of the Administration within the last 10 years;

(ii) the impact of the insolvency or receivership of the corporate sureties on the availability of surety bonds or contracts of surety insurance in the market;

(iii) the impact of the affected surety bonds on surety bond users and insurance producers; and

(iv) the notice requirements that the Administration provides to surety bond users, insurance producers, and the public in the event of the insolvency or receivership of a corporate surety;

(7) conduct a survey of the Maryland Property and Casualty Insurance Guaranty Corporation to determine:

(i) the number of claims submitted to and paid by the Corporation as a result of an insolvency of a corporate surety in the last 10 years;

(ii) whether contributions provided by surety insurers to the Corporation are adequate for future claims related to insolvent surety insurers;

(iii) the existing statutory requirements of items covered by the Corporation in the event of the insolvency of a corporate surety; and

(iv) whether loss of paid premiums or collateral of surety bond principal and any other covered items should be expanded;

(8) consider whether the laws and regulations for licensing and regulating corporate sureties are adequate, including whether the current risk-based capital standards are adequate to prevent the insolvency of corporate sureties;

(9) consider whether the laws and regulations regulating corporate sureties or individual sureties are adequate to prevent the issuance of fraudulent surety bonds or contracts of surety insurance by corporate sureties or individual sureties;

(10) conduct a survey of the Board of Public Works, the Department of Transportation, the Department of General Services, and a representative sample of corporate sureties and individual sureties, if appropriate, for each year beginning with 2004, that includes:

(i) the percentage of the total surety bonds or contracts of surety insurance that surety insurers issued in the State on construction projects to

minority business enterprises, as compared to the surety bonds or contracts of surety insurance that surety insurers issued on construction projects to nonminority business enterprises; and

(ii) the percentage of the total surety bonds or contracts of surety insurance that surety insurers rejected in the State that would have been issued to minority business enterprises on construction projects, as compared to the surety bonds or contracts of surety insurance that surety insurers rejected that would have been issued to nonminority business enterprises on construction projects;

(11) conduct a survey of a representative sample of contractors that have held a surety bond or contract of surety insurance issued by an insolvent surety insurer to determine the method each contractor used to acquire a new surety bond or contract of surety insurance and any additional costs or difficulties the contractor experienced in acquiring a new surety bond or contract of surety insurance;

(12) consider whether there are any programs, including the Maryland State Bond Development and Financing Authority and the United States Small Business Administration Bond Guaranty and Lending Program, that enhance the availability of surety bonds or contracts of surety insurance for new, emerging, and small businesses, including businesses that qualify as minority business enterprises; and

(13) consider the need to establish licensure requirements that are specific for surety insurance producers who sell surety bonds or contracts of surety insurance.

(d) (1) On or before December 1, 2012, the Administration shall submit an interim report, in accordance with § 2-1246 of the State Government Article, on its findings and recommendations to the Senate Finance Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Economic Matters Committee, and the House Health and Government Operations Committee.

(2) On or before December 1, 2013, the Administration shall submit a final report, in accordance with § 2-1246 of the State Government Article, on its findings and recommendations to the Senate Finance Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Economic Matters Committee, and the House Health and Government Operations Committee.

SECTION ~~2~~ 3, AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2012.

Approved by the Governor, May 2, 2012.

Appendix 1.b.

Chapter 299, Acts of 2006

CHAPTER 299

(House Bill 169)

AN ACT concerning

Procurement - Bid, Payment, and Performance Security Requirements

FOR the purpose of increasing the maximum amount of the bonds that the Maryland Small Business Development Financing Authority may issue as a surety for the benefit of a principal in connection with certain contracts; expanding bid, payment, and performance security to include a bond provided or executed by an individual surety if the individual surety provides a security interest in certain assets at the time the bond is furnished and the individual surety pledges certain assets in an amount equal to or greater than the aggregate penal amounts of the bonds required by the solicitation; expanding bid security to include another form of security satisfactory to a certain public body; expanding payment and performance security to include another form of security allowed by regulation; requiring the Procurement Advisor appointed by the Board of Public Works to report to the Governor and certain committees by certain dates regarding the implementation of this Act; providing for the application of this Act; providing for the termination of this Act; and generally relating to bid, payment, and performance security requirements.

BY repealing and reenacting, with amendments,

Article 83A - Department of Business and Economic Development

Section 5-1035

Annotated Code of Maryland

(2003 Replacement Volume and 2005 Supplement)

BY repealing and reenacting, without amendments,

Article 83A - Department of Business and Economic Development

Section 5-1037

Annotated Code of Maryland

(2003 Replacement Volume and 2005 Supplement)

BY repealing and reenacting, with amendments,

Article - State Finance and Procurement

Section 13-207 and 17-104

Annotated Code of Maryland

(2001 Replacement Volume and 2005 Supplement)

BY repealing and reenacting, without amendments,

Article - State Finance and Procurement

Section 13-208 and 13-216

Annotated Code of Maryland

(2001 Replacement Volume and 2005 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 83A - Department of Business and Economic Development5-1035.

(a) Subject to the restrictions of this Part VI, the Authority, on application, may guarantee any surety up to the lesser of 90 percent or \$1,350,000 of its losses incurred under a bid bond, a payment bond, or a performance bond on any contract, the majority of the funding for which is provided by the federal government or a state government, a local government or a utility regulated by the Public Service Commission.

(b) The term of a guaranty under this Part VI may not exceed the contract term.

(c) The Authority may vary the terms and conditions of the guaranty from surety to surety, based upon the Authority's history of experience with that surety and upon any other factor that the Authority considers relevant.

(d) (1) The Authority may execute and perform bid, performance, and payment bonds as a surety for the benefit of a principal in connection with any contract, the majority of the funding for which is provided by the federal government or a state government, a local government, or a utility regulated by the Public Service Commission.

(2) The bonds:

(i) May not exceed [~~\$1,000,000~~] \$5,000,000 each; and

(ii) Shall be subject to the approval of the Authority, based on the bond worthiness of the principal as determined by the Authority on review of an application.

(3) The monetary limit in this subsection does not apply if the sources of funding for the bonds are grants.

(e) (1) The Authority may not approve a guaranty or a bond under this Part VI unless the Authority considers the economic impact of the contract, for which a bond is sought to be guaranteed or issued, to be substantial.

(2) To determine the economic impact of a contract, the Authority may consider:

(i) The amount of the guaranty obligation;

(ii) The terms of the bond to be guaranteed;

(iii) The number of new jobs that will be created by the contract to be bonded; and

(iv) Any other factor that the Authority considers relevant.

5-1037.

(a) To qualify for a surety bond or guaranty under the Program, a principal shall meet the requirements of this section.

(b) The principal shall satisfy the Authority that:

(1) (i) The principal is of good moral character; or

(ii) If the principal is not an individual, the principal is owned by individuals of good moral character;

(2) As determined from creditors, employers, and other individuals who have personal knowledge of the principal:

(i) The principal has a reputation for financial responsibility; or

(ii) If the principal is not an individual, a majority of the principal is owned by individuals with a reputation for financial responsibility;

(3) The principal is a resident of Maryland or has its principal place of business in Maryland; and

(4) The principal is unable to obtain adequate bonding on reasonable terms through normal channels.

(c) The principal shall certify to the Authority and the Authority shall be satisfied that:

(1) A bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor;

(2) A bond is not obtainable on reasonable terms and conditions without assistance under the Maryland Small Business Surety Bond Program; and

(3) The principal will not subcontract more than 75 percent of the dollar value of the contract.

Article - State Finance and Procurement

13-207.

(a) Except as otherwise provided in this section, a procurement officer may not require a bidder or offeror to provide bid security on a procurement contract if the procurement officer expects the price to be \$100,000 or less.

(b) (1) A procurement officer shall require a bidder or offeror to provide bid security on a procurement contract for construction if:

(i) the price is expected to exceed \$100,000; or

(ii) the price is expected to be \$100,000 or less but federal law or a condition of federal assistance requires the security.

(2) The amount of bid security required for a procurement contract for construction shall be:

(i) at least 5% of the bid or price proposal; or

(ii) if the bid or price proposal states a rate but not a total price, an amount determined by the procurement officer.

(c) (1) A procurement officer may require a bidder or offeror to provide bid security on a procurement contract for services, supplies, or construction related services if the price of the procurement contract is expected to exceed \$50,000.

(2) A procurement officer shall require a bidder or offeror to provide bid security on a procurement contract for services, supplies, or construction related services if federal law or a condition of federal assistance requires the security.

(3) The amount of bid security required for a procurement contract for services, supplies, or construction related services shall be an amount determined by the procurement officer. If a bid or proposal states a rate but not a total price, the procurement officer shall determine the dollar amount of the bid security.

(d) Bid security under this section shall be:

(1) a bond provided by a surety company authorized to do business in the State;

(2) A BOND PROVIDED BY AN INDIVIDUAL SURETY THAT MEETS THE REQUIREMENTS OF ~~SUBSECTION (E) OF THIS SECTION;~~

[(2)] (3) cash; or

[(3)] (4) another form of security:

(I) ~~allowed by regulation~~ AUTHORIZED BY FEDERAL OR STATE REGULATION; OR

(II) ~~THAT IS SATISFACTORY TO THE PUBLIC BODY UNIT~~ AWARDING THE CONTRACT.

