March 11, 2019

Jeff Santos & Coraly Vazquez
Kissimmee Utility Authority
1701 W. Carroll St.
Kissimmee, FL. 34741
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RE: Kissimmee Utility Authority (KUA) – 5 year Warranty

Dear Jeff Santos and Coraly Vazquez,

The Florida Surety Association (FSA) is a trade association whose membership includes the vast majority of surety companies that are licensed to write fidelity and surety bonds in the state of Florida. These surety company members write construction surety bonds supporting contractors that are working on projects for Kissimmee Utility Authority (KUA), as well as other cities, counties, municipalities, and private owners throughout the State of Florida. Our membership has brought to our attention concerns regarding the language contained within the public construction contract KUA is utilizing, specifically the 5 year warranty provision. We would like to open communication with KUA regarding the required language.

When a surety writes a bond it is assessing the amount of risk inherent in a project, and the amount of exposure to the risk of loss. The surety must look at the terms of the contract including judging the exposure for damages and length of obligation. Contained within several of the specifications seen written by KUA, a 5 year warranty obligation has been present. When a surety writes a bond for a contractor, it is making a judgment about the contractor's financial and operational viability over the course of the obligations. As the duration of the bonded obligation becomes longer, and the surety must predict the strength of the contractor's operation for periods of time well into the future, the certainty of the judgment is lessened and the surety's risk increases. To compensate for the increased risk, sureties typically tighten their underwriting standards. As a result, fewer contractors can qualify for the bond. Many contractors who are capable of undertaking the work could be prevented from competing because of the long-term warranty requirement. Reduced competition could mean higher procurement costs for the KUA on the work, in addition to a higher premium cost for the bond itself, for the additional obligation.

If KUA must consider a warranty obligation longer than the industry standard of one to two years, we recommend the City require a one-year warranty bond that is annually renewable by the surety. In this way, a surety could have the opportunity to assess the contractor's performance and financial strength, make a judgment about the contractor's operations for the next year and determine whether to renew the bond. Alternatively, the obligation should be explicitly excluded from the coverage of the performance and payment bonds.

The FSA would be happy to work with KUA in drafting warranty language that meets the board's needs but also treats the principal and surety fairly, while continuing to KUA's interests.

Sincerely,

Cody Fore
President, Florida Surety Association

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