MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor

THERESE M. GOLDSMITH
Commissioner

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November 25, 2013

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
State House, Room H-107
Annapolis, Maryland 21401

The Honorable Michael E. Busch
Speaker of the House of Delegates
State House, H-101
Annapolis, Maryland 21401

The Honorable Joan Carter Conway
Chair, Senate Education, Health and Environmental Affairs Committee
2 West Miller Senate Building
11 Bladen Street
Annapolis, Maryland 21401

The Honorable Dereck E. Davis
Chair, House Economic Matters Committee
231 House Office Building
6 Bladen Street
Annapolis, Maryland 21401

The Honorable Thomas M. Middleton
Chair, Senate Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen Road
Annapolis, Maryland 21401

The Honorable Peter A. Hammen
Chair, House Health and Government Operations Committee
House Office Building, Room 241
6 Bladen Street
Annapolis, Maryland 21401

Re: Final Report on the Analysis of the Practices of Corporate Sureties and Individual Sureties in Maryland
MSAR No. 9319

Dear Sirs and Madam,

Pursuant to Chapters 299/300 of the 2012 Acts of the General Assembly, the Maryland Insurance Administration is enclosing its 2013 Final Report on the Analysis of the Practices of Corporate Sureties and Individual Sureties in Maryland.

Should you have any questions regarding this report, please do not hesitate to contact me.

Very truly yours,

signatuare on original

Therese M. Goldsmith
Insurance Commissioner

Enclosure

Final Report on the Analysis of the Practices of Corporate Sureties and Individual Sureties in Maryland

MSAR No. 9319

November 25, 2013

For more information concerning this document, please contact:

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People with disabilities may request this document in an alternative format.
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FINAL REPORT ON THE ANALYSIS OF THE PRACTICES OF CORPORATE SURETIES AND INDIVIDUAL SURETIES IN MARYLAND

I. Executive Summary

The Maryland Insurance Administration ("MIA") was required to conduct an analysis of the practices of corporate sureties and individual sureties in the State. In conducting the analysis, the MIA was required to consult with persons or entities the MIA deemed 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.

To perform the analysis, the MIA conducted nine surveys, researched current and proposed laws in other states, contacted state regulators in other jurisdictions, researched programs designed to enhance the availability of surety bonds or contracts of surety insurance, and reviewed relevant MIA records regarding surety insurers, producers, and surety insurance premiums. The MIA submitted the required Interim Report on the Analysis of the Practices of Corporate Sureties and Individual Sureties in Maryland on November 27, 2012, which summarized the MIA's progress, as of that date, in conducting the required analysis. This document constitutes the required final report.

Generally, a person may not act as an insurer or engage in the insurance business in the State unless the person has a certificate of authority issued by the Insurance Commissioner ("Commissioner"). In 2006, the General Assembly created a temporary and limited exception to this requirement and allowed a procurement officer to accept a bond provided by an individual surety to meet the requirements for bid, performance, and payment bonds on certain public procurement contracts. 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 Commissioner.

The MIA's analysis indicates that individual sureties have issued or attempted to issue surety bonds or contracts of surety insurance for the State, counties, or municipalities on only six occasions since 2006. On two of those occasions, projects were awarded to contractors utilizing the individual sureties. Two of the bids were rejected based on the individual surety's failure to meet regulatory criteria; one was voluntarily withdrawn by the bidding contractor; and one was withdrawn due to the re-bidding of the entire project by the procuring authority.

Only two other states allow the use of individual sureties: Alaska and Hawaii. Alaska allows the use of individual sureties on public works contracts; Hawaii allows the use of individual sureties for security deposits on commercial concession leases on public property. Between 2006 and 2008, legislation was introduced in North Carolina, New Mexico, and Virginia to allow the use of individual sureties in those states; all of those bills failed. We identified no legislative activity seeking to expand the use of individual sureties in the states since 2008.

Our research indicates that only one state insurance regulatory agency has sanctioned a corporate surety in connection with issuing surety bonds or contracts of surety insurance since 2006. During the same period, at least 14 state insurance regulatory agencies have taken 26 administrative actions sanctioning 12 individual sureties for acting as an insurer without first obtaining a certificate of authority. In those cases, the state insurance regulatory agency generally became aware of the unauthorized actions after receiving complaints regarding unpaid claims or unreturned premium. All 12 of the sanctioned individual sureties have engaged in fraudulent or misleading conduct, such as: (1) creating the illusion of a corporate form, which could mislead the public into believing that the same safeguards in place for corporate sureties exist as to the individual surety (*e.g.*, regulatory financial oversight, rate approval, and, in some cases, the backing of the state's guaranty fund); (2) inflating the valuation of property pledged; (3) pledging the same collateral for multiple projects so that the total amount of the surety bonds outstanding far exceeded the value of the collateral; or (4) misrepresenting other information as part of the surety bond submission.

There currently are 145 authorized corporate sureties actively writing surety bonds or contracts of surety insurance in Maryland, suggesting a robust and competitive surety insurance marketplace. Between 2004 and 2012, total written premium in the State for surety bonds or contracts of surety insurance issued by corporate sureties has increased by 53.5%. Similarly, corporate surety respondents to an MIA survey reported a 35.2% increase in the number of surety bonds they issued in the State during the same period, including bonds issued to both prime contractors and subcontractors. There are a number of programs available to further 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 ("MBEs"). Four such programs include the Maryland Small Business Development Financing Authority Surety Bond Program; the U.S. Small Business Administration Bond Guarantee and Lending Program; the Surety & Fidelity Association of America Model Contractor Development Program®; and the U.S. Department of Transportation Bonding Education Program. None of the 85 corporate surety respondents to an MIA survey who write bid, payment or performance bonds collect or maintain information regarding the number of surety bonds or contracts of surety insurance that have been issued or rejected for certified MBEs versus non-MBEs. Only one individual surety responded to the MIA survey, and that response was incomplete.

Corporate sureties are subject to the Commissioner's oversight, which includes monitoring of financial stability and solvency. In the last 25 years, there have been no insolvencies of a corporate surety domiciled in Maryland. In the last 10 years, there have been two corporate sureties operating in Maryland that were declared insolvent by their respective states of domicile. Claims filed against the insolvent corporate sureties are covered by the Maryland Property and Casualty Insurance Guaranty Corporation ("MPCIGC"). The MPCIGC reported that through August 1, 2013, it paid $161,117 for claims and $37,500 for related expenses in connection with one of the insolvencies, and that it is unaware of any covered claims that were not paid in full. The MIA identified no impact of these insolvencies on the availability of surety bonds or contracts of surety insurance in the Maryland insurance market. One producer respondent to an MIA survey reported that one of the insolvencies impacted client relationships. Several contractor respondents to an MIA survey indicated that they had experienced various business difficulties following one of the insolvencies, including cash flow problems, loss of bond premium paid, delayed payments by general contractors, higher premium rates on replacement bonds, and negative impact on lines of credit with suppliers.

To strengthen regulatory oversight of corporate insurers, the MIA proposed legislation during the 2013 Session, House Bill 431, which was signed into law as Chapter 115, Acts of 2013. Chapter 115 amends the Maryland Insurance Acquisitions Disclosure and Control Act by providing additional tools to evaluate risk on an enterprise level, including the activities and potential risks posed by non-insurance companies within the an insurance holding company system. These tools enhance regulatory oversight of corporate sureties' risks, and ultimately of their financial solvency. Since this study began, the General Assembly also has enacted Chapters 504 and 505, Acts of 2013, which prevent prime contractors on certain procurement contracts from requiring more stringent bonding requirements from subcontractors than those required of the prime contractors.

In conclusion, the MIA has not found any evidence to support a conclusion that corporate sureties are unable to meet the needs of the current market. The MIA has not identified any additional areas where existing laws and regulations for licensing and regulating corporate sureties or surety insurance producers are inadequate. The MIA recommends that the laws authorizing the use of unregulated individual sureties on public works contracts in the State be permitted to sunset as scheduled on September 30, 2014.

II. Introduction

During the 2012 Regular Session, the Maryland General Assembly passed Senate Bill 764/House Bill 885, Chapters 299/300 (referred to herein as "Chapters 299/300"), concerning Fraudulent Insurance Acts – Individual Sureties – Contracts of Surety Insurance.[1] Chapters 299/300 require that in accordance with the provisions of § 2-205 of the Insurance Article, Annotated Code of Maryland ("Insurance Article"), the Maryland Insurance Administration ("MIA") conduct an analysis of the practices of corporate sureties and individual sureties in the State and report 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 (referred to collectively herein as the "Committees") on its findings and recommendations.[2] Specifically, Chapters 299/300 required the MIA to submit an interim report on or before December 1, 2012 and a final report on or before December 1, 2013.

The MIA submitted the required interim report in accordance with Chapters 299/300 on November 27, 2012. This document constitutes the required final report and provides the Committees a summary of the MIA's required analysis. Consistent with the interim report, this final report is organized by each of the 13 prescribed components, and corresponding sub-components, of the analysis required by Chapters 299/300.

[1] A copy of each session law appears in Appendix 1.
[2] Md. Code Ann., Ins. § 2-205 is not applicable to individual sureties, which currently are not licensed or otherwise authorized by the MIA.

III. Background: Corporate and Individual Sureties in Maryland

A surety bond is a contract among at least three parties: (1) the "obligee" or project owner who initiates, manages or finances a project and is the recipient of the obligation; (2) the "principal" or party who is performing the contractual obligation; and (3) the "surety" or obligor.[3] Surety bonds require the surety to cover any losses incurred by the obligee if the principal (*i.e.*, contractor) defaults or otherwise cannot complete a contract as promised. Surety bonds provide assurance to the obligee that the principal or contractor providing services is legitimate, financially sound and can reasonably be expected to fulfill its duties, as the surety would not otherwise have issued the bond and assumed the associated risk. The duties of the principal include performance under the contract based on the bid provided, which is covered by a bid bond; completion of the job as contracted, which is covered by a performance bond; and payment of all suppliers and subcontractors, which is covered by a payment bond.

