



October 17, 2008

Ms. Molly Vanden  
RGM & Associates  
2000 Railroad Avenue, Suite G  
Pittsburg, California 94565

***Subject: Pittsburg Unified School District: PHS Reconstruction – Increment 2***

Dear Ms. Vanden:

As the Construction Manager for the “Pittsburg Unified School District: PHS Reconstruction – Increment 2” project, we are bringing to your attention concerns we have with provisions in the “General Conditions” document for that project relating to the obligations of the surety. Specifically, we object to Section 24.1.2.2.1, which requires the surety to respond to claims by the District within 3 days, and Section 24.1.2.2.2, which then requires the surety to initiate performance of the contract within 3 days of notifying the District.

Three days is simply insufficient to evaluate any claim or be in a position to reach an agreement with the District as to the most appropriate action. Furthermore, only allowing 3 days to commence work is also wholly insufficient.

The fact that it takes more time to properly evaluate and respond to a claim has been acknowledged by the Department of Insurance in its Fair Claims Settlement Practices Regulations. 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.”*

For a surety to meet its contractual obligations, it must have sufficient time to evaluate any claim before acting. Forcing a surety into such a short time-frame for review places the surety and the contractor in an untenable situation.

Surety bonding is a carefully balanced system formalized over decades to ensure appropriate protections and prevent needless conflict. By inserting language that only allows the surety 3 days to investigate and respond to a claim will only lead to litigation as it is not enough time to conduct a thorough investigation.

To ensure that due diligence is achieved as well as to protect the relationship between the school district, contractors, and the surety, we strongly recommend that the District modify its bond forms and provide a more realistic opportunity for a surety to meet its obligations.

Sincerely,

***Paul Gladfelty***

Paul Gladfelty