

Surety Association of Indianapolis

Information Update

NEW COLTS STADIUM

We have been informed that the State of Indiana has agreed to modify the contract language pertaining to the liquidated damages clause. The new language stipulates a limited cap amount of 5% of the contract price will be charged for delays. This new contract language should be seen in the next few days for future contract lettings on this project.

INDOT PROPOSED MAINTENANCE BOND

INDOT is proposing the addition of a one (1) year maintenance bond to be required with the documents at the time the bid is let going forward. The current contract does not contain any language speaking to a maintenance period to secure payment for faulty workmanship or materials once a project is complete. This proposal requires review and approval by the Standards Committee before it can become a requirement. The office of Indiana Constructors is planning to meet with this Committee to encourage a change in the contract language rather than requiring the contractor to provide a one year maintenance bond. We will keep you informed as more information becomes available.

FEDERAL POWER OF ATTORNEY RULE

The Surety Association of America reported on November 3, 2005 that the final rule dated 9/30/05 establishes that "a copy of an original power of attorney, including a photocopy or facsimile copy, when submitted in support of a bid bond is sufficient evidence of the authority to bind the surety. The authenticity and enforceability of the power of attorney at the time of the bid opening will be treated as a matter of responsibility." This rule makes everything about the power of attorney a matter of responsibility (which is addressed after bid opening) rather than responsiveness (which is grounds to reject a bid), except that there must be a signed and dated power of attorney. The net result is that contracting officers who have any questions about the power of attorney may simply call the surety and verify that the bid bond was authorized. The only exception, the only basis to reject a bid because of the power of attorney, would be if the power had no signature or date or if no power at all was submitted. The government incorporated the suggestions submitted jointly by SAA, AIA, AGC and NASBP except the proposal that a signature and date not be required. We were concerned that the date at the bottom of a power of attorney certifying that it remains in full force and effect is sometimes overlooked. The final rule did not delete the requirement of a signature and date, but the comments state that any question about the authenticity of the signature or date is a matter of responsibility to be addressed after bid opening.

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Sharon Stradling
Vice President, Surety Association of Indianapolis