Welcome to the Digital Edition of

Construction EXECUTIVE

THE MAGAZINE FOR THE BUSINESS OF CONSTRUCTION

This Digital Edition of Construction Executive is Interactive!

Here are some of the functions you can use while browsing this issue:

Table of Contents links directly to articles.
Jump to your favorite column in one click.

Communicate with authors and editors.
Click on the byline or article footer to address an email to the writer.

Advertisements link to company websites.
Click on any display ad to open the advertiser's website in a new browser window.

[NOVEMBER 2011]

Construction EXECUTIVE

INCLUDING THE 2012 DIRECTORY OF CONTRACT SURETY BOND PRODUCERS

9th Annual Contractors' Guide to SURETY BONDING

EPOXY/GETTY IMAGES

TABLE OF CONTENTS

EDITOR-IN-CHIEF
Lisa A. Nardone

ASSISTANT EDITOR
Joanna Masterson

STAFF WRITER
Jessica Porter

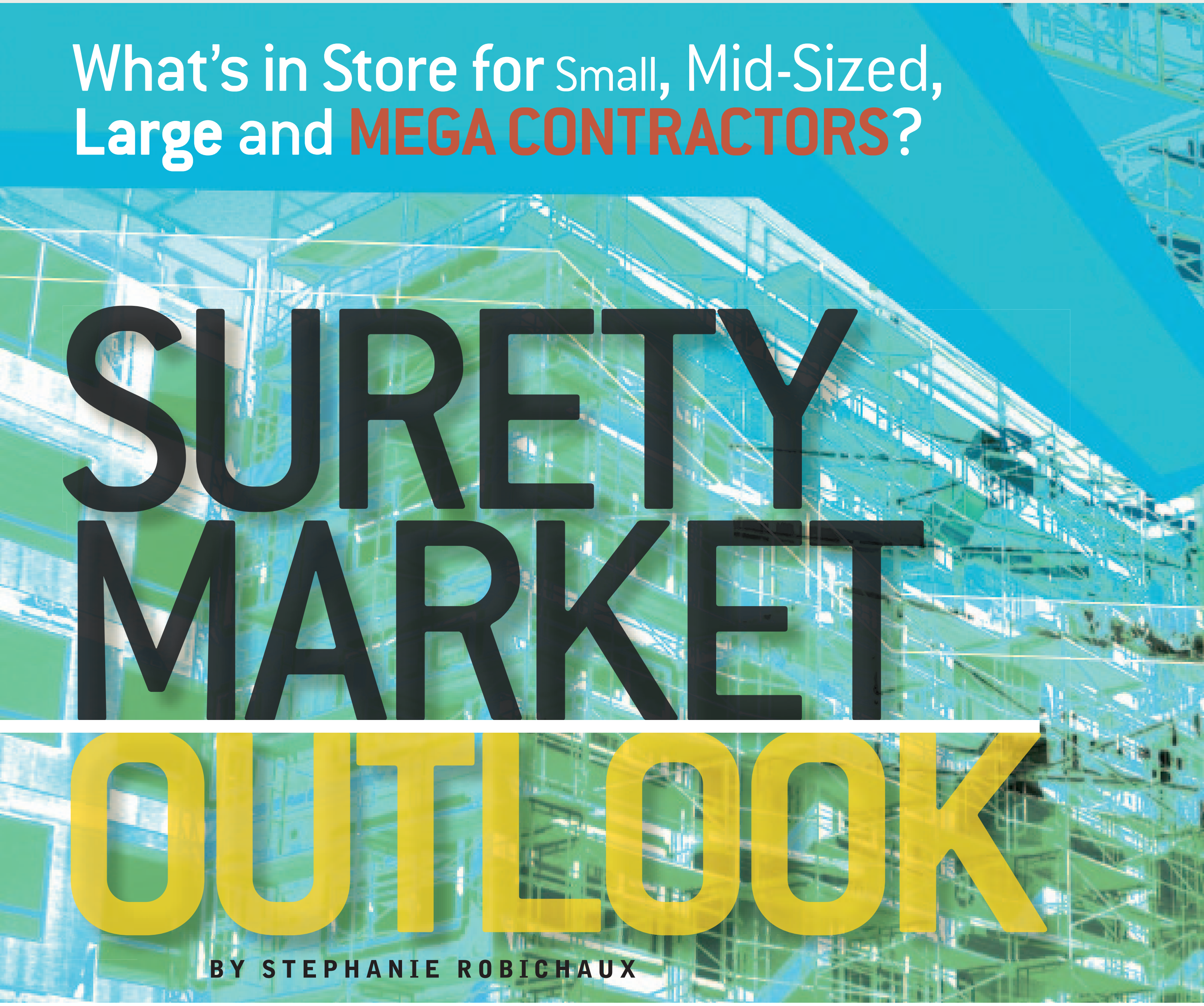
CONTRIBUTING EDITOR
Stephanie Robichaux
The Surety & Fidelity Association of America

DESIGN AND PRODUCTION
tmg custom media

ADVERTISING INFORMATION
Donald R. Berry,
National Sales Manager, (908) 852-7466
dberry@constructionexec.com

Stephen B. Donohue,
Regional Sales Manager, (609) 760-0702
sdonohue@constructionexec.com

EPOXY/GETTY IMAGES



What's in Store for Small, Mid-Sized, Large and MEGA CONTRACTORS?

SURETY MARKET OUTLOOK

BY STEPHANIE ROBICHAUX

THIS HAS BEEN ANOTHER TOUGH YEAR FOR THE U.S. construction industry. Work availability is down and the housing market is sluggish. Consumer confidence is low, with the national unemployment rate exceeding 9 percent, a fluctuating stock market and a recently downgraded credit rating. Congress' bickering over the budget deficit did not help. Reduced consumer and government spending further contribute to the economic decline.

During election years, the federal government usually increases its spending on public projects to boost the economy. That seemed highly unlikely with a congressional "super committee" assigned the task of recommending another $1.8 trillion in budget cuts.

In the construction industry, owners turned to the use of new project delivery methods, each of which comes with its own set of risks for the surety market to address.

"CM at-risk has been a very popular delivery method during the last few years. Owners like the ability to choose the contractor they feel is best qualified,"

JASON REED/GETTY IMAGES

says John Rindt, president of the National Association of Surety Bond Producers (NASBP) and executive vice president of JDW Insurance. This method can be abused on both ends, Rindt warns. "Some public boards are not sophisticated enough to make the correct decision about which contractor is best qualified, and contractors use any and all means at their disposal to secure work."

Regardless of the delivery method, Michael Bond, head of surety at Zurich North America, says the most important way to ensure a successful project is to hire the right contractors. "Surety continues to be the best way to prequalify those contractors and guarantee performance," Bond says.

Well-capitalized contractors with a proven record of successful projects will find significant bonding capacity in their respective market segments. Struggling contractors that are in debt and have a record of losses, however, will be afforded fewer opportunities. "Surety underwriters will disengage pretty quickly from an account when company losses or debt leverage become issues," says Daniel Young, senior vice president and chief underwriting officer of The Insco Dico Group.

To weather this economic downturn, contractors must reduce and manage overhead and budget expected revenues realistically. One of the most important things contractors can do is keep an open and honest line of communication with their sureties and bond producers so all parties can work together through any issues that arise.

SMALL CONTRACTORS

The economy hit this market segment hardest, which has led to an increase in defaults and losses. "As a small surety, underwriting has tightened up to ensure we are bonding qualified contractors," says Jeff Booth, senior vice president and chief underwriting officer of Allstar Financial Group.

However, there is an abundance of surety capacity for financially sound small contractors that can find work. "More small contractors are gravitating to the specialty markets and putting up collateral for their surety credit," Young says.

Furthermore, the Small Business Administration's Surety Bond Guarantee Program, which provides capacity for small contractors, is expanding. The Bonding Education Program—a joint effort between the U.S. Department of Transportation and the surety industry—educates small businesses about, and assists them in obtaining, surety bonds (*see related article, p. S46*).

"There is a substantial amount of capacity for contractors in this category with new surety companies entering the marketplace and providing additional capacity. Expansion of the SBA bond guarantee program has provided increased capacity for small contractors, and there are several markets supporting small contractors with collateral or 'funds disbursement' requirements in place," says Larry Taylor, president of Merchants Bonding Company.

MIDDLE CONTRACTORS

"This market segment appears to be one of the most competitive," says Michael Noe, executive vice president of construction services for Travelers Bond & Financial Products. "As with the small market, terms are very competitive due to the pressure of reduced writings as a result of the economic downturn in construction and continued favorable financial performance of surety carriers."

Larger contractors dropped into this market with the hope of maintaining

GUNNAR3000/VEER

Why Contractors Should Bring Their Bond to a Private Owner

- A bond shows an owner the contractor is better qualified for the job than contractors that are not bonded because the firm has undergone a rigorous prequalification process.
- Owners can pay the contractor in accordance with the contract terms without concern because the work is being guaranteed.
- Bonding capacity can increase a contractor's project opportunities.
- If problems arise on a project, the surety company may be able to offer the contractor financial, technical or managerial support.
- Bonded contractors are more likely to obtain loans from financial lending institutions.
- Subcontractors and suppliers are likely to offer better prices when they know they are protected by a payment bond, and therefore are guaranteed payment for their work.

their backlogs by taking on smaller projects. The good news is that "many smaller sureties are now trying to move up to service mid-market customers in addition to the traditional service from the large sureties," Bond says. "The effect is that mid-market contractors now have access to a wider range of sureties and their capacity and services."

LARGE CONTRACTORS

Many large contractors have begun to feel the effects of reduced backlogs and limited job opportunities. "Sureties were willing to step up to support the large contractors, as they are an efficient segment of the market. As backlogs have run off, the terms and conditions for maintaining the aggregate backlog have become more flexible," says David Finkelstein, executive vice president of surety at Arch Insurance Group.

As with the other market segments, contractors that are not financially sound will have difficulty obtaining bonds. Strong accounts with proven track records, however, will find the surety market is still highly competitive on terms.

MEGA CONTRACTORS

"The mega end of the large segment has seen increased capacity due to new entrants in this segment of the surety market," Noe says. Executives agree very large contractors and multinational construction companies endured the last few years most successfully.

"Owners continue to move forward with large-dollar projects that, due to size and complexity, attract only a handful of bidders. A select group of the largest contractors are maintaining significant backlogs and remain very profitable," says Tim Mikolajewski, president of Liberty Mutual Surety.

Many contractors in this segment have agreed to joint ventures to meet the needs of mega project owners, who expect high Standard & Poor ratings for a surety's financial strength. "These projects require detailed analysis and risk assessment with regard to contract language, bond forms and other risk factors, such as public-private partnerships and gap financing," Bond says. "Leading sureties have responded with strong levels of capacity at favorable terms and conditions."

SURETY OUTLOOK

Overall, sureties avoided high levels of losses in 2011, and surety executives generally are optimistic about the future of the industry. However, certain segments of the industry fared worse than others this year. "We have seen an increase in frequency of loss in the small contractor segment of the industry, but it has had little impact on our overall profitability," says Doug Hinkle, senior vice president and chief underwriting officer at CNA Surety. "We are clearly seeing deterioration in operating results for many contractors, but particularly so in the sub trades and utility contractor segments."

An increase in losses has been particularly noticeable in trades that require a lot of equipment to perform their jobs. "The equipment often is financed by debt or a high reliance on lines of credit. Fortunately, because the construction industry is so competitive, the sureties have been able to find replacement subcontracts with minimal financial loss," says Patrick Pribyl, senior vice president and surety team leader at Lockton.

"Reports point to a continued expectation of a depressed outlook for new work, which will present ongoing challenges for construction companies," Noe adds. Looking ahead to 2012, surety executives anticipate an increase in loss activity but not on a catastrophic level because most contractors went into the recession with healthy backlogs to carry them through the last few years. That, along with government stimulus, responsible surety underwriting, and increased collaboration among contractors and their agents and underwriters, has staved off an industry "armageddon" (*see related article, p. S36*).

"During the last three years, the surety industry reported its lowest loss ratios in decades. While we are not seeing a meaningful increase in losses, it is likely

ANDY DEAN/VEER

losses will revert to the historical normal range given the poor construction market and contractors' greatly reduced backlogs and margins," Mikolajewski says.

Despite the expected increase in losses, there is still plenty of flexible bonding capacity for financially sound accounts. "If loss ratios remain reasonable, capacity should remain the same," says David Hewett, executive vice president of XL Insurance. "The wild card is if losses go higher than sureties anticipate."

Most sureties remain disciplined in following the conservative underwriting standards implemented a number of years ago. "Sureties cannot protect their contractors from losses," Booth says. "We can only adhere to our underwriting guidelines and terms and conditions to deliver acceptable underwriting results."