(E) A BOND PROVIDED BY AN INDIVIDUAL SURETY SHALL BE ACCEPTABLE AS BID SECURITY UNDER THIS SECTION IF:

(1) ~~THE INDIVIDUAL SURETY PROVIDES A SECURITY INTEREST IN ONE OR MORE OF THE ASSETS LISTED IN PARAGRAPH (2) OF THIS SUBSECTION TO THE PROCUREMENT OFFICER AT THE TIME THE BOND IS FURNISHED; AND~~

(1) THE CONTRACTOR HAS BEEN DENIED CORPORATE SURETY CREDIT;

(2) THE INDIVIDUAL SURETY ONLY TRANSACTS BUSINESS THROUGH AN INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION;

(3) THE INDIVIDUAL SURETY ATTACHES THE GSA STANDARD FORM 28, AFFIDAVIT OF INDIVIDUAL SURETY, TO THE BID SECURITY;

(4) THE INDIVIDUAL SURETY PROVIDES A UCC-1 FILING SECURITY INTEREST TO THE UNIT FOR ONE OR MORE OF THE ASSETS LISTED IN ITEM (5)(I) THROUGH (IV) AND (VI) OF THIS SUBSECTION AT THE TIME THE BOND IS FURNISHED; AND

(2) (5) ~~THE INDIVIDUAL SURETY PLEDGES ONE OR MORE OF THE FOLLOWING ASSETS IN AN AMOUNT EQUAL TO OR GREATER THAN THE AGGREGATE PENAL AMOUNTS OF THE BONDS REQUIRED BY THE SOLICITATION, INCLUDING:~~

(I) CASH OR CERTIFICATES OF DEPOSIT;

(II) CASH EQUIVALENTS HELD WITH A FEDERALLY INSURED FINANCIAL INSTITUTION, ~~INCLUDING CASH EQUIVALENTS EVIDENCED BY IRREVOCABLE TRUST RECEIPTS ISSUED BY THE INSTITUTION OR BY AN~~

~~INDEPENDENT TRUSTEE OR ASSETS THAT ARE EVIDENCED BY A SECURITY INTEREST, INCLUDING AN IRREVOCABLE TRUST RECEIPT ISSUED BY THE FINANCIAL INSTITUTION OR BY AN INDEPENDENT TRUSTEE IN THE NAME OF THE UNIT THAT:~~

1. ~~ARE ISSUED IN ACCORDANCE WITH THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL CHAMBER OF COMMERCE, AND § 9-109 OF THE COMMERCIAL LAW ARTICLE;~~

2. ~~CONTAIN A PAYOUT CLAUSE IN THE EVENT THAT DEFAULT CANNOT BE REMEDIED; AND~~

3. ~~IDENTIFY THE SOLICITATION OR CONTRACT NUMBER FOR WHICH THE SECURITY INTEREST IS PROVIDED;~~

(III) ~~UNITED STATES GOVERNMENT SECURITIES AT MARKET VALUE;~~

(IV) ~~STOCKS AND BONDS THAT:~~

1. ~~ARE ACTIVELY TRADED ON A NATIONAL UNITED STATES SECURITY EXCHANGE;~~

2. ~~ARE ACCOMPANIED BY CERTIFICATES ISSUED IN THE NAME OF THE INDIVIDUAL SURETY; AND~~

3. ~~ARE PLEDGED AT 90% OF THEIR 52-WEEK LOW, AS REFLECTED AT THE TIME OF SUBMISSION OF THE BOND;~~

(V) ~~REAL PROPERTY THAT:~~

1. ~~IS LOCATED IN THE UNITED STATES OR ITS OUTLYING AREAS;~~

2. ~~THAT IS OWNED BY THE CONTRACTOR OR INDIVIDUAL SURETY IN FEE SIMPLE OR WITH COTENANTS THAT ALL AGREE TO ACT JOINTLY; AND~~

3. ~~THAT MAY INCLUDE THE GRANTING OF A MORTGAGE OR DEED OF TRUST ON REAL PROPERTY LOCATED WITHIN THE STATE IF SATISFACTORY TO THE UNIT;~~

4. ~~A. IS PLEDGED AT 100% OF THE MOST CURRENT REAL ESTATE TAX ASSESSMENT VALUE OF THE PROPERTY, EXCLUSIVE OF ENCUMBRANCES; OR~~

B. ~~IS PLEDGED AT 75% OF THE UNENCUMBERED MARKET VALUE OF THE PROPERTY, AS DETERMINED BY AN APPRAISAL DATED NO EARLIER THAN 6 MONTHS BEFORE THE DATE OF THE BOND; OR~~

5. ~~FOR WHICH THE FACE AMOUNT OF THE MORTGAGE OR DEED OF TRUST ON THE REAL PROPERTY LOCATED WITHIN THE STATE DOES NOT EXCEED 75% OF THE CONTRACTOR'S OR INDIVIDUAL SURETY'S EQUITY INTEREST IN THE PROPERTY; AND~~

6. ~~FOR WHICH A MORTGAGE OR DEED OF TRUST ACCEPTED UNDER THIS SUBSECTION IS RECORDED BY AN OFFICIAL DESIGNATED BY THE UNIT WHERE THE REAL PROPERTY IS SITUATED IN ACCORDANCE WITH § 3-103 OF THE REAL PROPERTY ARTICLE; OR~~

(VI) ~~IRREVOCABLE LETTERS OF CREDIT THAT:~~

1. ARE ISSUED BY A FEDERALLY INSURED FINANCIAL INSTITUTION IN THE NAME OF THE CONTRACTING AGENCY; ~~AND~~

2. IDENTIFY THE AGENCY AND THE SOLICITATION OR CONTRACT NUMBER FOR WHICH THE IRREVOCABLE LETTER OF CREDIT IS PROVIDED; AND

3. CONTAIN A PAYOUT CLAUSE IF THAT DEFAULT CANNOT BE REMEDIED.

(F) ANY ASSET LISTED UNDER SUBSECTION (E)(5) OF THIS SECTION SHALL BE PLEDGED ONLY FOR THE INTENDED SECURITY AND MAY NOT BE PLEDGED FOR ANY OTHER SECURITY OR CONTRACT IN OR OUTSIDE THE STATE UNTIL THE ASSET IS RELEASED BY THE UNIT.

13-208.

(a) Except as provided under subsection (b) of this section, if a procurement officer requires bid security, the procurement officer shall reject a bid or proposal that is not accompanied by proper security.

(b) A procurement officer may accept a bid or proposal that is accompanied by bid security in less than the amount required if:

(1) the procurement officer determines that:

(i) the deficiency in the amount is insubstantial; and

(ii) acceptance of the bid or proposal would be in the best interests of the State; and

(2) the procurement officer further determines that:

(i) the bid or proposal was the only one submitted and there is no time for rebidding;

(ii) the bid security became inadequate as a result of the correction of a mistake in the bid or proposal or as a result of a modification in the bid or proposal in accordance with applicable regulations, and the bidder or offeror increased the amount of bid security to required limits within 48 hours after the correction or modification; or

(iii) after consideration of the risks involved and the difference between the lowest bid and the next lowest bid, it would be fiscally advantageous to the State to accept the lowest bid or proposal.

13-216.

(a) Except as provided in subsection (b) of this section, a procurement officer may not require a contractor to provide a performance bond, payment bond, or other security on a procurement contract for construction, construction related services, services, or supplies if the price of the procurement contract is \$100,000 or less.

(b) A procurement officer shall require a contractor to provide a performance bond, payment bond, or other security if federal law or a condition of federal assistance requires the security.

(c) If the price of a procurement contract for construction exceeds \$100,000, a procurement officer shall require a contractor to provide security as required under Title 17, Subtitle 1 of this article.

(d) A procurement officer may require a contractor to provide a performance bond or other security on a procurement contract for supplies, services, or construction related services if:

- (1) circumstances warrant security; and
- (2) the price of the procurement contract exceeds \$100,000.

17-104.

(a) Payment security or performance security required under this subtitle shall be:

(1) a bond executed by a surety company authorized to do business in the State;

(2) A BOND EXECUTED BY AN INDIVIDUAL SURETY THAT MEETS THE REQUIREMENTS OF ~~SUBSECTION (C)~~ OF THIS SECTION;

~~[(2)]~~ (3) cash in an amount equivalent to a bond; or

~~[(3)]~~ (4) ~~[other]~~ ANOTHER FORM OF security:

(I) ALLOWED BY REGULATION AUTHORIZED BY FEDERAL OR STATE REGULATION; OR

(II) that is satisfactory to the public body awarding the contract.

(b) (1) Subject to paragraphs (2) and (3) of this subsection, performance security may include the granting of a mortgage or deed of trust on real property located within the State if such security is satisfactory to the public body awarding the contract.

(2) The face amount of a mortgage or deed of trust on real property granted as security under this subsection may not exceed 75% of the contractor's equity interest in the property.

(3) A mortgage or deed of trust accepted under this subsection shall be recorded by an official designated by the public body accepting the mortgage or deed of trust in the land records of the county where the real property is situated in accordance with § 3-103 of the Real Property Article.