State procurement law requires bid, performance, and payment security for construction contracts that are expected to exceed $100,000.[4] These security requirements for construction contracts apply to "public bodies," including the State; a county, municipal corporation, or other political subdivision; a public instrumentality; or any governmental unit authorized to award a contract.[5] Construction contractors must provide security for an amount deemed appropriate by the agency's procurement officer.[6] On other State contracts for services, supplies, or construction-related services that exceed $100,000, procurement officers have the option of requiring contractors to provide security.[7]

A person generally may not act as an insurer, and an insurer may not engage in the insurance business in the State, unless the person has a certificate of authority issued by the Insurance Commissioner ("Commissioner"), and only a corporate entity or reciprocal insurer may receive a certificate of authority.[8] Effective October 1, 2006, Chapter 299, Acts of 2006, created a temporary and limited exception to this requirement, allowing a procurement officer to accept a bond provided by an "individual surety" under certain circumstances to meet the requirements for bid, performance, and payment bonds on certain public procurements.[9] Individual surety bonds were permitted only if: (1) the contractor has been denied corporate surety credit; (2) the individual surety transacts business through a Maryland licensed insurance agency; (3) the individual surety provides a GSA Standard Form 28 affidavit and UCC-1 filing

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[3] A surety typically is an insurance company or other established financial institution commonly referred to as a "corporate surety." A primary focus of this analysis pertains to surety bonds issued by persons other than corporate sureties, who are known as "individual sureties."
[4] Md. Code Ann., State Fin. and Proc. §§ 13-207 and 17-103.
[5] Md. Code Ann., State Fin. And Proc. § 17-101.
[6] Md. Code Ann., State Fin. and Proc. § 17-103.
[7] Md. Code Ann., State Fin. and Proc. § 13-207.
[8] Md. Code Ann., Ins. § 4-102(a). A reciprocal insurer is an unincorporated aggregation of subscribers that operate individually and collectively through an attorney in fact to provide reciprocal insurance. Md. Code Ann., Ins. § 1-101(ii).
[9] Chapter 299 was due to terminate on September 30, 2009. Chapter 266, Acts of 2008, extended the sunset provision to September 30, 2014. Both session laws appear in Appendix 1.

security interest with the bond; and (4) the individual is a U.S. citizen and pledges one or more authorized assets.[10]

Chapter 299, Acts of 2006, also permitted individual sureties to pledge certain assets in an amount equal to or greater than the value of the bond required. Assets pledged by an individual surety may not be pledged for any purpose other than the bond until the asset is released by the unit of State government, and include: (1) cash or certificates of deposit; (2) cash or cash equivalents or other assets held by a federally insured financial institution; (3) U.S. government securities; (4) stocks and bonds; (5) real property subject to certain criteria; or (6) irrevocable letters of credit issued by a federally insured financial institution.[11]

Effective October 1, 2008, Chapter 266, Acts of 2008 changed the format of the affidavit required to be attached to the bid security by an individual surety from the GSA Standard Form 28 to a format required by the Board of Public Works ("BPW"). The affidavit required of an individual surety is a notarized form attesting to the accuracy and truthfulness of the information submitted in support of the bond provided by the individual surety.[12] The following are unacceptable as individual sureties: (1) a corporation, partnership or other unincorporated association or firm; or (2) members of a partnership on bonds that a partnership or an association, or any co-partner or member thereof, is the principal obligor.[13] Stockholders of corporate principals are acceptable provided their qualifications are independent of the stockholder's financial interest in the corporate principal. An individual surety may not include among its assets any financial interest in the principal the bond supports.[14] In addition, the individual surety must submit an affirmation regarding any convictions or debarment.[15] The offeror electing to use an individual surety must provide evidence that the contractor has been denied credit by a corporate surety within the past three years from the date the bond was submitted based on a good faith application by the contractor and that the individual surety transacts business only through an insurance agency licensed by the MIA.[16] Before accepting a bond from an individual surety for State procurements, the procurement officer must (1) determine the acceptability of individuals proposed as sureties and ensure that the surety's pledged assets are sufficient to cover the bonds required by the solicitation; and (2) obtain the advice of the Office of the Attorney General as to the adequacy of the documents pledging the assets prior to accepting the bid security or payment and performance bonds.[17]

Chapters 299/300, Acts of 2012, defined "individual surety" as a person that issues surety bonds or contracts of surety insurance and does not have a certificate of authority issued by the

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[10] Md. Code Ann., State Fin. and Proc. §§ 13-207 and 17-104. The Uniform Commercial Code Form 1 ("UCC-1") provides notice to the public that an interest has been secured in the individual surety's pledged property.

[11] Md. Code Ann., State Fin. and Proc. § 13-207.

[12] BPW Advisory No.: 2006-4 (Dec. 7, 2006, rev. Oct. 2010) provides guidance to State agencies regarding the use of individual sureties, the required documentation of pledged assets by the individual surety and completion of the required Affidavit of Individual Surety. *See* Appendix 2.a.

[13] COMAR 21.06.07.03.

[14] BPW Affidavit of Individual Surety form. *See* Appendix.2.b.

[15] COMAR 21.06.07.03.

[16] COMAR 21.06.07.02A.

[17] COMAR 21.06.07.02D.

Commissioner.[18] An individual surety bond obliges an individual, rather than an insurance company or other established financial institution, to cover the financial losses incurred by a project owner in the event of a default by a contractor. Unlike its regulatory authority over corporate sureties, the MIA has no authority to approve individual sureties' rates or contract forms, to examine and audit individual sureties' financial condition, or to enforce any capital and surplus requirements as to individual sureties. Claimants under contracts of surety insurance issued by a corporate surety that becomes insolvent have protection under the Maryland Property and Casualty Insurance Guaranty Corporation ("MPCIGC"), while claimants under contracts of surety insurance issued by individual sureties do not.

IV. Prescribed Components of Required Analysis

Chapters 299/300 required the MIA to consult with any person or entity that the MIA determines appropriate in conducting its analysis, including corporate sureties, individual sureties, insurance producers, contractors, the Department of Transportation ("MDOT"), the Department of General Services ("DGS"), BPW, and the MPCIGC. Chapters 299/300 require completion of the following 13 analysis components and their associated sub-components. To complete its analysis and submit its final report, the MIA must:

(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 do so under Chapter 299 of the Acts of 2006, Chapter 266 of the Acts of 2008 and any other applicable law, and, if so, the number issued, the number rejected and the reasons for any rejection;

(3) Consider whether and how the law, as enacted under Chapter 299 of the Acts of 2006 and Chapter 266 of the Acts 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;

[18] *See* Ins. Art. § 27-406.1. Chapters 299/300 also make it a fraudulent insurance act for an individual surety to solicit or issue a surety bond or contract of surety insurance except as otherwise provided by law. *Id.; see also* MIA Bulletin 10-29 – Amended (Nov. 15, 2010) (Appendix 3) ("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 authority.").

(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 MPCIGC 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 BPW, the MDOT, the DGS 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 ("MBEs"), 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 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;

(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 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;

(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 MBEs; 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.

V. Methodology

To complete this multi-faceted analysis, the MIA conducted nine surveys, researched current and proposed laws in other states, contacted state regulators in other jurisdictions, researched programs designed to enhance the availability of surety bonds or contracts of surety insurance, and reviewed relevant MIA records regarding surety insurers, producers, and surety insurance premiums. Each of the nine surveys, including survey methodology and survey participants, is summarized below.

(1) State Agency Survey – The MIA developed a survey to help determine whether individual sureties have issued or attempted to issue surety bonds or contracts of surety insurance for State construction or procurement contracts, the number of such surety bonds or contracts of surety insurance issued or rejected, and the reasons for any rejections, as required under Analysis Component (2) ("State Agency Survey"). The State Agency Survey was distributed to 110 State agencies. Responses were received from 77 agencies, for a return rate of 70%. To encourage responses, the MIA contacted each survey recipient multiple times by e-mail and telephone. A copy of the State Agency survey is included as Appendix 4.

(2) County, Municipality, and School Board Survey – The MIA developed a survey nearly identical to the State Agency Survey for distribution to counties (including Baltimore City), municipalities, and local school boards ("County, Municipality, School Board Survey"). The scope of the County, Municipality, School Board Survey was limited, however, to the use of individual sureties on construction projects, rather than both construction and procurement projects.[19] Response rates were 54% for counties (13 of a possible 24), 46% for municipalities (73 of a possible 158); and 38% for school boards (9 of a possible 24). As with the State Agency Survey, MIA staff contacted each survey recipient multiple times by e-mail and telephone to encourage a response. A copy of the County, Municipality, School Board Survey is included as Appendix 5.

[19] Title 17, Subtitle 1 of the State Finance and Procurement Article authorizes counties, municipal corporations, other political subdivisions, public instrumentalities, or other governmental units to obtain payment or performance bonds from an individual surety for construction contracts only.

(3) State Insurance Department Survey – The MIA surveyed insurance regulators in all other 49 states and the District of Columbia ("State Insurance Department Survey") to help determine: (1) 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 (Analysis Component (4)); and (2) 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 (Analysis Component (5)). Forty-six of the 50 jurisdictions (92%) completed the survey.[20] A copy of the State Insurance Department Survey is included as Appendix 6.

(4) Maryland Property and Casualty Insurance Guaranty Corporation – As required by Chapters 299/300, the MIA surveyed the Maryland Property and Casualty Insurance Guaranty Corporation ("MPCIGC Survey") to determine: (1) the number of claims submitted to and paid by the MPCIGC as a result of an insolvency of a corporate surety in the last 10 years; (2) whether contributions provided by surety insurers to the MPCIGC are adequate for future claims related to insolvent surety insurers; (3) the existing statutory requirements of items covered by the MPCIGC in the event of the insolvency of a corporate surety; and (4) whether loss of paid premiums or collateral of surety bond principal and any other covered items should be expanded (Analysis Component (7)). The survey was conducted by telephone, U.S. mail, and e-mail correspondence. The MPCIGC Survey also included questions to help determine the corporate sureties operating in Maryland that were declared insolvent or placed under receivership in the last 10 years (Analysis Component (6)(i)), and to identify claims made to the MPCIGC due any such insolvencies or receiverships in order to help determine the impact of those insolvencies or receiverships on surety bond users and insurance producers (Analysis Component 6(iii)).

