National Association of Surety Bond Producers
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BY ELECTRONIC TRANSMISSION (mary_kate.sullivan@uconn.edu)

May 21, 2015

Mary Kate Sullivan
Purchasing Agent II
CT CA Procurement Services
3 North Hillside Road
Storrs, CT 06269

Re: Excessive Liquidated Damages on UCONN Project #901820, Putnam Refectory Renovation Project

Dear Ms. Sullivan:

I am contacting you on behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of surety bond producers, including agencies employing licensed resident and nonresident producers placing bid, performance, and payment bonds in the State of Connecticut and all other jurisdictions.

We recently received information from some of our members that the UCONN Putnam Refectory Renovation Project #901820 (Project) seeks to impose onerous liquidated damages requirements on subcontractors, which has had--and was certain to have--a stifling effect on subcontractor competition for the Project. Certainly, such excessive liquidated damages provision will sabotage and subvert any goal of minority business participation on the Project.

The contract modification at Exhibit E in the Bid Package permits the construction manager to recover liquidated damages (LDs) at a rate of $30,000 per day and does not place any cap on such damages. Such a requirement constitutes a substantial risk to subcontractors of all types and sizes.

It is worth noting that a surety extends surety credit to those construction firms that the surety deems to possess the requisite experience, equipment, management capabilities, and financial wherewithal to perform the undertaken contract obligation successfully. As part of its assessment, the surety evaluates the risks presented in the contract obligations and ascertains if such risks are within the control and means of the construction firm. Those risks that are outside of the control and means of the construction firm will not be managed effectively by the firm, making the extension of surety credit highly unlikely. Unreasonable and excessive LDs may outstrip the capabilities and risk tolerances of even the largest subcontracting firms.

Moreover, small and disadvantaged business enterprises will be at a particular disadvantage, as they often do not possess the capabilities and financial wherewithal to assume substantial contract risks.

They cannot finance or self-insure against such risks. Excessive risks, such as the high and uncapped LDs called for in the UCONN Project Bid Package, negate the ability of almost all subcontracting firms to secure surety credit and to compete for the subcontracts.

To increase subcontractor bidder interest and to attract a higher percentage of disadvantaged business enterprise participation, revisions of the LDs requirements are necessary. For example, limiting the assessment of LDs against specific subcontractors to a set maximum percentage of the subcontract value would allow subcontractors and their sureties to better quantify the risk associated with subcontract performance. Such a revision should translate into less onerous terms, reducing risk to a scale that can be better managed and assumed by subcontracting firms, including disadvantaged business enterprises. Higher bidder interest and participation and enhanced reputation within the construction community would be tangible benefits of setting reasonable and proportional LDs requirements.

NASBP respectfully requests that UCONN reconsider the excessive liquidated damages requirement for the Project, in the interest of robust competitive bidding, lower project cost, and enhanced small, disadvantaged business inclusion.

Please let me know if you would like to discuss this matter. Thank you for your prompt consideration of NASBP's concerns.

Yours sincerely,

Martha L. Perkins

Martha L. Perkins
General Counsel

cc: Mark H. McCallum, CEO