

# CALIFORNIA SURETY FEDERATION

December 7, 2004

Mr. Robert Reid  
West Valley Sanitation District  
100 East Sunnyoaks Avenue  
Campbell, CA 95008

Dear Mr. Reid:

On behalf of the California Surety Federation, representing over 30 carriers and independent agent brokers in California we would like to bring an issue to your attention affecting a local construction project your district is undertaking. The bid in question is the Sanitary Sewer Rehab, Winchester Basin #7, located in Los Gatos, job bid 12/03/04. It is our understanding that you have requested that the contractors bidding on the job obtain a bond written by an A+ rated surety carrier. You may not be aware that as a result of legislation passed in 1992, it prohibits local agencies from requiring a bond rating higher than being California admitted.

The California Code of Civil Procedure Section 995.670 states "No state or local public entity shall require an admitted surety insurer to comply with any requirements other than those in Section 995.660 whenever an objection is made to the sufficiency of the admitted surety insurer on the bond or if the bond is required to be approved."

A plain reading of the law requires that a public agency cannot utilize an A.M. Best rating or any other criteria to disqualify a surety so long as such surety is a California admitted surety and they otherwise comply with Section 995.660 of the California Code of Civil Procedure.

Enclosed is a copy of the original legislation on this subject as well as a letter from Assembly Member Polanco who authored the bill expressing the rationale for passing such legislation. Also enclosed is a Legislative Counsel opinion regarding the scope of this legislation.

Our organization supported this legislation, and I am aware of no public agency that has prevailed in litigation reaching a contrary opinion on the law. We would be pleased to discuss this issue or answer any questions that you may have on the subject.

Sincerely,

  
Paul P. Gladfelty

Enclosures

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