(5) Surety Insurance Producer Survey – The MIA developed a survey for producers who sold surety bonds or contracts of surety insurance issued by insurers that were declared insolvent or placed under receivership ("Surety Insurance Producer Survey") to help determine the impact of the affected surety bonds, if any, on insurance producers (Analysis Component (6)(iii)). Nine such producers were identified. To facilitate a response, the MIA contacted each of the nine insurance producers up to three times, either by e-mail, phone or certified mail, depending upon the contact information that was available. Three survey responses were received. A copy of the Surety Insurance Producer Survey is included as Appendix 7.

(6) Maryland Board of Public Works ("BPW"), Department of Transportation ("MDOT"), and Department of General Services ("DGS") Survey – As required by Chapters 299/300, the MIA surveyed the BPW, MDOT, and DGS ("BPW/MDOT/DGS Survey") to determine for each year beginning with 2004 (1) 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 (2) 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 non-MBEs on construction projects (Analysis

[20] The District of Columbia, Alaska, Maine, and New Mexico did not respond.

Components (10)(i) and (ii)). A copy of the BPW/DPT/DGS Survey is included as Appendix 8. BPW and DGS did not have information responsive to the survey, as neither entity collected information regarding the number of surety bonds or contracts of surety insurance that surety insurers issued to both MBEs and non-MBEs on construction projects. MDOT provided information maintained in its Financial Management Information System (FMIS) in response to the survey. That information did not include data from the Maryland Transportation Authority ("MDTA"), an MDOT business unit and the independent state agency responsible for managing, operating and improving the State's toll facilities, because the MDTA does not utilize FMIS. MDTA responded separately to the BPW/MDOT/DGS Survey.

(7) Corporate Surety Survey - The MIA developed a survey for corporate sureties ("Corporate Surety Survey") to help determine for each year beginning with 2004 (1) the percentage of the total surety bonds or contracts of surety insurance that surety insurers issued in the State on construction projects to MBEs, as compared to the surety bonds or contracts of surety insurance that surety insurers issued on construction projects to non-MBEs; and (2) 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 non-MBEs on construction projects (Analysis Components (10)(i) and (ii)). The MIA also requested copies of the applications for surety insurance used by the corporate sureties. As of December 31, 2012, there were 147 corporate sureties authorized and actively writing surety bonds or contracts of surety insurance in Maryland. In 2012, these companies wrote $144,623,606 of premium for surety bonds or contracts of surety insurance in the State. Two of these companies wrote bail bonds exclusively and were excluded from the survey, resulting in a survey population of 145 corporate sureties writing $142,538,948 in premium.[21] Of those, 125 companies responded to the survey, yielding a response rate of 86%. A copy of the Corporate Surety Survey is included as Appendix 9.

(8) Individual Surety Survey – The MIA developed a survey for individual sureties ("Individual Surety Survey"), using the same questions developed for the Corporate Surety Survey, to help determine for each year beginning with 2004 (1) the percentage of the total surety bonds or contracts of surety insurance that surety insurers issued in the State on construction projects to MBEs, as compared to the surety bonds or contracts of surety insurance that surety insurers issued on construction projects to non-MBEs; and (2) 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 non-MBEs on construction projects (Analysis Components (10)(i) and (ii)). The MIA also requested copies of the applications for surety insurance used by the individual sureties. Through the work done for Analysis Component (2), the MIA identified four individual sureties that had issued or attempted to issue surety bonds or contracts of surety insurance in Maryland since authorized to do so under Chapter 299 of the Acts of 2006. Only one of the four individual sureties identified responded to the survey. Several attempts were made to contact the other three. One of the

[21] Bail bonds are not identified under a separate line of business in Maryland but are included in the "surety" line. Those companies that write bail bonds exclusively were identified and excluded from the survey, whereas any company that writes bail bonds in addition to construction, payment, bid or performance surety bonds was included.

individual sureties did not respond to the survey and two could not be located. All certified mail directed to these individuals was returned and all phone numbers associated with the two other individual sureties were disconnected. A copy of the Individual Surety Survey is included as Appendix 10.

(9) Contractor Survey – Analysis Component (11) required the MIA to 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 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. Based on the work done for Analysis Component (6), the MIA contacted the states where the two insolvent companies were domesticated to obtain a list of contractors who held bonds at the time of the insolvencies. The Arizona Department of Insurance was unable to provide any information regarding contractors holding a bond at the time of American Bonding Company's ("ABC") 2004 insolvency. The MPCIGC was able to identify one Maryland contractor holding a bond at the time of ABC's insolvency. For First Sealord Surety Incorporated ("FSSI"), the Pennsylvania Department of Insurance provided a list of contractors who held bonds at the time of the February 2012 insolvency. The MPCIGC provided additional contacts based on claims filed through the MPCIGC as a result of FSSI's insolvency.[22] In total, 41 contractors were identified as having bonds with FSSI in 2012.

Of the total 42 contractors identified as holding bonds at the time of insolvencies of ABC and FSSI, four were eliminated from further analysis because a search of Maryland's State Department of Assessment and Taxation database indicated that the contractor was out of business or its contact information was no longer available. The MIA developed a survey to address the questions raised in Analysis Component (11) ("Contractor Survey") and distributed the Contractor Survey to the 38 remaining contractors. Each contractor was called two weeks prior to the release of the survey to identify the owner or appropriate person to respond to the survey. The survey then was distributed either by e-mail, fax or U.S. mail. The MIA subsequently contacted the contractors up to three additional times to encourage completion of the survey. Of the total 38 contractors contacted, 20 (53%) provided responses to the survey.[23] Six of the 20 respondents stated that they were certified MBEs in Maryland; 14 stated that they were not certified MBEs. Not all contractors provided responses to all survey questions. Copies of the Contractor Surveys for FSSI and for ABC are included as Appendix 11.

VI. Findings and Recommendations

Analysis Component (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.*

[22] The combined list contained 30 bonds issued to Maryland contractors for projects in Maryland bonded by FSSI, 31 bonds issued to out-of-state contractors for projects in Maryland bonded with FSSI, and 16 bonds issued to Maryland contractors for out of state projects bonded with FSSI. Some contractors held multiple bonds with FSSI at the time of its insolvency.

[23] The one contractor who held a bond with ABC at its time of insolvency did not respond to the survey.

Under Maryland law, a person that engages in or transacts insurance business in the State, or performs an act relative to a subject of insurance in the State, must comply with each applicable provision of the Insurance Article.[24] The Commissioner is charged with enforcing the Insurance Article and controlling and supervising the MIA, among other things.[25] The MIA is the independent unit of State government that regulates the State's insurance industry and protects consumers by monitoring and enforcing insurers' and insurance professionals' compliance with State law. The MIA works to facilitate a strong insurance marketplace where consumers are well informed and treated fairly. The MIA's responsibilities include issuing and renewing certificates of authority, licenses, and registrations; reviewing and approving contracts of surety insurance; reviewing and approving rates charged for contracts of surety insurance; and investigating complaints regarding enforcement of surety insurance contract provisions. Because corporate sureties are required to meet minimum capital and surplus requirements, the MIA conducts risk-based capital analyses to determine and help ensure the financial solvency of domestic corporate sureties. The MIA collects premium taxes due from insurers which accrue to the State's General Fund and assesses and collects other fees as required by law. The Commissioner has the authority to deny, suspend, and revoke certificates, licenses, and registrations and may issue administrative penalties against regulated entities.

Currently, the Commissioner lacks the authority to provide any of this regulatory oversight with respect to individual sureties. The MIA's research revealed that only one other state, Alaska, authorizes the use of unregulated individual sureties on public works construction projects. In recent years, at least 13 other states have issued Cease and Desist Orders against individuals acting as sureties without first obtaining a certificate of authority or license. The MIA has identified no basis for continuing to permit unregulated individuals to solicit or issue surety bonds or contracts of surety insurance. The MIA recommends that the laws authorizing the use of individual sureties in the State be permitted to sunset as scheduled on September 30, 2014.

Analysis Component (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.*

The BPW reports to the Governor, the Senate Education, Health, and Environmental Affairs Committee, and the House Health and Government Operations Committee biennially on the implementation and effects of Chapter 299 of the Acts of 2006, as amended by Chapter 266 of the Acts of 2008, regarding individual surety bonds and the laws' impact on small and minority businesses. Accordingly, State agencies must report annually to the BPW on the use of individual sureties within 60 days after the close of each fiscal year.[26] In its reports for fiscal years 2010-2011 and 2008-2009, the BPW reported that no State agencies reported receiving

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[24] Md. Code Ann., Ins. Art. § 1-201.
[25] Md. Code Ann., Ins. Art. §§ 2-101, 2-108.
[26] A copy of the BPW Individual Surety Report Request – 2011 appears in Appendix 12.

individual surety bonds.[27] The BPW's initial report for fiscal year 2007 stated that only one individual surety bond was submitted by a certified small business in response to a solicitation by the State Highway Administration ("SHA"); however, the individual surety bond was subsequently rejected by the SHA.[28] Further research conducted by the MIA and SHA indicates that the individual surety was not rejected on its merits. Instead, the contractor withdrew its bid, claiming its bid price contained errors and missing elements. According to the SHA, the next lowest bid was much higher; therefore, in the best interest of the State, the SHA rejected all bids and re-advertised the solicitation.

Through responses to the State Agency Survey and the County, Municipality and School Board Survey, the MIA identified an additional five occasions since 2006 when individual sureties issued or attempted to issue surety bonds or contracts of surety insurance for the State, counties or municipalities: twice in connection with Baltimore County Public Schools projects and once each in connection with an MDTA project, a Maryland Port Authority ("MPA") project, and a project for the town of Perryville. Baltimore County Public Schools awarded both projects to contractors bonded by individual sureties. The MDTA, the MPA,[29] and the town of Perryville each rejected bids by contractors bonded by individual sureties.

