Steven D. Ness,
President

January 22, 2016

Construction Lien Act Review
c/o Mr. Bruce Reynolds, FCIARB
Borden Ladner Gervais, LLP
40 King Street West,
Toronto, Ontario
M5H 3Y4

via email

Dear Mr. Reynolds

Re: Submission of the Surety Association of Canada - Additional Information

Thank you again for taking the time to meet with Ray Bassett and myself in December. Again, SAC is fully supportive of the Review's mandate and approach and appreciates the time and thought that you and Ms. Vogol continue to bring to this endeavour.

In your letter of January 8th, you invited stakeholders to submit a brief follow up to their initial submissions to provide supplemental material and perhaps clarify any of the issues that arose from the earlier document or consultation meeting. As requested, this submission will be brief and discuss two follow up initiatives:

- A formal study to be commissioned by SAC and conducted by a professional consultant that will examine the overall economic impact of surety bonds on public construction in the province of Ontario.

- An informal survey of surety claim files to examine the industry response to claims; both in terms of timeliness and adequacy.

<u>Economic Impact of Surety Bonds on Public Construction</u>

Perhaps the most vexing of the challenges faced by our association and industry is that of closing the knowledge gap surrounding the surety product and process among construction industry stakeholders. The true value of surety bonds extends far beyond the dollar amount of claims paid out by the surety industry. The prequalification and security provided by bonds brings a measure of stability to the construction process and adds additional value in a substantive manner which is not easily perceptible

- The value of surety prequalification, such as the ancillary (unbonded) costs of default that can be avoided through the use of the surety's prequalification process; e.g. displacement cost for affected trades and suppliers, the ripple effect to other sectors of the economy and even the impact costs such as lost productivity, business interruption, etc.

- The mitigating value of the security provided; for example instances where a surety's action can prevent a default from occurring without any actual payout under the bond itself.
- The value of other "soft" benefits to the bonding process; e.g. the value of the stability to allow for more certainty in the planning process.

And yet these benefits are not truly understood or appreciated; even by committed users of the product. In an effort to address this lack of understanding and provide more credence to the proposals brought forward in our submission and at consultation meeting, SAC will be commissioning a formal study of the overall economic impact of surety bonds on public construction in the province of Ontario.

While this study will not be completed prior to the Review's March 31st deadline, we will endeavour to keep you appraised of its progress and ensure that you are provided with a copy of the report.

Responsiveness of Surety Bonds to Payment Bond Claims

During the consultation meeting in December, Ms. Vogol provided some information taken from a PPO survey of trade contractors that set out their experiences with bond claims and suretyship in general. As mentioned, some of those numbers were puzzling and led me to question the methodology used and the questions that were posed.

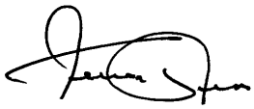
As discussed at the time, payment bond claims are typically expedited, particularly in cases of the Principal's insolvency, to ensure that the claimant is incentivized to continue working on the project. Where delays do occur, these will typically result from a delay in receiving the necessary documentation to allow the surety to verify the claim's validity.

Another concern identified in the survey surrounded the responsiveness and adequacy of the payment tendered by the surety in response to an L&M claim. Specifically it was asserted that sureties would sometimes offer a discounted settlement as negotiating strategy. Again, the veracity of such assertions is meaningless without the proper context but initial claim estimates can be over-estimated leading to "partial" settlements that are fair and equitable.

At the direction of the Board of Directors, SAC has undertaken a review of recent claims files to assess surety performance on L&M bond claims; particularly in regard to the timeliness and adequacy of settlement. We anticipate being in a position to provide preliminary results of this survey within the next several weeks and will pass any information along to the Review.

Mr. Reynolds, we hope this supplemental information is helpful and again, we thank you and Ms. Vogol for allowing our association to be part of the consultation process. As always, if you have any questions or would like to continue the discussion, please feel free to contact me directly.

Yours Very Truly,



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