



National Association of Surety Bond Producers

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February 8, 2013

Mr. James Skillestad, Chairman
Office of County Commissioners
County of Dawson
207 W. Bell St.
Glendive, MT 59330

Re: Decision to Waive Payment and Performance Bonds on FEMA Funded Projects

Dear Mr. Skillestad:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of companies employing licensed surety bond producers, including those resident and non-resident in the State of Montana, I am contacting you regarding your failure to require performance and payment bonds on projects funded with monies from FEMA grants, which is in derogation of federal procurement requirements and Montana statutes. Such information has come to the attention of NASBP, prompting us to contact you and to request your immediate reconsideration of the decisions to waive performance and payment bonds on one or more of these projects.

FEMA grants are subject to federal regulations that address the procurement requirements that are to be met by grantees and sub-grantees. 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, includes requirements addressing the necessity of having performance and payment bonds in 100% of the contract price for contracts involving construction. Part 13 also establishes that a grantee in certain circumstances may follow its own procurement policies and procedures so long as those procedures meet or exceed the federal procurement standards in 44 CFR 13.36.

Under 18-2-201 of the Montana Code Annotated, the state and its political subdivisions must require that persons and entities receiving award of public contracts furnish the state or political subdivision with bonds covering the performance of the contract obligations and the payment of providers of materials and labor on the project. Montana law also makes clear that political subdivisions that fail to require performance and payment bonds as security on public contracts assume liability for amounts unpaid and owed to any persons or entities furnishing labor, materials and equipment. 18-2-202 of the Montana Code Annotated states, in pertinent part, that if "any board, council, commission...waives or fails to take the security required or authorized by 18-2-201, the state or the county...is liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of the contract debts by any subcontractor as well as the contractor."

The purpose behind performance and payment bond requirements is to ensure the capability of the contractors undertaking publically-funded work and to provide guarantees of performance to the contracting entity and guarantees of payment to subcontractors and materials suppliers. Such guarantees are vitally important to protect precious taxpayer dollars and to ensure the completion of contracts utilizing public funding. These guarantees take on even greater significance in times, such as the present, when many construction companies have been and continue to be under financial stress.

For all of the above reasons, we urge your reconsideration of any decisions to waive bonds. We appreciate your consideration of our concerns and look forward to receiving your prompt response.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mark H. McCallum", with a long, sweeping horizontal line extending to the right.

Mark H. McCallum
Chief Executive Officer

cc: Joe Sharbono, Road Supervisor, County of Dawson (jsharbono@dawsoncountymail.com)
Larry LeClair, NASBP