



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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FOR IMMEDIATE ATTENTION

Sent via e-mail at engineering@melbourneflorida.org.

October 1, 2010

Engineering Department
900 East Strawbridge Avenue, 3rd Floor
Melbourne, FL 32901

Re: Invitation to Bid, Spain Outfall Drainage Basin Improvements – Phase 1, Melbourne Florida, Project No. 04209.

Dear Sir or Madam:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association representing firms employing surety bond producers, including licensed resident and licensed non-resident agents placing contract surety bonds in Florida, I am contacting you about a requirement stated in the Invitation to Bid, Spain Outfall Drainage Basin Improvements – Phase 1, Melbourne Florida, Project No. 04209. Specifically, the Invitation to Bid, A1, contains the following statement: “Bid bonds shall be countersigned by an agent *having an established place of business in the State of Florida* (emphasis added).” Because you state a requirement that the countersigning agent have “an established place of business in the State of Florida,” we believe that such a requirement, if meant to call for a physical location in Florida, runs counter to Florida law and the applicable statute, specifically F.S.A. § 624.425, a copy of which is attached for your reference.

You may not be aware that a prior version of F.S.A. § 624.425 was struck down in 2003 as unconstitutional by the U.S. District Court, Northern Florida, Tallahassee Division. That statute impermissibly favored licensed resident agents over licensed non-resident agents. I have attached for your reference a copy of that opinion along with a copy of Florida Informational Bulletin 2003-004 issued by the Florida Director of Insurance discussing the opinion. *Simply put, requirements that discriminate against licensed non-resident agents in favor of licensed resident agents are unconstitutional and cannot stand legally.*

For these reasons, NASBP respectfully requests that you *immediately amend the Invitation to Bid to make clear that both licensed resident agents and licensed non-resident agents may countersign the bid bonds.*

Should you wish to talk further about this matter or if you have questions, please feel free to contact me at 202-686-3700.

Yours sincerely,

Mark H. McCallum
Chief Executive Officer

cc: Martha Perkins, Esq., Whiteford, Taylor & Preston, LLP