National Association of Surety Bond Producers
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Sent via e-mail to: jecarter@blm.gov

Ms. Jacqueline Carter
Contracting Officer
U.S. Department of the Interior
BLM OC664/NOC-Entrance S-2 (Mail Room)
Building 50, Federal Center
Denver, CO 80255

RE: Liquidated Damages, Cliffside Gas Field Project, Amarillo, TX

Dear Ms. Carter:

I wish to make you aware of concerns that the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers, whose membership includes firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the United States, including Texas has regarding requirement of liquidated damages from contractors performing work on the Potter County-Cliffside Gas Field Project, Solicitation No. L13PS00281 (Project).

In the opinion of NASBP, the liquidated damages ($357,096.00 for each calendar day) requirements located in Section 52.211-12 of the bid solicitation documents will stifle overall competition for the project and, in addition, will sabotage and subvert the stated project goals included in Section 52.222-23 for "Equal Employment Opportunity for Construction." Moreover, NASBP understands that several small businesses were interested in bidding the Project, but were forced to withdraw their bid after discovering the risk of potential liquidated damages associated with the Project, which are a substantial risk to small businesses of all types and sizes.

It is worth noting that a surety extends surety credit to those construction firms that the surety deems to possess the requisite experience, equipment, management capabilities, and financial wherewithal to perform the undertaken contract obligation successfully. As part of its assessment, the surety evaluates the risks presented in the contract obligations and ascertains if such risks are within the control and the means of the construction firm. Those risks that are outside of the control and means of the construction firm will not be managed effectively by the firm, making the extension of surety credit highly unlikely. Unreasonable and excessive assessment of liquidated damages may outstrip the capabilities and risk tolerances of even the largest construction firms.

Moreover, MWBE/HUB firms will be at a particular disadvantage, as they often do not possess the capabilities and financial wherewithal to assume substantial contract risks. They cannot finance or self-insure against such risks. Excessive risks, such as the high and uncapped liquidated damages called for in the Cliffside Gas Field Project, may negate the ability of most small businesses to secure surety credit and to compete, and may virtually eliminate opportunities for MWBE/HUB firms on the Project.

To increase small business bidder interest and to attract a higher percentage of MWBE/HUB firm participation, revisions of the liquidated damages requirements are necessary. For example, consideration for limiting the assessment of liquidated damages at a maximum percentage of the contract value allow contractors and their sureties to better quantify the risk associated with performance. Such a revision should translate into less onerous terms, reducing risks to a scale that can be better managed and assumed by small business firms, including MWBE/HUB firms. Higher bidder interest and MWBE/HUB participation and enhanced reputation within the construction community will be tangible benefits of setting a reasonable and proportionate liquidated damages requirement.

Thank you for your consideration of our concerns and for your attention to these risk issues.

Sincerely yours,

Larry LeClair

Larry LeClair
Director, Government Relations