



**National Association of Surety Bond Producers**  
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March 24, 2016

Mr. Ivan A. Page  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Mail Stop 99-9-4  
Los Angeles, CA 90012-2952

**Re: Revisions to CP-5 Subcontractor Payment Provision**

Dear Mr. Page:

I am writing on behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of member companies employing surety bond producers, including licensed resident and nonresident producers placing bonds for construction and infrastructure projects in the State of California and all other jurisdictions. It has just come to our attention that Los Angeles County Metropolitan Transportation Authority (LACMTA) intends to incorporate the revisions to CP-5 of LACMTA Compensation & Payment Provisions concerning subcontractor payment in all future LACMTA construction projects in excess of \$5 million. NASBP has significant concerns about this revised provision, which is not in the best interest of the prime contractors, their sureties, the subcontractors, LACMTA, or the taxpayers.

NASBP's primary concern is that the revision to CP-5 will require a prime contractor to pay its subcontractors prior to final submittal of the contractor's monthly progress payment to LACMTA, or be subject to termination for default by LACMTA. This revision unfairly places a significant burden on the prime contractor for advance payment to its subcontractors. Under the provision the prime contractor would be required to pay its subcontractors for work neither approved nor accepted nor paid by LACMTA; this would require the prime contractor to finance the project, creating unfair exposure for the prime contractor if LACMTA fails to approve, accept, and pay for the work performed by any of the subcontractors. Any prime contractor that submits a bid on an LACMTA project would likely accommodate this provision by a higher bid amount, to the detriment of taxpayers and the public treasury.

In addition, sureties are likely to be reluctant to write such bonds for prime contractors, with such a non-traditional, unfair financial burden placed onto the prime contractor. From a surety perspective, this revision significantly affects the analysis of the risks associated with underwriting and issuing bonds for LACMTA projects. Accordingly, some well-qualified contractors that wish to bid on LACMTA projects may find it difficult to obtain bonding because of the undue financial risks imposed by CP-5.

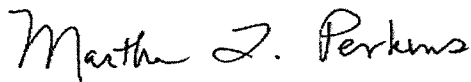
Finally, CP-5 violates the traditional risk and payments provisions under the California prompt payment laws. In enacting Public Contract Code § 20104.50, which is applicable to LACMTA, the California Legislature required local governmental entities such as LACMTA to pay their contractors on time so that the contractors could meet their own obligations. California law additionally requires the prime contractor to pay its subcontractors within a certain period of time *after* receipt of each progress payment (7 days) (Business and Professions Code § 7108.5). CP-5 turns the California statutory prompt payment scheme on its head by requiring the contractor to pay its subcontractors *prior* to receipt of each progress payment from the owner.

Accordingly, revised CP-5 will likely chill contractor participation in the bidding process, both because many contractors will be disheartened by the unfair financial burden they would assume and many sureties will be concerned about the significantly higher risk imposed on them, with concomitant less competition and, likely, greater pricing.

For the foregoing reasons, NASBP respectfully requests that LACMTA reconsider its proposed revisions to CP-5 and refrain from imposing any payment provisions that place an undue and unfair burden on the prime contractor, and its surety, and that violate California prompt payment statutes.

I appreciate your consideration of NASBP's concerns, and I would be happy to answer any questions you may have.

Yours sincerely,

A handwritten signature in cursive script that reads "Martha L. Perkins".

Martha L. Perkins  
General Counsel

cc: Mark H. McCallum, CEO