



June 23, 2008

Ms. Sherry Smith, Superintendent  
El Dorado Union High School District  
4675 Missouri Flat Road  
Placerville, CA 95667

***Subject: Oakridge High School Modernization***

Dear Ms. Smith:

On behalf of the California Surety Federation (CSF), made up of over 30 California-admitted surety carriers and independent agents, we are writing to express our concern with two provisions in the performance bond of the "Oakridge High School – Modernization Phase 1B" project, which are highly unusual and onerous. Specifically, we are concerned about the provision that requires the Surety to act on a claim within 30 days and the open-ended obligation for additional cost in section 6 of the bond.

***Claim Response Time***

Regarding the surety's obligation to respond to claims with 20 days, mandating such a quick response does not provide sufficient time for the surety to act in a deliberative manner. For a surety to meet its contractual obligations, it must have sufficient time to evaluate any claims before acting. This provision forces the surety and the contractor into an untenable situation and could lead to needless litigation.

To put this concern in context, below we note that the Department of Insurance in its Fair Claims Settlement Practices Regulations that 40 calendar days is a more appropriate length of time to respond to claims. Title 10, Chapter 5, Subchapter 7.5, Article 1, Section 2695.7 (b) specifically states:

"(b) Upon receiving proof of claim, every insurer, except as specified in subsection 2695.7 (b) (4) below, shall immediately, but in no event more than forty (40) calendar days later, accept or deny the claim, in whole or in part. The amounts accepted or denied shall be clearly documented in the claim file unless the claim has been denied in its entirety."

To ensure that due diligence is achieved as well as to protect the relationship between the owner, contractors and the surety, we strongly recommend that this provision be modified to allow for a more realistic opportunity for the surety to meet its obligations.

### ***Surety's Open-Ended Obligations***

The various provisions in Section 6 are unusual in that they obligate the surety beyond the terms of the agreement. Specifically, Sections 6.2 and 6.3 obligate the surety for "additional legal fees"... "delay costs" and... "unspecified damages resulting from the default."

The purpose of the surety bond is to provide protections based on a clear set of obligations as delineated in the construction contract. Adding provisions in the performance bond that are open-ended is not common practice and will undoubtedly lead to litigation if a conflict arises.

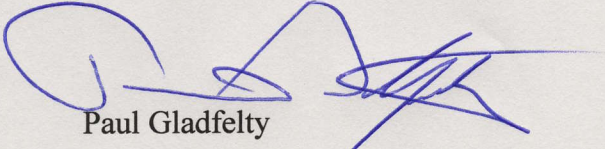
In addition to the questionable legal status of these provisions, it could have the practical effect of causing some sureties to avoid writing a bond that includes this language, leading to a reduced pool of qualified contractors with sureties unwilling to write such restrictive bonds, resulting in increased costs to the District, and less competition among contractors.

While these provisions may seem to provide added protections for the District, it is likely that should significant conflict arise from one of these unusual provisions, it will undoubtedly be litigated. This will have a direct cost to the District in the short term, and there is always the possibility that the District will not prevail, costing the District even more. Furthermore, the precedent setting nature of this approach could have significant consequences for many public works projects. Should the District proceed in this manner and precipitate a change in the common practices, it could alter the relationship between the public agency, contractor, and surety in a manner that is detrimental to all parties.

The relationship between these parties is carefully balanced to ensure appropriate protections for each party involved. Changing the general parameters of these relationships could lead to litigation, increased costs, less competition, and other negative consequences.

For these reasons, we urge you to alter these provisions before the contract is awarded.

Sincerely,



Paul Gladfelty