



NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS

1828 L Street, NW, Suite 720

Washington, DC 20036-5104

Tel: 202.686.3700

Fax: 202.686.3656

www.nasbp.org

Sent via email to kglatt@nd.gov

February 5, 2015

Mr. Kevin J. Glatt,
Burleigh County Auditor/Treasurer
221 N 5th Street
Bismarck, ND 58501

Re: Burleigh & Morton County Detention Center Venture Project No. 130014, Article 11.4.1

Dear Mr. Glatt:

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association representing firms employing surety bond producers, including licensed resident and non-resident agents placing contract surety bonds in North Dakota, I am contacting you about a requirement stated in the Bidding Documents of Venture Project No. 130014, for the Burleigh & Morton County Detention Center, specifically Section 11.4, "Performance Bond and Payment," which states the owner has the right to "waive either or both bond requirements." NASBP believes such waiver would be a violation of North Dakota's statutory requirements.

By enacting NDCC 48-01.2-10 (attached), "Bonds from contractors for public improvements," the North Dakota Legislature recognized as far back as 1913 the important role surety bonds have on state procurement projects. Payment bonds are vital in protecting the downstream businesses that supply labor and materials. Often these business entities, the project subcontractors or suppliers, are small businesses whose only viable remedy in the event of nonpayment by the prime contractor is to file a claim on the payment bond.

Should the prime contractor fail to pay subcontractors and suppliers due to bankruptcy or for other reasons, such subcontractors and suppliers do not have an alternative means to recover their wages, costs, and expenses-that is, they may have limited or no mechanics lien rights against public property and they cannot sue the governmental entity directly, since they do not have contracts with those governmental entities.

Taxpayer dollars also are at risk when public works projects are awarded without the protection of performance bond guarantees. In the absence of a performance bond, additional taxpayer funds will be required to complete projects if prime contractors default in their performance of such contracts.

Surety companies that write payment and performance bonds are in the regular business of qualifying their bonded contractors. They carefully scrutinize each contractor's financial soundness, experience, and qualifications, to ensure that the contractor can meet its payment obligations and perform its construction

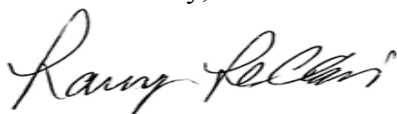
obligations. Why would a public entity want to risk taxpayer funds without the benefit of surety prequalification and guarantees of performance and payment?

Moreover, the purpose and legislative intent of NDCC 48-01.2-10 is well-documented in case law dating back to 1927, Payseno v. Padgett Co., 1927, 55 N.D. 154, 212 N.W. 836, which recognizes the importance of surety bonds and the protection they offer to those furnishing labor or material for public improvement.

For these reasons, NASBP respectfully requests that you immediately amend the Bidding Documents for Venture Project No. 130014 to omit any reference that bonds may be waived, ensuring that performance and payment bonds will be required in conformance with statutory requirements.

NASBP appreciates your attention to this important matter and looks forward to your prompt response on the requested actions.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Larry LeClair".

Larry LeClair
Director, Government Relations

cc: Mark McCallum, CEO, NASBP
Martha Perkins, General Counsel, NASBP

Attachment