Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1071 (Delegates Vaughn and Morhaim)
Economic Matters

Insurance - Certificate of Authority - Exemption

This emergency bill exempts insurers engaging in transactions that relate to individual sureties lawfully written under Title 13 (*Source Selection – State Procurement Contracts*) or Title 17 (*Special Provisions – State and Local Subdivisions*) of the State Finance and Procurement Article or for any private work in the State from the requirement to have a certificate of authority.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law:

Sureties: A procurement officer must require a bidder or offeror to provide bid security for a specified amount on a procurement contract for construction if the contract is expected to exceed $100,000 or federal law or a condition of federal assistance requires the security. A procurement officer may require a bidder or offeror to provide bid security for a specified amount on a contract for services, supplies, or construction-related services if the contract is expected to exceed $50,000. Bid security is mandatory on a contract for services, supplies, or construction-related services if federal law or a condition of federal assistance requires the security.

Bid security may be provided in several forms, including a bond provided by a surety company authorized to do business in the State and a bond provided by an individual surety that meets specified requirements.

An individual surety is only permitted for public works contracts and only if the applicable law is complied with. An individual surety is not permitted for private work in the State.

A bond provided by an individual surety is only acceptable 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 attached an affidavit of individual surety in an approved format to the bid security; and (4) the individual surety meets the criteria found in Titles 13 and 17 of the State Finance and Procurement Article.

Authorized Insurance Practice: Except in specified circumstances, a person 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 commissioner.

A certificate of authority is not required for an insurer to engage in:

- transactions that relate to policies that were lawfully written in the State, or the liquidation of assets and liabilities of the insurer, including the collection of premiums on existing policies, resulting from former authorized operation of the insurers in the State;
- transactions that occur after issuance of a policy that covers only subjects of insurance not resident, located, or expressly to be performed in the State at the time of issuance, or that covers property in the course of transportation by land, air, or water to, from, or through the State, including any incidental preparation and storage, and the coverage was lawfully solicited, written, and delivered outside the State;
- transactions that relate to surplus lines coverages lawfully written under Maryland law; or
- reinsurance transactions, except as to domestic reinsurers.

Background: A surety bond is a three-way contract between a project owner, a contractor, and a surety (typically an insurance company or other established financial company). Surety bonds require the surety to cover any losses incurred by the project owner if the contractor defaults or otherwise cannot complete a project as promised. Contractors purchase surety bonds in part to assure those seeking their services that they are legitimate businesses and provide reliable services.

An individual surety bond obliges an individual rather than an insurance company to cover the financial losses incurred by the project owner in the event of a default by a contractor. Individual surety bonds must provide evidence that the individual has the financial resources necessary to cover possible losses.

Small Business Effect: The bill may expand the market for both project owners and contractors by increasing the number of individual sureties able to provide bid security.

Additional Information

Prior Introductions: None.

Cross File: SB 782 (Senator Pugh) - Finance.

Information Source(s): Board of Public Works; Department of Budget and Management; Department of General Services; Maryland Insurance Administration; Department of Labor, Licensing, and Regulation; Public School Construction Program; Department of Legislative Services

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