

February 12, 2017

Kathleen Scarlett  
Palm Beach County  
Purchasing Director  
50 S. Military Trail, Suite 110  
West Palm Beach, FL 33415



[purchase@pbcgov.org](mailto:purchase@pbcgov.org)

**RE: Public Construction Bond Language**

Dear Ms. Scarlett,

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 the Palm Beach County as well as cities, counties, municipalities, and private owners throughout the State of Florida. Our membership has brought to our attention concerns regarding the language in the required Public Construction Bond Palm Beach County is utilizing. We would like to open communication with the County 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. Section 7 of the Public Construction Bond states:

*Principle and Surety expressly acknowledge that any and all provisions relating to consequential, delay and liquidated damages contained in the contract are expressly covered by and made a part of this Performance, Labor and Material Payment Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.*

The inclusion of consequential damages is difficult for a surety to underwrite as the potential liability is challenging to calculate. With the inclusion of consequential damages, the risk is increases immeasurably leading the surety to tighten its underwriting requirements and resulting in fewer contractors being able to qualify for the bond. This diminished competition on the project leads to increased contract prices due to the uncapped consequential damages and expanded liability exposure. The consequential damages provision will also impact the ability of small, minority and emerging contractors to bid the project and subcontractors to bid to the general contractor due to the inability of the contractors and their sureties to quantify the risk.

We would like to suggest that the County eliminate the inclusion of consequential damages in Section 7 of the Public Construction Bond. Please take the concerns expressed here under consideration as the inclusion of the problematic language could preclude many strong, viable contractors from procuring the necessary bonds that would allow them to bid on this project. The net result to the County is reduced competition and, ultimately, higher costs.

The Florida Surety Association would be glad to work with Palm Beach County to help identify terms that meeting the County's goals, and treats the Principal and Surety fairly. Please feel free to contact me if you have any questions.

Sincerely,

Brian Nichols  
President, Florida Surety Association.