



National Association of Surety Bond Producers

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Sent via e-mail to:

Administrator Summer Strand
State of Wisconsin
Department of Administration (DOA)
Division of Facilities Development
Madison, WI 53703

RE: Project threshold amounts for new single prime contracting process

Dear Administrator Strand:

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 Wisconsin, has regarding the DOA's policy of reducing the bonding capacity of qualified contractors. This policy appears to supplant the function and role of the surety underwriter, who, before issuing surety credit, conducts a thorough prequalification assessment of the contractor's business operations.

Professional prequalification, as done by a surety, involves both qualitative and quantitative analyses of a construction firm in order to gain a complete picture of the contractor's qualifications. Sureties carefully scrutinize each contractor's financial soundness, experience, and qualifications, to ensure that the contractor can meet its payment obligations and perform its construction contracts. Sureties maintain ongoing, long-term relationships with contractors, providing the surety with knowledge of the contractor's complete work program, including private and public work, and performance over time. Prior to issuing a bond, the surety company must be fully satisfied that the contractor has among other criteria that includes: good references and reputation; the necessary equipment to perform the work; an excellent credit history and an established bank relationship and line of credit.

It is unclear why DOA is pursuing a policy that significantly lowers the bonding capacity of prequalified contractors, if the surety is willing to extend surety credit beyond DOA's limit. State agencies throughout the U.S. rely on the surety to perform an in-depth analysis of the contractor's financial wherewithal to ensure those contractors are capable of fulfilling contractual obligations in order to protect both state taxpayer funds and the small businesses that rely on the payment protection afforded by the bond. Such a depth of understanding of

prequalification is not one that can be approximated by a public contracting authority. Frankly, few, if any, public contracting agencies are well prepared to perform rigorous contractor prequalification. Public contracting agencies have limited resources and expertise with respect to analyzing the qualifications of contractors. Why would the DOA contracting authorities want to assume this burden when it already is being done successfully and more efficiently by sureties, which are in the regular business of qualifying construction firms?

DOA should also consider the countless number of Wisconsin contractors that have increased their bonding capacity by making the necessary commitment to manage its business correctly and efficiently. Is it fair to limit their bonding capacity and more importantly, the number of projects they can bid and perform? Often these businesses start out as subcontractors but have taken the necessary steps to grow their business. In turn many have also increased their bonding capacity, which has afforded them greater project opportunities. Has DOA considered the impact their policy will place on those Wisconsin businesses?

Finally, according to Section 144 (b)(2)(c) of AB 40, "Project Delivery Reform—Single Prime Contract," a qualified bidder must meet the following conditions, which include "the bidder is bondable for the term of the proposed contract and is able to obtain a 100% performance bond and a separate 100% payment bond." The language is silent in regards to the current policy DOA is pursuing relating to bonding limits. It is unclear why DOA would pursue such a policy that is not included in the law.

Finally, NASBP commends the Wisconsin Legislature for including Section 153, "Insurance and Bonds," in AB 40. By enacting a provision requiring the furnishing of performance and payment bonds by subcontractors, the Wisconsin Legislature recognized the importance of having performance bonds in place to protect the prime contractor and payment bonds to protect subcontractors in the event the subcontractor is unable to complete its contractual obligation.

Thank you for your consideration of our concerns and for your attention to these issues. Please feel free to contact me should you have any questions concerning the points raised in this letter.

Respectfully submitted for your review,

A handwritten signature in black ink, appearing to read "Larry LeClair". The signature is fluid and cursive, with the first name "Larry" and last name "LeClair" clearly distinguishable.

Lawrence E. LeClair
Director, Government Relations