(C) A BOND EXECUTED BY AN INDIVIDUAL SURETY SHALL BE ACCEPTABLE AS PAYMENT SECURITY OR PERFORMANCE SECURITY UNDER THIS SUBTITLE IF:

~~(1) THE INDIVIDUAL SURETY PROVIDES A SECURITY INTEREST IN ONE OR MORE OF THE ASSETS LISTED IN PARAGRAPH (2) OF THIS SUBSECTION TO THE PROCUREMENT OFFICER AT THE TIME THE BOND IS FURNISHED; AND~~

(1) THE CONTRACTOR HAS BEEN DENIED CORPORATE SURETY CREDIT;

(2) THE INDIVIDUAL SURETY ONLY TRANSACTS BUSINESS THROUGH AN INSURANCE AGENCY LICENSED BY THE MARYLAND INSURANCE ADMINISTRATION;

(3) THE INDIVIDUAL SURETY ATTACHES THE GSA STANDARD FORM 28, AFFIDAVIT OF INDIVIDUAL SURETY, TO THE BID SECURITY;

(4) THE INDIVIDUAL SURETY PROVIDES A UCC-1 FILING SECURITY INTEREST TO THE PUBLIC BODY FOR ONE OR MORE OF THE ASSETS LISTED IN ITEM (5)(I) THROUGH (IV) AND (VI) OF THIS SUBSECTION AT THE TIME THE BOND IS FURNISHED; AND

~~(2)~~ (5) THE INDIVIDUAL SURETY PLEDGES ONE OR MORE OF THE FOLLOWING ASSETS IN AN AMOUNT EQUAL TO OR GREATER THAN THE AGGREGATE PENAL AMOUNTS OF THE BONDS REQUIRED BY THE SOLICITATION, INCLUDING:

(I) CASH OR CERTIFICATES OF DEPOSIT;

(II) CASH EQUIVALENTS HELD WITH A FEDERALLY INSURED FINANCIAL INSTITUTION, INCLUDING ~~CASH EQUIVALENTS EVIDENCED BY IRREVOCABLE TRUST RECEIPTS ISSUED BY THE INSTITUTION OR BY AN INDEPENDENT TRUSTEE~~ OR ASSETS THAT ARE EVIDENCED BY A SECURITY INTEREST, INCLUDING AN IRREVOCABLE TRUST RECEIPT ISSUED BY THE FINANCIAL INSTITUTION OR BY AN INDEPENDENT TRUSTEE IN THE NAME OF THE PUBLIC BODY THAT:

1. ARE ISSUED IN ACCORDANCE WITH ~~THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL CHAMBER OF COMMERCE; AND~~ § 9-109 OF THE COMMERCIAL LAW ARTICLE;

2. CONTAIN A PAYOUT CLAUSE IN THE EVENT THAT DEFAULT CANNOT BE REMEDIED; AND

3. IDENTIFY THE SOLICITATION OR CONTRACT NUMBER FOR WHICH THE SECURITY INTEREST IS PROVIDED;

(III) UNITED STATES GOVERNMENT SECURITIES AT MARKET VALUE;

(IV) STOCKS AND BONDS THAT:

1. ARE ACTIVELY TRADED ON A NATIONAL UNITED STATES SECURITY EXCHANGE;

2. ARE ACCOMPANIED BY CERTIFICATES ISSUED IN THE NAME OF THE INDIVIDUAL SURETY; AND

3. ARE PLEDGED AT 90% OF THEIR 52-WEEK LOW, AS REFLECTED AT THE TIME OF SUBMISSION OF THE BOND;

(V) REAL PROPERTY THAT:

1. ~~IS LOCATED IN THE UNITED STATES OR ITS OUTLYING AREAS;~~

2. THAT IS OWNED BY THE CONTRACTOR OR INDIVIDUAL SURETY IN FEE SIMPLE OR WITH COTENANTS THAT ALL AGREE TO ACT JOINTLY; AND

2. THAT MAY INCLUDE THE GRANTING OF A MORTGAGE OR DEED OF TRUST ON REAL PROPERTY LOCATED WITHIN THE STATE IF SATISFACTORY TO THE PUBLIC BODY;

~~3. A. IS PLEDGED AT 100% OF THE MOST CURRENT REAL ESTATE TAX ASSESSMENT VALUE OF THE PROPERTY, EXCLUSIVE OF ENCUMBRANCES; OR~~

~~B. IS PLEDGED AT 75% OF THE UNENCUMBERED MARKET VALUE OF THE PROPERTY, AS DETERMINED BY AN APPRAISAL DATED NO EARLIER THAN 6 MONTHS BEFORE THE DATE OF THE BOND; OR~~

3. FOR WHICH THE FACE AMOUNT OF THE MORTGAGE OR DEED OF TRUST ON THE REAL PROPERTY LOCATED WITHIN THE STATE DOES NOT EXCEED 75% OF THE CONTRACTOR'S OR INDIVIDUAL SURETY'S EQUITY INTEREST IN THE PROPERTY; AND

4. FOR WHICH A MORTGAGE OR DEED OF TRUST ACCEPTED UNDER THIS SUBSECTION IS RECORDED BY AN OFFICIAL DESIGNATED BY THE UNIT WHERE THE REAL PROPERTY IS SITUATED IN ACCORDANCE WITH § 3-103 OF THE REAL PROPERTY ARTICLE; OR

(VI) IRREVOCABLE LETTERS OF CREDIT THAT:

1. ARE ISSUED BY A FEDERALLY INSURED FINANCIAL INSTITUTION IN THE NAME OF THE CONTRACTING AGENCY; ~~AND~~

2. IDENTIFY THE AGENCY AND THE SOLICITATION OR CONTRACT NUMBER FOR WHICH THE IRREVOCABLE LETTER OF CREDIT IS PROVIDED; AND

3. CONTAIN A PAYOUT CLAUSE IF THAT DEFAULT CANNOT BE REMEDIED.

(D) ANY ASSET LISTED UNDER SUBSECTION (C)(5) OF THIS SECTION SHALL BE PLEDGED ONLY FOR THE INTENDED SECURITY AND MAY NOT BE PLEDGED FOR ANY OTHER SECURITY OR CONTRACT IN OR OUTSIDE THE STATE UNTIL THE ASSET IS RELEASED BY THE PUBLIC BODY.

SECTION 2. AND BE IT FURTHER ENACTED, That on or before September 30, 2007, and annually thereafter through September 30, 2009, inclusive, the Procurement Advisor appointed by the Board of Public Works shall report to the Governor, and, in accordance with § 2-1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and House Health and Government Operations Committee, regarding the implementation of this Act during the immediately preceding fiscal year, including the impact of this Act on small business and minority business enterprises.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any requirement for bid security or for payment security or performance security due before the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2006. It shall remain effective for a period of 3 years and, at the end of September 30, 2009, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved May 2, 2006.

Appendix 1.c.

Chapter 266, Acts of 2008

CHAPTER 266

(House Bill 312)

AN ACT concerning

Procurement – Security Requirements – ~~Repeal~~ Extension of Sunset Provision

FOR the purpose of ~~repealing~~ altering the format of certain affidavits required to be attached to certain bid security; altering a certain reporting requirement on the implementation of included in a certain Act on relating to security requirements for procurement; ~~repealing~~ altering the termination provision of a certain Act relating to security requirements for procurement; and generally relating to security requirements for procurement.

~~BY repealing and reenacting, without amendments,
Article 83A – Department of Business and Economic Development
Section 5-1035 and 5-1037
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)~~

BY repealing and reenacting, without amendments,
Article – Economic Development
Section 5-568 and 5-569
Annotated Code of Maryland
(As enacted by Chapter 306 (H.B. 1050) of the Acts of the General Assembly of 2008)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 13-207 and 17-104
Annotated Code of Maryland
(2006 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 13-207, 13-208, 13-216, and 17-104
Section 13-208 and 13-216
Annotated Code of Maryland
(2006 Replacement Volume and 2007 Supplement)

~~BY repealing
Chapter 299 of the Acts of the General Assembly of 2006
Section 2~~

BY repealing and reenacting, with amendments,
 Chapter 299 of the Acts of the General Assembly of 2006
 Section ~~3 and 4~~ 2, 3, and 4

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

~~Article 83A — Department of Business and Economic Development~~

~~5-1035.~~

~~(a) Subject to the restrictions of this Part VI, the Authority, on application, may guarantee any surety up to the lesser of 90 percent or \$5,000,000 of its losses incurred under a bid bond, a payment bond, or a performance bond on any contract financed by the federal government or a state government, a local government, a private entity, or a utility regulated by the Public Service Commission.~~

~~(b) The term of a guaranty under this Part VI may not exceed the contract term.~~

~~(c) The Authority may vary the terms and conditions of the guaranty from surety to surety, based upon the Authority's history of experience with that surety and upon any other factor that the Authority considers relevant.~~

~~(d) (1) The Authority may execute and perform bid, performance, and payment bonds as a surety for the benefit of a principal in connection with any contract financed by the federal government or a state government, a local government, a private entity, or a utility regulated by the Public Service Commission.~~

~~(2) The bonds:~~

~~(i) May not exceed \$5,000,000 each; and~~

~~(ii) Shall be subject to the approval of the Authority, based on the bond worthiness of the principal as determined by the Authority on review of an application.~~

~~(3) The monetary limit in this subsection does not apply if the sources of funding for the bonds are grants.~~

~~(e) (1) The Authority may not approve a guaranty or a bond under this Part VI unless the Authority considers the economic impact of the contract, for which a bond is sought to be guaranteed or issued, to be substantial.~~

~~(2) To determine the economic impact of a contract, the Authority may consider:~~

- ~~(i) The amount of the guaranty obligation;~~
- ~~(ii) The terms of the bond to be guaranteed;~~
- ~~(iii) The number of new jobs that will be created by the contract to be bonded; and~~
- ~~(iv) Any other factor that the Authority considers relevant.~~

~~5-1037.~~

~~(a) To qualify for a surety bond or guaranty under the Program, a principal shall meet the requirements of this section.~~

~~(b) The principal shall satisfy the Authority that:~~

- ~~(1) (i) The principal is of good moral character; or~~
 - ~~(ii) If the principal is not an individual, the principal is owned by individuals of good moral character;~~

~~(2) As determined from creditors, employers, and other individuals who have personal knowledge of the principal:~~

- ~~(i) The principal has a reputation for financial responsibility; or~~
 - ~~(ii) If the principal is not an individual, a majority of the principal is owned by individuals with a reputation for financial responsibility;~~

~~(3) The principal is a resident of Maryland or has its principal place of business in Maryland; and~~

~~(4) The principal is unable to obtain adequate bonding on reasonable terms through normal channels.~~

~~(c) The principal shall certify to the Authority and the Authority shall be satisfied that:~~

~~(1) A bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor;~~

~~(2) A bond is not obtainable on reasonable terms and conditions without assistance under the Maryland Small Business Surety Bond Program; and~~

~~(3) The principal will not subcontract more than 75 percent of the dollar value of the contract.~~

Article – Economic Development

5-568.

(a) The Authority may guarantee a surety up to the lesser of 90% or \$5,000,000 of its loss under a bid bond, payment bond, or performance bond on a contract financed by the federal government, a state government, a local government, a private entity, or a utility that the Public Service Commission regulates.

