

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

SERVING THE INDUSTRY SINCE 1908

August 30, 2016

Via [Electronic Submittal](#)

Richard W. Corey
California Air Resources Board
Transportation and Toxic Division
1001 I Street
Sacramento, CA 95814

Re: **NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA
CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE
MECHANISMS REGULATION**

Dear Mr. Corey:

The Surety & Fidelity Association of America ("SFAA") is a non-profit corporation with members that are insurance companies licensed to write surety and fidelity bonds. SFAA is a licensed rating or advisory organization in all states, including California. Our member companies collectively write the majority of bonds that secure regulatory obligations throughout California. We appreciate the opportunity to provide comments to the California Resource Board ("the Board") regarding the captioned proposed amendments to the California Greenhouse Gas proposed regulations, particularly the amendment set forth in Section 95912 (j)(1)(D), which eliminates the option to use a surety bond as a form of guarantee to secure a bid obligation. This amendment does not serve to protect the interest of the public.

Section 95912 (j)(1) currently states that a surety bond could be used as a form of guarantee to secure bid obligations. In its Initial Statement of Reasons, the Board contends that surety bonds are not a feasible form of bid guarantee and that bonds "are not commonly available with an ability to meet the requirement to be payable within three business days of [a] payment request." It is common practice in the surety industry for a bond obligee (beneficiary) to draft the bond terms and conditions. Thus, the obligee can dictate the terms and conditions of the bond, including the number of days during which the surety must pay under the bond. If the issue being addressed is the lack of adequate bond language in regards to a payment request, that issue is more effectively addressed by developing a standard bond form that incorporates the bid guarantee requirements as set forth by the Board, rather than eliminating the surety bond option. SFAA is available to assist the Board in developing such a template bid bond. To eliminate the bond option, however, does not serve to protect the interest of the public and therefore, we suggest the surety bond option should not be deleted.

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Surety bonds provide two valuable services. The better-known service of a surety is to perform its stated bond obligation and provide financial protection in the event the bond principal defaults in its performance (such as failing to pay the bid price when due). In such an event, the surety steps in to make payment pursuant to the conditions of the bond and the applicable statutory or regulatory language.

While payment is a critical function of the surety, another equally critical function is the surety's prequalification of a principal before the surety will write a bond. A surety will review the capabilities and financial strength of bond applicants and provide bonds only to those entities that the surety has determined are capable of performing the underlying obligation. This prequalification service facilitates the goal of having qualified bidders participating in the auction.

We thank you again for the opportunity to provide comments on this important topic. We hope that the Board will consider our guidance as it evaluates the captioned request for public comments. Thank you for your consideration. If there are questions, contact me by email at egilbert@surety.org or by phone at 202-463-0601.

Sincerely,



Eli Gilbert
Director of Underwriting

Cc: Mary D. Nichols, Chair
California Air Resource Board