



## NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

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Ms. Suzi Fulcher  
Procurement Manager  
Washington County  
155 N First Ave. MS 28  
Hillsboro, OR 97124

Letter submitted to: [suzi\\_fulcher@co.washington.or.us](mailto:suzi_fulcher@co.washington.or.us)

Dear Ms. Fulcher:

On behalf of the National Association of Surety Bond Producers (NASBP)<sup>1</sup>, a national trade association of firms employing professional surety bond producers licensed and conducting business in Oregon and throughout the United States, I am contacting you regarding a shift in policy where the County no longer requires bidders to furnish bid bonds on public works contracts. It is NASBP's understanding that this policy change came into being under the belief that waiving bid bonds would facilitate contracting opportunities for small and disadvantaged businesses. If that is the rationale, it is mistaken for the reasons further enumerated herein.

### **Surety Bonds: Sound Public Policy Protecting Taxpayers and Downstream Project Participants**

Public construction projects are complex and inherently risky, as typical construction projects involve many variables and parties. Not surprisingly and for many decades, surety bonds have served as preferred, statutorily-required protection to offset the substantial risks attendant on publicly-funded construction projects. Corporate surety bonds are three-party contract agreements by which one party (a state-regulated surety company) guarantees or promises a second party (the obligee/contracting authority) the successful performance of an obligation by a third party (the principal/contractor). Importantly, surety bonds provide essential prequalification services, assuring that taxpayer-funded projects are being undertaken by qualified, vetted firms and, in the less likely event a default occurs, shifting financial losses away from taxpayers to a regulated surety company with expertise in construction contracts and claims administration.

### **Bid Bonds Are a Necessary Component of Proper Prequalification**

A bid bond protects the contracting authority by ensuring that the winning bidder submits its bid in good faith and will enter into the final contract and supply the requisite final security in the form of performance and payment bonds. If the winning bidder fails to do so, the surety is liable to the contracting authority for resulting damages, such as re-procurement costs, up to the penal sum of the bid bond. Surety companies, which *most often do not charge premiums for issuing bid bonds*, will not issue bid bonds for those firms that, after a thorough underwriting determination, fail to possess the character, capacity, and capital to undertake the overall contract obligation successfully. Simply removing bid bonds as a component of the procurement process does not make qualifying for final bonds easier; it does, however, degrade the procurement process, allowing unqualified firms to remain in the bidding pool and placing public resources at risk. If an unqualified firm is awarded the contract, that firm will not be able to furnish the final performance and payment bonds to the contracting authority and the contracting authority will not have a ready means to recover its re-procurement costs. Further, such procurements will be delayed and more costly. Worse, unqualified businesses will be placed in positions to fail, especially since they will not have the benefits of and the support given through established surety bonding relationships with bonded principals.

### **Programs to assist small, emerging, and disadvantaged businesses in Oregon**

NASBP and others in the surety community seek opportunities to educate small construction firms on the proper paths to become bondable. If the objective of the County is for greater inclusion of small, emerging, and disadvantaged

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<sup>1</sup> The National Association of Surety Bond Producers is a national trade association whose membership includes firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the United States and its territories.

businesses as prime contractors on county public works contracts, we believe educational outreach, not relaxation of prudent bid security, is a far better approach. Excellent resources and programs exist, such as federal and industry bonding educational programs, which include:

- [The Office of Surety Guarantees of the U.S. Small Business Administration](#) (bond guarantee program aimed at providing bonds to small and emerging construction businesses);
- The [Office of Small and Disadvantaged Business Utilization of the U.S. Department of Transportation](#) (offers lending and other programs specifically designed to benefit small and emerging contractors seeking to perform transportation contracts); AND
- [The NASBP/SFAA Contractor Bonding Education & Mentoring Program](#) (a free online program to help new and emerging construction businesses, particularly minority-owned and other under-represented businesses, learn how to qualify for surety bonds).

These are tremendous resources and programs which can position small, emerging, and disadvantaged construction businesses to better qualify for surety bonding, ensuring that such businesses become more competitive in the marketplace and are positioned for long-term success through standing arrangements that enhance their credit arrangements, support networks, and business resources. NASBP would welcome the opportunity to collaborate with the County on programs to expand business opportunities for small, emerging, and disadvantaged businesses.

For the foregoing reasons, we firmly believe that the County's current policy is fiscally irresponsible, placing taxpayer funds at risk, and counterproductive to the long-term interests of small and disadvantaged business and their inclusion in public procurement environments. NASBP strongly suggests that the County reconsider waiving bid bond requirements.

Please feel free to contact me should you have further questions at 240-200-1270 or by email at [lleclair@nasbp.org](mailto:lleclair@nasbp.org).

Respectively submitted for your consideration,

A handwritten signature in cursive script, reading "Larry LeClair".

Larry LeClair  
Director, Government Relations