



**National Association of Surety Bond Producers**

1140 19th Street, NW, Suite 800, Washington, DC 20036-5104

Phone: 202-686-3700

Fax: 202-686-3656

Website: <http://www.nasbp.org>

**BY ELECTRONIC TRANSMISSION (dadams@horrycountyschools.net)**

August 14, 2015

Darlyn B. Adams  
Procurement Coordinator  
Horry County Schools  
335 Four Mile Road  
Conway, SC 29526

**RE: Comments on Unlimited Consequential Damages for Horry County Schools  
Solicitation Number 1415-91, Design-Build Delivery of New School Facilities**

Dear Ms. Adams:

I am contacting you on behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of companies employing licensed surety bond producers, including those in South Carolina, about the requirement for unlimited consequential damages in the Request for Proposals (RFP) and proposed contract documents for Solicitation Number 1415-91, Design-Build Delivery of New School Facilities (Project). NASBP has just become aware of the consequential damages provision through our members, which provision does not provide a consequential damages cap value. NASBP offers the following comments in support of capping the consequential damages on the Project.

In assessing its financial risk and preparing a bid for any project, a contractor will review, among other things, the consequential damages exposure on that specific project. When the contractor is faced with a very broad consequential damages provision, such as the one for the Project, the contractor will insert contingencies into the bid to account for the uncapped consequential damages, for which the contractor is unable to assess its risk. The effect of this contingency inserted into the bid is, of course, that the project owner will receive higher bids for the project. Thus, the taxpayer will pay more for public works projects. There will also be less interest in bidding on a project where the consequential damages exposure is so great. As always, less competition means higher project cost to the public entity—and the taxpayers.

In addition, uncapped consequential damages pose considerable problems from a surety underwriting perspective. Sureties are usually not comfortable in issuing bonds for projects where the contractor/principal has very broad consequential damages exposure. Unlimited consequential damages exposure increases substantially the uncertainty regarding underwriting projections about the contractor's future viability. Simply put, sureties cannot gauge the soundness and financial wherewithal of a particular construction company engaged on projects with such unlimited exposure. In the present economic environment, sureties are reviewing

contract requirements more closely to discern provisions that pose special underwriting difficulties.

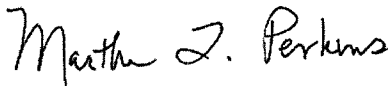
Uncapped consequential damages also reduce competition from the standpoint of eliminating from the bidder/proposal pool all but the largest contractors, since only large contractors can shoulder the higher risks inherent in such contracts. Small contractors effectively are precluded from bidding such projects, for they likely will not have the sophistication to adequately price such uncapped exposure and likely will not have a sufficient level of financial capital on hand to provide the surety with assurance of the small contractor's fiscal strength.

The broad and uncapped consequential damages provision is not the industry standard and runs counter to achieving a robust pool of bidders. Including a cap on the consequential damages will better serve the purposes of maximizing, not reducing, competition. Maximum competition is, of course, in the best interest of the public owner and its treasury.

We respectfully request that Horry County Schools reconsider the uncapped consequential damages provision and either remove the provision or, at the very least, provide for a reasonable cap certain for consequential damages on the Project.

NASBP appreciates your prompt consideration of our concern. Please feel free to contact me at 202-464-1214 or at [mperkins@nasbp.org](mailto:mperkins@nasbp.org) should you wish to discuss this matter.

Yours sincerely,



Martha L. Perkins  
General Counsel

cc: Ara I. Heinz, Procurement Specialist ([aheinz@horrycountyschools.net](mailto:aheinz@horrycountyschools.net))  
Joe Defeo, Chair, Horry County Board of Education ([joedefeo@horrycountyschools.net](mailto:joedefeo@horrycountyschools.net))  
Mark H. McCallum, CEO, NASBP