Additionally, to protect themselves and their contractor partners, sureties pay considerably more attention to terms and conditions in contracts and bond forms.

"There is more of a risk in the current environment where owners have many firms anxious for work, allowing owners to believe they can place more risk on contractors. There needs to be a balanced set

"A significant risk to contractors during the recovery is talent availability."

of risks and rewards between the owner and the contractor," Bond says.

"We need to be especially vigilant on LEED projects," Rindt says, as liquidated damages may be tied to the LEED certification (*see related article p. S32*).

Executives agree it is important for contractors to walk away from work with onerous contract terms. "Big losses usually stem from bad documents, not bad work," says Henry W. Nozko, Jr., president of ACSTAR Insurance Company.

While managing the challenges of today's market, contractors need to plan for the future. "A significant risk to contractors during the recovery is talent availability," Mikolajewski says. "Having downsized their organizations, contractors may have fewer trusted project managers necessary to support a return to full backlogs."

There also are financial concerns, such as constraints in cash flow and working capital. "When bottom lines are impacted negatively, balance sheets and liquidity positions can become strained. Without enough profitable work to go around, firms may have a difficult time repairing their financial positions to a sufficient level in time to take advantage of the turning market," Noe says.

Some executives say contractors may be tempted to overextend already strained balance sheets to take on new work, but others are not as convinced. "With the severe pain most contractors have experienced to reduce overhead and survive this economy, we don't believe we will see a rush to spend," Taylor says.

Adds Rindt: "I do not foresee a scenario where the economy heats up and contractors, especially subcontractors, are not in a position to respond. I see a slow, methodical recovery that will never stretch the resources of our contractor clients."

Stephanie Robichaux is communications associate of The Surety & Fidelity Association of America. For more information, call (202) 778-3629 or email srobichaux@surety.org.

2012 BizCon®

Strategic Thinking for Construction Leaders

Feb. 21-22 Arizona Biltmore, Phoenix

Perspective. Insight. Focus. Vision Forward

Experience the Ultimate Strategic Leadership Summit

Invest in the future of your company and move your vision forward.

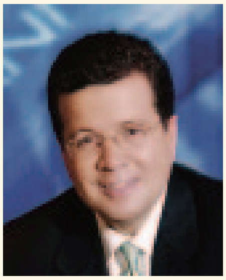
Challenge your thinking, connect with construction leaders and acquire a new ***perspective*** during high-level, hard-hitting sessions.

Gain ***insight*** on emerging industry trends and business opportunities, economic developments and the political scene.

Identify the changing dynamics of the construction industry and ***focus*** your company for breakthrough performance, productivity and profitability.

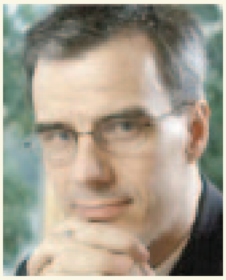
Keynote Presentations

Business Growth



As a widely respected business and financial expert, **Neil Cavuto** is front and center when it comes to assessing the challenges businesses face. Having covered some of the most important business stories of the last two decades, Cavuto will provide insights and strategic advice for business growth and financial stability.

Innovation

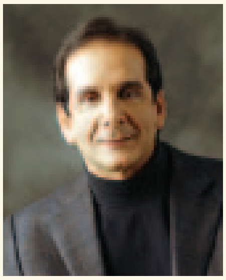


Technology and mobile thought leader **Tomi Ahonen** will share key facts and insights on the massive size and reach of the mobile industry, as well as explore the ways in which mobile technologies and mobile culture are influencing the way businesses communicate and operate across the world.

The Economy

Economists **Barry Asmus** and **Anirban Basu** will examine and explain the data that dramatically affect the commercial and industrial construction industry on both domestic and global levels. Learn about key economic factors, trends and indicators, including an economic analysis of what we can expect in the future.

Political Landscape



Get a glimpse into what the future holds for Washington policymakers and American society with political analyst **Charles Krauthammer**. Hear incisive commentary on the current political scene, as well as insights into the upcoming 2012 elections and what they mean for the construction industry.

Additional Industry Sessions

- Trends Driving the Construction Industry
- Competing in a Recovering Economy
- Best Practices in Cash Flow Management
- Developing the Leadership Pipeline

EXECUTIVE INSIGHTS >>

WHAT IS YOUR ADVICE FOR CONTRACTORS IN TODAY'S CHALLENGING CONSTRUCTION ECONOMY?

MIKE NOE
Executive Vice President of Construction Services
Travelers Bond & Financial Products

Today's construction marketplace looks vastly different than it did even three short years ago. The complexities of managing through the current construction environment have made it exponentially more challenging to succeed. A few key areas that are critical to success for any firm include managing overhead, knowing your costs and maintaining a healthy balance sheet.

It is important to have an overhead structure that is lean enough to meet the demands of the current market, but that also can react when the market takes a turn for the better. Finding the balance between the two can play a big role in how well you survive this downturn. Contractors also must know their costs and price their work appropriately. There are times when a company would be better off walking away from opportunities. Taking on work at inadequate margins could set the company up for multiple years of an underpriced, underperforming backlog.

Additionally, a company must actively manage its balance sheet to survive in today's market. Those that manage effectively will be in the best position to weather the current storm. Proper cash flow management, limited borrowing, modest debt from necessary purchases and sound project management are some of the key ways a company can maintain a healthy balance sheet. If companies stay on top of these aspects of their business, they will be in a better position to achieve long-term stability.

ROD WILLIAMS
Chief Underwriting Officer
Liberty Mutual Surety

The weak economy and the prolonged construction slowdown present a challenging environment for contractors. To survive, contractors must adapt their business model to be flexible in the face of inconsistent construction demand. In all stages of the cycle, a successful contractor implements sound business plans, monitors key metrics and demonstrates flexibility to adapt quickly to changing circumstances.

Today's reality for many contractors is decreased revenue, depressed margins, limited bank credit access, and underutilized workforce and equipment. In this environment, managing overhead is critical. The ability to survive the cycle requires thinning equipment fleets, reducing debt and closely managing liquidity. Astute risk management is also essential, with emphasis on owner prequalification, subcontractor prequalification and management, avoiding onerous contract terms and conditions, and safety.

Contractors and their sureties must keep up with changing owner/obligee needs and be ready to respond to those changing needs with innovative solutions, such as understanding the intricacies and meeting the challenges of public-private-partnerships or gap financing. Responsive contractors also are adopting integrated project delivery methods and embracing tools such as building information modeling to bring together contractors, owners and architects in a partnering relationship.

As more owners seek to mitigate exposure by transferring risk through contracts and bond forms, contractors need to facilitate strong communications and build relationships with key partners. Maintaining frequent and transparent communication with a surety is especially critical, as sureties can share a national perspective on construction trends and mediate emerging disputes with owners on affirmative claims. Overall, contractors should have a flexible plan and be ready to adapt and execute it consistently with market trends.

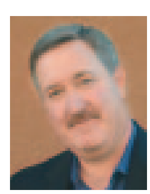
JOHN RINDT
President
National Association of Surety Bond Producers
Executive Vice President
JDW Insurance

The current economic environment presents plenty of uncertainty for contractors and their sureties. As surety professionals, we must draw on our experience to help our construction clients through the next 18 months to two years. We are in a unique position to help our clients' businesses remain viable, as they seek our advice on reducing payroll, resolving disputes with project parties, and selecting construction-oriented bankers, accountants and attorneys.

Certainly, the red ink has increased this year, and working capital has been negatively impacted. With fewer jobs to bid, many contractors wonder if more work is available in regions beyond their normal area of operations. Some try to diversify into trades with which they have little or no experience. We can draw on our experience to convince these clients that the risk may not match the reward.

Bonding companies continue their interest in a contractor's bank debt, strategy to reduce reliance on the bank, contingency plan if the bank pulls the plug and subcontractors (especially because subcontractor failure has increased). Obtaining subcontract bonds is more important than ever, and sureties are increasing this requirement across the board. More contractors recognize this and seem more willing to accept this risk transfer.

Contractors should heed the collective advice from their key partners, including their surety bond agent, surety, banker, CPA and attorney, to ensure the construction company's success for many years to come.



DAN YOUNG
Senior Vice President and Chief Underwriting Officer
The Insco Dico Group

The 2011 construction environment has been challenging. Profitable work appears difficult to come by and competition is fierce, with even small jobs attracting too many bidders. Most contractors are struggling to cover overhead and turn a profit. There are a number of things contractors can do to protect their balance sheets. First and foremost, aggressively adjust staffing and overhead as revenues decrease. A delay in doing so typically leads to increased losses and impaired balance sheets.

In addition, liquidity and access to cash are vital. Contractors should think twice about purchasing long-term assets, or those that aren't essential to operations, such as real estate. It is also important that contractors can access an unsecured line of credit from a strong, viable bank, and that the line is unsecured or tied to long-term assets rather than cash. The bank should be evaluated to make sure it is financially sound and that it will be there when the contractor must draw on the line. The bottom line is that having the liquidity available to work through unexpected events—like a large receivable that becomes uncollectable or unforeseen litigation—is vital to the long-term viability and balance sheet health of contractors of every size.

Finally, contractors should pay particular attention to timely and aggressive collection of receivables and maintain a strong cost accounting software package. Job costing data should be reviewed frequently to identify projects where profit is slipping and steps should be taken to make adjustments wherever possible to restore profitability.

CARTER B. REID

Senior Partner

Watt, Tieder, Hoffar & Fitzgerald, LLP

Today's construction economy involves fewer, riskier, more complex projects. Many of these larger projects involve sophisticated federal, state and municipal entities using less traditional delivery methods and demanding adherence to a growing number of laws, rules and regulations. As competition for these larger projects stiffens, recoverable margins shrink. Knowledge and experience are essential to minimizing risk in these circumstances. Contractors must be willing to invest in educating estimators and project executives on the demands of contract terms and administrative requirements before committing to a price. Otherwise, escalating general conditions alone may consume any hopes of profitability.

JEFF BOOTH

Senior Vice President and Chief Underwriting Officer

Allstar Financial Group

When discussing advice for contractors in today's construction market, a few pearls of wisdom come to light: Streamline your operation by reducing debt, manage inventory/equipment and evaluate your personnel. Utilize a good construction-oriented CPA. Provide financial statements and keep lines of communication open with your surety and banker. Be honest with any issues your company has and detail pending changes. Then, the surety will evaluate and try to come up with a bond program. The key is communication.

Contractors and subcontractors need to be diligent in managing and collecting receivables. Avoid performing work outside the contract without written change orders. Obtain confirmation of financing on private jobs. Avoid bidding work just to get work. Construction is a risky business; there is no need to complicate matters with a low profit margin. Large bid spreads seem to be a bit more common and will cause concern from your surety.

Maintaining a good working relationship with your surety and banker will pay dividends. The surety can be a great source of advice; utilize it to review bond forms and contracts for onerous language. An underwriter reviews a lot of contracts and bond forms and can point out areas of concern that might save you money in the long run. Ultimately, the surety and the contractor share the same goal on a bonded project and can work together to endure this challenging economy and enjoy long-term success.

HENRY W. NOZKO, JR.

President

Acstar

Discussion is growing about the United States being in the midst of a lost decade of economic malaise. According to the U.S. Bureau of Economic Analysis, the U.S. gross domestic product grew at 0.4 percent in the first quarter of 2011 and just 1 percent in the second quarter. That's like watching grass grow. At that rate, the current annual construction put in place of $789 billion would take more than a lifetime to reach the $1.2 trillion level of 2006. It is safe to say the construction industry will not grow out of the economic crater it is in for several years. Hope for the best, but plan for the worst.

Contractors might consider shifting skills and strategies to uncover new means to develop business and create revenue. For example, one mechanical contractor developed a heating and air conditioning service business that now supports a chunk of its overhead. Another general contractor zeroed in on exceptional service to one particular customer that was growing. The contractor secured several projects and that customer is almost the sole source of revenue. Although normally not a good idea, the strategy has kept the contractor's doors open. The point is, fresh thinking and some experimentation might spur new ways to develop business.

PHILIP S. TOBEY

President

Bondex Insurance Company

Make sure you have an open line of communication and are scheduling periodic meetings with your CPA and surety bond agent to continually evaluate and discuss the financial strength or weakness of the company. Its potential impact on your current or future bond needs must be consistently monitored. In today's challenging times, being proactive and surrounding yourself with the right professionals is more important than ever.

ED TITUS

Senior Vice President

PHLY Surety

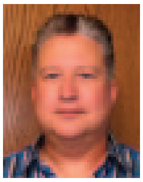
Contract surety is a relationship business based on underwriting the three Cs: capital (financial capability), capacity (operational capability) and character (integrity). In today's challenging economy, contractors should follow the intent of these three Cs.