(b) The term of a guaranty under this part may not exceed the contract term, including:

(1) the maintenance or warranty period required by the contract; and

(2) the period during which the surety may be liable for latent defects.

(c) The Authority may vary the terms and conditions of a guaranty based on:

(1) the Authority's history of experience with a surety; and

(2) any other factor the Authority considers relevant.

5-569.

(a) The Authority may execute and perform a bid bond, performance bond, and payment bond as a surety for the benefit of a principal in connection with a contract financed by the federal government or a state government, a local government, a private entity, or a utility regulated by the Public Service Commission.

(b) (1) This subsection does not apply if the sources of funding for the bonds are grants.

(2) The bonds may not exceed \$5,000,000 each.

(c) Bonds are subject to the approval of the Authority based on the bond worthiness of the principal.

Article – State Finance and Procurement

13-207.

(a) Except as otherwise provided in this section, a procurement officer may not require a bidder or offeror to provide bid security on a procurement contract if the procurement officer expects the price to be \$100,000 or less.

(b) (1) A procurement officer shall require a bidder or offeror to provide bid security on a procurement contract for construction if:

(i) the price is expected to exceed \$100,000; or

(ii) the price is expected to be \$100,000 or less but federal law or a condition of federal assistance requires the security.

(2) The amount of bid security required for a procurement contract for construction shall be:

(i) at least 5% of the bid or price proposal; or

(ii) if the bid or price proposal states a rate but not a total price, an amount determined by the procurement officer.

(c) (1) A procurement officer may require a bidder or offeror to provide bid security on a procurement contract for services, supplies, or construction related services if the price of the procurement contract is expected to exceed \$50,000.

(2) A procurement officer shall require a bidder or offeror to provide bid security on a procurement contract for services, supplies, or construction related services if federal law or a condition of federal assistance requires the security.

(3) The amount of bid security required for a procurement contract for services, supplies, or construction related services shall be an amount determined by the procurement officer. If a bid or proposal states a rate but not a total price, the procurement officer shall determine the dollar amount of the bid security.

(d) Bid security under this section shall be:

(1) a bond provided by a surety company authorized to do business in the State;

(2) a bond provided by an individual surety that meets the requirements of this section;

(3) cash; or

(4) another form of security:

(i) authorized by federal or State regulation; or

(ii) that is satisfactory to the unit awarding the contract.

(e) A bond provided by an individual surety shall be acceptable as bid security under this section if:

(1) the contractor has been denied corporate surety credit;

(2) the individual surety only transacts business through an insurance agency licensed by the Maryland Insurance Administration;

(3) the individual surety attaches ~~the GSA Standard Form 28, Affidavit of Individual Surety,~~ **AN AFFIDAVIT OF INDIVIDUAL SURETY IN A FORMAT THAT THE BOARD REQUIRES** to the bid security;

(4) the individual surety provides a UCC-1 filing security interest to the unit for one or more of the assets listed in item (5)(i) through (iv) and (vi) of this subsection at the time the bond is furnished; and

(5) the individual surety pledges one or more assets in an amount equal to or greater than the aggregate penal amounts of the bonds required by the solicitation, including:

(i) cash or certificates of deposit;

(ii) cash equivalents held with a federally insured financial institution, or assets that are evidenced by a security interest, including an irrevocable trust receipt issued by the financial institution or by an independent trustee in the name of the unit that:

1. are issued in accordance with § 9-109 of the Commercial Law Article;

2. contain a payout clause in the event that default cannot be remedied; and

3. identify the solicitation or contract number for which the security interest is provided;

(iii) United States government securities at market value;

(iv) stocks and bonds that:

1. are actively traded on a national United States security exchange;

2. are accompanied by certificates issued in the name of the individual surety; and

3. are pledged at 90% of their 52-week low, as reflected at the time of submission of the bond;

(v) real property:

1. that is owned by the contractor or individual surety in fee simple or with cotenants that all agree to act jointly;

2. that may include the granting of a mortgage or deed of trust on real property located within the State if satisfactory to the unit;

3. for which the face amount of the mortgage or deed of trust on the real property located within the State does not exceed 75% of the contractor's or individual surety's equity interest in the property; and

4. for which a mortgage or deed of trust accepted under this subsection is recorded by an official designated by the unit where the real property is situated in accordance with § 3-103 of the Real Property Article; or

(vi) irrevocable letters of credit that:

1. are issued by a federally insured financial institution in the name of the contracting agency;

2. identify the agency and the solicitation or contract number for which the irrevocable letter of credit is provided; and

3. contain a payout clause if that default cannot be remedied.

(f) Any asset listed under subsection (e)(5) of this section shall be pledged only for the intended security and may not be pledged for any other security or contract in or outside the State until the asset is released by the unit.

13-208.

(a) Except as provided under subsection (b) of this section, if a procurement officer requires bid security, the procurement officer shall reject a bid or proposal that is not accompanied by proper security.

(b) A procurement officer may accept a bid or proposal that is accompanied by bid security in less than the amount required if:

- (1) the procurement officer determines that:
 - (i) the deficiency in the amount is insubstantial; and
 - (ii) acceptance of the bid or proposal would be in the best interests of the State; and
- (2) the procurement officer further determines that:
 - (i) the bid or proposal was the only one submitted and there is no time for rebidding;
 - (ii) the bid security became inadequate as a result of the correction of a mistake in the bid or proposal or as a result of a modification in the bid or proposal in accordance with applicable regulations, and the bidder or offeror increased the amount of bid security to required limits within 48 hours after the correction or modification; or
 - (iii) after consideration of the risks involved and the difference between the lowest bid and the next lowest bid, it would be fiscally advantageous to the State to accept the lowest bid or proposal.

13–216.

(a) Except as provided in subsection (b) of this section, a procurement officer may not require a contractor to provide a performance bond, payment bond, or other security on a procurement contract for construction, construction related services, services, or supplies if the price of the procurement contract is \$100,000 or less.

(b) A procurement officer shall require a contractor to provide a performance bond, payment bond, or other security if federal law or a condition of federal assistance requires the security.

(c) If the price of a procurement contract for construction exceeds \$100,000, a procurement officer shall require a contractor to provide security as required under Title 17, Subtitle 1 of this article.

(d) A procurement officer may require a contractor to provide a performance bond or other security on a procurement contract for supplies, services, or construction related services if:

- (1) circumstances warrant security; and
- (2) the price of the procurement contract exceeds \$100,000.

17–104.

(a) Payment security or performance security required under this subtitle shall be:

(1) a bond executed by a surety company authorized to do business in the State;

(2) a bond executed by an individual surety that meets the requirements of this section;

(3) cash in an amount equivalent to a bond; or

(4) another form of security:

(i) authorized by federal or State regulation; or

(ii) that is satisfactory to the public body awarding the contract.

(b) (1) Subject to paragraphs (2) and (3) of this subsection, performance security may include the granting of a mortgage or deed of trust on real property located within the State if such security is satisfactory to the public body awarding the contract.

(2) The face amount of a mortgage or deed of trust on real property granted as security under this subsection may not exceed 75% of the contractor's equity interest in the property.

(3) A mortgage or deed of trust accepted under this subsection shall be recorded by an official designated by the public body accepting the mortgage or deed of trust in the land records of the county where the real property is situated in accordance with § 3-103 of the Real Property Article.

(c) A bond executed by an individual surety shall be acceptable as payment security or performance security under this subtitle if:

(1) the contractor has been denied corporate surety credit;

(2) the individual surety only transacts business through an insurance agency licensed by the Maryland Insurance Administration;

(3) the individual surety attaches ~~the GSA Standard Form 28, Affidavit of Individual Surety,~~ **AN AFFIDAVIT OF INDIVIDUAL SURETY IN A FORMAT THAT THE BOARD REQUIRES** to the bid security;

(4) the individual surety provides a UCC–1 filing security interest to the public body for one or more of the assets listed in item (5)(i) through (iv) and (vi) of this subsection at the time the bond is furnished; and

(5) the individual surety pledges one or more assets in an amount equal to or greater than the aggregate penal amounts of the bonds required by the solicitation, including:

(i) cash or certificates of deposit;

(ii) cash equivalents held with a federally insured financial institution, or assets that are evidenced by a security interest, including an irrevocable trust receipt issued by the financial institution or by an independent trustee in the name of the public body that:

1. are issued in accordance with § 9–109 of the Commercial Law Article;

2. contain a payout clause in the event that default cannot be remedied; and

3. identify the solicitation or contract number for which the security interest is provided;

(iii) United States government securities at market value;

(iv) stocks and bonds that:

1. are actively traded on a national United States security exchange;

2. are accompanied by certificates issued in the name of the individual surety; and

3. are pledged at 90% of their 52–week low, as reflected at the time of submission of the bond;

(v) real property:

1. that is owned by the contractor or individual surety in fee simple or with cotenants that all agree to act jointly;

2. that may include the granting of a mortgage or deed of trust on real property located within the State if satisfactory to the public body;

3. for which the face amount of the mortgage or deed of trust on the real property located within the State does not exceed 75% of the contractor's or individual surety's equity interest in the property; and

4. for which a mortgage or deed of trust accepted under this subsection is recorded by an official designated by the unit where the real property is situated in accordance with § 3-103 of the Real Property Article; or

(vi) irrevocable letters of credit that:

1. are issued by a federally insured financial institution in the name of the contracting agency;

2. identify the agency and the solicitation or contract number for which the irrevocable letter of credit is provided; and

3. contain a payout clause if that default cannot be remedied.

(d) Any asset listed under subsection (c)(5) of this section shall be pledged only for the intended security and may not be pledged for any other security or contract in or outside the State until the asset is released by the public body.

