



**National Association of Surety Bond Producers**

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**BY ELECTRONIC TRANSMISSION ([jack.pellegrino@sdcounty.ca.gov](mailto:jack.pellegrino@sdcounty.ca.gov);  
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February 3, 2015

Jack Pellegrino  
Director of Purchasing & Contracting  
Department of Purchasing & Contracting  
5560 Overland Avenue, Suite 270  
San Diego, CA 92123

Leonard Pinson  
JOC Coordinator  
Department of Purchasing & Contracting  
5560 Overland Avenue, Suite 270  
San Diego, CA 92123

**Re: NASBP Comments on County of San Diego JOC Contracts General  
Conditions Section 15.1.3**

Dear Mr. Pellegrino and Mr. Pinson:

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, including those resident and non-resident in the State of California. I was recently forwarded a copy of the General Conditions used as part of the bid package by the County of San Diego (County) for JOC contracts that bid in the next few weeks. Section 15.1.3 of the General Conditions contains language that gives NASBP cause for concern.

Specifically, Section 15.1.3 provides, in part, as follows:

Surety shall have the rights and obligations set forth in the Performance Bond. Subject to the surety's rights under the Performance Bond (which rights are waived upon a default under the Performance Bond) . . . .

The phrase in parentheses, "which rights are waived upon a default under the Performance Bond," is ambiguous and could be subject to differing interpretations. While we assume that it is the intention that it is surety's default that would cause a waiver of rights under the performance bond, the language could be interpreted to mean the contractor/principal's default.

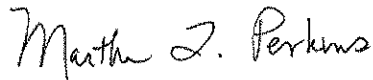
This matter can be easily be clarified by simply adding the words “the surety’s” between “waived upon” and “default” to provide that “rights are waived upon the surety’s default under the Performance Bond.”

It is worth noting that language such as in Section 15.1.3 could mean less competition and higher bid amounts for the County. Surety companies are less willing to issue surety credit to contractors when they are unable to assess certain risks in the contract. In other words, the higher the risks posed by the contract or bond language, such as the surety waiving its right under the performance bond if the contractor defaults, the less attractive it is for a surety to extend surety credit. This means that only highly capitalized and larger contractors will be available to bid on such projects. This, of course, restricts competition and does not comport with DBE goals for these JOC contracts.

We respectfully request that the County reconsider the language in Section 15.1.3 of the General Conditions for the JOC contracts. This can be accomplished by simply deleting “a” and inserting “the surety’s” as set forth above.

Please feel free to contact me should you wish to discuss this matter further. We appreciate your prompt consideration of 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