Financially, reduce overhead and debt commensurate with revenues and projected revenues. This may mean selling that idle equipment you were so excited to acquire in the good times. This also may mean reducing staff, some of whom have been with you for years and you consider family. Despite the competitive environment and decreasing profit margins, never bid below the sum of direct and overhead costs, a contingency and at least a nominal margin commensurate with the risk. Delaying action on these measures could result in the ultimate failure of your entire organization.

Operationally, don't deviate from projects that made your company successful. Stay in your typical geographic region. Bid to owners you've successfully worked with in the past. Pursue your type of work. Be on the lookout for onerous contracts and release forms that transfer inordinate risk to you. Unless you can achieve a "win-win," refuse the work.

Provide your surety with regular, accurate and timely business and personal financial statements and work in progress schedules. Involve your surety when you first sense you are in distress. Don't let your surety company discover you're broke when you ask for this week's payroll when you know you experienced financial difficulty months ago. Dust off your business plan and update it based on the current economic environment.

Coordinate with the business partner who can advocate your position and help navigate the course of your actions in these challenging economic times: your professional contract surety agent.



MICHAEL D. WILLIAMS

President

CCI Surety, Inc.

The latest construction cycle has created the need for contractors to be more in touch with their surety representative. It starts with communicating and providing financial information. It is especially important to communicate any bad news so the contractor's professional agent can communicate with the surety rather than surprise it, which could lead to a termination of the relationship. The information should at least be reported monthly, either in the form of a short note or another format created and approved by the agent, which can then be shared with the surety.

It would be prudent for the contractor to sit down with his or her agent and become knowledgeable about which alternative methods for bonding may be available in the event the company suddenly does not meet standard market guidelines for bonding. To know ahead of time, before a problem surfaces, substantially increases the chances the firm can make adjustments, obtain bonding and begin working to repair any issues to return to the standard market.

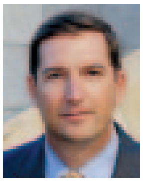
DAVID FINKELSTEIN

Executive Vice President, Surety

Arch Insurance Group

The critical characteristics of a successful contractor in these challenging times focus on the two major areas of finance and operations. Financial characteristics include strong cash to internally finance their operations, low interest-bearing debt to provide flexibility when capital expenditures are required, and diaphragmatic overhead that can easily adjust to various revenue and backlog volumes. Operational characteristics include disciplined job selection, diversified customer base, diversified geographic spread, diversified construction skills, and developmental and strong subcontractor management.

HOW DO BOND UNDERWRITERS AND BOND PRODUCERS BRING A COMPETITIVE ADVANTAGE TO THEIR CONTRACTOR CUSTOMERS?



DOUGLAS WHEELER

Regional Director, Surety

Aon Construction Services Group

Our clients expect us to do more than deliver a bond. A strong producer becomes a partner in their businesses, providing analysis, strategic direction and relationships that enable them to grow and succeed.

Many contractors have taken the first step in reacting to the rapid change in construction spending. The next step is to adapt and thrive in this economic climate. One of the largest challenges facing our clients today is growing their revenue base. Softness in this area drives higher risk throughout all projects. A good producer will look beyond typical services and deliver additional value, such as providing assistance in reaching capital investors, facilitating introductions to other clients with large capital expenditure programs in matching industry sectors and offering new risk transfer products.

Some contractors that are unable to secure sufficient work in their home markets are looking at jobs that would take them out of their existing territory. This often leads to dealing with legal statutes, subcontractor qualifications and other local regulations that vary by county and state. Underwriters can help their clients compete and expand geographically through local expertise and a global footprint of resources on the ground. This provides a competitive advantage to avoid the many pitfalls that are inherent in pursing work and relationships in a new area.

As a partner to our clients, our job is all about facilitating opportunities for them to succeed in advancing their businesses in this economy.

DOUG HINKLE

Senior Vice President and Chief Underwriting Officer

CNA Surety

The very livelihood of the bond underwriter and bond producer depends on successful contractors. The bond underwriter is in the business to provide surety capacity to contractors. Successful sureties and the bond underwriters they employ develop underwriting expertise through years of experience that is shared with contractor clients through the underwriting process. This underwriting expertise, in conjunction with the contractor's overall credit quality, allows the surety to maximize the available bond capacity. This bond capacity creates a competitive advantage, as it supports the needs of the contractor's business plan and can give the contractor access to work that is not available to less qualified firms.

Bond producers add additional value in knowing the different underwriting appetites among competing sureties. In addition, they provide valuable counsel through their own experience in working with successful contractors.

The bond underwriter and bond producer both play an important role in supporting the surety needs and ongoing success of a contracting firm.

MICHAEL BOND

Head of Surety

Zurich

One of the most important factors in the success of any construction company is access to the professional advice of a strong surety underwriter and a professional surety-oriented agent. By nature, construction includes a high degree of risk. In fact, it's one of the riskiest industries in the country. Successful contractors are entrepreneurs who risk substantial personal and corporate assets to deliver successful construction projects to customers. The most successful contractors engage the most professional sureties and surety-oriented brokers.

Surety bond underwriters and bond producers provide a competitive advantage to their contractor clients in a number of ways. In today's market, construction firms often need to find a joint venture partner to gain additional expertise or specialized geographic capabilities. Underwriters and producers often can help find well-qualified joint venture partners that match a contractor's needs. This capability helps a contractor enter new markets and simultaneously lower the risk.

Underwriters and producers deal with many construction firms and have a strong knowledge of how to best manage project risk. They also have an excellent network of construction industry specialists, such as construction-oriented CPA firms, and can help guide a contractor to the best possible advice in this area. Underwriters and producers also have excellent knowledge of contract terms and bond forms. Many contract terms are onerous and greatly increase the risk to the contractor if not actively managed. The risks of the construction business are real; strong surety bond underwriters and professional producers help manage those risks in a meaningful way.

PATRICK PRIBYL

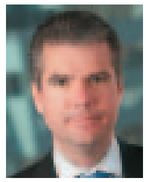
Senior Vice President and Surety Team Leader

Lockton

Construction companies should expect their surety broker to be strategically engaged and aligned with their business objectives. By understanding the challenges and risks facing their construction clients, professional surety brokers can create tools and opportunities that provide a competitive edge for their clients. Two of the largest issues facing contractors in the current economic climate are subcontractor risk and procuring new work at acceptable margins. An effective bond producer can help clients manage both of these issues.

Contractors should rely on their surety broker to actively create solutions that deliver real value to the subcontractor risk management process. In addition to providing the front-end services for prequalification of subcontractors, a professional surety firm can provide tools to manage the ongoing risks that develop during the life of a project.

The dynamics of the construction market are driving contractors to shift their business models to follow the money and meet owner demand for alternative delivery methods. Bond producers are uniquely positioned to assist their clients with business development plans and activities. Contractors can develop a competitive advantage by engaging a surety broker who has a broad business network and is willing to actively participate in their business development process. An intentional process to facilitate introductions and discussions between clients to drive project opportunities, as well as joint venture and teaming arrangements, should be implemented.



DAVID HEWETT

Executive Vice President

XL

Today's construction environment and fragile economy are challenging for any contractor. For underwriters and producers, this atmosphere presents new opportunities to add value to business relationships with clients, as well as help manage new and emerging risks. For us, it is not just about providing a surety bond. It's about listening to customers, understanding their needs, and establishing a strong and collaborative working relationship. As the public budget deficit continues to grow, cutting-edge alternative methods of project delivery are essential. Stay abreast of changing market conditions in the way construction projects are financed and the type of performance security owners and lenders are requiring on projects with private financing. By working with clients to understand the risk associated with a project, and appropriate enterprise risk management, underwriters and producers can deliver innovative solutions and products that give contractors a competitive market advantage.

MICHAEL P. FOSTER

Executive Vice President, Underwriting

Merchants Bonding Company

It is a tremendous advantage for a contractor to have a skilled surety bond producer and capable bond underwriter as part of its professional team. The agent and underwriter can provide suggestions to the contractor on how to enhance its balance sheet, which in turn provides additional bonding capacity. They can review bid specifications and provide advice on terms and conditions that may be advantageous, or detrimental, to the contractor. They can assist with the review and prequalification of subcontractors. They also can provide advice on tax planning and continuity arrangements, which can provide long-term benefits to the contractor.

BOB THOMAS

President

Hanover Surety

The best contractors know that maximizing resources is an essential strategy to follow at all times, not just during the current difficult environment. Every contractor should look to strong advisors—including independent agents, accountants, attorneys and bankers —with construction and surety expertise.

Contractors that align their businesses with a trusted surety producer and bond underwriter backed by a financially strong carrier are best positioned for sustainable success.

Capable surety producers and bond underwriters bring added intelligence, depth and reason to the decision-making process, as well as expertise and industry perspective. That perspective should be evaluated as part of the bigger picture. Like most business owners, a contractor's perspective often is colored by his own prejudices and insights. Including a worthy producer's view will bring an extra dimension to the table and help bring clarity to the situation. The value of an experienced underwriter is no different. Producers and underwriters are on the contractor's side and should be invited to contribute ideas and suggestions.

The producer and the underwriter should be considered an extension of the contractor's team who are there to assist in keeping the contractor out of trouble. A contractor benefits from the professional resources of the producer and underwriter when they endorse the long-term view and inject reality into the equation, something that is hard to find in these frantic times. This can be accomplished through open and candid dialogue and consultation. The more contractors listen to others who are truly looking out for them, the better off they will be.

WHAT STRATEGIES CAN A CONTRACTOR EMPLOY TO PROTECT ITS BALANCE SHEET?

MARK BUNDY

Senior Vice President

Rutherfoord

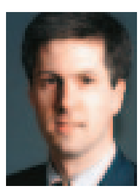
The main strategy is not to panic. Too many contractors become concerned about running out of work and have a knee-jerk reaction to bid work at cost. They think they will break even, keep their people by covering their overhead and, once the economy turns around, start putting profit back into their bids. This strategy always seems to turn out worse than if they would have just downsized rapidly and sat on the sidelines until things turned around. These "at cost" bids are executed by sub-par subcontractors that are one hung receivable from bankruptcy.

The contractors that are surviving in this economy and preserving their balance sheets have three common characteristics: They have an extremely good handle on their job cost, their internal accounting is extremely accurate and current (within two weeks of the month's closing), and they are always looking ahead six months to a year down the road.

Contractors that possess these qualities can be proactive rather than reactive. They can accurately project their revenues and gross profits and always know months in advance when they will have to reduce overhead if they are unable to pick up additional work. Letting long-term employees go is painful but necessary for survival.

These contractors can recognize problems in their jobs immediately as opposed to several months down the road when a small problem becomes a costly larger problem that ultimately can put them out of business.

WITH MORE FIRMS TEAMING UP TO PURSUE LARGER PROJECTS, WHAT ARE THE MAIN CONSIDERATIONS WHEN FORMING A JOINTLY BONDED VENTURE?



FREDERIC L. SMITH, JR.

Partner

Bradley Arant Boult & Cummings

Entering into a joint venture may give your firm more bidding capacity than it would have standing alone. However, there are a number of important factors to consider when obtaining bonds for your firm's joint venture.

Typically, sureties provide bonds in the name of the joint venture. Sureties will examine the financial strength of each joint venture partner and prequalify the joint venture in its entirety.

Joint venture partners should be prepared to have their respective sureties exchange underwriting information, such as financial statements, work-in-process information, contract documents and a copy of the joint venture agreement.

Conduct thorough due diligence on your firm's joint venture partners. Your firm will be fully liable (jointly and severally) to the sureties providing bonds for the joint venture regardless of how liability may be apportioned in the joint venture agreement.

If the surety for each joint venture partner signs the bond, the sureties have a "co-surety" relationship. Co-sureties typically are jointly and severally liable to the owner. Each surety is likely to require a separate indemnity agreement from each joint venture partner. However, even without entering into an indemnity agreement directly with your firm, your joint venture partner's surety may be able to assert a claim directly under the co-surety provision in the indemnity agreement between your firm and its surety.

