



National Association of Surety Bond Producers

1140 19th Street, NW, Suite 800, Washington, DC 20036-5104

Phone: 202.686.3700

Fax: 202.686.3656

Website: <http://www.nasbp.org>

E-mail: info@nasbp.org

BY ELECTRONIC TRANSMISSION (anthony.lujan1@state.nm.us)

May 22, 2015

Anthony Lujan, Deputy Secretary of Highway Operations
New Mexico Department of Transportation
P.O. Box 1149
Santa Fe, NM 87504-1149

Re: Long-Term Warranties and Long-Term Warranty Bonds for NMDOT Projects

Dear Mr. Lujan:

I am contacting you on behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of surety bond producers, including agencies employing licensed resident and nonresident producers placing bid, performance, and payment bonds in the State of New Mexico and all other jurisdictions.

We recently received information from some of our members that the New Mexico Department of Transportation (NMDOT) seeks to impose onerous terms in the Warranty Bond required from contractors for the overlay material and installation, Item #536001. The Notice to Contractors (April 14, 2015) specified that the "value of the warranty bond shall equal the Total Original Contract Amount." This is neither customary nor standard in the industry. It is customary for the value of this type of warranty bond to be set at the Total Unit Bid Amount for that item—not the Total Contract Amount. This onerous term is now piled on top of the lengthy, five-year warranty period, as already specified in section 536.3.11.

Lengthy warranty periods, such as those of five (5) years and over, and such onerous terms, as the bond equaling the total original contract amount, exceed the standards for contractors in the United States and will restrict the availability for bonds on such projects. Lengthy warranty periods and onerous terms pose considerable problems for most sureties. Durations longer than two years and an unreasonable warranty bond amount increase substantially the uncertainty regarding underwriting projections about a contractor's future viability. Simply put, sureties are less able to gauge the soundness and financial wherewithal of a particular construction company for periods extending too far into the future.

Significantly, long-term and onerous warranty bonds, such as this warranty bond for the Bridge Deck Overlay, reduce competition from the standpoint of eliminating from the bidder/proposal pool all but the largest contractors, since most sureties will not write this kind of obligation and those few that will write it will only do so for the largest contractors that can shoulder the higher risks inherent in such contracts. Small contractors and local contractors are effectively precluded from bidding on such projects, for they are much less likely able to qualify for surety credit. With less competition and a smaller pool of potential bidders, the cost to NMDOT for these projects will likely be higher.

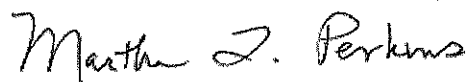
NMDOT, as a public entity, undoubtedly seeks to maximize the inclusion of small and disadvantaged businesses on its projects. A warranty bond requirement of five years, with onerous terms, runs

counter to achieving such a goal. Shortening the duration of the contractor's warranty and reducing the value of the warranty bond to the Total Unit Bid Amount of that item would better serve the purposes of small business inclusion by maximizing, not reducing, competition.

NASBP respectfully requests that NMDOT reconsider both the value of the warranty bond and the five-year contractor warranty requirement, in the interest of robust competitive bidding, lower project cost, and enhanced small, disadvantaged, and local business inclusion.

Please let me know if you would like to discuss this matter. Thank you for your prompt consideration of and attention to NASBP's concerns.

Yours sincerely,

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

Martha L. Perkins
General Counsel

cc: Mark H. McCallum, CEO
Larry LeClair, Director, Government Relations