



## National Association of Surety Bond Producers

1140 19<sup>th</sup> Street NW, Suite 800. Washington, DC 20036-5104

Phone: (202)686-3700

Fax: (202)686-3656

Web Site: <http://www.nasbp.org>

E-mail: [info@nasbp.org](mailto:info@nasbp.org)

February 3, 2014

Delivered via email to: [kbertschy@bentonvillear.com](mailto:kbertschy@bentonvillear.com)

Ms. Katherine N. Bertschy  
Purchasing Officer  
117 West Central  
Bentonville, AR 72712-5256

RE: Attorney-in-fact resident agent requirement for Bid No: 14-02, Bella Vista Bypass Water and Sewer Main Replacement, MCE Project: FY 072128

Dear Ms. Bertschy:

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 Arkansas, I am contacting you about a requirement stated in Bid No. 14-02 for the construction of water and sewer mains in the vicinity of Bella Vista Bypass, in Bentonville, Arkansas. Specifically, my concern is with Section 14, Bid Security, which calls for the attorney-in-fact to be a resident agent of Arkansas.

You should note that state statutes mandating resident agent countersignature requirements on insurance policies have been uniformly struck down in court decisions across the United States as such statutes impose requirements that are unconstitutional. Such courts have found statutes mandating that only resident agents can countersign policies and bonds 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. Constitutions.

Conversely, insurance policy and surety bond countersignature requirements are legal and proper, as long as they do not distinguish between licensed resident agents and licensed non-resident agents. What causes some unfortunate confusion on this matter is that there are new books and articles in the public domain that pronounce that the countersignature requirements in general have been repealed. This is simply inaccurate; it is the resident agent language of the countersignature laws that has been repealed.

Finally, the current practice of your office to require that an attorney-in-fact to be a resident agent ensures that licensed non-resident agents are treated unequally in the pursuit of insurance activity. We neither can envision nor are we aware of any justification for such a practice. NASBP requests your immediate action to review your practices, including your rules and regulations, so that (1) non-resident and resident licensed agents are placed on substantially equal terms and (2) businesses pursuing contract awards with your department will not be unduly hampered or delayed in their ability to conduct business due to misguided rejection of bonds not bearing "resident agent" countersignatures.

For these reasons, NASBP respectfully requests that you immediately amend Bid No.14-02 Section 14 to make clear that both licensed resident agents and licensed non-resident agents may act as an attorney-in-fact in order to execute bid and contract bonds. For your reference, I am attaching judicial decisions from federal appellate and trial courts that have addressed these various state resident agent countersignature statutes, which have been held unconstitutional.

NASBP appreciates your attention to this important matter and looks forward to your prompt response on the requested actions.

Please feel free to contact me at 202-686-3700 or [lleclair@nasbp.org](mailto:lleclair@nasbp.org) if you have any further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry LeClair".

Larry LeClair  
Director, Government Relations

Attachments