GARY DUNBAR

President, Bond Division

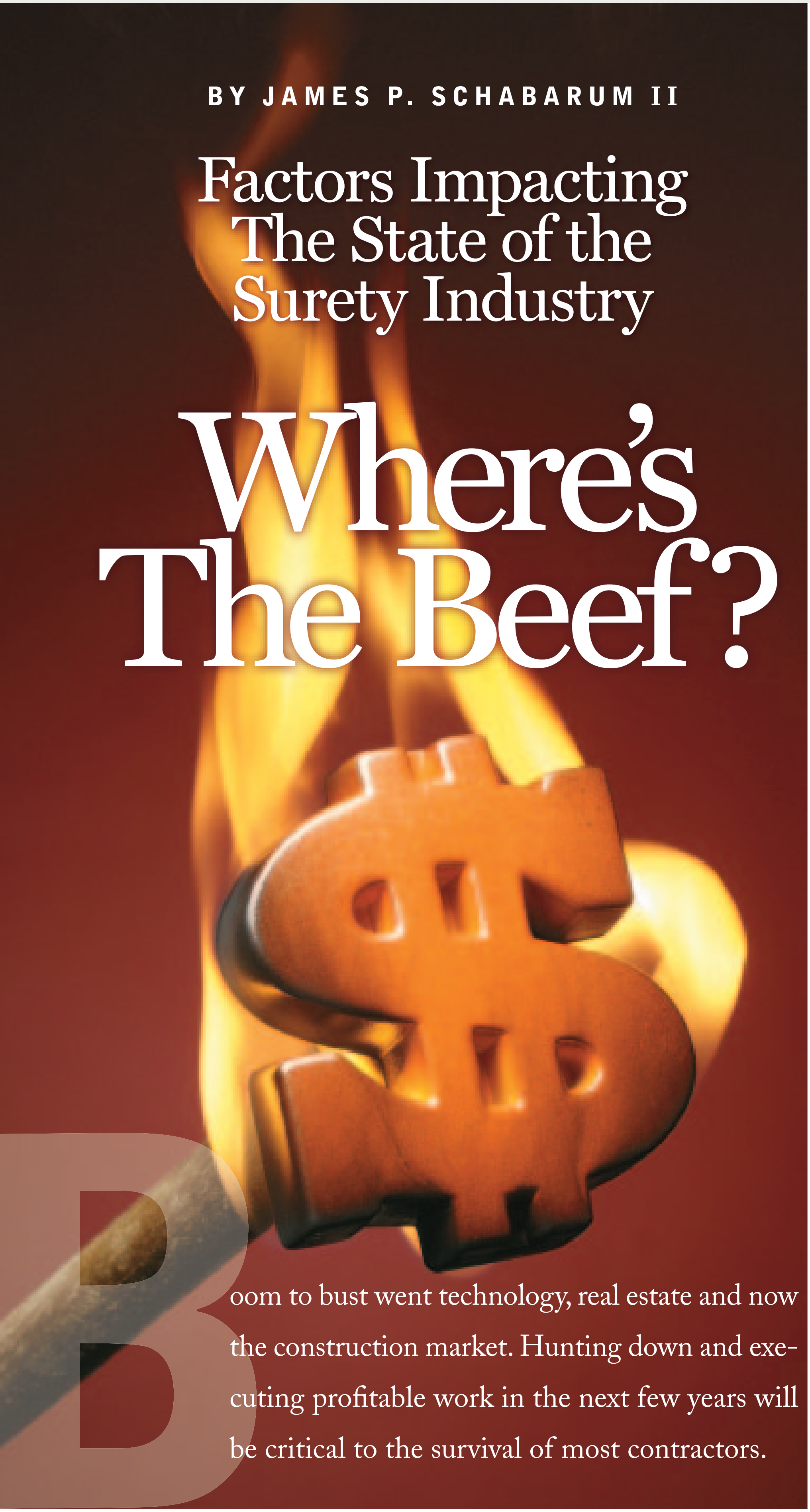
Great American Insurance Company

One area where we see contractors join forces is the bidding of government set-aside work, with a smaller firm holding some preferred status partnering with a larger contractor. Whether the team is contemplating a formal joint venture, SBA-approved mentor-protégé arrangement, or less structured teaming agreement, we look for two primary conditions to be met: clear disclosure to the government of the existence of the team and any indemnity support, and meaningful project work and financial risk undertaken by the preferred contractor.

Disclosure to the government is paramount. Contractor teams must ensure the government understands the nature of their relationship during the bidding process. In terms of the actual work performed, we will not get involved with teams if the smaller contractor has little or no construction trade experience. They must have construction skill that will be employed on the project and be a risk-bearer in the venture. The new amendments to the SBA's affiliation rules and recent enforcement activity show that the rules of the game have changed. With the government appropriately taking a much closer look at these relationships, it is critical that the smaller contractor truly participates in the construction of the project, not just perform ministerial or administrative tasks.

One important point to remember is that while the surety and the bond producer can ask the tough questions, we fully expect our clients to vet their proposed ventures with their own legal counsel. They must do the appropriate due diligence to protect themselves. It is not our job as sureties or bond producers to offer legal advice to our contractors, but it is our job to raise the issues to help make sure any joint venture complies with the various rules impacting contractor teams.

Compiled by Stephanie Robichaux, communications associate for the Surety & Fidelity Association of America.



NICHOLAS EVELEIGH/GETTY IMAGES

BY JAMES P. SCHABARUM II

Factors Impacting The State of the Surety Industry

Where's The Beef?

Boom to bust went technology, real estate and now the construction market. Hunting down and executing profitable work in the next few years will be critical to the survival of most contractors.

Surety losses are expected to increase in 2012 and 2013 because a downturn in construction activity means more bidders fighting for fewer jobs yielding lower profit margins. Primary factors affecting the overall state of the surety industry will be:

- access to capital;
- the economic and political climate;
- sureties' performance; and
- finding the "beef."

CAPITAL

Federal Chairman Ben Bernanke recently indicated the long-term strengths and growth fundamentals of the U.S. economy "do not appear to have been permanently altered by the shocks of the past four years." While acknowledging the challenges the nation is facing, Bernanke reminded investors that "restorative forces are at work today, and they will continue to promote recovery over time."

He also reiterated that policymakers have a tough job in supporting economic recovery while tackling long-term debt, and pledged the Fed would keep short-term interest rates low to help support an economic turnaround.

Although interest rates may remain low through 2012, access to capital remains tight. Without freed-up financing, a slower recovery should be anticipated.

ECONOMY/POLITICS

In the first four months of 2011, construction spending was 8.4 percent lower than during the same period in 2010. Nonresidential spending was approximately 39 percent below its peak in January 2008, with $400 billion in spending. Federal construction spending topped out at $30 billion in 2010.

Employment figures, consumer confidence, the real estate market and private investment have been struggling for the last few years. The economy is stalled, with 13.3 percent construction industry unemployment, slow job growth and lingering residential mortgage problems. Private investments are few and far between because of difficult access to capital and compliance with capital requirements.

Public spending may see a boost in 2012 going into an election year; however, public fiscal restraints will continue to be locked by the overwhelming need for a balanced budget.

Sureties will expect a higher standard of conduct from contractors in the years to come.

SURETIES

The top 10 U.S. surety companies write 65 percent of the industry premiums, and the top five sureties—Travelers, Liberty, Zurich, CNA and Chubb—write 54 percent of all the surety industry's premiums. The continuing industry consolidation should be a concern for underwriting flexibility and conflicts in claims handling.

Still, the surety industry remains healthy, with a profitable industry loss ratio of 16.7 percent on approximately $5 billion in premiums in 2010. Reinsurance results for the surety industry also have been good, and contractors will find plenty of supporting capacity. As most sureties have evolved to excess-of-loss reinsurance with large deductibles, underwriting shifts will be driven by direct market results more than reinsurance restrictions.

Capacity should increase for single bonds and maximum lines. Surety rates continue to follow an inverted pricing curve in which the largest capacity users pay higher rates than the middle market because many surety companies are willing to write the middle market, but only about six sureties will write the mega-contractors (more than $500 million work programs).

Loss frequency will be up in 2011 and is expected to continue to increase in 2012 and 2013. With more losses from smaller specialty trade contractors, sureties likely will see more severe losses from larger general building and engineering contractors. Two years of obtaining low-margin work with tough contract terms will begin to affect many contractors in 2012. Having significant interest-bearing debt and failing to cut overhead early and quickly could spell the end for some contractors.

Sureties are hungry for the best contractors and will compete on capacity, indemnity and rates. However, sureties are very tight on struggling contractors in a tough construction market. When losses mount as expected, reactionary surety underwriters will become more conservative.

Surety underwriters are more concerned about project financing, contract terms (including warranty and efficiency guaranties), collection of account receivables (and retainage), access and use of bank debt and exposure to subcontractor default. As a result, sureties now want to meet and evaluate financials more often, look closer at the details, and confirm acceptable contract, bond form and financing terms. Sureties also will require subcontractors to bond back to prime and general contractors more frequently. Overall, sureties will expect a higher standard of conduct from contractors in the years to come.

THE 'BEEF'

Sureties want to see contractors grow their balance sheets from profitable operations and retain their earnings. Growth in net retained earnings is still the "beef."

All contractors should accurately assess their own capabilities. It is important to operate profitability and maintain a history of completing contracts profitably. Complete, accurate and timely job costing and financial reporting is mandatory in today's environment.

Contractors need to communicate good and bad news in real time to their surety business partners. The most important thing a contractor can do is keep the surety informed when problems arise. If approached in a proactive manner, most surety companies will work a problem through with the contractor.

Because construction is cyclical, contractors should prepare for the pent-up demand that builds during a recession. While contractors must retrench during lean times, they also need to protect their core resources and be ready to bid work when the economy rebounds.

Contractors should be vigilant on conserving capital and staying liquid. They also should bond subcontractors to help manage risk. Subcontractors should be bonded when they represent a key trade to the project, perform a significant portion of the work, are the sole source for anything, or when the contractor is unfamiliar with the subcontractor.

Additionally, contractors should:

- aggressively bill and collect, and minimize under-billings and retentions;
- procure materials and lock in prices when possible;
- have the right size bank line of credit available to support the company's business plan;
- have a backup bank in the event the primary bank reduces or does not renew the credit line, or becomes financially unstable;
- adjust overhead and maintain profit margins in order to bid jobs successfully;
- qualify the sureties from which they receive subcontract bonds;
- understand their contract and require effective and equitable terms;
- read the bond forms and watch for onerous language;
- protect employees who will manage projects well no matter what the market conditions are, and who will be essential when the economy recovers;
- select and structure partnerships carefully; and
- work with a construction-oriented CPA, banker and attorney.

RELATIONSHIPS

In times of economic uncertainty, a well-developed surety relationship is essential. The professional surety bond producer and surety company underwriter are key players on a contractor's team. There are three basic components of a solid long-term surety relationship.

- **Meeting.** At least once a year, contractors should meet with the surety underwriter and surety bond producer. The company's CPA, bankers and attorney should attend.
- **Maintaining.** Make it standard practice to communicate frequently, openly and honestly. Routine job information is an essential component of this communication. Jobsite visits are valuable, and regular and accurate financial reporting is a must.
- **Nurturing.** This requires commitment, trust, communication, timely reporting and teamwork.

Sureties want more than a contractor that can build a project. They want a sound business partner that knows how to run a successful construction company and is rational, committed and honest. In other words, they want a company that will continue to grow and be profitable.

James P. Schabarum II is a principal of Cavignac & Associates, San Diego. For more information, visit www.cavignac.com.

WHO WILL SURVIVE AND ULTIMATELY THRIVE?

BY BILL WATERS

The Recession's Impact on Contractors

PLINGHOO/VEER

Market conditions are so bad for some contractors that it is easy to forget where the construction industry was just a few years ago. 2006 saw building booms in nearly all areas of construction, great profits and overflowing backlogs. Private equity firms were chomping at the bit to invest in contractors, bankers and bonding companies had plenty of credit to offer, and the most common sentiment from contractors was, "We can't find enough people to build all this work." >>

By 2008, the situation changed dramatically. Less work, longer bid lists and shrinking margins became the norm. Market sectors such as residential, retail and office construction seemed to dry up overnight. The same employees contractors scrambled to find just a short time before were being laid off in record numbers. Contractor failures followed quickly and continue at an alarming rate.

REASONS FOR FAILURE

Generally speaking, contractors came into this recession in the best possible financial position and had strong backlogs of profitable work. Smaller contractors felt the pain first and were forced to face recessionary market conditions almost immediately. It does not take long for small contractors to exhaust their financial resources if they cannot replace their backlogs.

The end came quickest for small contractors with debt, especially site and underground utility contractors that focused on private sector work. The financed equipment that enabled them to cash in on the residential building boom became their undoing. Overhead can be cut, but debt is a relentless drain on cash reserves.

The key to surviving a downturn of this magnitude is to right-size the firm's overhead to fit what the market is offering in terms of job profit.

Many contractors that thrived on residential and commercial work sought to replace their shrinking backlogs in the public sector, but they found demanding owners, new construction standards and entrenched public works contractors that were not going to cede their market share without a fight.

Failures gradually spread to larger contractors, whose backlogs started to shrink and the burdens of debt, real estate investment and the inability to cut overhead quickly began to erode their financial strength.

As contractors scrambled to find answers, they looked to new types of work, larger jobs and new geographic areas, all of which bring additional risk. The combination of taking on more risk with today's market conditions will lead to more—and even larger—contractor failures in the years to come.

