

BPW Advisory No.: 2006-04

Date: **December 7, 2006**

Subject: **Individual Surety Bonds**

Effective: **Immediately**

Robert L. Ehrlich, Jr.
Governor

William Donald Schaefer
Comptroller

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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 2009, each agency shall annually report to the Board of Public Works on the impact of the use of individual surety bonds within 60

days after the close of each fiscal year.

Attachments:

Affidavit of Individual Surety (Attachment A)

Surety Affidavit Appendix (Attachment B)

Questions concerning this Advisory may be addressed to:

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