National Association of Surety Bond Producers
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BY ELECTRONIC TRANSMISSION

March 13, 2017

Transportation Corridor Agencies
125 Pacifica, Suite 100
Irvine, CA 92618

RE: Comments on Bond Requirement for Foothill/Eastern TCA and San Joaquin Hills TCA Customer Service Center System RFP K001063

To Whom It May Concern:

I am contacting you on behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of companies employing licensed surety bond producers placing contract and commercial surety bonds in the State of California and all other jurisdictions. NASBP was recently forwarded a copy of the Request for Proposal (RFP) K001063 for Customer Service Center System project (Project), issued by Foothill/Eastern Transportation Corridor Agency (TCA) and San Joaquin Hills Transportation Corridor Agency. NASBP has significant concerns about the language in section 11.1.1 of the RFP: specifically, NASBP is concerned about the penalty incurred by the performance bond surety if the bond is not renewed by the surety and is not replaced by the contractor.

In the RFP TCA provides, in relevant part, that "[t]he obligation of each Performance Bond shall be that if the Contractor fails to provide a replacement for any Performance Bond expiring prior to the end of the Term, TCA shall be entitled to call on the then current Performance Bond on the day prior to its expiry date." NASBP asks that TCA reconsider this approach. The usual approach with commercial surety bonds, such as this one, is to require an annually renewable bond where non-renewal is not an event of default for the contractor or the surety. The RFP provision penalizing a surety's non-renewal (with no replacement) currently required by TCA poses considerable problems from a surety underwriting perspective. Sureties are less comfortable in issuing commercial surety bonds that are not annually renewable, with a penalty for non-renewal. The current language negates the purpose of having a renewable bond form and will serve as a disincentive for sureties to issue such a performance bond.

This performance bond issue will lessen competition for the Project, as sureties are likely only to provide such bonds for the largest businesses. Less competition generally translates into higher bids. Maximum competition is, of course, in the best interest of any public owner and its treasury.

NASBP respectfully requests that TCA reconsider its performance bond requirement for the Project and implement acceptance of an annually renewable bond where non-renewal does not constitute an event of default for the contractor or the surety.

NASBP appreciates your prompt consideration of our concern. Please feel free to contact me at 202-464-1214 or at mperkins@nasbp.org should you wish to discuss this matter.

Yours sincerely,

Martha L. Perkins

Martha L. Perkins
General Counsel