



National Association of Surety Bond Producers

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VIA ELECTRONIC TRANSMISSION (rich.rouleau@unh.edu) AND U.S. MAIL

December 18, 2013

Mr. Richard Rouleau
Facilities Project Manager
University of New Hampshire
105 Main Street
Durham, New Hampshire 03824

RE: Elimination of Performance Bond Requirement for UNH McConnell Hall Renovation Project

Dear Mr. Rouleau:

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 New Hampshire. NASBP was recently informed that the University of New Hampshire (UNH) has issued bid specifications for the McConnell Hall project, which has eliminated the usual and customary performance bond requirement and only includes the payment bond requirement. NASBP is concerned with UNH's decision to eliminate the performance bond requirement for the dormitory renovation, which would protect the completion of the project and taxpayer funds.

The General Court of New Hampshire recognized the importance of requiring surety bonds on state and political subdivision contracts for more than \$35,000 by enacting N.H. Rev. Stat. Ann. § 447:16, the so-called little Miller Act, which requires bonds (or other securities) conditioned on the payment by contractors and subcontractors for all labor performed or furnished. These bonds protect the subcontractors and suppliers that furnish labor and materials on New Hampshire public construction projects. Every state in the United States has enacted a little Miller Act, each of which sets forth a version of the federal Miller Act, which requires on all federal construction contracts above a certain threshold a performance bond to protect completion of the construction and taxpayers funds and a payment bond to protect payments to subcontractors and suppliers.

New Hampshire's little Miller Act is highly unusual among state little Miller Acts in not expressly and unambiguously including a performance bond requirement as well as a payment bond requirement. Nearly every state requires such performance bonds on public projects because they are a proven and highly recognized instrument that ensures completion of the public project, which is constructed with taxpayer funds. In the absence of a performance bond, additional taxpayer funds would be required to complete a project where a prime contractor defaults in the performance of a public works contract. Such a result would deprive taxpayers of additional funds unnecessarily and could be a political embarrassment to UNH. As you are

aware, construction businesses have a high failure rate, and performance guarantees have ensured that countless owners have been able to finish projects.

The New Hampshire Department of Education (NHDOE), which includes the Division of Higher Education-Higher Education Commission, of which UNH is a part, provides on its website Advice for Construction Contracts, which urges schools to “[e]ither develop your own payment and performance bonds or require the contractor to submit bonds in the penal sum amount of the contract in a form acceptable to the District as a condition to signing the contract.” By this guideline the NHDOE endorses a requirement by state education facilities of both performance and payment bonds at 100% of the contract amount.

NASBP understands that one surety has quoted to UNH a price reduction of 25% of the bond premium to issue just the payment bond--and not the payment and performance bonds. To move forward with this public contract with only a payment bond, for a 25% premium reduction, is, quite simply, a good example of the adage “penny-wise and pound-foolish.” Elimination of the performance bond requirement on this UNH dormitory renovation project means that the procuring agency retains all performance risk, thereby exposing taxpayers to loss and possible additional expenditure of funds. NASBP strongly believes that deviating from the 100% protection of both a performance bond and a payment bond on public works projects is an unwise decision and imprudent public policy.

NASBP respectfully requests that UNH reconsider its approach and re-institute the performance bond requirement for the current dormitory renovation project and all future UNH projects, to protect both the completion of the project and taxpayer funds. The federal government and nearly every state in the Union recognize the necessary protection provided to the public treasury through performance bonds on public works projects. Indeed, the New Hampshire Department of Education also recognizes the importance of performance bonds. Departure from this requirement in New Hampshire is an unwise, short-term, belt-tightening mechanism that could have disastrous public financial effects.

We appreciate your prompt consideration of NASBP’s concerns. Please contact me if you would like to discuss this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Lawrence LeClair". The signature is fluid and cursive, with the first name "Lawrence" written in a larger, more prominent script than the last name "LeClair".

Lawrence LeClair
Director, Government Relations

cc: Mark H. McCallum, CEO
Martha Perkins, General Counsel