



National Association of Surety Bond Producers
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**BY ELECTRONIC TRANSMISSION (rhooper@seminolecountyfl.gov;
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August 28, 2014

Ray Hooper, CPCM
Anthony Maldonado, CPPB
Seminole County Purchasing and Contracts Division
1101 East 1st Street
Sanford, FL 32771

**Re: Long-Term Maintenance Warranty Provisions in Seminole County 10%
Material and Workmanship Bond; Resident Agent Countersignature Requirement**

Dear Mr. Hooper and Mr. Maldonado:

I am contacting you 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, payment, and maintenance bonds in the State of Florida and all other jurisdictions.

We recently received information from our members regarding the Seminole County 10% Material and Workmanship Bond (Bond) to be used on "CDBG, HOME, SHIP and NSP funded residential new construction and reconstruction projects benefitting income-qualified households in Seminole County." The Bond, the First Amendment to Master Construction Services Agreement (Amendment), and Exhibit A and Exhibit D to the Amendment impose long-term maintenance provisions on the contractor--and its surety. In particular, the provisions of these documents require the contractor, and its surety, to assume long-term maintenance obligations for roofing (five years) and all structural components (ten years).

Lengthy warranty periods, such as those of five (5) years and over, exceed the standard warranty period of one to two years for contractors in the United States and will restrict the availability for bonds on such projects. Lengthy warranty periods pose considerable problems from a surety underwriting perspective. Sureties are usually comfortable with issuing bonds for contracts with a warranty obligation of one or two years. Durations longer than two years increase substantially the uncertainty regarding underwriting projections about a contractor's future viability. Simply put, sureties cannot gauge the soundness and financial wherewithal of a particular construction company for periods extending too far into the future.

We understand that most of the contractors who bid on these projects are small contractors, who will be unable to qualify for such a bond with warranty periods above two years. Long-term warranty obligations reduce competition from the standpoint of eliminating from the bidder/proposal pool all but the largest contractors, since only large contractors can shoulder the higher risks inherent in such contracts. Small contractors are effectively precluded, for they are less likely able to qualify for surety credit on such projects. With less competition and a

smaller pool of potential bidders, the cost to Seminole County for the projects will likely be higher.

NASBP respectfully requests that Seminole County reconsider the contractor warranty requirements of five years and ten years and reduce all the warranties to a period of two years.

NASBP would also like to advise you that the Bond requirement that the "bonds shall be . . . issued or countersigned by a local producing agent" is an invalid requirement. The Florida resident agent countersignature statute was struck down as unconstitutional in *Council of Insurance Agents and Brokers v. Tom Gallagher* 287 F. Supp. 1302 (N.D. Fla. 2003). In that case, the U.S. District Court in Florida determined that there was no rational basis for a distinction between Florida-licensed resident agents and Florida-licensed non-resident agents and declared unconstitutional the statute that discriminated against Florida-licensed non-resident agents. Indeed, since that decision, all 50 states have uniformly struck down or repealed the resident agent countersignature requirement.

NASBP interprets the "local producing agent" countersignature requirement in the Bond as tantamount to the invalid resident agent countersignature requirement. Accordingly, NASBP urges Seminole County to delete this invalid and unconstitutional requirement from the Bond.

Please let me know if you would like to discuss these matters. Thank you for your 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
Larry LeClair, Director, Government Relations