Chapter 299 of the Acts of 2006

~~SECTION 2. AND BE IT FURTHER ENACTED, That on or before September 30, 2007, and annually thereafter through September 30, 2009, inclusive,~~
SECTION 2. AND BE IT FURTHER ENACTED, That on or before September 30, 2009 AND EVERY 2 YEARS THEREAFTER the Procurement Advisor appointed by the Board of Public Works shall report to the Governor, and, in accordance with § 2-1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and House Health and Government Operations Committee, regarding the ~~implementation~~ **EFFECTIVENESS** of this Act ~~during the immediately preceding fiscal year,~~ **ACT**, including the impact of this Act on small business and minority business enterprises.

~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any requirement for bid security or for payment security or performance security due before the effective date of this Act.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2006. It shall remain effective for a period of 8 years and, at the end of September 30, 2009~~ **SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2006. It shall remain effective for a period of 8 years and, at the end of September 30, 2014,** with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, April 24, 2008.

Appendix 2.a.

BPW Advisory No.: 2006-4



Board of Public Works



BPW Advisory No.: 2006-4

Revision Date: October 2010
Original Date: December 7, 2006

Subject: **Individual Surety Bonds**

Effective: **Immediately**

Martin O'Malley
Governor

Nancy K. Kopp
Treasurer

Peter Franchot
Comptroller

Sheila McDonald
Executive Secretary

Purpose: To provide guidance to State agencies concerning the use of *individual* sureties to submit bid, payment, and performance bonds for State and local government procurements. General guidance concerning the use and types of bid, payment, and performance security may be found in BPW Advisory 1996-03.

Authority: Bid, payment, and performance security may be in the form of: (1) a bond executed by a surety company authorized to do business in the State; (2) a bond executed by an individual surety that meets certain criteria; (3) cash; (4) another form of security required by State or federal law; or (5) another form of security satisfactory to the unit awarding the contract. Sections 13-207, 13-216, 17-104 of the State Finance and Procurement Article, Annotated Code of Maryland.

Background: The 2006 General Assembly expanded the scope of acceptable security to provide more State contracting opportunities for businesses unable to obtain bonding from surety companies. The 2006 law permits *individuals* to serve as sureties. (Chapter 299, Laws of 2006.)

Procedure:

I. **Acceptability of Bonds from Individual Sureties:** A State agency may accept a bond provided by an individual surety **ONLY** if:

- A. The contractor has been denied bonding by a corporate surety;
- B. The individual surety transacts business through an insurance agency licensed by the Maryland Insurance Administration;
- C. The individual surety attaches an Affidavit of Individual Surety with Appendix to the bid security (affidavit form included with this Advisory);

D. The individual surety pledges one or more of the following assets in an amount equal to or greater than the bond's total penal amount:

- (1) Cash or certificates of deposit.
- (2) Cash equivalents held with a federally-insured financial institution.
- (3) Certain assets evidenced by a security interest including irrevocable trust receipts.
- (4) U.S. Government securities at market value.
- (5) Stocks and bonds that meet certain criteria.*
- (6) Real property that meets certain criteria.*
- (7) Irrevocable letters of credit that meet certain criteria.*

* These criteria may be found at State Finance and Procurement Article §§13-207 and 17-104.

II. *Pledged Assets:*

A. *Personal property.* If using the personal property assets listed in II. D. 1-5, 7 above, an individual surety must provide a current UCC-1 financing statement at the time the bond is furnished. The financing statement is filed to perfect the State's security interest in the property and establishes the State's priority in case of debtor default or bankruptcy. An example of a UCC-1 financing statement (National UCC Financing Statement) may be found on the State Department of Assessments and Taxation Web site (www.dat.state.md.us/sdatweb/ucc/ucc1.pdf).

B. *Real property.* Pledged real property must be owned by the contractor or individual surety in fee simple or by co-tenants who all agree to act jointly. Evidence of title must be a certificate of title prepared by an attorney or a title insurance company licensed by the State. Title evidence must show:

- Fee simple title vested in the contractor or surety along with any concurrent owners;
- Whether any real estate taxes are due and payable; and
- Any recorded encumbrances.

The individual surety must also provide a copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months before the bond date, prepared by a professional appraiser who certifies that the appraisal was conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice.

- C. Pledged assets may not be pledged for any other security or contract until the State agency releases the asset.
- III. *Who may act as an individual surety?* An individual surety must be a United States citizen. Corporations and partnerships cannot act as individual sureties. Individual sureties who have been suspended or debarred by the State may not submit bonds.
- IV. *Office of the Attorney General Review:* Before accepting a bond from an individual surety, the procurement officer must consult with the Office of the Attorney General to determine whether the requirements for an individual surety bond have been met.
- V. *BPW Reporting:* Through fiscal year 2014, each agency shall annually report to the Board of Public Works on the impact of the use of individual surety bonds within 60 days after the close of each fiscal year.

Attachments:

Affidavit of Individual Surety (Attachment A)

Surety Affidavit Appendix (Attachment B)

Questions concerning this Advisory may be addressed to:

Board of Public Works
80 Calvert Street, Room 117
Annapolis, Maryland 21401
410-260-7335 Toll Free: 877-591-7320
Fax: 410-974-5240
Mary Jo Childs, Procurement Advisor
email: mchilds@comp.state.md.us

Greg Bedward, General Counsel
Email: gbedward@comp.state.md.us

Appendix 2.b.

**Documentation of Pledged Assets and Affidavit of Individual
Surety Form**

AFFIDAVIT OF INDIVIDUAL SURETY
(See instructions on reverse) (Type or print all answers)

County: _____ State: _____

Social Security Number: _____

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the State of Maryland and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under the Criminal Law Article, §9-101, Annotated Code of Maryland and the State Finance and Procurement Article, §11-205.1, Annotated Code of Maryland. This affidavit is made to induce the State of Maryland to accept me as surety on the attached bond.

Name (First, Middle, Last)

Home Address (Number, Street, City, State, Zip)

Type and Duration of Occupation

Name of Employer (if self-employed, so state)

Address of Employer

Name and Address of Individual Surety Broker Used (If any)

(Number, Street, City, State, Zip)

Telephone Number (Home)

(Office)

The following is a true representation of the assets I have pledged to the State of Maryland in support of the attached Bond:

(a) Real estate *(Include a legal description, street address and other identifying description; the market value: attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)*

(b) Assets other than real estate *(describe the assets, the details of the escrow account, and attach certified evidence thereof).*

Identify all mortgages, liens, judgments or any other encumbrances involving subject assets including real estate taxes due and payable.

Identify all bonds, including bid guarantees for which the subject assets have been pledged within 3 years prior to the date of execution of this Affidavit.

SIGNATURE OF SURETY

BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES *(Where appropriate):*

Subscribed and sworn to before me, this _____ day of _____, 20__.

Signature

Printed/Typed Name

My commission expires:
_____, 20__

NOTARY PUBLIC [Seal]

DOCUMENTATION OF THE PLEDGED ASSETS MUST BE ATTACHED

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with State contracts must complete and submit this form with the bond. The surety must have the completed form notarized.
2. No corporation, partnership, or other unincorporated association or firm, as such, is acceptable as an individual surety. Likewise, members of a partnership are not acceptable as sureties on bonds that a partnership or an association, or any co-partner or member thereof, is the principal obligor. However, stockholders of corporate principals are acceptable provided their qualifications are independent of the stockholder's financial interest therein. An individual surety will not include any financial interest in assets connected with the principal on the bond that this affidavit supports.
3. United State citizenship is a requirement for individual sureties for contracts and bonds.
4. All signatures of the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person must sign the bond. Any person signing in a representative capacity (e.g. an attorney-in-fact) must furnish evidence of authority if that representative is not a member of a firm, partnership, or joint venture, or an officer of the corporation involved.

Appendix 3.

**Maryland Insurance Administration Bulletin 10-29 –
Amended (Nov 15, 2010)**

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



BETH SAMMIS
Acting Commissioner

KAREN STAKEM HORNIG
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
Property & Casualty

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2301 Fax: 410-468-2306
Email: pjohnson@mdinsurance.state.md.us
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

BULLETIN 10-29 - AMENDED

DATE: November 15, 2010

TO: All Property & Casualty Producers, Surety Insurers and Interested Parties

RE: Individual Sureties

The Maryland Insurance Administration ("MIA") has been asked whether individual sureties who do not hold certificates of authority are authorized to write payment and performance bonds in Maryland. The answer depends on whether or not the project involves a public works project. An individual surety is permitted for public works projects so long as the applicable law is complied with. In all other circumstances, it is not permitted.

The applicable provisions of § 4-101 of the Insurance Article require a person to obtain a certificate of authority from the Insurance Commissioner before engaging in the business of insurance in Maryland. This includes providing surety insurance, which is defined in the Insurance Article as including, among other items insurance that guarantees the:

- performance of contracts other than insurance contracts; and
- execution of bonds, undertakings, and contracts of suretyship.

The State Finance and Procurement Article of the Annotated Code of Maryland permits individuals to serve as sureties for State and local procurement contracts ONLY if the:

- contractor has been denied bonding by a corporate surety;
- individual surety transacts business through an insurance agency licensed by the MIA;
- individual surety attaches an Affidavit of Individual Surety with Appendix to the bid security; and
- individual security meets the criteria found in §§ 13-207 and 17-104 of the State Finance and Procurement Article.

See BPW Advisory NO. 2006-4 (December 7, 2006).

Similarly, individual sureties are permitted as an exception to the federal requirement that a surety company appear on the U.S. Treasury's List of Approved Surety companies if it has fully complied with the requirements of the Federal Acquisition Regulations (FAR § 28.203).

Outside of the public works projects covered by the State Finance and Procurement Article and the Federal Acquisition Regulations, there is no exception to the licensing requirements of the Insurance Article.

Producers should be aware that it is a violation of § 4-203 of the Insurance Article to directly or indirectly act as an insurance producer for or otherwise represent or help on behalf of another an unauthorized insurer. Individual sureties not involved in public works projects have been found by the Insurance Commissioner to be engaging in the business of insurance without the required certificate of insurance. *See MIA v. Stephen R. Woods, et al. (MIA Case No. 1055-1/90).*

Any questions regarding these requirements should be directed to Dave Diehl, Chief Administrator, Property & Casualty Unit at ddiehl@mdinsurance.state.md.us or by calling 410-468-2320.

