



National Association of Surety Bond Producers

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BY ELECTRONIC TRANSMISSION (seth.sorensen@cityofkilgore.com)

September 17, 2014

Mr. Seth Sorensen
Director of Public Works
City of Kilgore
815 N. Kilgore Street
Kilgore, TX 75662

RE: Waiver of Performance and Payment Bonds for Kilgore Baseball Complex Project

Dear Mr. Sorensen:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of surety bond producers, including licensed resident and nonresident producers placing bid, performance, and payment bonds in the State of Texas and all other jurisdictions, I am contacting you regarding the decision by the City of Kilgore (City) to waive performance and payment bonds for the Kilgore Baseball Complex project (Project). Not only is this decision violative of statutory requirements but also it puts the City at substantial risk, both in terms of financial impact and reputational impact.

Pursuant to Tex. Gov't Code Ann. § 2253.021, Performance and Payment Bonds Required, the City of Kilgore has no discretion whatsoever to waive bonds; the statute unambiguously requires performance and payment bonds for such a project. The reason these bonds are statutorily required is that they protect taxpayers and subcontractors and suppliers against performance and payment risks. Without these bonds, a performance default and/or a payment failure by the contractor of subcontractors and suppliers will require the City to step in to complete the Project and to pay those unpaid subcontractors and suppliers who remain unpaid. This is a time-consuming process that surety companies that issue such bonds are equipped, by personnel and experience, to accomplish. The City does not have similar capabilities. If the City continues violating the law, with the full risk of a performance and payment failure on the Project, and such failures occur on the Project, there will certainly be political repercussions and a backlash of a diminishing reputation for the City.

NASBP understands that one of the reasons cited for waiving the bond requirement is so that small and local contractors will be enabled to bid on the Project. Indeed, such a position does not withstand scrutiny. If the City accepts bids from contractors, without the benefit of the surety's prequalification, then the City is more likely to have unqualified bidders. One of the main benefits of bond requirements is that the surety will not issue bonds on behalf of a contractor without prequalifying that contractor and ensuring that the contractor is capable of completing the project.

During the prequalification process, the surety underwrites the contractor's character, creditworthiness, and ability to perform the project. Small contractors tend to be subcontractors on large projects, such as the Kilgore Baseball Complex project. Allowing unqualified prime contractors to bid on the Project would make it more likely that the prime contractor would fail to pay the subcontractors and suppliers, who would be left without a payment guarantee. Permitting unqualified contractors to bid on the Project is a disservice not only to the City and its taxpayers but also to the unqualified contractors, who are just getting in over their heads and being set up for failure, and to small subcontractors and suppliers, who are more likely to suffer from non-payment. By waiving payment bond requirements, the City is accepting the full risk of non-payment and causing subcontractors and suppliers to lose their statutorily mandated payment remedies. It should be remembered that subcontractors and suppliers are not permitted to lien public improvements.

For these reasons, NASBP respectfully requests your reconsideration of waiving the performance and payment bonds required by state statute. We recommend that the City comply with statutory requirements and require bonds as mandated by Tex. Gov't Code Ann. § 2253.021. It is not only the law but also it protects the City and its taxpayers and subcontractors and suppliers from loss.

I appreciate your consideration of NASBP's concerns, and I would be happy to answer any questions you may have.

Yours sincerely,



Martha L. Perkins
General Counsel

cc: R.E. Spradlin, III, Mayor (through deborah.dane@cityofkilgore.com)
Mark H. McCallum, CEO, NASBP
Larry LeClair, Director, Government Relations, NASBP