

# CALIFORNIA SURETY FEDERATION

January 6, 2006

Ms. Nancy Bellard, City Risk Manager  
Risk Management  
City and County of San Francisco  
400 Van Ness, Room #370  
San Francisco, CA 94102

Subject: Surety Carrier Selection Criteria Under California Law

Dear Ms. Bellard:

On behalf of the California Surety Federation, representing over 30 carriers and independent agent brokers in California, this letter is in regard to information we have received that the City and County of San Francisco may be requiring contractors to use a specific A.M. Best surety carrier based on its bond rating, which is contrary to California law. You may not be aware that as a result of legislation passed in 1992, local agencies can only require a surety carrier to be "California admitted."

The California Code of Civil Procedure Section 995.670 states "No state or local public entity shall require an admitted surety insurer to comply with any requirements other than those in Section 995.660 whenever an objection is made to the sufficiency of the admitted surety insurer on the bond or if the bond is required to be approved."

A plain reading of the law requires that a public agency cannot utilize an A.M. Best rating, or any other rating criteria, to disqualify a surety so long as it is a California admitted surety and they otherwise comply with section 995.660 of the California Code of Civil Procedure.

Enclosed is a copy of the original legislation on this subject as well as a letter from Assembly Member Polanco, who authored the bill expressing the rationale for passing such legislation. Requiring arbitrary standards through the use of ratings of surety carriers can often have a discriminatory effect on emerging contractors.

It is further our understanding that San Francisco is attempting to distinguish itself from the requirements of the law on the basis that it is a charter city. Enclosed are two legislative counsel opinions, one of which specifically addresses this question in which Legislative Counsel opines that charter cities are included in the law.

Our organization supported this legislation, and I am aware of no public agency that has prevailed in litigation reaching a contrary opinion on the law. We would be pleased to discuss this issue or answer any questions that you may have on the subject.

Sincerely,

  
Paul P. Gladfety

Enclosures

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