National Association of Surety Bond Producers
1140 19th Street, NW, Suite 800 Washington, DC 20036-5104
Phone: (202)686-3700
Fax: (202)686-3656
Web Site: http://www.nasbp.org
E-mail: info@nasbp.org

BY U.S. MAIL and ELECTRONIC TRANSMISSION (cgarcia@mail.sdsu.edu)

December 16, 2013

Ms. Cathy Garcia
Director, Contract and Procurement Management
San Diego State University
5500 Campanile Drive AD 116
San Diego, CA 92182-1616

RE: Extension of Limitations Period of Performance Bond to Ten Years on SDSU JOC Bid Specifications

Dear Ms. Garcia:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of surety bond producers, including licensed resident and nonresident producers placing bid, performance, and payment bonds in the State of California and all other jurisdictions, I am contacting you regarding concerns about the extended limitations period of the contract bonds to ten years, as set forth in the Contract General Conditions for Job Order Contracts (revised July 2013) for San Diego State University (SDSU) projects. Such information recently has come to our attention, prompting us to express our concerns to you about the substantial impact that extended bond limitation periods have on the construction and surety communities and the difficulties they pose from an underwriting standpoint.

I note that Section 3.03 of the Contract General Conditions, Contract Bonds, provides that contract bonds will "remain in effect during the term of the contract including the one-year guarantee period, and through the ten-year limit on latent defects." Such longer, non-industry standard bond requirements effectively preclude many highly qualified contractors from obtaining contract bonds, lowering bid and price competition on such projects significantly.

A lengthy performance bond period, such as this one of ten years to cover latent defects, imposes considerable problems from a surety underwriting perspective. Sureties usually are comfortable in covering a bond obligation of one to two years after completion of the project. Durations longer than two years increase substantially the uncertainty regarding underwriting projections about the contractor's future viability. In other words, sureties cannot gauge the soundness and financial wherewithal of a particular construction company for periods extending too far into the future.

Long bond limitation periods also reduce competition from the standpoint of eliminating from the bidder/proposer pool all but the largest contractors, since sureties will likely issue such performance bonds only for large contractors. Small contractors effectively are precluded, for sureties are unlikely to issue bonds with such long durations for smaller contractors, who will not have a sufficient level of financial capital on hand to provide the surety company with assurance of the small contractor's fiscal strength and ability over an extended time period. Such lengthy ten-year liability on the performance bonds will disadvantage small and emerging contractors, such as disabled veteran business enterprises, for which California state law requires a certain percentage of participation in state contracts.

Even more problematic is that the ten-year limitations period to cover latent defects would, essentially and improperly, turn the surety for the contractor into the insurer for the project. In effect, by mandating that the contractor's bond would have a ten-year limitations period for latent defects, the bond would become a form of project insurance, a role and purpose it decidedly is not. It is not practical to mandate that the contractor obtain bonds with a ten-year limitations period for latent defects. It will increase the cost of the projects, decrease competition, and impose liability on the surety more akin to project insurance than a performance guarantee.

For these reasons, NASBP respectfully requests your reconsideration of imposing a this highly unusual ten-year bond limitations period on required contract bonds for SDSU job order contracts. We respectfully recommend that you adopt a more pragmatic approach of a shorter bond limitations period of one to two years.

I appreciate your consideration of our concerns, and I would be happy to answer any questions you may have.

Yours sincerely,

Martha L. Perkins

Martha L. Perkins
General Counsel

cc: Mark H. McCallum, CEO
Larry LeClair, Director of Government Relations