The MDTA cited several factors that contributed to the rejection of a contractor to be bonded by an individual surety, including: (1) failure to execute a bond equal to or exceeding the penal amount of 5% of the bid amount submitted;[30] (2) failure to provide any documentation that the contractor had been denied credit by a corporate surety within the past three years from the date the bond was submitted; (3) failure to submit an executed State individual surety affidavit with an affirmation regarding convictions and debarment; (4) failure to provide a perfectible security interest or lien; (5) failure to provide evidence of the individual surety transacting business through an insurance agency licensed by the MIA; and (6) failure to provide evidence that the individual surety was a United States citizen. The MDTA, with the advice of the Office of the Attorney General, determined that the individual surety bond submitted as a bid guaranty did not meet the requirements set forth by regulation.

The MPA cited the following reasons for rejecting a bid by a contractor to be bonded by an individual surety: (1) failure to submit an acceptable security offered by the individual surety; (2) failure to provide evidence that the contractor had been denied corporate surety credit within the past three years; (3) failure to submit an executed State individual surety affidavit with an affirmation regarding convictions and debarment; and (4) failure to provide evidence that the individual surety was transacting business only through an insurance agency licensed by the

[27] Report to the Governor of the State of Maryland and the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on Individual Surety Bonds, Fiscal Years 2010-2011 and Fiscal Years 2008-2009.

[28] Report to the Governor of the State of Maryland and the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on Individual Surety Bonds, Fiscal Year 2007.

[29] The November 2012 MDTA project should appear in the 2012-2013 BPW biennial report. It is unclear why the March 2010 MPA project did not appear in a prior BPW biennial report.

[30] The penal amount of a bid bond is the amount charged to the successful bidder who fails to accept and fulfill the terms of the underlying contract.

MIA.[31] The MPA, with the advice of the Office of the Attorney General, determined that the individual surety bond submitted as a bid guaranty did not meet the requirements set forth by regulation.

According to the town of Perryville's survey response, after considering all bids received relating to its construction solicitation, Perryville decided to re-bid the project. The decision to re-bid was unrelated to the individual surety bonding submitted as part of one contractor's bid.

In summary, based on all available information, it appears there have been six bid submissions since 2006 involving the use of individual sureties in response to State, county, or municipality solicitations. Two contracts were awarded to contractors utilizing individual sureties. Two bid submissions were rejected based on the individual surety's failure to meet regulatory criteria. Two additional bid submissions utilizing individual sureties were withdrawn; one by the bidding contractor, and the other due to re-bidding of the entire project by the municipality. Thus, in each of those two cases, the proposed individual surety bond was never reviewed for sufficiency.

Analysis Component (3): *Consider whether and how the law, as enacted under Chapter 299 of the Acts of 2006 and Chapter 266 of the Acts of 2008, should be expanded to allow individual sureties to issue surety bonds or contracts of surety insurance to subcontractors.*

As explained under Analysis Component (1), the MIA recommends that the laws authorizing the use of individual sureties in the State be permitted to sunset as scheduled on September 30, 2014, thereby restoring the Commissioner's regulatory authority over all persons issuing surety bonds or contracts of surety insurers in the State.

Our study identified evidence of a need for unregulated individual sureties by contractors or subcontractors on government projects in the State. As discussed in greater detail under Analysis Component (2), we have identified only six bids in response to State, county, or municipal solicitations utilizing individual sureties since they were authorized in 2006 – two of those projects were awarded to the contractors utilizing individual sureties; two were rejected based on each of the individual surety's failure to meet regulatory criteria; one was voluntarily withdrawn by the bidding contractor; and one was withdrawn due to the re-bidding of the entire project by the procuring authority. Thus, the use of indiviudal sureties over the past seven years has been extremely limited.

There currently are 145 authorized corporate sureties actively writing surety bonds or contracts of surety insurance, suggesting a robust and competitive surety insurance marketplace. As reflected in Table 3 under Analysis Component (6)(ii) below, between 2004 and 2012, total written premium in the State for surety bonds or contracts of surety insurance issued by corporate sureties has increased by 53.5%. Corporate Surety Survey respondents reported a

[31] The personal property asset pledged by the individual surety, 140,144 tons of "previously mined coal" in Kentucky, did not meet standards provided by COMAR 21.06.07.04B and was subsequently deemed unacceptable by the MPA. The asset pledged had been previously pledged on a federal job procurement. The MPA considered *Tip Top Construction Corporation*, U.S. Comp. Gen. B-311305, 2008 WL 1948064, in which the court found that the "previously mined coal" was deemed to be an unacceptable asset upon which to premise an individual surety bond in a U.S. Department of Transportation procurement.

35.2% increase in the number of surety bonds they issued in the State during the same period, including bonds issued to both prime contractors and subcontractors (see Table 4 under Analysis Component (6)(ii) below).

It also is important to note that since this study began, the General Assembly passed Chapters 504 and 505, Acts of 2013, which prevent prime contractors on certain procurement contracts from requiring more stringent bonding requirements from subcontractors than those required of the prime contractors, thereby making bonding requirements on State procurement contracts equitable between prime contractors and subcontractors.

Analysis Component (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.*

An analysis of the State Insurance Departments Survey responses and the MIA's own research indicates that "individual sureties" who do not have a certificate of authority issued by the respective state's insurance regulator are authorized to issue surety bonds or contracts of surety insurance in only two states: Alaska and Hawaii. In three additional states – North Carolina, New Mexico, and Virginia – bills that would have authorized individual sureties to issue surety bonds or contracts of insurance were introduced in the last several years, but did not pass.[32]

In Alaska, a contract exceeding $100,000 for construction, alteration, or repair of a public building or public work of the state requires the contractor to furnish a performance bond and a payment bond which may to be satisfied by either a corporate surety qualified to do business in Alaska or an individual surety. For the bond requirements to be satisfied by an individual surety, the contractor must secure "at least two" individual sureties, each of whom must provide bonding in the full amount required for the project.[33]

Acceptance of an individual surety bond is authorized under Hawaii law only as a security deposit for a commercial concession lease on public property with the state of Hawaii.[34]

Analysis Component (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.*

Since 2006, the MIA has not sanctioned any corporate sureties for issuing surety bonds or contracts of surety insurance in the State. With regard to individual sureties, in June 2006, the Commissioner issued a Cease and Desist Order against nine unauthorized entities and Robert Joe Hanson, a principal of those unauthorized entities (collectively, "Respondents"). Among other things, the Commissioner found that in 2003, Respondents had misrepresented that they were authorized insurers in the State and that the products offered by Respondents were either authorized by the Commissioner for sale in Maryland or exempted from the requirements for

[32] *See* Virginia House Bill 3065 (2007) and House Bill 187 (2008); North Carolina House Bill 2793 (2006); New Mexico House Bill 436 (2007).
[33] Alaska Statutes § 36.25.010.
[34] Hawaii Revised Statutes § 102-1.

such authorization. Several other states issued similar cease and desist orders against Respondents.

Sanctions against corporate and individual sureties in other states, as reported by respondents to the State Insurance Survey and as further identified through the MIA's independent research, are summarized below and in Table 1.

Other States: Sanction Against Corporate Surety

In 2012, the Florida Office of Insurance Regulation entered into a consent order with Peninsular Surety Company ("PSC"), an insurer authorized to transact insurance business in Florida, after a financial examination revealed that PSC had issued fifteen surety bonds in excess of the amount allowed by Florida law. PSC was ordered to pay $6,000 in fines and costs.[35]

Other States: Sanctions Against Individual Sureties

In 2006, the Louisiana Department of Insurance became aware of possible violations of Louisiana state insurance laws when it was contacted by Great Southern Dredging, Inc., a Louisiana business entity, when it was unable to obtain a full refund of bond premiums paid after the bonds it presented on a public works project were not accepted.[36] Upon further investigation by the department, the insurance commissioner issued a Cease and Desist Order against United Assurance Company, Ltd., an insurance company domiciled in Barbados that was not authorized to transact insurance business in Louisiana. The Louisiana insurance commissioner also issued Cease and Desist Orders against AA Communications, Inc., a business entity in Louisiana, and its employees, agents, and or/insurance producers, including James Zoucha, Cong Li, and Gwen Moyo related to their activities regarding the sale and issuance of a performance bond, payment bond, and bid bond to Great Southern Dredging, Inc. Neither AA Communications, Inc. nor its agents were authorized to transact insurance business in the state. The total premium paid by Great Southern Dredging, Inc. for all three bonds was $321,555.00.

The Montana Office of Securities and Insurance became aware of possible violations of Montana state insurance laws when it received a complaint from the Montana Department of Agriculture on behalf of Montana grain farmers after a claim was made against a surety bond purchased by Olson Trading Company for unpaid debts after the trading company ceased doing business. The trading company was required to purchase a surety bond in favor of the department for each of the Montana grain farmers who stored grain with the trading company. The trading company obtained a surety bond through licensed insurance producers from Polaris International Insurance Company Ltd., an entity that was not authorized to conduct insurance business in Montana. In 2009, the department entered into consent orders with the licensed insurance producers; in 2010, the department issued Cease and Desist Orders against Polaris International Insurance Company, Ltd. ("Polaris") and Westernworld Financial Risk

[35] *See* Peninsular, Case No. 125430-12-CO (FL Off. Ins. Reg. July 16, 2012) (consent order).
[36] *See* United Assurance, Case No. 549569 (LA Dep't Ins. Jan. 22, 2007). A performance bond and payment bond were issued to Great Southern Dredging, Inc. for work to be performed for Recreation District No. One of St. Tammany Parish, each in the amount of $6,630,000. A bid bond for $350,000 was also issued.

Management, LLC, an entity that was acting as a managing general agent for Polaris but was not authorized to act as one under Montana law.[37]

In at least 12 other states, including Alabama, Colorado, Connecticut, Florida, Iowa, Nevada, North Carolina, Oklahoma, Rhode Island, Texas, Virginia, and Washington, state insurance regulatory agencies have taken action against individual sureties for engaging in the business of insurance without first obtaining a certificate of insurance to act as insurer in the respective state. The state insurance regulatory agencies usually have discovered the unlawful activities of individual sureties only after a complaint for nonpayment of a claim or unreturned premium has been filed by an obligee or a bond purchaser.

