National Association of Surety Bond Producers
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Sent via email to: ron.bibeau@rtd-denver.com

April 10, 2015

Mr. Ron Bibeau
Purchasing Agent
Regional Transportation District (RTD)
1600 Blake Street
Denver, CO 80202

Re: No. 35FH018, 16 Street Mall Reconstruction, 1.13 Payment Bond Requirements

Dear Mr. Bibeau:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association representing professional surety bond producers, including licensed resident agents doing business in Colorado, I am contacting you concerning the payment bond requirements located in Section 1.13, for Bid Package No. 35FH018, which calls for a payment bond in the amount of $2.5 million, or 25% of the contract amount of $10 million. NASBP respectfully requests your reconsideration of the payment bond amount, as we believe the present amount is inadequate to protect subcontractors and material suppliers and is not in conformance with applicable laws and regulations.

Recipients of federal grant funds are subject to the terms and conditions of 44 CFR Part 13, the Uniform Administrative Requirements Grants and Cooperative Agreements to State and Local Governments, which requires performance and payment bonds in 100% of the contract price for contracts involving construction. Part 13 also establishes that recipients in certain circumstances may follow their own procurement policies and procedures so long as those procedures meet or exceed the federal procurement standards in 44 CFR 13.36.

Moreover, Colorado Revised Statute 24-105-202 requires payment bonds in 50% of the amount of the contract. By enacting Colorado Revised Statute 24-105-202, the Colorado Legislature recognized the importance of having payment bonds in place to protect the downstream businesses that supply labor and materials on Colorado public construction projects. Often the only viable remedy to subcontractors and suppliers in the event of nonpayment by the prime contractor is to claim on the payment bond, as the expense of a lawsuit may outweigh any potential recovery and a mechanics lien may not be available against public property. A payment bond in a low amount may mean that many subcontractors will not have a sufficient pool of bond funds from which to recover amounts due, jeopardizing the viability of these businesses.

Note also that, without a higher payment bond in place, project subcontractors and suppliers which are small or Disadvantaged Business Enterprises, for which the project requires an 8% set-aside goal, may be disproportionately impacted. Small businesses often cannot compete as prime contractors on public construction contracts, so they participate at subcontractor and supplier levels. Reducing the amount of the payment bond may mean that bond funds are available only for some, but not all, claimants, a significant proportion of which may be disadvantaged firms that cannot readily weather cash flow interruptions.
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For these reasons, we urge RTD to increase the amount of the required payment bond. A low payment bond amount will not save premium costs, as bond premiums are predicated on the contract amount, not the bond amount, but it will significantly reduce the coverage under the payment bond to those businesses which rely on the bond for payment protection.

I would be happy to discuss these concerns with you in further detail. Please feel free to contact me at 202-686-3700 or lleclair@nasbp.org

Yours sincerely,

Lawrence E. LeClair
Director, Government Relations