REASONS FOR SURVIVAL

Despite all of these challenges, the vast majority of contractors survived. Why? First and foremost, a strong financial base was essential. Liquidity and lack of debt gave contractors the flexibility to adjust to changing market conditions.

The key to surviving a downturn of this magnitude is to right-size the firm's overhead to fit what the market is offering in terms of job profit. Contractors quickly responded by cutting staff and unnecessary costs. The marginal performers were the first to go, but as the recession deepened, solid contributors started to lose their jobs and now some top-tier employees are being laid off as the cuts reach close to the core.

Another key success factor has been diversification. Forward-looking managers began to look for new sources of work long before the recession started. Strategically expanding into new forms of project delivery such as design-build, vertical integration and joint ventures; forging strong alliances with small and disadvantaged businesses; broadening geographic range; and looking beyond traditional revenue streams gave some contractors a head start in the race for new sources of profitable work. Contractors that attempted diversification after the recession hit are finding many of the choice spots already are taken.

Contractors with strong systems and

controls also fared better. Being able to effectively track job costs and manage subcontractor risk helped squeeze every nickel out of the shrunken margins the market has to offer. Subcontractor failure continues to be the most common source of profit deterioration for general contractors, so now is not the time to lighten up on prequalification and risk mitigation policies.

Many contractors say their goal is simply to survive the recession. That clearly is the first step, but limping across the finish line might not be enough. A great construction market awaits those that survive and are healthy enough to cash in as the nation's neglected infrastructure gets the attention it demands.

The goal is to be in a position to thrive after the market shakeout is complete. To do so, firms must preserve their financial strength and have access to the banking and surety credit they'll need to take advantage of the market resurgence.

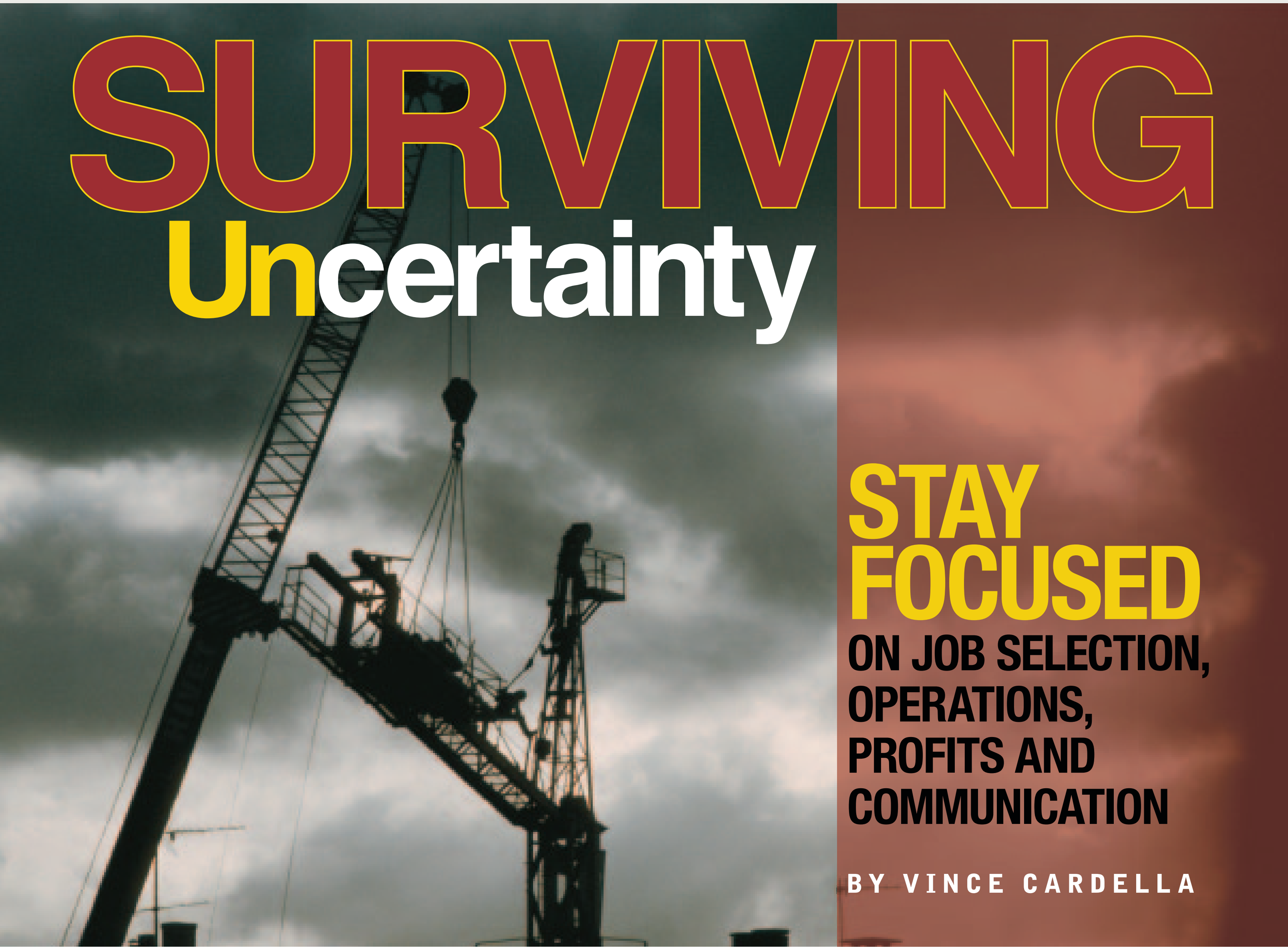
Maintaining and building on its financial base requires a company to make some tough decisions. The optimists are banking on a market recovery in late 2011 and are hanging onto overhead costs in anticipation, but the pessimists are expecting the worst and slashing overhead to ensure a reasonable return at even lower revenues.

> **A great construction market awaits those that survive and are healthy enough to cash in as the nation's neglected infrastructure gets the attention it demands.**

No one knows for sure when the market will rebound and margins will return to healthier levels, but it doesn't take an economist to see federal, state and local governments are in a deep financial hole. Until they get their houses in order, funding for construction will suffer. The vast majority of public work is funded at the state level, and history shows it can take 12 to 18 months after the end of a recession for state revenues to show signs of recovery.

The keys to prospering during the tail end of the recession and thriving in the recovery are immediately and realistically aligning overhead with the market and seeking every possible advantage to stand out from the competition. A great source of advice and market intelligence is available from the firm's business partners; now is the ideal time to reach out to a surety, banker, CPA, insurance professional and attorney for expert assistance.

William Waters is senior vice president of contract surety for CNA Surety. For more information, visit www.cnasurety.com.



SURVIVING Uncertainty

STAY FOCUSED ON JOB SELECTION, OPERATIONS, PROFITS AND COMMUNICATION

BY VINCE CARDELLA

The construction industry can be the first to feel the initial throes of a recession and provide a bellwether for economic forecasts, as evidenced by the last major downturns in the mid-1980s and late 1990s. But for contractors, the current downturn exceeds what has been experienced in the past. It is no longer simply a case of having to batten-down the hatches or being more careful and deliberate in job selection. One of the most significant challenges to contractors in nearly a century is the uncertainty of future construction outlays brought about by budget cuts at the federal and state government levels.

Additionally, unemployment in most areas and across certain industries remains high. Reports suggest construction spending will be limited in the near term and the overall market for construction will continue to be extraordinarily competitive. These challenges beg the question: How do contractors survive?

FUNDAMENTALS OF JOB SELECTION

With fewer construction projects being let, three temptations begin to affect even the most risk-averse contractors: fill the void with a new type of work, expand into new territories or radically lower margins. Contractors should treat each of these options cautiously.

Construction is a risky business segment, but not all risk is created equal. The temptation to undertake atypical work, expand territories or bid work at lower

PHOTOALTO/GLOW IMAGES


MAY
BE COMING?

margins is understandable for contractors with minimal work on hand. However, contractors should strongly consider the potential long-term impact these decisions may have on a company's existence, as the risk could far outweigh the short-term perceived benefit of securing projects.

One example of contractors pursuing work outside their niche is private industry contractors moving to low-bid public work. Many construction companies that turned to the public market found unfamiliar subcontractors, unknown (or inflexible) obligees and stricter regulatory requirements, which can lead to significant problems. To prevent or mitigate these situations, it is essential for contractors to talk to others with experience in areas outside their expertise, including their surety and peers in industry associations.

Looking outside of a firm's typical territory also can present numerous challenges, including unfamiliar owners and local conditions. In addition, as a contractor travels further from its home base, being onsite to mitigate any problems that may arise becomes increasingly challenging.

If travel becomes a necessity to secure work, some of these unknowns need to be diminished. Consider working on a job with a known owner or subcontractors, or, at a minimum, having a strong project manager onsite who can make significant, binding decisions for the company.

Evaluating thin-margin scenarios is similar: A contractor should decide if the estimated margin is an adequate cushion for the unknowns that come with any construction project. Contractors need to ask if taking work with thin margins is worth the impact it might have on the company overall. Many construction owners who survived previous economic downturns chose to forgo jobs rather than risk their companies by taking work with thin margins.

RIGHT-SIZING THE FIRM

Declining revenues or periods with little to no revenue often force contractors to look at the structure of their internal operations. Contractors must evaluate their operation so it continues to perform as profitably as possible and ensure the firm is operating with the right number of staff to remain competitive and to know which personnel are the most critical for the organization's overall success. It is not just about cutting costs; rather, it's about maintaining the best possible staff to ensure future success.

Resist the temptation to pre-pay large amounts of bank debt with cash.

Right-sizing includes more than temporary personnel reductions to cut overhead expenses in the face of dwindling revenue; a contractor's equipment and other hard assets also should be evaluated for their respective performance contributions. Cost accounting and analysis should be used to determine equipment utilization rates. Only after an honest assessment of which pieces of equipment can be divested from the contractor's balance sheet can the appropriate adjustments be made to fit the current market conditions.

MANAGING THE BALANCE SHEET

With highly competitive markets often resulting in reduced revenues and lower profit margins, it is increasingly important for contractors to consider retaining as much of their asset base in highly liquid assets as possible. Liquidity in any market allows a firm to manage through short-term problems and puts it in a position to make decisions that are best for the long-term success of the organization. If liquidity is compromised, a manager may be forced to make a judgment call to maintain adequate cash flow to keep the company afloat, which could unintentionally harm the business.

Although large amounts of debt on a balance sheet should be avoided, it is important for contractors to consider what type of debt is manageable. For example, resist the temptation to pre-pay large amounts of bank debt with cash. As long as principal and interest payments remain within the limits of a contractor's pre-tax income, it's important to try to retain as much cash as needed to offset the potential risks posed by declining revenues and profit margins. It may be an advisable tradeoff to pay more interest, which could allow for greater liquidity in the short term. Whichever action is taken, contractors should utilize their professional advisors to help make the best decision for their situation.