Beth Sammis, Acting Insurance Commissioner

By: SIGNATURE ON FILE WITH ORIGINAL
P. Randi Johnson, Associate Commissioner
Property & Casualty

Appendix 4.
State Agency Survey

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



THERESE M. GOLDSMITH
Commissioner

KAREN STAKEM HORNIG
Deputy Commissioner

THOMAS L. MARSHALL
Associate Commissioner
Compliance & Enforcement

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2289 Fax: 410-468-2245
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

SURVEY REGARDING CORPORATE AND INDIVIDUAL SURETIES

The Maryland Insurance Administration (“MIA”) is required by legislation passed by the 2012 Maryland General Assembly to conduct an analysis of the practices of corporate sureties and individual sureties in the State. As part of that analysis, the MIA is required to survey Maryland agencies employing contractors that have held a surety bond or contract of surety insurance for a procurement contract for services, supplies or construction related services. You have been identified as a qualifying agency.

The State and Finance and Procurement Article of the Annotated Code of Maryland permits individuals to serve as sureties for State procurement contracts ONLY if the:

- contractor has been denied bonding by a corporate surety;
- individual surety transacts business through an insurance agency licensed by the MIA;
- individual surety attaches an Affidavit of Individual Surety with the Appendix to the bid security; and
- individual security meets the criteria found in §§ 13-207 and 17-104 of the State Finance and Procurement Article.

The following survey is designed to gather the information required as it pertains to your experience with contractors and surety insurance. Participant responses will be compiled and included in a report to the Governor and General Assembly. No individual participant’s response will be identified.

Please make sure to fill out this form completely, even if your agency has not received any solicitations that utilized individual surety bonds.

Thank you in advance for your cooperation in completing and submitting the following survey.

Name of Agency:

Contact Name:

Contact Number:

1. Since October 1, 2006, has your agency received any bid proposals or awarded any procurement contracts for construction, supplies, or services in which the bid or performance bond required by the contract was provided by an individual surety? For purposes of this question, an individual surety is a person that issues surety bonds or contracts of surety insurance and does not have a certificate of authority issued by the Insurance Commissioner.

Yes _____ No _____

If you answered “Yes” to Question 1, please complete the following table for any solicitations occurring on or after October 1, 2006.

(a)	(b)	(c)	(d)	(e)
Solicitation Date	Solicitation Project Name and Number	Name and Contact Information for the Issuer of the Individual Surety Bond Submitted in Response to the Solicitation*	Was the contract awarded to a contractor using an individual surety bond in their bid response? (Yes or No)	Were any of the individual surety bonds in (c) provided as part of the bid or as part of the awarded contract rejected? (Yes or No)

* We will be contacting the issuer of the individual surety bond to complete a different survey as part of our analysis.

Appendix 5.

County, Municipality, and School Board Survey

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



THERESE M. GOLDSMITH
Commissioner

KAREN STAKEM HORNIG
Deputy Commissioner

THOMAS L. MARSHALL
Associate Commissioner
Compliance & Enforcement

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2289 Fax: 410-468-2245
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

SURVEY REGARDING CORPORATE AND INDIVIDUAL SURETIES

The Maryland Insurance Administration (“MIA”) is required by legislation passed by the 2012 Maryland General Assembly to conduct an analysis of the practices of corporate sureties and individual sureties in the State. As part of that analysis, the MIA is required to survey Maryland municipalities, counties, and school boards employing contractors that have held a surety bond or contract of surety insurance for a construction project. You have been identified as a qualifying entity.

The State and Finance and Procurement Article of the Annotated Code of Maryland permits individuals to serve as sureties for State and local construction contracts ONLY if the:

- contractor has been denied bonding by a corporate surety;
- individual surety transacts business through an insurance agency licensed by the MIA;
- individual surety attaches an Affidavit of Individual Surety with the Appendix to the bid security; and
- individual security meets the criteria found in §§ 13-207 and 17-104 of the State Finance and Procurement Article.

The following survey is designed to gather the information required as it pertains to your experience with contractors and surety insurance. Participant responses will be compiled and included in a report to the Governor and General Assembly. No individual participant’s response will be identified.

Please make sure to fill out this form completely, even if your entity has not received any solicitations that utilized individual surety bonds.

Thank you in advance for your cooperation in completing and submitting the following survey.

Name of Entity:

Contact Name:

Contact Number:

1. Since October 1, 2006, has your agency received any bid proposals or awarded any contracts for construction in which the bid or performance bond required by the contract was provided by an individual surety? For purposes of this question, an individual surety is a person that issues surety bonds or contracts of surety insurance and does not have a certificate of authority issued by the Insurance Commissioner.

Yes _____ **No** _____

If you answered “Yes” to Question 1, please complete the following table for any solicitations occurring on or after October 1, 2006.

(a)	(b)	(c)	(d)	(e)
Solicitation Date	Solicitation Project Name and Number	Name and Contact Information for the Issuer of the Individual Surety Bond Submitted in Response to the Solicitation*	Was the contract awarded to the contractor using the individual surety bond in their bid response? (Yes or No)	Were any of the individual surety bonds in (c) provided as part of the bid or as part of the awarded contract rejected? (Yes or No)

* We will be contacting the issuer of the individual surety bond to complete a different survey as part of our analysis.

Appendix 6.

State Insurance Department Survey

**MARYLAND INSURANCE ADMINISTRATION
STATE SURVEY REGARDING CORPORATE AND INDIVIDUAL SURETIES**

The Maryland Insurance Administration is required by legislation passed by the 2012 Maryland General Assembly to conduct an analysis of the practices of corporate sureties and individual sureties. Under Maryland law, an individual surety is defined as a person that issues surety bonds or contracts of surety insurance and does not hold a certificate of authority issued by the Maryland Insurance Commissioner. Surety bonds issued by an individual surety are currently only acceptable on public works contracts in Maryland.

As part of the analysis, we must:

- Determine whether individual sureties are authorized to issue surety bonds or contracts of surety insurance in other states and, if so, how individual sureties are regulated in those states; and
- Determine whether corporate sureties or individual sureties have been sanctioned for issuing surety bonds or contracts of surety insurance in other states and the reasons for the sanctions.

Throughout this survey an “**individual surety**” is defined as a person issuing a surety bond or contract of surety insurance that does not hold a certificate of authority from your state’s insurance regulatory authority. A “**corporate surety**” is defined as an insurer issuing a surety bond or contract of surety insurance that does hold a certificate of authority from your state’s insurance regulatory authority.

We would appreciate your assistance by answering the following four questions. Please limit your information to bid, performance, and payment bonds. **Bail bonds should not be included in your responses to this survey.**

State Survey – Corporate Sureties and Individual Sureties:

1. Does your state permit surety bonds or contracts of surety insurance to be issued by an individual surety?

Yes _____ No _____

If yes, please provide us with the appropriate citation to your state’s regulation or statute that enables individual sureties to issue surety bonds or contracts of surety insurance. In addition, please advise us if the individual sureties are required to be authorized by or registered with your state or are otherwise regulated. Please also describe your state’s overall regulatory process over individual sureties.

2. At the state level, has any legislation been proposed or enacted in the past seven years permitting individual sureties to issue surety bonds or contracts of insurance?

Yes _____ No _____

If yes, please explain and provide us with additional information such as legislative history and citations.

3. In the past seven years, has your state issued any sanctions or taken administrative action against corporate sureties regarding the issuance of surety bonds or contracts of surety insurance?

Yes _____ No _____

If yes, please identify the corporate sureties and explain or provide us with information concerning the sanctions or actions taken against them. If you have issued any orders or other public documents in connection with these sanctions, please include copies as an attachment to your response or, if it is on your state's website, please provide a link to the documents.

4. In the past seven years, has your state issued any sanctions or taken administrative action against any individual sureties and/ or producers or brokers related to the issuance of surety bonds or contracts of surety insurance in your state?

Yes _____ No _____

If yes, please identify the individual sureties and/or producers or brokers involved and explain or provide us with information concerning the sanctions or actions taken against the producers or brokers. If you have issued any orders or other public documents in connection with these sanctions, please include copies as an attachment to your response or, if it is on your state's website, please provide a link to the documents.

Thank you in advance for your help and assistance with this important study. If possible, please respond to us by close of business May 31, 2013 by e-mail to: nour.benchaaboun@maryland.gov by fax at 410-468-2245, or by mail to: Mr. Nour Benchaaboun, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

Appendix 7.

Surety Insurance Producer Survey

MARYLAND INSURANCE ADMINISTRATION
Producer Survey Regarding Surety Bonds or
Contracts of Surety Insurance Issued by Insolvent Surety Insurer

The Maryland Insurance Administration (“Administration”) is required by legislation passed by the 2012 Maryland General Assembly to conduct an analysis of the practices of corporate sureties and individual sureties in the State. As part of that analysis, the Administration is required to survey a representative sample of insurance producers that have assisted contractors in procuring a surety bond or contract of surety insurance issued by an insolvent surety insurer to determine the impact you experienced with regards to an insolvent surety insurer as an insurance producer. You have been identified as a producer who has placed a surety bond with the insolvent surety insurer, **First Sealord Surety**.

The following survey is designed to gather the information required under the law as it pertains to your business and your experience with the insolvent surety insurer, First Sealord Surety. Survey participant responses will be compiled and included in a report to the Governor and General Assembly. No individual survey participant’s response will be identified.

Thank you in advance for your cooperation in completing and submitting the following survey.

Producer Survey – Insolvent Surety Insurer:

1. How many years have you been an insurance producer?

2. For how many years did you write surety bond coverage with First Sealord Surety?

3. Prior to First Sealord Surety, did you ever write surety bond coverage from a different surety bond insurer? If so, from whom?