Table 1
Sanctions and Other Actions Entered Against Corporate Sureties and Individual Sureties for Issuing Surety Bonds or Contracts of Surety Insurance

Type of Entity	Name	State	Year	Type of Sanction or Other Action	Reason for Sanction
Corporate Surety	Peninsular Surety Company	FL	2012	Consent order and fine	Issuing surety bonds in excess of authorized limit
Individual Surety	Aaron Powless d/b/a Small Business Federal Bonding	FL	2012	Cease and Desist Order and administrative penalties	Acting as an insurer without first obtaining a certificate of authority
Individual Surety	Genesis Business Group, Inc, Genesis Capital Corporation, Don Delwyn Tuzo	VA	2011	Default Judgment, Fine, Permanently Enjoined from Conducting the Business of Insurance	Transacting the business of insurance without first obtaining a license
Individual Surety	Edmund Scarborough d/b/a IBCS Group Inc.	IA VA WA	2011 2011 2013	Cease and Desist Order and administrative penalties	Acting as an insurer without first obtaining a certificate of authority
Individual Surety	Polaris International Insurance Company Ltd.	MT	2010	Cease and Desist Order	Acting as an insurer without first obtaining a certificate of authority
Individual Surety	Leo Rush d/b/a Great Northern Bonding Company	RI	2010	Cease and Desist Order	Acting as an insurer without first obtaining a certificate of authority
Individual Surety	George Black d/b/a Infinity Surety, Infinity Surety Company, Infinity Surety Agency, LLC., and Infinity Surety of Louisiana, Inc.	FL LA TX	2010 2010 2009	Cease and Desist Orders	Acting as an insurer without first obtaining a certificate of authority
Individual Surety	Larry Wright d/b/a Underwriters Group	OK FL	2008 2011	Cease and Desist Orders	Acting as an insurer without first obtaining a certificate of authority
Individual Surety	Leo Rush d/b/a Eastern Shores Casualty and Indemnity	RI	2008	Cease and Desist Order	Acting as an insurer without first obtaining a certificate of authority
Individual Surety	Boyd Ewing d/b/a/ Metrocrest Surety Company	TX	2008	Cease and Desist Order and administrative penalty	Acting as an insurer without first obtaining a certificate of authority

[37] *See* Western & Polaris, Case No. INS-2008-27 (MT Comm. Sec. Ins. Apr. 30, 2010).

Individual Surety	United Assurance Company, Ltd.	LA	2006	Cease and Desist Order	Acting as an insurer without first obtaining a certificate of authority
Individual Surety	Morris Sears d/b/a Abba Bonding, Abba Surety Inc.	AL CO FL NC	2005, 2009 2007 2010, 2011 2009	Cease and Desist Orders	Acting as an insurer without first obtaining a certificate of authority
Individual Surety	Robert Joe Hanson a/k/a Dennis Lyon a/k/a Dan Lyon a/k/a Frank Lyon d/b/a Global Bonding; Shonto Surety; Underwriters Reinsurance Co, Ltd.; Belfort Bancorp; Individual Surety, Ltd.; Millenium Bonding; I.S. a Native American Corporation; Millenium Bonding Enterprises; Rock Enterprises; World Wide Bonding; World Wide Construction Services	CT MD MT NV OK WA	2004 2006 2006 2007 2012 2004 2005 2004	Cease and Desist Orders Cease and Desist Order Permanent Cease and Desist Order; and administrative penalties Permanent Cease and Desist Order; and administrative penalties Cease and Desist Order Cease and Desist Order; and administrative penalties Cease and Desist Order	Acting as an insurer without first obtaining a certificate of authority

Analysis Component (6)(i): *Conduct a review of 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; determine 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.*

The MPCIGC is responsible for paying covered claims of Maryland residents against surety insurers authorized to write surety bonds in Maryland when the bonds were issued or when the events giving rise to the claims occurred, and against which a court of competent jurisdiction in the insurer's state of domicile has passed a final order of liquidation with a finding of insolvency.[38] The MPCIGC confirmed that in the last 10 years there have been two corporate sureties operating in Maryland that were declared insolvent by their respective states of domicile: ABC and FSSI.[39] Through August 1, 2013, these events resulted in the MPCIGC's payment of $161,117 for claims and $37,500 for related expenses, as illustrated in Table 2.

[38] An insurer's placement into receivership alone does not render the insurer an "insolvent insurer." *See* Ins. Art. §§ 9-301(e), 9-302, 9-306.

[39] No Maryland-domiciled corporate sureties have been found to be insolvent or placed under receivership in the last 25 years.

Table 2
Claims Submitted to and Paid by the MPCIGC within the Last 10 Years

Name Of Surety Company	Date of Insolvency	State of Domicile	Claims Process Open Or Closed	Number of Maryland Claims Received	$ Amount of Claims Paid	$ Amount of Expenses
American Bonding Company	10/08/2004	Arizona	Closed Since 2005	6	$0.00	$0.00
First Sealord Surety Incorporated[40]	02/08/2012	Pennsylvania	Open	24	$161,117.00	$37,500.00
Totals				30	$161,117.00	$37,500.00

Analysis Component (6)(ii) : *Conduct a review of 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.*

The MIA identified no impact of the insolvencies or receiverships of ABC and FSSI on the availability of surety bonds or contracts of surety insurance in the Maryland insurance market. To the contrary, the marketplace for obtaining surety bonds or contracts of surety insurance appears to be active. As of December 31, 2012, there were 147 corporate sureties authorized and actively writing surety bonds or contracts of surety insurance in Maryland. During calendar year 2012 these companies wrote surety insurance premiums totaling $144,623,606 in Maryland. Two of these corporate surety insurers wrote only bail bonds. Excluding the two corporate sureties that exclusively write bail bonds, the total written premium in Maryland for 2012 for the 145 active corporate surety insurers was $142,538,948. As indicated in Table 3 below, between 2004 and 2012, total written premium in the State for surety bonds or contracts of surety insurance has increased by 53.5%.

[40] A review of the Commonwealth Court of Pennsylvania lawsuit, filed by the Insurance Commissioner of the Commonwealth of Pennsylvania on September 15, 2012, indicates that the delayed detection of FSSI's true financial condition until late 2011 and the eventual insolvency of the insurer was due to many factors including, but not limited to: fraudulent reserving practices; diversion of millions in cash by top executives to an unregulated affiliate under common control; and defendants' wrongful misrepresentation of FSSI's assets and liabilities. *See* http://www.portal.state.pa.us/portal/server.pt/document/1283832/first_sealord_surety_sept_11_2012_commonwealth_court_of_pa_complaint_pdf. The Complaint alleges that during 2010 through the end of 2011, some corporate officers and board members knew that FSSI was insolvent, but continued to mislead regulators and their own independent auditors and actuaries in various ways including (1) diverting cash while under-reserving for anticipated claims and claims loss expense obligations and over-reserving for anticipated subrogation and salvage recoveries; (2) making affirmative misrepresentations on FSSI's statutory filings and/or management letters for the independent annual audit of their financial statements; and (3) improperly verifying that complete and accurate data had been provided. The complaint alleges that these factors, coupled with the issues surrounding FSSI's holding company system, contributed to the insolvency.

Table 3
Corporate Surety Written Premium in Maryland 2004-2012

Year	Written Premium
2004	$92,857,719
2005	$100,313,881
2006	$93,569,171
2007	$137,698,234
2008	$145,960,550
2009	$146,556,569
2010	$127,360,401
2011	$136,825,888
2012	$142,538,948

Of the 145 active corporate surety insurers in the State, 125 responded to the MIA's Corporate Surety Survey. Forty of those respondents indicated that they do not write bid, performance or payment bonds. Of the remaining 85 respondents, 81 provided data regarding the total number of surety bonds or contracts of surety insurance that they issued in Maryland from 2004 through 2012, including bonds issued to both prime contractors and subcontractors. As reflected in Table 4, those data indicate a steady increase in the number of bonds or contracts issued, from 8,215 in 2004 to 11,107 in 2012 (an increase of 35.2%).

Table 4
Corporate Surety Survey Response Summary

Year	Number of Surety Bonds or Contracts of Surety Insurance Issued (81 Sureties Responding)
2004	8,215
2005	8,241
2006	8,492
2007	8,389
2008	10,271
2009	10,458
2010	10,205
2011	11,254
2012	11,107

Analysis Component (6)(iii): *Conduct a review of the impact of the affected surety bonds on surety bond users and insurance producers.*

With respect to the impact of surety bonds issued by ABC or FSSI on surety bond users, the MPCIGC confirmed that all of the covered claims and expenses detailed in Table 2 relating to insolvent surety insurers writing in Maryland were paid by the MPCIGC.[41] The MPCIGC reported that it is unaware of any covered claims that were not paid in full.

The MIA's insurance producer records do not associate producers with specific insurers. As a result, the MIA was unable to identify all producers who were appointed by ABC and FSSI to sell, solicit or negotiate contracts of insurance on their behalf. Respondents to the Contractor Survey, however, identified nine insurance producers that had procured surety bonds or contracts of surety insurance issued by the insolvent surety insurers identified in Analysis Component (6(i)). The MIA distributed the Surety Insurance Producer Survey to those nine producers to help determine the impact, if any, of the affected surety bonds on insurance producers. Three producers responded to the Survey. One respondent indicated that there was no impact on their business. A second respondent indicated that client relationships were impacted because the insolvency "made me look bad." Upon notification of the insolvency, the third respondent

[41] Chapters 299/300 do not define the term "surety bond user." The term also is not defined in the Insurance Article, the State Finance and Procurement Article, or the Code of Maryland Regulations. For purposes of this analysis, the term "surety bond user" is defined as the obligee (the project owner who initiates, manages or finances a project). The impact of the affected surety bonds on contractors is addressed separately under Analysis Component (11).

elected to return premiums to the insureds out of the producer's own assets. The MPCIGC advised the MIA that it had no information regarding any impact of the insolvencies on producers.