COMMUNICATION

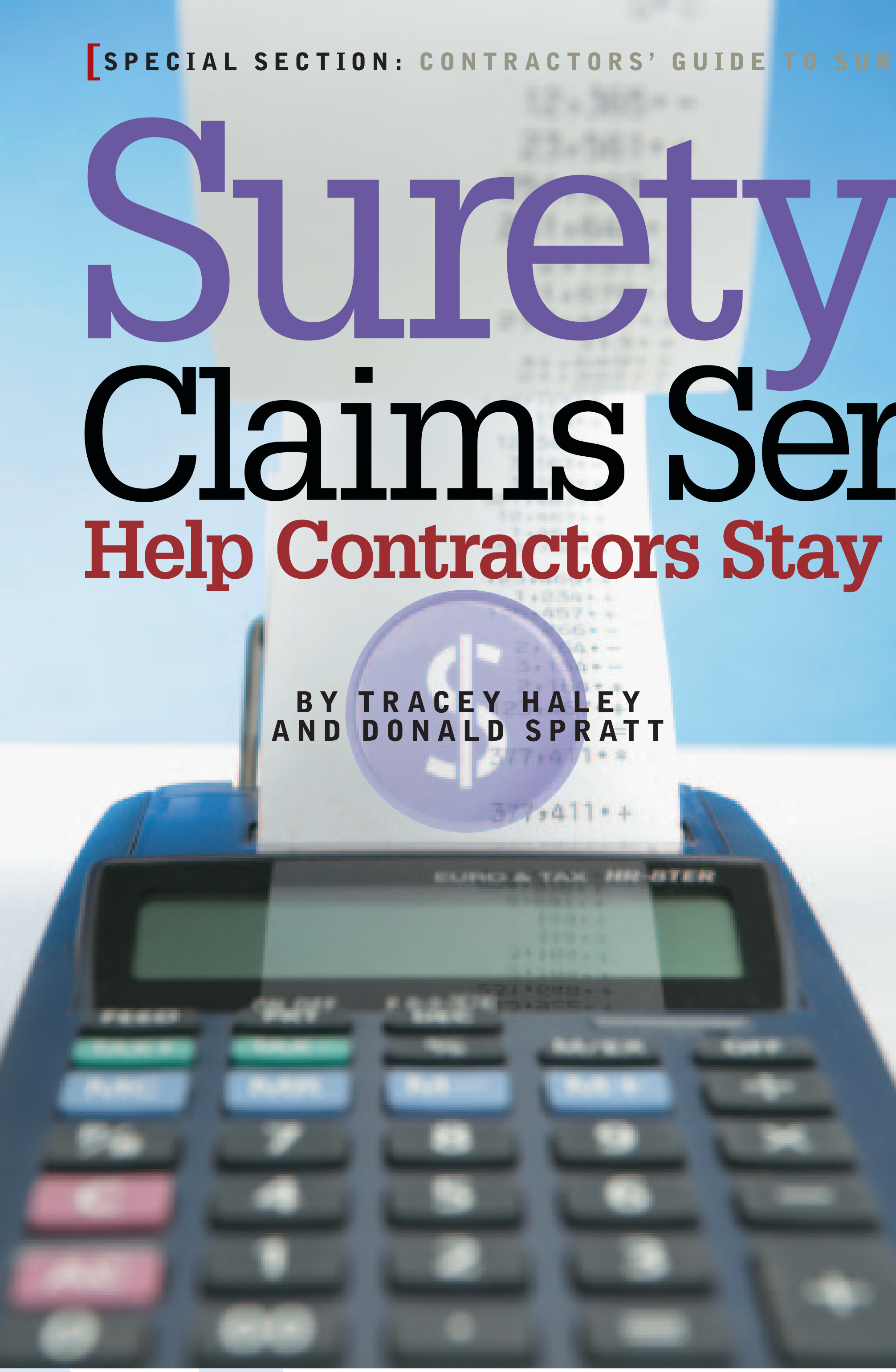
Sureties often talk about the "three Cs" of contractor evaluation: capital, capacity and character. Communication is a critical fourth component. Open, honest dialogue between the contractor and its surety can be immeasurable in this challenging economic environment.

Professional sureties can help a construction business grow or, in times such as these, help it remain in business. Successful contractors understand their markets and their clients and are adept at communicating with project owners. But while their senses are well honed to their current market, contractors may be unaware of changes in other geographic areas, potential risks of other types of work or the actual losses incurred by other contractors that made imprudent changes to their business model. Surety underwriters can offer valuable insight into the risks involved in proposed changes and can provide the consultative expertise to prevent what could be an extremely costly mistake.

It is crucial to communicate, through an agent or broker, the construction firm's financial health or any unusually difficult financial or technical issue. A sound surety has a variety of risk management, financial and accounting resources to help overcome tough situations.

It is imperative contractors continue to adhere to the fundamentals of risk management and mitigation and avoid taking any leap that could pose a threat to the business they've worked so diligently to build over the years. Working closely with partners such as an agent, broker and surety can help contractors be well-positioned for the future.

Vince Cardella is an underwriting specialist of Travelers' Construction Services. For more information, call (860) 277-0486 or email vjcardel@travelers.com.



Surety Claims Services Help Contractors Stay in Business

BY TRACEY HALEY AND DONALD SPRATT

New payment and performance claims on construction surety bonds are on the rise and, in some cases, severity is up as well. Depending on economic developments and government spending on construction, forecast show these trends will accelerate in the next 24 months. Labor and material claimants, along with owners and prime contractors, are pursuing claims earlier and more aggressively than in the past.

When a contractor encounters problems completing its bonded projects, the negative effect on the principal can be personally and professionally damaging. It is imperative the surety uses its experienced and knowledgeable claims professionals to work closely with the principal in choosing the right program to complete outstanding work to avoid or minimize loss and expense.

A surety's claims department must honor the surety's bonded responsibilities. While fully performing this duty, the surety also attempts to prevent or minimize loss and expense. The best result can be achieved through a close working relationship between the principal and a surety's claims professionals. Bond forms, statutes and case law often compress the time within which the surety must respond to a payment or performance bond claim. In the current economy of increased numbers and severity of claims, this close working relationship is even more important.

The stakes are always high with a performance bond claim. A surety may have many options on how to respond to such situations, but the best option is not always clear. The surety needs the cooperation of its principal and an experienced, well-trained staff to make the most effective decision.

Following are two examples of difficult claims situations that could have resulted in the demise of the contractor, but in fact resulted in the firm remaining viable. These results couldn't have been achieved without the principal and surety working

EYESEE/VEER; $ ICON: JOHN TAKAI/VEER

closely together to assure they both fully performed their respective obligations in a manner that helped minimize or prevent loss.

CASE STUDY #1

After a long period of growth and financial success, a medium-sized contractor encountered some financial problems. Once the contractor's bank suspended its line of credit (with a zero balance), the surety sat down with the principal to discuss the resulting cash flow problems impacting the completion of more than 20 open projects.

Two of the largest and most difficult projects were in litigation or the administrative claims process. Collection of the contract balances was not expected to be readily forthcoming, further increasing the contractor's cash flow difficulties.

The type and location of the work also were problematic. One of the largest jobs was a design-build project, so handing this off to a completing contractor was going to be difficult, but not impossible. The completion problems were compounded by a recent hurricane, making construction workers and materials scarce and incentivizing subcontractors and suppliers to seek higher paying local disaster recovery work. Additionally, asphalt and rebar prices skyrocketed since the projects were bid, resulting in large cost increases and potentially serious project delays.

The surety evaluated each project on a case-by-case basis in conjunction with the contractor. Ultimately, about half of the projects were completed by the account with the surety's financial support and about half of the remaining projects were transitioned to another contractor for completion. This allowed the contractor to continue its business operations by focusing its efforts on select projects, owners and regions.

After several years, all the jobs were completed successfully with the surety incurring considerable loss and expense. A repayment plan was negotiated, including the sale of properties and quarterly payments funded from year-end excess cash. The two projects in litigation took years and hundreds of thousands of dollars in fees and expenses to conclude. The account won one suit and lost the other.

Cooperation and communication between the contractor and surety was exceptional throughout the long and often difficult process of reshaping an entire construction organization. But the surety was repaid and the firm emerged as a strong, bonded contractor performing public and private work.

The stakes are always high with a performance bond claim.

CASE STUDY #2

About five months before the scheduled completion of a historic renovation project, the owner notified the surety of alleged delays by the bonded contractor. At that time, the principal appeared to respond adequately.

About a month before the scheduled completion date, the owner sent a letter stating it would terminate the contract within one week because the principal failed to submit an updated schedule. However, on the date of the letter, the obligee demanded the principal leave the project, which it did. The principal noted the architect routinely rejected change orders requesting extensions of time and neither accepted nor rejected the schedules the principal submitted. The principal's attorney immediately contended the termination was wrongful because the principal effectively was terminated without the required cure period.

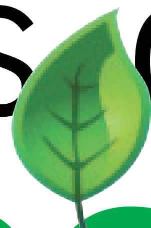
After some review, the surety proposed performing the remaining work under a reservation of rights by utilizing the principal's services. The surety retained an engineering consultant and commenced completion. All of the principal's subcontractors ratified their subcontracts in agreements with the surety and achieved completion about a year after the termination. The surety paid for the construction costs over and above paid contract balances aside from the principal's home office and jobsite overhead. A letter of credit was accepted as collateral from the principal's bank for its expected loss (net of receipts of the remaining contract proceeds). When the project was completed, the letter of credit was released, and the principal reimbursed the surety in six monthly installments.

As the project neared completion, the principal sued the owner for wrongful termination and the architect for negligent design and administration of the project, and sought arbitration as provided in the contract. The owner never made a claim against the surety during arbitration. About two years after the project's completion, the principal won an award of almost $1 million in arbitration and defeated the owner's claims.

Early on, the surety recognized the principal performed high-quality work and would follow through on its commitments. The principal, its attorney, and the surety worked closely during completion of the project to recognize potential legal issues and develop the evidence and arguments submitted in the arbitration. Today, the principal remains in business, completing private and public jobs.

Tracey Haley is managing counsel and Donald Spratt is claim counsel of Zurich Surety and Financial Claims. For more information, email tracey.haley@zurichna.com or donald.spratt@zurichna.com.

Performance Bonds on Green Projects



BY ROBERT J. DUKE AND MARK MCCALLUM

Like many other movements, green building requirements and construction practices began modestly and expanded with greater frequency and scope each year. In 1989, the American Institute of Architects formed the Committee on the Environment. In 1992, the Environmental Protection Agency and the Department of Energy launched the Energy Star program. The U.S. Green Building Council (USGBC) was founded in 1993, and five years later it established the LEED rating system to indicate a building's sustainable design, construction and operations.

In the early years, the share of green construction as a percentage of the nonresidential market was minimal. Even as late as 2005, McGraw-Hill reported green construction represented only 2 percent of the nonresidential market. By 2015, McGraw-Hill expects green construction to represent almost half of the nonresidential market.

Furthering the movement's reach, green building requirements are expanding to building codes. In March 2011, the USGBC, American Society of Heating, Refrigerating and Air Conditioning Engineers, the International Code Council and the Illuminating Engineering Society launched the International Green Construction Code.

With a performance bond, the surety company guarantees the performance of the contractor's contract obligations to the project owner as determined by the contract documents. With green requirements expanding, the contractor may be undertaking additional green construction obligations under the contract and the performance bond that secures the contract may extend to these green obligations.

The contractor, by entering into a contract with green obligations, and the surety, by securing those obligations, must be aware of the special risks related to green construction and have a plan to manage those risks.

IDENTIFYING RISKS

An owner undertaking a green building construction project likely has heightened expectations for the job. The owner may expect a building with systems operating at a specified performance level, enhanced goodwill and market differentiation created by the sustainable building or special tax incentives. These expectations, particularly if translated into contractual guarantees and warranties, may mean an increased liability exposure if the project fails to be completed or fails to attain the certification (such as a particular LEED rating) or performance standards anticipated by the owner.

Further, the owner may view the contractor and its surety as the "deep pocket" to rectify such issues, regardless of the contractor's responsibility for the failure. The owner may attempt to seek damages from the contractor that allegedly result from the failure to obtain certification of a "green" building (e.g., loss of expected tax credits, increased operating costs, and the loss of goodwill and profits in leasing the building).

In addition, a green building is likely the result of a collaborative process in which all parties involved (owner, developer, design professional and contractor) play a role in attaining the green objectives (such as the LEED rating). Thus, the contractor may not have control of certain tasks or variables leading to the green objective.

FEJAS/VEER

"Getting the job is the first step toward completing the job."

Zurich HelpPoint

Seal the deal with our surety bonds

Whether around the corner or around the world, Zurich can help you address your most challenging contract and commercial surety needs while also helping you distinguish yourself in the marketplace and generate more business:

- 120 years as a surety leader in the market
- Global expertise, insight and flexibility
- Provider of reliable surety capacity to 50% of the *Engineering News Record's* largest 100 contractors and 50% of the Fortune 100 companies

For more details about Zurich surety bonds, visit www.zurichna.com/surety.

ZURICH®

Because change happenz®

FOTOSEARCH ILLUSTRATION/VEER

Contractors and sureties should be aware of these heightened risks: Is the contractor liable only for exposures it can control? Of those manageable exposures, what is the risk management plan?

ADDRESSING RISKS

The Surety & Fidelity Association of America and the National Association of Surety Bond Producers drafted a position paper offering suggestions on how to address risks on green projects. The paper's main premise is that the contractor and surety must address and be aware of the special risks. Although the paper doesn't take a position on how the risks should be addressed, it offers some suggestions. One way to manage the additional risks is to exclude them. The surety bond could extend only to the contractor's obligation to construct the work in accordance with the contract documents. A guarantee or warranty that the building will achieve a desired green building certification status, and liability and damages for any failure to achieve such status, could be excluded from the scope of the construction contract or performance bond.

The following statement is an example of language that could be inserted into the contract and performance bond to exclude the risk and confine the surety's liability solely to the contractor's construction obligations:

"NO LIABILITY FOR GREEN BUILDING REQUIREMENTS. The condition of the Bond does not include any obligation to achieve any green building certification, status, level of performance, water usage or energy usage, whether mandated by statute, ordinance or otherwise. The Principal and Surety shall not be liable under the Bond for any damages or costs caused or allegedly caused by, arising out of, or related to the project's failure to achieve such certification, status, level of performance, water usage or energy usage, including, but not limited to, attorneys' fees, unrealized cost savings, lost profits, lost tax credits, or other costs, expenses, fees, or benefits."

