

HELPING CONTRACTORS OBTAIN BONDING What Works & What Doesn't?

Bonding for small and emerging contractors has been an issue recently in some state legislatures. In this context, legislation has been introduced to permit individual sureties to write bonds. The thinking was that if insurance companies did not write bonds for contractors, these contractors should have the option of individual backing. Individual sureties claim to pledge assets to the state to back the bonds they issue. State procurement officers have the substantial burden of determining the authenticity of the documentation of the assets pledged and verifying that pledged assets actually exist and are sufficient.

Why Doesn't This Legislation Work?

The simplest answer is that these types of legislation do not help small and emerging contractors, because such legislation is not aimed at them directly. Just like raising the state bond thresholds does not guarantee that small and emerging contractors will get any or all of the state projects under the higher threshold, and permitting individual sureties to issue bonds does not mean that they will focus their efforts on these contractors.

Even more important is whom this legislation harms. Laborers, subcontractors, and suppliers on public projects must rely on the general contractor's payment bond for protection, because they cannot assert mechanics liens against public property. If no payment bond is required, these parties are left with no means to collect for their services and supplies if the contractor is unable or unwilling to pay them. Small and emerging contractors are more likely to start their businesses as subcontractors, so that when state bond thresholds are raised, the most vulnerable companies are deprived of payment protection. Increasing the bond threshold may mean only that all contractors will be able to bid on bigger projects without providing payment bond protection, and these may include financially unstable contractors from other states who cannot get bonded. Threshold legislation can really hurt those intended to be helped.

Similarly, to the extent that individual sureties pledge assets that don't exist, are difficult to verify, or are not readily convertible into cash to pay the obligations of the general contractor, everyone on the project from the owner on down is left unprotected. There have been significant abuses and fraud in the past when individual sureties have been permitted to issue bonds. It doesn't take much imagination to realize that if individual sureties can write bonds in unlimited amounts, they could be the surety on multiple large state contracts. If the assets pledged to support the bonds are uncollectible, any or all of the contractors bonded could default and go into bankruptcy, and in any case, all of the public owners would be left with huge unfunded expenses to complete the construction projects.

What Does Work?

Bonding requirements exist to provide vital safeguards for those who work on public projects and the taxpayers who pay for them. Programs currently are in place to assist small and emerging contractors in obtaining surety bonds. The Surety Bond Guarantee Program of the U.S. Small Business Administration is one example.

Members of The Surety & Fidelity Association of America (SFAA) are committed to making surety bonds available and accessible to all qualified contractors. They also are committed to increasing the number of small, minority, and women-owned contractors who are bondable. SFAA has developed a Model Contractor Development Program (MCDP) to assist the local surety associations and their respective contractor communities to further these goals. The relationship between a surety and its client is one of mutual help. The surety wants the contractor to succeed and grow, and the surety prospers only when the contractor succeeds.