Analysis Component (6)(iv): *Conduct a review of 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.*

The receiver or conservator of a corporate surety generally is required by its state of domicile to notify all of its policyholders of the receivership or conservatorship. In the event a Maryland domiciled surety insurer were placed into receivership or conservatorship, the MIA would require the receiver or conservator to provide notice of the receivership or conservatorship to all policyholders within 15 days pursuant to § 9-214 of the Insurance Article. When the MIA suspends a certificate of authority of a corporate surety doing business in Maryland, the MIA posts the suspension order on the MIA website. Producers and members of the public may elect to receive electronic notifications regarding actions taken and decisions made by the MIA.

Analysis Component (7)(i): *Conduct a survey of the Maryland Property and Casualty Insurance Guaranty Corporation to determine: 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;*

The MPCIGC confirmed that in the last 10 years there were two corporate sureties operating in Maryland that were declared insolvent by their respective states of domicile: ABC and FSSI. Through August 1, 2013, these events resulted in the MPCIGC's payment of \$161,117 for claims and \$37,500 for related expenses (see Analysis Component (6)(i) Table 2).

Analysis Component (7)(ii): *Conduct a survey of the Maryland Property and Casualty Insurance Guaranty Corporation to determine whether contributions provided by surety insurers to the Corporation are adequate for future claims related to insolvent surety insurers.*

The MPCIGC advised the MIA that if a surety insurer were to become insolvent, any covered claims, as defined in § 9-301 of the Insurance Article, would be submitted to the MPCIGC. The MPCIGC's Account #4 would be used to pay those claims.[42]

Additionally, in the event of a surety insurer's insolvency, § 9-306 of the Insurance Article authorizes the MPCIGC to assess each member insurer up to 2% of the insurer's direct written premium for business written and covered by Account #4.[43] The MPCIGC informed the MIA that the premium base for Account #4 is approximately \$3.5 billion. At 2%, the assessment limit is approximately \$70,000,000 per year. If a yearly assessment is insufficient, any deficit can be covered in future years' assessments. This assessment capacity is well in excess of losses incurred in prior surety insurer insolvencies. Although there is no assurance that the capacity will be sufficient for future insolvencies, there is no evidence to indicate it would not be.

[42] "Account #4" means an account established by the MPCIGC for administration and assessment purposes pursuant to § 9-304(d)(4) of the Insurance Article.
[43] "Member Insurer" means an authorized insurer that writes a kind of business, including the exchange of reciprocal or interinsurance contracts, to which Title 9, Subtitle 3 of the Insurance Article applies. *See* Ins. Art. § 9-301(f).

Analysis Component (7)(iii): *Conduct a survey of the Maryland Property and Casualty Insurance Guaranty Corporation to determine the existing statutory requirements of items covered by the Corporation in the event of the insolvency of a corporate surety.*

Information provided by the MPCIGC responsive to Analysis Component (7)(iii) is summarized in Table 5 (for performance obligations) and Table 6 (for payment obligations) below.

Table 5

Type of Obligation	Location of Work	Resident Obligee	Non-Resident Obligee
<u>Performance Obligations</u> (Includes obligations under contract performance and miscellaneous surety bonds)	In Maryland	Claim Covered	Claim Not Covered
	Out of Maryland	Claim Covered	Claim Not Covered

Table 6

<table>
<tr><th>Type of Obligation</th><th colspan="2">Location of Work</th><th>Resident Obligee</th><th>Non-Resident Obligee</th></tr>
<tr><td rowspan="4"><u>Payment Obligations</u>
(Includes third party beneficiary obligations under contract payment and miscellaneous surety bonds)</td><td rowspan="2">In Maryland</td><td>Resident Claimant</td><td>Claim Covered</td><td>Claim Covered</td></tr>
<tr><td>Non-Resident Claimant</td><td>Claim Covered</td><td>Claim Not Covered</td></tr>
<tr><td rowspan="2">Out of Maryland</td><td>Resident Claimant</td><td>Claim Covered</td><td>Claim Covered</td></tr>
<tr><td>Non-Resident Claimant</td><td>Claim Covered</td><td>Claim Not Covered</td></tr>
</table>

Analysis Component (7)(iv): *Conduct a survey of the Maryland Property and Casualty Insurance Guaranty Corporation to determine whether loss of paid premiums or collateral of surety bond principal and any other covered items should be expanded.*

Management of the MPCIGC advised the MIA that, based on its past experience, it does not see the need for expansion of premiums or collateral of surety bond principal. The purpose of a guaranty fund is to provide for the prompt payment of covered claims of an insolvent insurer and not to reimburse policyholders for premium paid.

Analysis Component (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.*

The laws and regulations for licensing companies to conduct insurance business in the State, including surety insurance, and for regulating their financial solvency once licensed, are not designed to absolutely prevent the insolvency of those insurance companies. Rather, they are designed to help ensure that insurance companies have appropriate procedures and controls in place, and sufficient capital, to operate successfully. State insurance regulators monitor the financial condition of insurance companies, including corporate sureties, through the financial analysis and examination process. If an insurance company is financially impaired, the state insurance regulatory agency in the company's state of domicile may initiate conservation or rehabilitation proceedings to help the insurance company improve its financial condition. If these steps fail, regulators may ask the courts to declare the insurer insolvent and to order the liquidation of the insurance company. Once a court has found an insurance company insolvent, and ordered it liquidated, a liquidator is appointed who will identify assets of the insurance company, collect premiums from policyholders, notify parties who may potentially have a claim, and turn covered claims over to the state's insurance guaranty association.[44]

Risk-based capital (RBC) standards are one method of measuring the minimum amount of capital appropriate for an insurer to maintain to support its business operations in consideration of its size and risk profile. RBC standards also provide regulatory authority for preventative and corrective action to be taken based on the capital deficiency indicated by the RBC result. The standards require a company with a higher amount of risk to hold a higher amount of capital. As the amount of business and risk increase, so does the level of minimum required capital. Maintaining an appropriate amount of capital based on the size and risk profile of the insurance company is intended to provide a cushion against the risk of insolvency. RBC is not designed to be a stand-alone tool in determining the financial solvency of an insurance company; rather it is one tool that provides regulators a means to monitor insurance companies. Despite rigorous oversight by state regulators, financially troubled insurers can become insolvent.

To strengthen regulatory oversight of insurers within an insurance holding company system, the MIA proposed legislation during the 2013 Session, House Bill 431, which was signed into law as Chapter 115, Acts of 2013. Chapter 115 amends the Maryland Insurance Acquisitions Disclosure and Control Act by providing additional tools to evaluate risk on an enterprise level, including the activities and potential risks posed by non-insurance companies within the system. These tools enhance regulatory oversight of insurers' risks, and ultimately of their financial solvency. At this time, the MIA has not identified any additional areas where existing laws and regulations for licensing and regulating corporate sureties are inadequate.

Analysis Component (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.*

<u>Corporate Sureties</u>

The laws and regulations governing corporate sureties are designed to help ensure that those entities have appropriate procedures and controls in place to operate successfully and have sufficient capital and surplus available to pay their claims and satisfy their other financial obligations. The Commissioner also has the authority to deny, suspend, and revoke certificates

[44] Maryland is one of only seven states (Arkansas, Kansas, Kentucky, Maine, Maryland, Michigan, and New York) that include surety insurance as a covered line of business under its property and casualty insurance guaranty association.

of authority, licenses, and registrations required by law and may impose administrative penalties against regulated entities.

To strengthen regulatory oversight of corporate insurers within an insurance holding company system, the MIA proposed legislation during the 2013 Session, House Bill 431, which was signed into law as Chapter 115, Acts of 2013. Chapter 115 amends the Maryland Insurance Acquisitions Disclosure and Control Act by providing additional tools to evaluate risk on an enterprise level, including the activities and potential risks posed by non-insurance companies within the system. These tools enhance regulatory oversight of insurers' risks, and ultimately of their financial solvency. Actions by the officers, board members or owners of insurers within an insurance holding company system such as those alleged to have been taken by some officers or some board members of FSSI, are now under the purview of the Commissioner.

Furthermore, to help ensure protection of the public interest in the promotion of insurance companies operating or proposed to be operated in Maryland, corporate sureties must provide biographical affidavits for principal managers, officers, directors or key managerial personnel, and any individual with a ten percent or more beneficial ownership interest in the insurer. These persons must disclose criminal history, adverse regulatory actions, or any other conduct that could indicate the person is untrustworthy or not of good character. A corporate surety must submit these biographical affidavits for (1) an application for a certificate of authority; (2) a filing seeking approval for the acquisition of control of a domestic insurer; and (3) a notice of change in the management of a domestic insurer.[45]

At this time, the MIA has not identified any areas where existing laws and regulations governing corporate sureties are inadequate.

Individual Sureties

The Commissioner lacks regulatory authority over individual sureties authorized to solicit or issue surety bonds or contracts of surety insurance under §§ 13-207 and 17-104 of the State Finance and Procurement Article. The regulatory safeguards applicable to corporate sureties discussed above are therefore unavailable to help prevent or address the issuance of fraudulent surety bonds or contracts of surety insurance by individual sureties.

Research conducted as part of Analysis Component (5) indicated that all 12 individual sureties identified in Table 1 had engaged in fraudulent or misleading conduct, such as: (1) creating the illusion of a corporate form, which could mislead the public into believing that the same safeguards in place for corporate sureties (*e.g.*, regulatory financial oversight, rate approval, and, in some cases, the backing of the state's guaranty fund) exist as to the individual surety; (2) inflating the valuation of property pledged; (3) pledging the same collateral for multiple projects so that the total amount of the surety bonds outstanding far exceeded the value of the collateral;[46] or (4) misrepresenting other information as part of the surety bond

[45] COMAR 31.04.02.
[46] *See*, *e.g.*, Order Granting in Part and Denying in Part the Debtor's Motion to Alter or Amend, dated May 22, 2012, *In re* Morris Sears, Case No. 09-11053-MAM-11, Adv. No. 09-01070 (Bankr. S.D. Ala. Filed May 5, 2009) (Individual surety knowingly made fraudulent representations in affidavits regarding assets pledged in support of

submission.[47] The acceptance of bonds issued by those individual sureties on public work contracts put taxpayers and bond users at risk and denied contract awards to rival bidders who submitted proper surety bonds.

