



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

1828 L Street, NW, Suite 720

Washington, DC 20036-5104

Tel: 202.686.3700

Fax: 202.686.3656

www.nasbp.org

October 23, 2008

Ramon M. Young
City Manager
City of Maysville
Maysville Municipal Building
216 Bridge St.
Maysville, KY 41056

Re: Absence of bond requirements on municipal construction/sewer projects

Dear Mr. Young:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association located in Washington, DC, which serves a membership of firms with personnel of over 5,000 surety agents and brokers, I, as the First Vice President of NASBP and a concerned Kentucky businessman, citizen, and taxpayer, am writing you to express concerns over a recent procurement for sewer improvements conducted by the City of Maysville. More specifically, Addendum Number 1, Washington Area Sewer Improvements, Contract 1 – Sewer Line Extensions, provided that the City of Maysville would not require bid bonds from interested bidders and was reserving the option to waive payment and performance bonds for the project. It is not clear on what grounds those decisions were made; however, I firmly believe that those decisions are not in the best interests of the City of Maysville or its citizens and that the City of Maysville is assuming project risks that could and should be addressed through requirements for the requisite bid, payment, and performance bonds, the absence of which places taxpayer dollars at unnecessary risk.

As I am sure you are aware, the Kentucky legislature expressed its strong preference for such bond requirements on municipal projects when it enacted the Kentucky Model Procurement Code. Although it appears from a review of the City of Maysville Code of Ordinances that the City may not have adopted the Kentucky Model Procurement Code and that it adheres to an alternative and older competitive bidding statute, the City should refrain from eliminating bond requirements on its municipal construction projects. Simply put, the City of Maysville has too much at stake politically and financially to suffer a major construction default on even one of its public works projects during these periods of tight and even deficit budgets.

I can assure you that the surety industry is strong and competitive, providing available and affordable bonding capacity to qualified small, medium, and large contractors performing public and private construction work. The current, declining economic climate makes the observance of and adherence to bonding requirements, in the form of bid, performance and payment bonds, imperative. The bond producer and the surety underwriter ensure that the construction companies that merit surety credit go through rigorous underwriting processes, demonstrating those companies' qualifications for and ability to undertake

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and to fulfill their contractual commitments. In the event that a default does occur, the surety company stands ready to fulfill the contractor's contractual commitment. However, often times, a default is avoided, because the surety team provides monitoring and assistance to the contractor as the project progresses, addressing problems that may hinder the contractor's performance. In short, contract bonds provide certainty in otherwise uncertain economic times.

Please also bear in mind that, without a payment bond in place, subcontractors and suppliers, which may be small and local businesses, are at significant risk for nonpayment. Subcontractors and suppliers do not have direct contractual relationships to the City and cannot recover amounts unpaid by the prime contractor in the event that the prime contractor fails to pay or goes bankrupt. Subcontractors and suppliers also do not have mechanic lien rights against public property. The payment bond is their payment remedy, and the waiver of that bond denies them that remedy, possibly costing them their businesses in the event of payment default by the prime contractor.

NASBP or I would be happy to answer any questions you may have of bonds and of the bonding marketplace. I hope you will reconsider your position on waiving bid, payment and performance bonds on City projects, and I respectfully request the courtesy of your reply.

Yours sincerely,

Todd P. Loehnert
First Vice President

cc: Sam Baker, City of Maysville, City Engineer
Mark McCallum, NASBP General Counsel & Director of Government Relations