



**National Association of Surety Bond Producers**

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***BY ELECTRONIC TRANSMISSION (tammie-otto@uiowa.edu) AND U.S. MAIL***

October 30, 2013

Tammie M. Otto  
Facilities Management – Design & Construction  
200 University Services Bldg.  
Iowa City IA 52242-1922

Re: Certain Concerns with Bonding Requirements in University Construction Contracts

Dear Ms. Otto:

The National Association of Surety Bond Producers (“NASBP”) is a national trade association of professional surety bond producers, representing firms employing licensed resident and nonresident producers placing surety bonds on contracts in the State of Iowa and in other jurisdictions. Recent changes to the University’s standardized contract language addressing bonding requirements have been brought to our attention. More specifically, new language, e.g., Supplement Conditions Clause 11.3.7, calls for the owner to be notified by the contractor in writing “of all communications with the surety.” We believe this is an unwarranted intrusion in the confidential business relationship between the contractor and the surety and that such a change in requirements ultimately will not inure to the benefit or reputation of the University of Iowa.

First, the language does not qualify the nature of the communications to be disclosed; rather, all communications, regardless of their nature, are to be disclosed under its terms, presumably even those unrelated to the project. Clearly, such a requirement is overreaching and ensures a contractual compliance impossibility.

Please keep in mind that bonded contractors often rely on their sureties for more than surety credit. The surety is viewed as part of the contractor’s team of trusted business advisors, providing principals with market intelligence and even technical and strategic services, such as forensic accounting and information about best practices. A requirement to learn all communications between the contractor and its surety likely will “chill” the contractor’s use of the surety for such advice and feedback, as the contractor will know that the requests will be known to the owner and possibly to others. Situations that are concerns but not problems may, in fact, turn into problems as a result of the contractor’s reticence to consult with and receive advice from its surety. The surety, in turn, will not be placed in position to avert the escalation of matters or to mitigate problems, until perhaps they have risen to a serious degree and are obvious to all. We simply cannot see any benefit to the University of Iowa in inviting such a situation.

We appreciate your consideration of our concerns and await your response. Please do not hesitate to contact me should you have any questions concerning this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mark H. McCallum", with a long horizontal flourish extending to the right.

Mark H. McCallum  
Chief Executive Officer