NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS
1828 L Street, NW, Suite 720
Washington, DC 20036-5104
Tel: 202.686.3700
Fax: 202.686.3656
www.nasbp.org

March 20, 2009

Scott L. Harra
Director
Department of Administrative Services
155 Cottage St. NE, U20
Salem, Oregon 97301-3972

Dear Mr. Harra:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association located in Washington, DC serving a membership of firms throughout the United States, including firms resident or doing business in Oregon, with personnel of over 5,000 surety agents and brokers, who specialize in providing surety bonds to companies and individuals for construction and other commercial purposes, I am writing to express our deep concerns over a recently issued temporary administrative order, DAS 5-2009, applying to emergency procurements under the "Go Oregon!" stimulus package, that would grant discretion to procurement officers of authorized agencies to "excuse the requirement of furnishing a good and sufficient performance bond or payment bond." NASBP strongly believes that, despite the declaration of emergency, the relaxing of surety bond requirements for Oregon construction projects is unwise and inapposite to the welfare and interests of Oregon taxpayers and the many businesses that rely on the protections of payment bonds. We urge you to reconsider your decision to authorize the relaxation of surety bond requirements, and believe that Oregon has too much at stake financially to suffer a major default on even one of its public works projects during these periods of tight and even deficit budgets.

I can assure you that the surety industry is strong and competitive, providing available and affordable bonding capacity to qualified small, medium, and large contractors performing public construction work. The current, declining economic climate makes the observance of and adherence to bonding requirements, in the form of performance and payment bonds, imperative. The bond producer and the surety underwriter ensure that the construction companies that merit surety credit go through thorough underwriting processes, demonstrating those companies' qualifications for and ability to undertake and to fulfill their contractual commitments. In the event that a default does occur, the surety company stands ready to fulfill the contractor's contractual commitment. However, often times, a default is avoided, because the surety team provides monitoring and assistance to the contractor as the project progresses, addressing problems that may hinder the contractor's performance. In short, contract surety bonds provide certainty in otherwise uncertain economic times. Without a performance bond in place, the contracting agency and, in turn, Oregon taxpayers will suffer the full costs of any default.

Please also bear in mind that, without a payment bond in place, subcontractors and suppliers, which may be small and local businesses, are at significant risk for nonpayment. Subcontractors and suppliers do not have direct contractual relationships to contracting agencies and cannot recover amounts unpaid by the prime contractor in the event that the prime contractor fails to pay or becomes insolvent. Subcontractors and suppliers also do not possess mechanic lien rights against public property. The payment bond is their statutory payment remedy, and the waiver of that bond denies them that remedy, possibly costing them even their businesses in the event of payment default by the prime contractor.

In addition, the provision of surety bonds by contractors for “Go Oregon!” projects should not appreciably slow down the procurement of these projects. These performance and payment bond guarantees are applicable and needed regardless of the procurement method utilized by the contracting agency.

For the foregoing reasons, we respectfully request that you reconsider that portion of your temporary order relating to the relaxation of mandatory performance and payment bond requirements or that you issue further administrative guidance to procurement officials that mandates that such officials must conduct a market analysis to determine the unavailability of performance and payment bonds as an express condition of excusing the bond requirement.

Please feel free to contact me should you have questions or require additional information at this time. NASBP appreciates your consideration of our concerns and looks forward to your reply.

Yours sincerely,

Mark H. McCallum
General Counsel & Director of Government Relations