4. If you answered “Yes” to question 4, why did you change to First Sealord Surety?

5. How were you notified that First Sealord Surety was insolvent? Who provided notification?

6. After you were notified of the insolvency of First Sealord Surety, what method did you use to obtain a replacement bond for your clients (e.g.; What steps did you take)?

7. Were you able to successfully acquire a replacement surety bond or contract of surety insurance following the insolvency of First Sealord Surety for your clients?

Yes _____ No _____

Please provide details of any additional costs or difficulties that your client may have experienced in acquiring a new surety bond or contract of surety insurance.

8. What were the impacts of the insolvency at First Sealord Surety, if any, on your business both at the time of the insolvency in 2012 and since then?

9. Are there any further comments you would like to provide related to your experience with First Sealord Surety?

10. May we contact you for further information? If yes, please provide your contact information.

Yes _____ No _____

Thank you for completing this survey. Please return it by close of business on September 15, 2013 by e-mail to: paula.yocum@maryland.gov , by fax at 410-468-2112, or by mail to: Paula J. Yocum, Special Projects Manager – Examination & Audit, **Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.**

Appendix 8.

**Maryland Board of Public Works,
Department of Transportation and
Department of General Services
Survey**

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor

THERESE M. GOLDSMITH
Commissioner

KAREN STAKEM HORNIG
Deputy Commissioner

TINNA QUIGLEY
Director, Government Relations

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2222 Fax: 410-468-2245
Email: nancy.egan@maryland.gov
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

SURVEY REGARDING SURETY INSURANCE CONTRACTS

The Maryland Insurance Administration ("Administration") is required by legislation passed by the 2012 Maryland General Assembly to conduct an analysis of the practices of corporate sureties and individual sureties. An individual surety is defined as a person that issues surety bonds or contracts of surety insurance and does not hold a certificate of authority issued by the Maryland Insurance Commissioner to act as an insurer.

As part of the analysis, the Administration must conduct a survey of the BPW, the DOT, and the DGS for each year beginning with 2004 that includes:

- the percentage of the total surety bonds or contracts of surety insurance that surety insurers issued in the State on construction projects to minority business enterprises ("MBEs"), as compared to the surety bonds or contracts of surety insurance that surety insurers issued on construction projects to nonminority business enterprises (Non-MBEs"); and
- the percentage of the total surety bonds or contracts of surety insurance that surety insurers rejected in the State that would have been issued to MBEs on construction projects, as compared to the surety bonds or contracts of surety insurance that surety insurers rejected that would have been issued to nonminority business enterprises on construction projects

We would appreciate your assistance by answering the following questions.

Please provide your contact information:

Name of Agency: _____

Contact Name: _____

Contact Number: _____

1. Does your agency collect information regarding the number of surety bonds or contracts of surety insurance that have been issued in the State on construction projects for your agency to MBEs as compared to surety bonds or contracts of surety insurance that surety insurers have issued on construction projects to nonminority business enterprises?

YES _____ NO _____

If you answered YES, please provide us with the number of surety bonds or contracts of surety insurance issued to MBEs and Non-MBEs in Maryland on your agency's construction projects for the following years.

Year	MBEs	Non-MBEs
2004		
2005		
2006		
2007		
2008		
2009		
2010		
2011		
2012		

2. Does your agency collect information regarding the number of surety bonds or contracts of surety insurance that have been rejected by surety insurers on construction projects for your agency to MBEs as compared to surety bonds or contracts of surety insurance that surety insurers have rejected on construction projects for your agency to nonminority business enterprises?

YES _____ NO _____

If you answered YES, please provide us with the number of surety bonds or contracts of surety insurance rejected to MBEs and Non-MBEs for the following years.

Year	MBEs	Non-MBEs
2004		
2005		
2006		
2007		
2008		
2009		
2010		
2011		
2012		

3. We would appreciate any comments you would like to provide regarding the survey or your responses.

Thank you in advance for your assistance with this important study. Please respond to me by close of business August 7, 2013 by e-mail to: nancy.egan@maryland.gov, by fax at 410-468-2020, or by mail to: Nancy Egan, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

Appendix 9.

Corporate Surety Survey

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor

THERESE M. GOLDSMITH
Commissioner

KAREN STAKEM HORNIG
Deputy Commissioner

THOMAS L. MARSHALL
Associate Commissioner
Compliance & Enforcement

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2222 Fax: 410-468-2245
Email: nour.benchaaboun@maryland.gov
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

SURVEY REGARDING SURETY INSURANCE CONTRACTS

The Maryland Insurance Administration ("Administration") is required by legislation passed by the 2012 Maryland General Assembly to conduct an analysis of the practices of corporate sureties and individual sureties. An individual surety is defined as a person that issues surety bonds or contracts of surety insurance and does not hold a certificate of authority issued by the Maryland Insurance Commissioner to act as an insurer.

As part of the analysis, the Administration must:

- Determine the percentage of the total surety bonds or contracts of surety insurance that surety insurers issued in Maryland on construction projects to certified minority business enterprises ("MBEs"), as compared to the surety bonds or contracts of surety insurance that surety insurers issued on construction projects to nonminority business enterprises; and
- Determine the percentage of the total surety bonds or contracts of surety insurance that surety insurers rejected in Maryland that would have been issued to certified minority business enterprises ("MBEs") on construction projects, as compared to the surety bonds or contracts of surety insurance that surety insurers rejected that would have been issued to nonminority business enterprises on construction projects.

We would appreciate your assistance by answering the following questions. **Please limit your response to information concerning bid, performance, and payment bonds only. Information concerning bail bonds, financial bonds, and fiduciary bonds should not be included in your responses.** Thank you for completing and submitting the survey.

Please provide your contact information:

Name of Company: _____

Contact Name: _____

Contact Number: _____

1. Does your company write bid, performance, and/or payment bonds in Maryland?

YES _____ NO _____

If your answer is NO, you have completed the survey. Please return it as instructed in the last paragraph. If your answer is YES, please respond to the remaining questions.

2. Does your company collect information regarding the number of surety bonds or contracts of surety insurance that you have issued in Maryland to certified MBEs?

YES _____ NO _____

If you answered YES, please provide us with the number of surety bonds or contracts of surety insurance issued to certified MBEs and non-MBEs in Maryland for the following years.

Year	MBEs	Non-MBEs
2004		
2005		
2006		
2007		
2008		
2009		
2010		
2011		
2012		

If you answered NO, please provide us with the total number of surety bonds or contracts of surety insurance issued in Maryland for the following years.

Year	Number of Surety Bonds or Contracts of Surety Insurance Issued
2004	
2005	
2006	
2007	
2008	
2009	
2010	
2011	
2012	

3. Does your company collect information regarding the number of surety bonds or contracts of surety insurance that you have denied in Maryland to certified MBEs?

YES _____ NO _____

If you answered YES, please provide us with the number of surety bonds or contracts of surety insurance denied to certified MBEs and non-MBEs for the following years.

Year	MBEs	Non-MBEs
2004		
2005		
2006		
2007		
2008		

2009		
2010		
2011		
2012		

If you answered NO, please provide us with the total number of surety bonds or contracts of surety insurance denied in Maryland for the following years.

Year	Number of Surety Bonds or Contracts of Surety Insurance Denied
2004	
2005	
2006	
2007	
2008	
2009	
2010	
2011	
2012	

4. Does your company use different application forms for a surety bond or contract of surety insurance based on the amount of the bond?

YES _____ NO _____

If you answered YES, what is the threshold amount of the bond that determines which application is used?

5. Please send us copy(ies) of your company's new business application(s).

6. Are there any further comments you would like to provide related to this survey?

Thank you in advance for your assistance with this important study. Please respond to us by close of business July 26, 2013 by e-mail to: nour.benchaaboun@maryland.gov, by fax at 410-468-2245, or by mail to: Nour Benchaaboun, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

Sincerely,

(Mr.) Nour Benchaaboun
Chief, Market Analysis
Compliance and Enforcement Unit

Appendix 10.

Individual Surety Survey

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor

THERESE M. GOLDSMITH
Commissioner

KAREN STAKEM HORNIG
Deputy Commissioner

THOMAS L. MARSHALL
Associate Commissioner
Compliance & Enforcement

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2222 Fax: 410-468-2245
Email: nour.benchaaboun@maryland.gov
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

SURVEY REGARDING SURETY INSURANCE CONTRACTS

The Maryland Insurance Administration ("Administration") is required by legislation passed by the 2012 Maryland General Assembly to conduct an analysis of the practices of corporate sureties and individual sureties. An individual surety is defined as a person that issues surety bonds or contracts of surety insurance and does not hold a certificate of authority issued by the Maryland Insurance Commissioner to act as an insurer.

As part of the analysis, the Administration must:

- Determine the percentage of the total surety bonds or contracts of surety insurance that individual sureties issued in Maryland on construction projects to certified minority business enterprises ("MBEs"), as compared to the surety bonds or contracts of surety insurance that surety insurers issued on construction projects to nonminority business enterprises; and
- Determine the percentage of the total surety bonds or contracts of surety insurance that individual sureties rejected in Maryland that would have been issued to certified minority business enterprises ("MBEs") on construction projects, as compared to the surety bonds or contracts of surety insurance that surety insurers rejected that would have been issued to nonminority business enterprises on construction projects.

We would appreciate your assistance by answering the following questions. Please limit your response to information concerning bid, performance, and payment bonds only. Information concerning bail bonds, financial bonds, and fiduciary bonds should not be included in your responses. Thank you for completing and submitting the survey.

Please provide your contact information:

Name: _____

Contact Name: _____

Contact Number: _____

1. Do you write bid, performance, and/or payment bonds in Maryland?

YES _____ NO _____

If your answer is NO, you have completed the survey. Please return it as instructed in the last paragraph. If your answer is YES, please respond to the remaining questions.

2. Do you collect information regarding the number of surety bonds or contracts of surety insurance that you have issued in Maryland to MBEs?