In another approach, the parties could contractually establish the roles and responsibilities of owner, architect and contractor with respect to the green building obligations. Clearly identifying the parties' roles helps mitigate risk and pinpoints the risks under the contractor's control. An example of this approach is the ConsensusDOCS Green Building Addendum.

With clear identification of the contractor's obligations, the surety can evaluate the contractor's qualifications, financial means and ability to carry out its green building obligations successfully. The exposure to additional damages can be managed with a contractual waiver of consequential damages. In making a decision to provide the performance bond, the surety must consider the nature and extent of the contractor's undertaking and whether the principal, through its qualifications and financial means, can carry out the undertaking successfully.

Does the contractor possess the experience, personnel and wherewithal necessary to perform the green building obligations? Does the contractor understand and have the ability to control or mitigate any associated risks? The surety will examine the facts and circumstances of each case. From the surety's perspective, the issue is whether the risk can be underwritten prudently. In some cases, the contractor has the ability and resources to undertake well-defined green building obligations. In other cases, the best course of action is to exclude the risk from the contract and the performance bond. In all cases, the contractor and surety must be aware of the additional risks of going green.

Robert J. Duke is director of underwriting and counsel for The Surety & Fidelity Association of America. For more information, call (202) 778-3630 or email rduke@surety.org. Mark McCallum is chief executive officer of the National Association of Surety Bond Producers. For more information, call (202) 464-1173 or email mmccallum@nasbp.org.

What Happened To Armageddon?

How Surety Loss Ratios Have Stayed in Check

BY MICHAEL FOSTER

After peaking at about $1.2 trillion in 2006, U.S. construction spending is expected to total about $750 billion in 2011. Contractors are facing the most difficult construction environment in modern economic times.

- Private work, with historically favorable profit margins, is virtually nonexistent.
- Because of the lack of private work, contractors focus on public work, creating an excessive number of bidders with minimal, or nonexistent, profit margins.
- Public entities deal with severe budget shortages. Projects are put on hold and requests for change orders are delayed or denied.
- Contractors are forced to look for work outside their area of expertise.
- Onerous contractual language is forced on contractors and subcontractors that are desperate for work.

Based on the law of the jungle, only the strong will survive. Many contractors already have gone out of business, some voluntarily, and many more will be forced to close their doors.

While experts predicted these failures would result in higher surety loss ratios in 2009, that did not happen. In 2010, it did not happen once again. Whether losses show up in 2011 or 2012 is still unclear. Losses eventually will increase, but it is unlikely they will approach the levels of 2001, when the industry loss ratio peaked around 80 percent.

In the 1990s, the phrase "any contractor who can fog up a mirror can get a bond" became popular. The industry is not at the same level today.

The following changes should keep the construction and surety industries from returning to a time of exceedingly high loss ratios.

- **Reinsurance.** A significant portion of the industry losses in the early 2000s was passed on to reinsurance companies. Pricing and terms changed significantly. Current reinsurance arrangements apply significantly more exposure to the primary companies than 10 years ago. As a result, primary companies are going to be more careful with an increased net exposure.
- **Credit models.** The previous loss cycle forced many companies to establish internal models to better understand their overall business. Accounts that fall outside the established parameters are easier to pinpoint and are discovered earlier.
- **Shrinking backlogs.** Most failures are caused by a lack of work as opposed to too much work. Contractors are not struggling to complete work; they are struggling to find new work at acceptable margins.
- **Takeover capacity.** When a contractor failure occurs during boom times, it is virtually impossible to find a new contractor to take over the project. Nobody wants the hassle. Now when a failure occurs, contractors line up to try and get the work. Pricing and terms for the surety can be reasonable.
- **Subcontractor selection process.** General contractors are more careful now when selecting subcontractors. They understand one bad project partner can cause the entire job to fail. Capable general contractors routinely underwrite their subcontractors, including their financial information, job history and safety records. Having a surety perform this underwriting, along with subcontractor bonds, provides added protection.

So what does the future hold? S&P downgraded the U.S. credit rating, the stock market resembles a roller coaster with more downs than ups and few contractors see positive signs. Private work continues to be minimal and, with the recent commitment to reduce the deficit, government agencies are being pressured to reduce spending.

Most contractors indicate they reduced overhead as much as possible. So long as there is an insufficient amount of work to support the current demand, contractors will continue to go out of business.

Michael Foster is executive vice president of underwriting for Merchants Bonding Company, serves on the Contract Advisory Committee of The Surety & Fidelity Association of America and is a member of the Government Affairs Committee of the National Association of Surety Bond Producers.

BBOURDAGES/VEER

Contractual Imperative:

Review Terms Prior to Execution

BY MELISSA CURRENT

Reviewing contract terms, conditions and specifications prior to bidding a construction job or executing a contract may be the difference between a profitable project that strengthens the balance sheet and adds to a contractor's résumé and a missed opportunity that adversely affects a contractor's reputation and threatens its viability.

Terms & Conditions

General terms and conditions of federal and other public works contracts usually are considered standard and static; however, this is not always the case. Federal construction contracts have different sets of standard terms and conditions that correspond to the risk and cost of a project. In a few instances, small federal projects were paired inadvertently with terms and conditions usually used for multimillion-dollar projects, resulting in unexpected costs and significant profit fade for general and prime contractors because of requirements that were not considered when providing bid estimates. Had the issue been brought to the attention of the contracting officer prior to execution of the contract, the correct set of terms and conditions may have been utilized and the projects may have been completed profitably without unnecessary loss of time and additional onerous oversight.

Many state and local entities amend general terms and conditions of construction contracts from time to time to provide greater protection for themselves. However, in some cases this results in terms and conditions too onerous to yield the contractor an adequate profit or to obtain surety support. In one case, a local public entity amended its standard terms, conditions and specifications regarding warranty terms to obligate the general contractor, subcontractor and associated sureties to five years for materials and workmanship.

The contractors bidding the project reviewed the terms, conditions and specifications well before the bid date and were aware that little, if any, surety support would be available due to this condition. During the request-for-information stage of the construction bid process, they contacted their surety agents, who in turn advised the surety underwriters of the new condition. The general contractor, subcontractors, agents and sureties contacted the owner, discussed the condition and advised that surety support would be limited due to the onerous warranty condition. After much discourse, the owner came to understand the position of the contractors and the sureties and amended the warranty to the manufacturer and general contractor for two years.

At times, contractors can negotiate equitable contract terms and conditions with an owner; however, other times surety support in these discussions makes all the difference. Owners requiring construction projects to be bonded know the value surety protection provides. These owners are amenable to discussions with sureties to reach equitable contract terms and conditions. All bonded contractors are encouraged to provide a complete copy of any construction contract, along with all corresponding documentation, into which they are considering entering. This will expedite the surety underwriting process and allow for any changes so surety support can be provided.

RTIMAGES/VEER

When considering a project for a new public or private owner—or for a general or prime contractor for which a subcontractor has not previously worked—prior review of contract terms, conditions and specifications is crucial to profitability. Various owners include terms, conditions and specifications that are standard to their locality or way of doing business, which may not be familiar to the contractor in a different locality. Case in point: Many general contractors include a "governing law" condition, making the contract subject to the law of the state in which they are domiciled. If the project is located in a different state, this may cost the subcontractor time, effort and profits, as legal requirements differ from territory to territory.

With regard to subcontracts, prime contract terms, conditions and specifications generally are included by reference. The subcontractor should review the prime contract prior to execution, even for a public works project. This is particularly crucial for a private works project, as private owners can, and do, include various terms, conditions and specifications that may not be standard to public works contracts. For example, in the subcontract of an international general contractor, an indemnity condition tied the subcontractor's responsibility to the scope of work of the prime contract, not simply the subcontractor's scope of work. When discussing the issue, the general contractor's representative stated the organization had no problem adjusting the contract to a more equitable sharing of responsibilities, but that many subcontractors simply do not ask. A contractor always should request equitable contract terms to any construction contract into which they consider entering.

Clauses to Be Mindful of When Reviewing a Construction Contract

- Indemnity
- Warranty
- Damages
- Efficiency Guarantee
- Default
- Payment

Many private owners use American Institute of Architects or ConsensusDOCS contract language. While the general terms and conditions are standard, both have been updated in recent years. In addition, the documents provide room for inclusion of additional terms, conditions and specifications that may differ greatly from one contract to the next. During negotiations, contractors should review the contract for onerous terms, conditions and specifications. Then, work with the owner to revise or amend the contract to reflect a more equitable distribution of responsibilities and prevent any surprises that may cut into gross profit margin or result in a losing project.

Melissa Current is surety and fidelity manager of First Insurance Company of Hawaii, Ltd. For more information, call (808) 527-7609 or email melissa.current@ficoh.com.

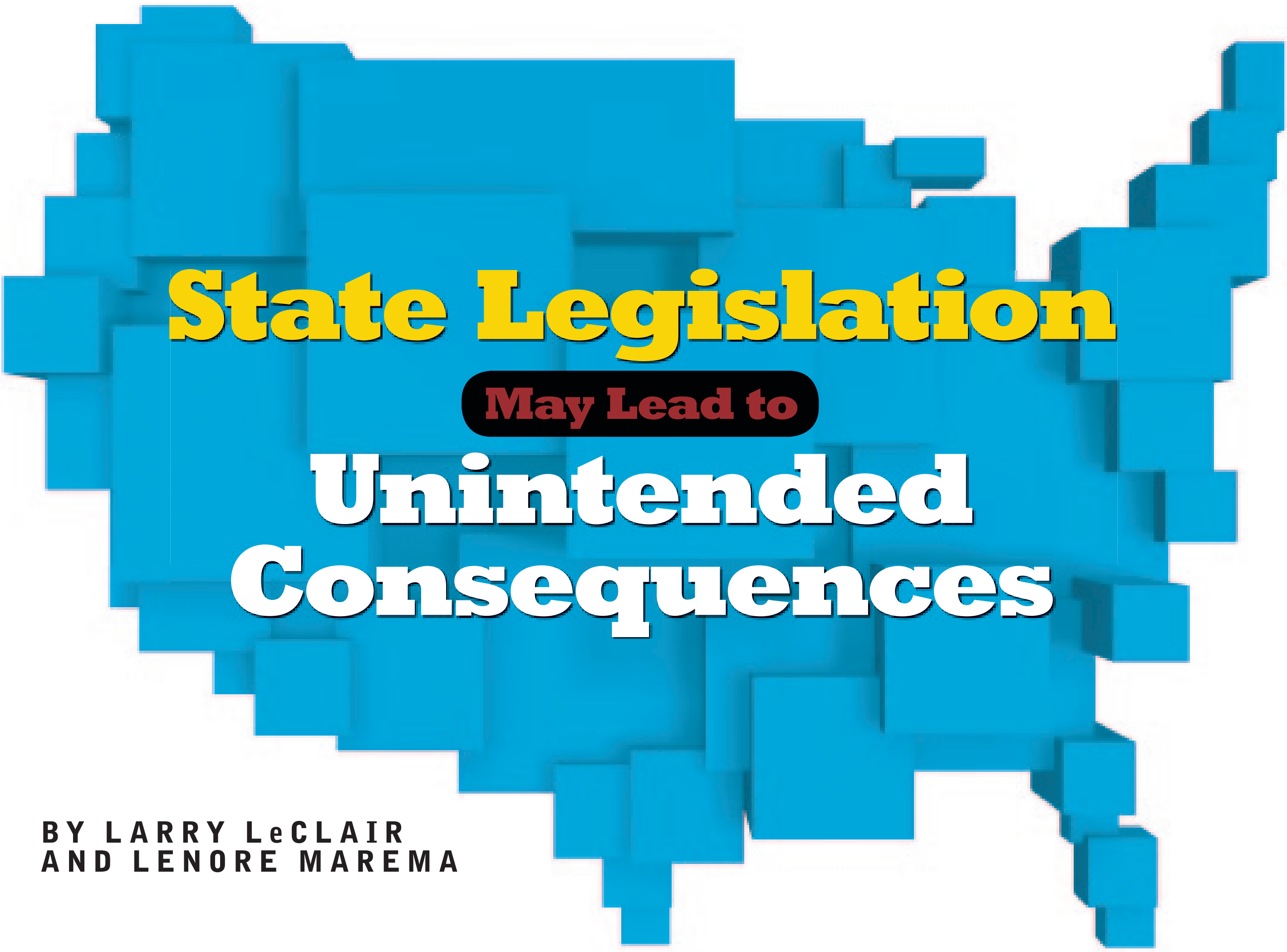
CCI SURETY, INC.

Surety Bond Solutions

We Find a Way!

1710 N Douglas Dr. Suite 110
Golden Valley, MN 55422

Phone (763) 543-6993
Fax (763) 512-0430
Toll Free: 1-866-317-3294
www.ccisurety.com



State Legislation May Lead to Unintended Consequences

BY LARRY LeCLAIR AND LENORE MAREMA

State lawmakers believe they are making the right policy decisions when they support legislation they think will benefit their constituents. Sometimes these decisions prove harmful to the interests of the individuals the legislation is intended to benefit.

