National Association of Surety Bond Producers
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February 24, 2012

Mr. Ken Grube
Samet/Barton Mallow/SRS Spartan Village Phase 1, a JV Co.
309 Gallimore Diary Rd.
Greensboro, NC 27409

Re: Subcontract Terms/Liquidated Damages Inapposite to Subcontractor & Disadvantaged Business Participation

Dear Mr. Grube:

I wish to make you aware of concerns that the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers, whose membership includes firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the United States, including in North Carolina, has regarding the flow down requirement of liquidated damages to subcontractors performing work on the UNC-Greensboro Spartan Village Project. In the opinion of NASBP, the liquidated damages requirements that flow down to subcontractors will stifle overall subcontractor competition for the project and, in addition, will sabotage and subvert the stated project goals of "encouraging participation of Minority or Women Owned Business Enterprises/Historically Underutilized Businesses." Such liquidated damages requirements appear excessively high and are uncapped, constituting a substantial risk to subcontractors of all types and sizes.

It is worth noting that a surety extends surety credit to those construction firms that the surety deems to possess the requisite experience, equipment, management capabilities, and financial wherewithal to perform the undertaken contract obligation successfully. As part of its assessment, the surety evaluates the risks presented in the contract obligations and ascertains if such risks are within the control and the means of the construction firm. Those risks that are outside of the control and means of the construction firm will not be managed effectively by the firm, making the extension of surety credit highly unlikely. Unreasonable and excessive assessment of liquidated damages may outstrip the capabilities and risk tolerances of even the largest subcontracting firms. Moreover, MWBE/HUB firms will be at a particular disadvantage, as they often do not possess the capabilities and financial wherewithal to assume substantial contract risks. They cannot finance or self-insure against such risks. Excessive risks, such as the high and uncapped liquidated damages called for in the UNC-Greensboro Spartan Village Project, may negate the ability of most subcontracting firms to secure surety credit and to compete for associated subcontracts, and may virtually eliminate subcontracting opportunities for MWBE/HUB firms.

To increase subcontractor bidder interest and to attract a higher percentage of MWBE/HUB firm participation, revisions of the liquidated damages requirements are necessary. For example, consideration for limiting the assessment of liquidated damages against specific subcontractors to a set maximum percentage of the subcontract value allow subcontractors and their sureties to better quantify the risk associated with subcontract performance. Such a revision should translate into less onerous terms, reducing risks to a scale that can be better managed and assumed by subcontracting firms, including MWBE/HUB firms. Higher bidder interest and MWBE/HUB participation and enhanced reputation within the construction community will be tangible benefits of setting a reasonable and proportionate liquidated damages requirement.

Thank you for your consideration of our concerns and for your attention to these risk issues.

Yours sincerely,

Mark H McCallum

Mark H. McCallum
Chief Executive Officer

cc: Larry LeClair, NASBP