In order to better safeguard the public against the issuance of fraudulent surety bonds or contracts of surety insurance, all sureties doing business in the State should be required to obtain a certificate of authority issued by the Commissioner and should be subject to the same level of regulatory oversight required for corporate sureties under Maryland law.

Analysis Components (10)(i) and (ii): *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 to include:*

- *(i) the percentage of the total surety bonds or contracts of surety insurance that surety insurers issued in the State on construction projects regarding 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;*
- *(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 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.*

Survey of the Board of Public Works, the Department of Transportation, and the Department of General Services

The BPW and DGS advised that they did not have information responsive to the BPW/MDOT/DGS Survey. Accordingly, Survey results are limited to information provided by MDOT, and separately by MDTA, an MDOT business unit and the independent state agency responsible for managing, operating and improving the State's toll facilities.

Table 7 summarizes the information tracked and reported by MDOT on the number of contract awards to general contractors on construction contracts over $100,000, including federally funded contracts that had MBE participation goals.[48] During the survey period, MDOT

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surety bonds for federal projects across the United States, including overvaluation of assets, false assertion that assets were owned free and clear of liens, and false assertion that assets had not been pledged to any other bond contract within three years).

[47] *See In re Dennis Lyon, a.k.a. Robert Joe Hanson*, INS-2011-220 (Mont. Comm'r of Sec. & Ins. Oct. 23, 2012) (individual surety accepted money knowing that coverage would not be provided, used subterfuge by signing false names to documents which represented to obligees that the unregistered business entity with which he was associated would provide bonding that it could not legally provide, and failed to disclose a permanent Cease and Desist Order that prohibited him from soliciting, negotiating, selling, and/or effectuating a contract of insurance for the sale of surety bonds or otherwise transacting insurance business in Montana).

[48] Under Maryland law, any State construction contract over $100,000 requires a surety bond or contract of surety insurance. Md. Code Ann., State Fin. and Proc. § 13-207.

awarded 1,607 construction contracts over $100,000; 180 of those were awarded to MBEs.[49] MDTA, which does not track the number of contracts awarded between MBEs and non-MBEs, awarded 130 contracts during the same time period.

Table 7

MDOT Survey Response Summary
(Exclusive of MDTA Data)

Year	Total Contracts Awarded	MBEs Awarded Contracts	Non-MBEs Awarded Contracts
2004	123	23	100
2005	170	19	151
2006	219	23	196
2007	185	16	169
2008	155	13	142
2009	190	16	174
2010	130	24	106
2011	230	30	200
2012	205	16	189
Total	**1,607**	**180**	**1,427**

None of the BPW/MDOT/DGS Survey participants collected or maintained information regarding the number of surety bonds or contracts of surety insurance that have been rejected by surety insurers on construction projects for MBEs as compared to surety bonds or contracts of surety insurance that surety insurers have rejected on construction projects for non-MBEs.

<u>Survey of Corporate Sureties</u>

All respondents to the Corporate Surety Survey indicated that they did not collect information regarding the app*l*icant's MBE status during the underwriting process. Forty of the

[49] Pursuant to COMAR 21.11.03.01, the certified MBE participation tracked by each procurement agency is based on the total dollar value of all awarded procurements made directly or indirectly. MBE participation tracking is not based on the number of contracts awarded, but rather on the dollar amount of the total contract. According to the Fiscal Year 2012 Minority Business Enterprise Program Statistical Report issued by the Governor's Office of Minority Affairs, MDOT's seven agencies awarded $2,174,533,581 in total prime procurement/contracts. Of that award amount, $479,832,055 represented a certified MBE participation level of 22.07%. *See* http://goma.maryland.gov/Documents/FY2012MBEStatisticalReport.pdf**.**

125 Corporate Surety Survey respondents (32%) reported that they did not write bid, payment or performance bonds during the survey period of 2004 through 2012. Of the remaining 85 respondents, none collected or maintained information regarding the number of surety bonds or contracts of surety insurance that have been issued or rejected in Maryland for certified MBEs versus non-MBEs.

Survey of Individual Sureties

The sole respondent to the Individual Surety Survey stated that its records of surety bonds or contracts of surety insurance issued or rejected in Maryland date back only to 2009.[50] The respondent reported that during the four-year period from 2009-2012, 18 surety bonds or contracts of surety insurance were issued, nine of which were issued to MBEs (with five of those issued in 2012).

Table 8

Individual Sureties Survey Response Summary

Year	Total Number of Surety Bonds or Contracts of Surety Insurance Issued	Number of Surety Bonds or Contracts of Surety Insurance Issued to MBEs	Number of Surety Bonds or Contracts of Surety Insurance Issued to Non-MBEs
2009	3	2 (67%)	1 (33%)
2010	7	0 (0%)	7 (100%)
2011	2	2 (100%)	0 (0%)
2012	6	5 (83%)	1 (17%)
Total	**18**	**9**	**9**

The respondent did not report the amounts of these surety bonds or contracts of surety insurance and did not identify the contractors to whom the surety bonds or contracts of surety insurance were issued. The respondent also failed to provide copies of its bond application form(s), as requested by the survey.

Analysis Component (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.*

Of the 20 Contractor Survey respondents, 18 held a combined total of 37 bonds issued by FSSI at the time of its insolvency.[51] Of those 18 contractors, four no longer needed bonding

[50] The one individual surety that responded to the Individual Surety Survey was the same individual surety rejected by the MPA. *See* Analysis Component (2).
[51] Information provided by the Pennsylvania Department of Insurance.

following the insolvency, and 13 were able to obtain replacement bonding through an insurance producer. One respondent reported that it was able to replace one of its bonds, but was unsuccessful in replacing the other.

Although all but one Contractor Survey respondent obtained replacement bonding, 12 of the 20 respondents indicated that they had experienced various business difficulties following the FSSI insolvency, including cash flow problems, loss of bond premium paid, delayed payments by general contractors, higher premium rates on replacement bonds, and negative impact on lines of credit with suppliers. In addition, one contractor reported losing one of its contracts because of the time required to replace the bond.

Analysis Component 12: *Consider whether there are any programs, including the Maryland State Bond Development and Financing Authority[52] 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 MBEs.*

The MIA researched available State, federal, and industry materials to identify programs that enhance the availability of surety bonds or contracts of surety insurance for new, emerging and small businesses, including businesses that qualify as MBEs. Four such programs include:

- the Maryland Small Business Development Financing Authority ("MSBDFA") Surety Bond Program;
- the U.S. Small Business Administration ("SBA") Bond Guarantee and Lending Program;
- the Surety & Fidelity Association of America ("SFAA") Model Contractor Development Program®; and
- the U.S Department of Transportation ("DOT") Bonding Education Program.

MSBDFA Surety Bond Program

Under the purview of the State's Department of Business & Economic Development, MSBDFA was created by the Maryland General Assembly in 1978 to aid and promote businesses owned by economically and socially disadvantaged entrepreneurs.[53] MSBDFA's client base was expanded following a statutory change in 2001 to include all small business rather than only those that are owned by economically and socially disadvantaged entrepreneurs.[54] The expansion included small businesses that do not meet the established credit criteria of most financial institutions and consequently are unable to obtain adequate business financing on reasonable terms through normal financing channels.[55]

[52] Although the statute references the Maryland State Bond Development and Financing Authority, there is no such entity. Staff to the Senate Finance Committee, House Economic Matters Committee, and House Health and Government Operations Committee confirmed with the MIA that the intent was to refer to the Maryland Small Business Development Financing Authority.
[53] MSBDFA Annual Financial Status Report FY 2012, at 1 (June 30, 2012).
[54] *Id*.
[55] *Id.*

The MSBDFA Surety Bond Program was established in 1984 and is designed to help small businesses obtain bid, performance or payment bonds necessary to perform on public contracts where funding is primarily provided by a government agency or public utility. The Surety Bond Program can provide assistance to small businesses in one of two ways: (1) it can issue bid, performance or payment bonds directly as a surety, up to a limit of $5,000,000 each; or (2) it can guarantee a surety's losses incurred as a result of the contractor's breach of a bid, performance or payment bond up to 90% of the face value of the bond, not to exceed $5,000,000.[56] According to MSBDFA, bond premiums for bonds directly issued by the Surety Bond Program generally range from 2% to 3% of the total bond amount.[57] A surety bond revolving line of credit may be established by MSBDFA to directly issue or guaranty multiple bonds to a principal within pre-approved terms, conditions and limitations.

MSBDFA reported that since the Surety Bond Program's inception, 107 bonds had been issued directly or guaranteed by the program and resulted in approximately $56,900,000 of financial assistance to businesses. Approximately $1,800,000 has been paid for nine claims as a result of defaults by companies with bonds issued directly or guaranteed by the program during that same period. Four of these claims equating to approximately $1,400,000 were attributable to the default of one company in the Surety Bond Program.[58]

MSBDFA reported that in Fiscal Year 2012, four bonding applications were received for approximately $1,800,000 and the requests for bonding assistance were expected to increase to $8,000,000 for 13 companies in fiscal year 2013.[59] MSBDFA also reported that due to the increasing number of requests for bonding assistance, it was anticipated that the Surety Bond Program would not be able to sustain the $5,000,000 per bond limit. The authority for MSBDFA to issue bonds up to a limit of $5,000,000 is due to sunset on October 1, 2014; at that time, the maximum amount available under the Surety Bond Program will be the lesser of 90% or $1,350,000 of its loss under a bid, payment, 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. MSBDFA's authority to execute a bond also will revert to $1,000,000 each.[60]

SBA Bond Guarantee and Lending Program

A federal agency created to serve the needs and protect the interests of small businesses, the SBA is largely responsible for the management and oversight of the small business procurement process for the federal government, ensuring that small businesses are afforded the greatest opportunity to participate in government contracting. The Maryland Department of Business and Economic Development works in conjunction with the SBA to promote the SBA's substantial resources available to small businesses including the SBA Bond Guarantee and Lending Program.[61] Information is available at http://www.sba.gov/md.

