



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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August 4, 2010

Mr. Richard J. Bechtold
Construction Contracts Coordinator
Design and Construction Division
General Services Administration Department (GSA)
111 NW 1st Street, Suite 2340
Miami, FL 33128

Re: Countersignature requirements for Project/Contract Number GSA W20167

Dear Mr. Bechtold:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers and brokers, representing over 5,000 personnel who specialize in surety bonding, whose membership includes licensed resident bond agents and licensed non-resident bond agents in Florida, I am writing you to respectfully request your prompt review of resident agent countersignature requirements placed in recent contract bid solicitations, including in GSA Project Number GSA W20167 (Fleet Shop 3C Additional Service Bays Metal Building Expansion, GSA Contract No. W20167).

It has come to my attention that your office required the contract bond be countersigned by the surety's "resident Florida agent." This requirement appears on page 76, located in "00120 Supplemental General Covenants and Conditions, Prepared by CAS/DCSD-Revised 3-30-10."

However, according to section §624.425 of the Florida Statutes the term "a resident of this state" was removed in 2004, when the Florida legislature removed the resident agent signature requirement. I have attached, as an exhibit to this letter, a photocopy of the applicable Florida statute, §624.425, and an annotated version, which indicates the history of amendments to this law.

Such an action by the Florida legislature properly was in keeping with the state legislative trend to repeal resident agent countersignature requirements as wholly outdated with respect to modern business practices and at odds with federal constitutional law. Judicial decisions interpreting the resident agent countersignature statutes in other states clearly established that such requirements ensure a practice of disparate treatment between licensed nonresident agents and licensed resident agents.

I am attaching also the FL Informational Bulletin (2003-004), dated November 12, 2003, informing property, casualty and surety insurers and general lines insurance agents of a court decision that affected the way nonresident general lines agents conduct business in Florida. In the *Council of Insurance Agents and Brokers v. Tom Gallagher* (Case No. 4:02cv208-RH), the United States District Court for the Northern

District of Florida ruled that Sections 624.425, 626.741 and 626.927 of Florida Statutes violated the United States Constitution to the extent that they denied the same rights and privileges to Florida licensed nonresident insurance agents that they afforded to Florida-licensed resident insurance agents. Each of these sections of law restricted the ability of nonresident general lines agents to do business in Florida. As I stated earlier, the Florida legislature acted accordingly by removing the “a resident of this state” language in 2004.

NASBP respectfully requests your immediate action to review your practices so that (1) nonresident and resident licensed agents are placed on substantially equal terms and (2) no unconstitutional countersignature preferences for licensed resident agents are included in existing or future bidding documents.

NASBP appreciates your attention to this important matter and looks forward to your prompt response on the requested actions.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Mark H. McCallum", with a long, sweeping horizontal line extending to the right.

Mark H. McCallum
Chief Executive Officer

Attachments