



May 7, 2008

Ms. Donna Enfiajian, Senior Construction Manager
Port of Los Angeles
425 S. Palos Verdes St.
PO Box 151
San Pedro, CA 90733-0151

Subject: *Project titled "Berths 145-147 Wharf Improvements Spec. No 2605"*

Dear Ms. Enfiajian:

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 bid documents relating to Port's project "Berths 145-147 Wharf Improvements Spec. No 2605" that are highly unusual and onerous. Specifically, we are concerned with the provisions that the surety respond to claims within five days and must act as co-guarantors of manufactured products used on the project.

Regarding the surety's obligation to respond within five days, mandating such a short response time simply does not provide enough time to act in a deliberative manner. For a surety to meet its contractual obligations, it must have sufficient time to evaluate any claim 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.

Secondly, the requirement that the surety become the co-guarantor of the manufacturer's products is extremely onerous. The manufacturer is a separate entity that provides its own warranty based on its testing and evaluation of the products it sells. A contractor is not in a position to warrant a product that it did not manufacture, test, or produce.

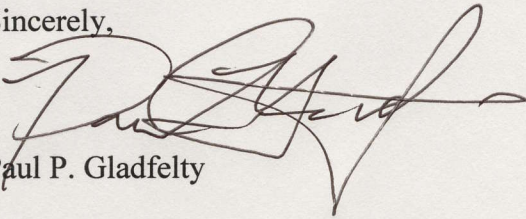
For example, a roofing manufacturer will often provide warranties of up to 50 years on its products. There is no way a contractor or surety can assume the obligation that the product will not fail at any point during 50-year warranty period. The contractor is at the end of the process and is only in the position to install the product correctly and not guarantee its long-term performance.

While these provisions may seem to provide added protections for the Port, the precedent setting nature of this approach could have significant consequences for many public works projects. Should the Port 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,

A handwritten signature in black ink, appearing to read "Paul P. Gladfelty", written over a horizontal line.

Paul P. Gladfelty