[56] Md. Code Ann., Economic Development, §5-568.
[57] MSBDFA Annual Financial Status Report FY 2012, at 1(June 30, 2012).
[58] MSBDFA Annual Financial Status Report FY 2012, at 4 (June 30, 2012).
[59] The MSBDFA Annual Financial Status Report for FY 2013 was not available at the time of this analysis and report.
[60] Md. Code Ann., Economic Development, §§ 5-568 and 5-569.
[61] Maryland/SBA Small Business Resource 2013-2014 Guide; SBA Publication #MCS-0018.

The SBA Bond Guarantee and Lending Program focuses on the qualification and preparation of small businesses to become federal government contractors. SBA does not directly bond a contractor. Instead, the SBA guarantees bonds issued by a corporate surety to encourage the corporate surety to provide bonds to small businesses. Under its Prior Approval Program, the SBA guarantees 90% of the surety's paid losses and expenses incurred on bonded contracts up to $100,000, and on bonded contracts greater than $100,000 that are awarded to socially and economically disadvantaged small businesses, including veteran or service-disabled veteran-owned small businesses and businesses in historically underutilized business zones. For all other contracts, the SBA offers an 80% guarantee up to $6.5 million in value or up to $10,000,000 if a federal contracting officer certifies that the SBA's guarantee is necessary for the small business to obtain bonding. The SBA also offers a Preferred Surety Bond Program that enables corporate sureties to issue, monitor, and service bonds without prior approval by the SBA. The Preferred Program's guarantee rate is 70%.[62]

The SBA offers a streamlined application process known as the Quick Bond Guarantee Application and Agreement. According to the SBA, this approach significantly reduces paperwork for both contractors and corporate sureties participating in SBA's Prior Approval Program and reduces processing time. SBA's online surety bond application system, or "E-App," assists contractors with the completion of the forms required by the corporate surety or producer.

SBA's web site provides a considerable amount of helpful information including application materials, descriptions of the SBA programs, upcoming training and workshops, a list of the participating surety insurers and access to a list of producers appointed to represent the insurers. The SBA also maintains a network known as "Sub-Net" that alerts small businesses to search for subcontracting opportunities posted by prime contractors. According to the U.S. Department of Transportation ("DOT"), more than 50% of DOT subcontracting opportunities are awarded to small businesses including certified MBEs, veteran-owned, service-disabled veteran-owned, small disadvantaged, and women-owned businesses.[63]

SFAA Model Contractor Development Program

The SFAA is an association of approximately 450 corporate surety insurers writing the majority of surety and fidelity bonds in the U.S. SFAA programs are available in many states, including Maryland, and are designed to help small or emerging businesses obtain bonding. The SFAA provided the MIA with information on its Model Contractor Development Program ("MCDP"), which focuses on two major aspects of bonding for companies: education and bond readiness.

The MCDP has been available for more than a decade and includes a series of workshops on topics such as bonding and insurance, project estimating and bidding, and business

[62] http://www.sba.gov/content/contractors.

[63] "United States Department of Transportation," http://www.dot.gov/osdbu/procurement-assistance/subcontracting-with-dot (accessed Nov. 22, 2013).

operations. The workshops are conducted by industry volunteers from surety insurers and producers.

In 2006, the SFAA signed a Memorandum of Understanding ("MOU") with the Prince George's County Economic Development Corporation ("EDC") as part of its Small Business Initiative. EDC conducted a Contractors Development Program in 2008, which SFAA co-sponsored under its MOU. The SFAA reports that since that time, contractor referrals to the volunteer surety bond producers involved in Small Business Initiative have resulted in more than $15,000,000 in bid, performance and payment bonds being offered to those contractors. The SFAA web site is found at: http://www.surety.org/?page=AboutSurety.

In 2010, the SFAA and the DOT entered into a Memorandum of Agreement to develop and implement a national bonding education program. The resulting program was adopted in Maryland as the MDOT Bonding Education Program, discussed more fully below.

MDOT Bonding Education Program

The MDOT Bonding Education Program ("BEP") is based on the federal DOT program. Developed jointly by the DOT Office of Small and Disadvantaged Business Utilization and surety industry partners including SFAA and the National Association of Surety Bond Producers, the BEP is designed to help small businesses become bond ready for State and/or federal contracts. Tailored to businesses competing for transportation-related contracts, the BEP includes opportunities for one-on-one contact with local surety bonding producers who volunteer to assist businesses prepare materials necessary to complete a surety bond application.

To be eligible for BEP assistance, businesses must meet certain requirements including, but not limited to, being in business for two or more years, having a least two full-time employees, demonstrating past performance in the construction industry and seeking transportation-related contracts, and possessing certification or designation as a small business, veteran-owned or disabled veteran-owned business, woman-owned business, or other small or disadvantaged business enterprise. The business must complete an application, be capable of bidding on MDOT contracts, and attend certain BEP workshops. Consulting, engineering and development firms are not eligible for the BEP.

Southern Maryland was among the initial 12 locales in which the SFAA and MDOT implemented the BEP in 2011. The program is conducted through the MDOT Office of Small and Disadvantaged Business Utilization and its network of Small Business Transportation Resource Centers throughout the county. According to the SFAA, the BEP was expanded to 14 geographic locations in 2012 and provided $139,000,000 in bonding. More locations were to be added in 2013.

The MDOT web site provides additional information about the BEP, including program details, eligibility, and the location of current workshops around the nation. The web site is found at: http://www.dot.gov/osdbu/financial-assistance/bonding-education/bonding-education-program.

Analysis Component (13): *Consider the need to establish licensure requirements that are specific for surety insurance producers who sell surety bonds or contracts of surety insurance.*

In Maryland, an insurance producer licensed to sell surety insurance as defined under §1-101 of the Insurance Article does not have a separate producer license but must be licensed as a property and casualty insurance producer. To qualify for a property and casualty license, the applicant must be of good character and trustworthy, be at least 18 years of age, complete a program of studies that has been approved by the Commissioner, be employed for a period totaling at least one year during the last three years in the property and casualty insurance industry, and pass an examination.[64] The license renewal period is every two years. As a condition of renewing a license for property and casualty, a producer must complete 24 hours of continuing education in the kind of insurance for which the producer has received a license.[65] Of the required 24 continuing education hours, three hours must be related directly to ethics.[66] Since 2006, when Chapter 299, Acts of 2006 took effect, the MIA has not taken any administrative action against any insurance producer, other than bail bond producers, for conduct regarding surety bonds or contracts of surety insurance in the State.

The MIA has identified no evidence of a need for licensure requirements that are specific for surety insurance producers who sell surety bonds or contracts of surety insurance.

[64] Md. Code Ann., Ins. § 10-104.
[65] Md. Code Ann., Ins. § 10-116.
[66] *Id.*

GLOSSARY OF ACRONYMS

ABC	American Bonding Company
BEP	Bonding Education Program
BPW	Board of Public Works
DGS	Department of General Services
DOT	U.S. Department of Transportation
EDC	Economic Development Corporation
FMIS	Financial Management Information System
FSSI	First Sealord Surety Incorporated
MBE	Minority Business Enterprise
MCDP	Model Contractor Development Program
MDTA	Maryland Transportation Authority
MOU	Memo of Understanding
MDOT	Maryland Department of Transportation
MIA	Maryland Insurance Administration
MPA	Maryland Port Authority
MPCIGC	Maryland Property and Casualty Insurance Guaranty Corporation
MSBDFA	Maryland Small Business Development Financing Authority
PSC	Peninsular Surety Company
RBC	Risk-based capital
SBA	U.S. Small Business Administration
SFAA	Surety & Fidelity Association of America
SHA	State Highway Administration

Appendices

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.

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.

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 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 $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~~

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. 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.

(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~~ <u>AUTHORIZED BY FEDERAL OR STATE REGULATION</u>; 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~~

<u>(1) THE CONTRACTOR HAS BEEN DENIED CORPORATE SURETY CREDIT;</u>

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

(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

~~(3)~~ (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 ~~2.~~ 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,~~ **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.~~]~~ ~~**2.**~~ 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.~~]~~ ~~**3.**~~ AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2006. ~~[~~It shall remain effective for a period of ~~3~~ **8** years and, at the end of ~~September 30, 2009~~ **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

MARYLAND 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)

<u>Questions concerning this Advisory may be addressed to:</u>

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: <u>*mchilds@comp.state.md.us*</u>

Greg Bedward, General Counsel
Email: <u>*gbedward@comp.state.md.us*</u>

Appendix 2.b.

Documentation of Pledged Assets and Affidavit of Individual Surety Form

Attachment A

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

MARYLAND
INSURANCE
ADMINISTRATION

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

MARYLAND INSURANCE ADMINISTRATION

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.

2. If you answered “Yes” in column 1(e), please provide an explanation of why the individual surety bond was rejected for that project. If necessary please attach a separate sheet.

3. Please provide any additional comments regarding any issues, problems, and/or concerns that your agency may have experienced with individual sureties.

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: joseph.fitzpatrick@maryland.gov, by fax at 410-468-2245, or by mail to: Joseph Fitzpatrick, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

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

MARYLAND INSURANCE ADMINISTRATION

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.

2. If you answered “Yes” in column 1(e), please provide an explanation of why the individual surety bond was rejected for that project. If necessary please attach a separate sheet.

3. Please provide any additional comments regarding any issues, problems, and/or concerns that your agency may have experienced with individual sureties.

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: joseph.fitzpatrick@maryland.gov, by fax at 410-468-2245, or by mail to: Joseph Fitzpatrick, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

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.

<u>Producer Survey – Insolvent Surety Insurer</u>:

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.

<u>Contractor Survey – Insolvent Surety Insurer</u>:

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

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 mhodges@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.

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BPW Individual Surety Bonds Request Form (continued)…

Please provide any additional comments on a separate page. Thank you.