



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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Sent via email to jtallant@acaconstruction.com

March 6, 2012

Mr. Jim Tallant
ACA Construction Group, LLC

Re: Bid Package No. 9C, ACA Project No. 1108 — Florida Licensed Resident Agent

Dear Mr. Tallant:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association representing firms employing surety bond producers, including licensed resident and licensed non-resident agents placing contract surety bonds in Florida, I am contacting you about a requirement stated in the Invitation to Bid, in Bid Package NO. 9C, ACA Project NO. 1108. Specifically, Section B(e), and Section D(b), which requires the bid bond to be signed by a “Florida Licensed Resident Agent” and requires the surety company to have a Florida Resident Agent. Such requirement runs counter to Florida law and the applicable statute, specifically, F.S.A. § 624.425, a copy of which is attached.

You may not be aware that a prior version of §624.425 was struck down in 2003 as unconstitutional by the U.S. District Court, Northern Florida, Tallahassee Division. That statute impermissibly favored licensed residents agents over licensed non-resident agents. 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was in keeping with the state legislative trend to repeal resident agent countersignature requirements as wholly outdated with respect to modern business practices and at odds with federal constitutional law.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. In short, you should not favor a licensed resident agent over a licensed non-resident agent with respect to a countersignature; any “registered agent” should be permitted to countersign the bond.

For these reasons, NASBP respectfully requests that you immediately amend the Invitation of Bid in Bid Package No. 9 C, to make clear that both licensed resident agents and licensed non-resident agents may sign the bid bond.

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 black ink, appearing to read "Mark H. McCallum", with a long horizontal flourish extending to the right.

Mark H. McCallum
Chief Executive Officer

Attachments