



National Association of Surety Bond Producers
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BY ELECTRONIC TRANSMISSION (drodrigues@bayareametro.gov)

Ms. Denise Rodrigues, Administration and Facilities
MTC Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105

Re: Bond Requirements in MTC Next Generation Clipper® (C2) System Integrator RFP

Dear Ms. Rodrigues:

I am contacting you on behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of agencies employing surety bond producers, including licensed resident and nonresident producers placing bid, performance, and payment bonds on both public and private projects in the State of California and all other jurisdictions. NASBP recently received and reviewed a copy of the bond forms (Bonds) and bond requirements set forth in the Metropolitan Transportation Commission (MTC) Next Generation Clipper® System Integrator RFP (Project). The terms and conditions of these Bonds and the bond requirements in general are counter to standard and prevailing surety industry practices and to the market reputation of the MTC as a desirable procurer of services. The practical effect to the MTC of these bond requirements is likely that there will be fewer bidders on the Project and higher prices due to less competition, with taxpayers shouldering unnecessary, additional costs.

A number of the terms and conditions for the bond requirements substantially increase the risks to both the contractor and the surety. This increased risk certainly affects the number of contractors that will be able to submit a bid for the MTC Project. We provide below general commentary and comments on specific terms and conditions that will elucidate our concerns and that we hope will be beneficial to you.

As an initial comment, it is quite atypical to have a joint performance and maintenance bond. It would be simpler and standard in the industry to require a separate performance bond and a maintenance bond, as well as a payment bond. NASBP recommends that the MTA use separate bond forms for the Performance Bond and the Payment Bond and the Operations and Maintenance Bond.

The bond requirements in the RFP roll the initial Performance Bond and Payment Bond into the Operations and Maintenance Bond. As set forth in Section III.B., Period of

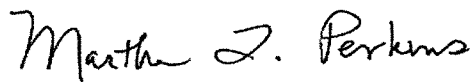
Performance, the MTC expects the contractor's performance to be completed in 10 years, with the initial maintenance period of 10 years, with two 5-year options at the MTC's sole option. These current RFP bond requirements could, therefore, make this a situation by which the Bonds could be in place for up to 25 years. Sureties are highly unlikely to issue bonds with that kind of long-term exposure.

In addition, the Bonds provide for an initial period of three years, thereafter annually renewed. If the surety decides not to renew the Bonds and replacement bonds acceptable to the MTC are not submitted, then the contractor and its surety are in default of the contract—and both “shall be liable for all obligations of the contractor associated with the contract” In essence, with no cancellation-without-liability provision, any surety that agrees to issue the initial Bonds could be liable for up to 25 years. Any surety reviewing these Bonds and bond requirements will quickly sit straight up and take especial notice of these long terms and will be much less likely to issue the requested Bonds.

NASBP respectfully urges the MTC to either significantly modify its current Bonds to provide for a performance bond, a payment bond, and an operations and maintenance bond or use one of the standard bond forms, such as the AIA A312—2010, with any amendments that might be needed. In addition, NASBP respectfully urges the MTC to provide that a surety can deny renewal of its bonds without incurring liability. Such initiatives would certainly increase robust competition and lower project costs.

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

Yours sincerely,

A handwritten signature in cursive script that reads "Martha L. Perkins".

Martha L. Perkins
General Counsel