



**National Association of Surety Bond Producers**

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**VIA ELECTRONIC TRANSMISSION ([lori.girard@amwater.com](mailto:lori.girard@amwater.com)) AND U.S. MAIL**

July 17, 2013

Lori Girard, Corporate Counsel  
California American Water  
511 Forest Lodge Road, Suite 100  
Pacific Grove, CA 93950

**RE: Concerns on Proposal Bond Requirements for Design and Construction of  
Desalination Infrastructure for the Monterey Peninsula Water Supply Project**

Dear Ms. Girard:

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 resident and non-resident in the State of California. I was recently forwarded copies of materials relating to the RFP for the Design and Construction of Desalination Infrastructure for the Monterey Peninsula Water Supply Project. Within these materials is a requirement for a Proposal Bond, some of the terms and conditions of which give NASBP cause for concern.

Section 2.20 of the RFP requires that the Proposal Bond must be executed in an amount equal to at least 20% of the proposed Fixed Design-Build Price and must be executed using Proposal Form 22. The Proposal Bond provides that the bond is forfeited in its entirety in the event the principal receiving the award “fails to meet the requirements for finalizing or executing the DB Agreement . . . .” Such an amount is a considerable penal sum and bears absolutely no relationship to the actual costs that would be incurred by California-American Water Company (CAW) in the event CAW needed to enter into negotiations with another design-build contractor. Typically, bid bonds are for the purpose of making the obligee whole with regard to costs or losses suffered as a result of a reprocurement. Such an extreme forfeiture amount in this Proposal Bond appears unnecessary and punitive, notwithstanding the language in section 2 that attempts to mitigate that effect. In addition, such a penal forfeiture amount is particularly unnecessary as CAW has conducted a rigorous prequalification process on the bidders qualified on this high-profile project.

There are also general concerns with the current wording of the Proposal Bond, with the forfeiture provisions predicated on failure to negotiate in good faith—a subjective, not objective, standard. Such subjectivity will not lend any comfort to guarantors, including sureties, particularly when “failure to finalize a DB Agreement that is satisfactory to the Obligor” means forfeiture of the entire security. It is worth noting that sureties require the companies to which they extend surety credit to furnish them with indemnity agreements for any amounts paid out on their behalf. Thus, the surety expects to recoup the forfeited bond penalty from its principal. In other words, the higher the risk posed by the subjective

standards in the language of the security agreement, the less attractive is the environment for guarantors to underwrite such security agreements.

We respectfully request that CAW reconsider its forfeiture approach and significantly reduce the face amount of the Proposal Bond below 20% so that it is in line with the costs that CAW would incur for reprocurement and does not act as an arbitrary windfall to CAW in such circumstances. Please feel free to contact me should you wish to discuss these matters further.

We appreciate your prompt consideration of our concerns.

Yours sincerely,

A handwritten signature in dark ink, reading "Martha L. Perkins". The signature is written in a cursive, flowing style.

Martha L. Perkins  
General Counsel

cc: Mark. H. McCallum, CEO