



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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November 22, 2010

Mr. Jerry M. Campbell & Associates

802 North Blvd.

Baton Rouge, LA 70802

Mr. John L. Davis

Division of Administration

Office at Facility Planning and Control

Claiborne Office Building, 1201 North Third Street,

Conference Room 1-145

P.O. Box 94095

Baton Rouge, LA 70804-9095

Re: Countersignature requirements for Project Number: 19-601-98B-05, Part 6 (see attached)

Dear Mr. Campbell and Mr. Davis:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers and brokers, whose membership includes licensed resident bond agents and licensed non-resident bond agents conducting business in Louisiana, I am writing you to respectfully request your prompt review of resident agent countersignature requirements placed in a recent contract bid solicitation for the Parking Garage and Shell Space at Louisiana State University located in Baton Rouge, LA for *Project Number 19-601-98B-05, Part 6*. It has come to my attention that the Office of Planning and Control is requiring that bid bonds be “countersigned by a person who is under Contract with a surety as a licensed agency in this State and who is residing in this State.”

You may not be aware that in 2001 the Louisiana Legislature passed and the Governor signed, effective July 1, 2001, Act No. 138 (H.B. 1032), (see attached) “Public Contracts, Works, Improvements—Public Bid Law—Deletion of Countersignature Requirements,” which repealed R.S. 38:2216(A)(2) and 2218 (B), relative to the Public Bid Law. This Act deleted countersignature requirements on bonds for the construction or doing of any public works by resident agents; and deleted the bid bond countersignature requirement from certain public contract bids.

Also, please refer to the attached Memorandum OSP02-02 dated August 15, 2001 from the Director of State Purchasing, Denise Lea, to all State Agencies and Political Subdivisions Purchasing Personnel announcing the changes to Procurement Laws/2001 Regular Legislative Session reaffirming the legislature’s intent.

You should note that resident agent policy countersignature requirements have been eliminated elsewhere in the United States through acts of state legislatures or through judicial decisions declaring them unconstitutional. Such courts have found that statutes mandating that only resident agents may countersign insurance policies discriminate unlawfully against licensed non-resident agents, violating their rights under the Privileges and Immunities Clause and the Equal Protection Clause of the U.S. Constitution. Please consult, for example, the *Council of Insurance Agents and Brokers v. Tom Gallagher*, in which a federal district court declared Florida's statute unconstitutional and the *Council of Insurance Agents v. Molasky-Arman*, in which a federal district court declared Nevada's statute unconstitutional

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 immediate 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