YES _____ NO _____

If you answered YES, please provide us with the number of surety bonds or contracts of surety insurance issued to certified MBEs and non-MBEs in Maryland for the following years.

Year	MBEs	Non-MBEs
2004		
2005		
2006		
2007		
2008		
2009		
2010		
2011		
2012		

If you answered NO, please provide us with the total number of surety bonds or contracts of surety insurance issued in Maryland for the following years.

Year	Number of Surety Bonds or Contracts of Surety Insurance Issued
2004	
2005	
2006	
2007	
2008	
2009	
2010	
2011	
2012	

3. Do you collect information regarding the number of surety bonds or contracts of surety insurance that you have denied in Maryland to certified MBEs?

YES _____ NO _____

If you answered YES, please provide us with the number of surety bonds or contracts of surety insurance denied to certified MBEs and non-MBEs for the following years.

Year	MBEs	Non-MBEs
2004		
2005		
2006		
2007		
2008		
2009		

2010		
2011		
2012		

If you answered NO, please provide us with the total number of surety bonds or contracts of surety insurance denied in Maryland for the following years.

Year	Number of Surety Bonds or Contracts of Surety Insurance Denied
2004	
2005	
2006	
2007	
2008	
2009	
2010	
2011	
2012	

4. Do you use different application forms for a surety bond or contract of surety insurance based on the amount of the bond?

YES _____ NO _____

If you answered YES, what is the threshold amount of the bond that determines which application is used?

5. Please send us copy(ies) of your new business application(s) and any other initial underwriting forms.

6. Are there any further comments you would like to provide related to this survey?

Thank you in advance for your assistance with this important study. Please respond to us by close of business July 26, 2013 by e-mail to: nour.benchaaboun@maryland.gov, by fax at 410-468-2245, or by mail to: Nour Benchaaboun, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

Sincerely,

(Mr.) Nour Benchaaboun
Chief, Market Analysis
Compliance and Enforcement Unit

Appendix 11.a.

Contractor Survey – First Sealord Surety Incorporated

MARYLAND INSURANCE ADMINISTRATION
Contractor Survey of Corporate Surety Bonds or
Contracts of Surety Insurance

The Maryland Insurance Administration (“Administration”) is required by legislation passed by the 2012 Maryland General Assembly to conduct an analysis of the practices of corporate sureties and individual sureties in the State. As part of that analysis, the Administration is required to survey a representative sample of contractors that have held a surety bond or contract of surety insurance issued by an insolvent surety insurer to determine the method each contractor used to acquire a new surety bond or contract of surety insurance and any additional cost or difficulties the contractor experienced in acquiring a new surety bond or contract of surety insurance. You have been identified as a contractor who has held a surety bond with the insolvent surety insurer, **First Sealord Surety**.

The following survey is designed to gather the information required under the law as it pertains to your business and your experience with the insolvent surety insurer, First Sealord Surety. Survey participant responses will be compiled and included in a report to the Governor and General Assembly. No individual survey participant’s response will be identified.

Thank you in advance for your cooperation in completing and submitting the following survey.

Contractor Survey – Insolvent Surety Insurer:

1. How many years have you been in business?

2. Are you certified by the Maryland Department of Transportation (MDOT) as a Minority Business Enterprise (MBE)?

Yes _____ No _____

3. For how many years did you have surety bond coverage with First Sealord Surety?

4. Prior to First Sealord Surety, had you ever obtained surety bond coverage from a different surety bond insurer? If so, with whom? (e.g. Travelers, Hartford, CNA.)

5. If you answered “Yes” to question 4, why did you change to First Sealord Surety?

6. At the time of First Sealord Surety’s insolvency in 2012, what was your aggregate bonding limit and what was the largest job you were permitted to bid at that time?

7. How were you notified that First Sealord Surety was insolvent? Who provided notification?

8. What was the name of and the contact information for the insurance producer or agency that arranged for your bond with First Sealord Surety? We would like to contact them about completing a survey about their experience with First Sealord Surety. We would appreciate it if you could provide their contact information.

9. After you were notified of the insolvency of First Sealord Surety, what method did you use to obtain a replacement bond (e.g.; Did your insurance producer or agency take steps to find another bonding company? Did you switch agents? What steps did you take?)?

10. Were you able to successfully acquire a replacement surety bond or contract of surety insurance following the insolvency of First Sealord Surety?

Yes _____ No _____

a. If you answered “Yes” to Question 10, please provide details of any additional costs or difficulties that you experienced in acquiring a new surety bond or contract of surety insurance.

b. If you answered “No” to Question10, please provide details of why you were unable to acquire a new surety bond or contract of surety insurance and any additional costs or difficulties.

11. What were the impacts of the insolvency at First Sealord Surety on your business both at the time of the insolvency in 2012 and since then?

12. Are there any further comments you would like to provide related to your experience with First Sealord Surety?

11. May we contact you for further information? If yes, please provide your contact information.

Yes _____ No _____

Thank you for completing this survey. Please return it by close of business on May 31, 2013 by e-mail to: nancy.egan@maryland.gov , or by fax at 410-468-2020 or by mail to: Nancy J. Egan, Assistant Director Government Relations, **Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.**

Appendix 11.b.

Contractor Survey – American Bonding Company

MARYLAND INSURANCE ADMINISTRATION
Contractor Survey Regarding Surety Bonds or
Contracts of Surety Insurance Issued by Insolvent Surety Insurer

The Maryland Insurance Administration (“Administration”) is required by legislation passed by the 2012 Maryland General Assembly to conduct an analysis of the practices of corporate sureties and individual sureties in the State. As part of that analysis, the Administration is required to survey a representative sample of contractors that have held a surety bond or contract of surety insurance issued by an insolvent surety insurer to determine the method each contractor used to acquire a new surety bond or contract of surety insurance and any additional cost or difficulties the contractor experienced in acquiring a new surety bond or contract of surety insurance. You have been identified as a contractor who has held a surety bond with the insolvent surety insurer, **American Bonding Company**.

The following survey is designed to gather the information required under the law as it pertains to your business and your experience with the insolvent surety insurer, American Bonding Company. Survey participant responses will be compiled and included in a report to the Governor and General Assembly. No individual survey participant’s response will be identified.

Thank you in advance for your cooperation in completing and submitting the following survey.

Contractor Survey – Insolvent Surety Insurer:

1. How many years have you been in business?

2. Are you certified by the Maryland Department of Transportation (MDOT) as a Minority Business Enterprise (MBE)?

Yes _____ No _____

3. For how many years did you have surety bond coverage with American Bonding Company?

4. Prior to American Bonding Company, had you ever obtained surety bond coverage from a different surety bond insurer? If so, from whom?

5. If you answered “Yes” to question 4, why did you change to American Bonding Company?

6. At the time of American Bonding Company’s insolvency in 2004, what was your aggregate bonding limit and what was the largest job you were permitted to bid at that time?

7. How were you notified that American Bonding Company was insolvent? Who provided notification?

8. What was the name of and the contact information for the insurance producer or agency that arranged for your bond with American Bonding Company? We would like to contact the producer or agency about completing a survey regarding their experience with American Bonding Company. We would appreciate it if you could provide their contact information.

9. After you were notified of the insolvency of American Bonding Company, what method did you use to obtain a replacement bond (e.g.; Did your insurance producer or agency take steps to find another bonding company? Did you switch agents? What steps did you take?)?

10. Were you able to successfully acquire a replacement surety bond or contract of surety insurance following the insolvency of American Bonding Company?

Yes _____ No _____

Please provide details of any additional costs or difficulties that you experienced in acquiring a new surety bond or contract of surety insurance.

11. What were the impacts of the insolvency at American Bonding Company, if any, on your business both at the time of the insolvency in 2012 and since then?

12. Are there any further comments you would like to provide related to your experience with American Bonding Company?

13. May we contact you for further information? If yes, please provide your contact information.

Yes _____ No _____

Thank you for completing this survey. Please return it by close of business on May 31, 2013 by e-mail to: nancy.egan@maryland.gov , by fax at 410-468-2020, or by mail to: Nancy J. Egan, Assistant Director Government Relations, **Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.**

Appendix 12.

BPW Individual Surety Report Request - 2011

Board of Public Works Individual Surety Bonds Report Request



Board Members:

Martin O'Malley, Governor
Nancy K. Kopp, Treasurer
Peter Franchot, Comptroller

Board Staff:

Sheila McDonald, Executive Secretary
Mary Jo Childs, Procurement Advisor
Gregory Bedward, General Counsel
Doldon Moore, Wetlands Administrator

80 Calvert Street, Treasury Building, Room 117, Annapolis, Maryland 21401 Phone 410.260.7335

Each procurement agency must report to the Board of Public Works on the impact of the use of individual surety bonds within 60 days after the close of each fiscal year (COMAR 21.13.01.11; see also Board Advisory 2006-4). The General Assembly extended the individual surety bond program through September 30, 2014. (Chapter 266, Laws of 2008.)

Although the 2008 Law requires the Board to compile the Statewide report every two years, we continue to ask for *annual reports* from each agency so we can track trends and make adjustments over the course of the year.

Please submit the completed form to Missy Hodges at mhodes@comp.state.md.us or fax to 410-974-5240. **Please make sure to fill out this form completely, even if your department/agency has not used individual surety bonds.**

Agency/Department: _____

Contact Name: _____

Contact Number: _____

1. Has your agency excluded individual surety bonds as acceptable security in any FY 20__ solicitations? No Yes
2. If so, please attach a copy of the written determination required by BPW Advisory 1996-3.
3. Did your Agency/Department receive any individual surety bonds in response to a solicitation in Fiscal Year 20__? No Yes
4. If so, how many individual surety bonds were submitted? _____
5. How many individual surety bonds were rejected? _____
6. Please attach copies of all correspondence from the Agency and Individual Sureties regarding ISB rejections.
7. Please provide any comments on the effectiveness of this program.