During the 2011 legislative sessions in Virginia and Maryland, state lawmakers introduced measures thinking they were making sound policy decisions. Such measures, however, were not justified by empirical data and ultimately could prove to be counterproductive to their intended goals.

In Virginia, legislation (H.B. 1951) was signed into law that raised the performance and payment bond threshold for non-transportation contracts from $100,000 to $500,000—more than three times higher than the federal threshold. Lawmakers supported the bill because they believed raising the bonding threshold would provide greater opportunities for small, women- and minority-owned businesses attempting to win public construction contracts.

By enacting bonding requirements, the Virginia legislature recognizes the importance of having payment bonds in place to protect the downstream businesses that supply labor and materials on public construction projects. Small businesses often cannot compete as prime contractors on public construction contracts, so they participate at subcontractor and supplier levels. At that level, the only viable remedy in the event of nonpayment by the prime contractor is to claim on the statutorily required payment bond.

If the prime contractor fails to pay subcontractors and suppliers due to bankruptcy or other reasons, subcontractors and suppliers do not have an alternative means to recover their wages, costs and expenses. They cannot sue the governmental entity because they do not have a direct contract with the government, and they cannot place a mechanic's lien against the public property.

By raising the bonding threshold to $500,000, materialmen and subcontractors performing on contracts below the threshold will be without payment bond protections. Having no recourse in the event of nonpayment may be disastrous for

YANG MINGQI/VEER

Stronger Foundations Start with Hanover Surety

When you build a foundation, you carefully choose materials that are a perfect match for the job. Building a strong relationship with a Surety company should be precisely the same process. You look for specialized industry experience, underwriting and service excellence, commitment, and a decades-long history of serving contractors with quality and reliability. That's The Hanover.

We became one of the top Surety writers in the U.S. by hiring underwriters who understand local markets and business trends, have deep industry knowledge, and can make underwriting decisions quickly. Our broad Surety product line (including Commercial Surety Bonds), value-added services, deep industry experience, and hands-on approach have made us the preferred choice of large and small contractors nationwide. They rely on our nearly 160-year history of financial stability, "A" rated financial strength, and world-class service to support them through every construction challenge.

Let's start pouring the foundation for your future success. *Speak with your local Independent Surety Specialist to discover how The Hanover can be the smart choice for your bonding needs.*

The Hanover Insurance Group®

440 Lincoln Street ■ Worcester, MA 01653 ■ **www.hanover.com**

those firms, many of which are struggling to weather the difficult economic environment. Although lawmakers believed they were helping small and emerging business owners, the opposite could prove to be true.

The argument often made is bonding is an impediment for small and emerging contractors, and if statutory restrictions are waived or raised, a greater number of small and emerging contractors could obtain public works contracts as prime contractors. The reality is many small businesses are not capable of assuming the entire risk present in the prime contract because of the scale, experience and equipment required at that level, but they can perform at the subcontractor level. Removing their payment bond protection ensures these businesses will be vulnerable. Also, in today's market the lack of a bond requirement merely opens up the bid to more competitors.

Last year, the North Carolina legislature raised the bonding threshold to $500,000 with the intent of providing greater opportunities for small and emerging contracts after previously raising its bonding threshold to $300,000. Each increase appeared to be a reaction to political pressure rather than empirical data substantiating that the increase would benefit small business inclusion. The impact of either threshold increase is too early to tell.

The law requires North Carolina state agencies and University of North Carolina systems to report the number of defaults, the cost to complete defaulted projects and the number of projects below the $500,000 threshold to prove a greater number of small contractors are participating on state projects. The Virginia law contains a similar requirement. Once these reports are published, taxpayers will gain a better understanding of whether such legislation benefits small businesses. Such a study, however, does not directly address the impact on small businesses that participate at subcontractor and supplier levels.

Legislation was introduced in the Maryland General Assembly (S.B. 782/H.B. 1071), but did not advance out of committee, to allow unregulated individuals to issue surety bonds on private construction contracts without obtaining a certificate of authority from the Maryland Insurance Administration (MIA). The purported goal of the bill was to provide additional opportunities for small and emerging contractors having difficulties obtaining surety credit in the standard market.

Compared to a 2006 bill approved by the Maryland General Assembly that allowed unregulated individual sureties to write on public contracts—provided the contractor has been denied bonding by a corporate surety and the individual surety attaches an affidavit proving appropriate assets are in place to secure the bond—the proposed legislation would have allowed an unlicensed individual surety to write on private contracts without being subject to any oversight by the MIA because subcontracts on public works projects are private contracts.

Waiving or raising statutory bonding thresholds should never be the political recourse, as such actions actually negatively impact small businesses and taxpayers.

Furthermore, an unregulated surety could be free to charge whatever rates it wants for surety bonds, use whatever forms it proposes and impose whatever conditions it chooses. Should problems occur on these bonds, the obligee, the principal and the subcontractors protected by the surety bond would have no other recourse to address situations other than private lawsuits, which require significant resources these businesses likely would not have. The procuring agency could not help them, and they could not turn to the MIA for relief.

Much like the North Carolina and Virginia laws, the 2006 Maryland bill mandated state agencies report to the General Assembly concerning the law's effectiveness. According to two reports issued by the Board of Public Works to the General Assembly in FY2008 and FY2009, small businesses have not benefitted from the law. The last report, issued Nov. 3, 2009, stated, "Bidders and offerors submitted zero individual surety bonds in FY2008 and FY2009."

Substantial resources are available to small firms seeking to secure surety bonding credit. Waiving or raising statutory bonding thresholds should never be the political recourse, as such actions actually negatively impact small businesses and taxpayers.

Many surety companies offer small contractor programs designed to provide bonds through a simplified application process. Governmental agencies provide bonding assistance and guarantee programs designed specifically for qualified small contractors. Contractors that do not qualify in the standard market can enter bonding assistance programs or guarantee programs offered by the Maryland Small Business Development Financing Authority or the U.S. Small Business Administration to gain surety credit. Furthermore, the surety community partnered with the U.S. Department of Transportation and other public agencies to create bonding education programs designed to help small and emerging contractors improve their operations and make it easier for them to be bonded or to increase their bonding capacity.

In some cases, a firm should not obtain surety credit because of a lack of the basic ingredients—character, capacity and capital—needed to perform the contract obligation successfully. A grant of surety credit in such circumstances is not warranted and certainly is not in the interest of taxpayers, potential claimants or even the contractor seeking the bond.

The purposes of bonding are to demonstrate the qualifications of a firm to perform a specific obligation and to stand behind that obligation. Raising a bond threshold steals that protection from taxpayers and subcontractors on public projects.

Larry LeClair is director of government relations for the National Association of Surety Bond Producers. For more information, call (202) 464-1217 or email lleclair@nasbp.org. Lenore Marema is vice president of government affairs at The Surety & Fidelity Association of America. For more information, call (202) 778-3637 or email lmarema@surety.org.

SFAA and DOT Partner to Assist Small, Emerging Contractors

BY SAM CARRADINE

ADAM NIKLEWICZ/IMAGES.COM

Earlier this year, The Surety & Fidelity Association of America (SFAA) and the U.S. Department of Transportation (DOT) launched a nationwide effort aimed at helping small and emerging contractors obtain bonding to bid on and be awarded contracts for federally supported transportation-related projects. This effort, called the Bonding Education Program (BEP), provides bonding education, placement and technical assistance to small businesses competing for transportation contracts.

The BEP reaches small businesses specializing in the maintenance, rehabilitation, improvement or revitalization of the nation's modes of transportation. SFAA supports BEP by garnering the participation of surety companies and surety industry professionals. At the SFAA's annual


Every successful building project
needs a firm foundation.
We have the expertise and financial strength to support your business start to finish. Great American is a leading writer of construction-related products, including Surety Bonds and Builders' Risk from our Bond Division and Property & Inland Marine Division.
GREAT AMERICAN.
INSURANCE GROUP
Property & Inland Marine Division
Bond Division
GreatAmericanInsuranceGroup.com
Great American Insurance Group Tower I 301 E Fourth Street I Cincinnati, OH 45202. Underwritten by Great American Alliance Insurance Company, Great American Assurance Company, Great American Insurance Company and Great American Insurance Company of New York, licensed insurers in 50 states and DC.

meeting held in May in Washington, D.C., Transportation Secretary Ray LaHood cited the role of programs such as the BEP in assuring small businesses participate in building and repairing America's infrastructure. Through the program, participating businesses will improve their operations to qualify for surety bonding.

The program, conducted through the DOT's Office of Small and Disadvantaged Business Utilization (OSDBU), began on a pilot basis last year in Atlanta, Chicago and Dallas. It utilizes the DOT's nationwide network of Small Business Transportation Resource Centers (SBTRCs).

The DOT/OSDBU enters into cooperative agreements with business-centered and community-based organizations, transportation-related trade associations, colleges and universities, community colleges and chambers of commerce to establish SBTRCs on a regional basis. Already, a number of contractors that participated in the pilot phase have had successful bonding outcomes. The national launch took place throughout 2011 with BEP initiatives established in 12 cities around the country: Baltimore; Chicago; Columbia, S.C.; Denver; Los Angeles; Miami; Minneapolis; New Orleans; New York; Orlando, Fla.; Raleigh, N.C.; and Seattle. In addition, a second round of workshops and bond readiness activities is planned in each of the original pilot cities.

The BEP is based on the SFAA's Model Contractor Development Program (MCDP), which has been implemented in a number of state and local jurisdictions nationwide. During the past several years, MCDP has been highly successful in qualifying contractors to participate in the public construction bidding process. To date, the MCDP has been directly responsible for more than $150 million in bonding for small and emerging contractors that participated in the various program initiatives.

The MCDP consists of two components. The educational workshops component includes a 10-week curriculum designed to help small businesses improve their operations to become bonded or to increase their bonding capacity. In these workshops, contractors learn how surety bonding relates to all aspects of their business operations, as well as specific approaches and techniques that result in a successful bond application. Workshop content focuses on business planning, banking and finance, construction accounting and financial management, bonding and insurance, claims and dispute resolution, marketing, estimating and bidding, and project management and field operations.

After the workshops are completed, the bond readiness component provides one-on-one interactions with surety bond producers, underwriters and other professionals that work with the contractors to assemble the materials necessary for a complete bond application and address any omissions or deficiencies that might deter the successful underwriting of a bond.

Industry underwriters, brokers and agents throughout the country voluntarily participate in these educational workshops and bond readiness activities. In addition to contacting individual member companies, the SFAA coordinates volunteer outreach activities with the National Association of Surety Bond Producers and works with the local surety associations in each of the locales.

For the past 10 years, the SFAA has played an active role in diversity by helping educate small, minority- and women-owned contracting companies on how to obtain surety bonding or increase their bonding capacity. It also has provided technical assistance and program resources to federal, state and local governments in the areas of contractor development and bonding support.

Preparing small and emerging contractors for surety bonding or increased bonding capacity is a critical component of ensuring these firms can play a significant role in government contracting. For many small companies, bonding signals an important step toward greater independence and opens the door to new opportunities for growth and expansion. The BEP demonstrates the surety industry's commitment to helping small, minority- and women-owned businesses effectively compete in today's construction arena.

Sam Carradine is development and diversity consultant of The Surety & Fidelity Association of America. For more information, call (202) 778-3638 or email scarradine@surety.org.

What I know:

I know that at any one time, we may have 30 large construction projects underway all over the world.

I know that by hiring 70 percent of our workers from the community in which we're building, we build more than just a project.

I know the only way to run an international construction company is to delegate.

I know that coaching a competitive soccer team relates to running a successful construction company in ways you might not realize.

I know that working with people is supremely satisfying.

I know our success is predicated upon allowing people to do what they know.

I know we can allow Bradley Arant Boult Cummings attorneys to do what they know, and B.L. Harbert International will be well served.

That's what I know.

JIM REIN
CHIEF OPERATING OFFICER
B.L. HARBERT INTERNATIONAL

BRADLEY ARANT BOULT CUMMINGS LLP

babc.com | ALABAMA | DISTRICT OF COLUMBIA | MISSISSIPPI | NORTH CAROLINA | TENNESSEE

BEST PRACTICES FOR MENTORS, PROTÉGÉS AND JOINT VENTURES

The 8(a) Advantage

BY JEFFREY HENDRICKS

Effective March 14, 2011, the Small Business Administration (SBA) revised its rules and regulations to strengthen its 8(a) Business Development Program. These efforts aim to reduce fraud and abuse and ensure benefits flow to intended recipients. In light of legislative concerns and revised regulations, applicants and participants can expect greater scrutiny and increased enforcement procedures.

THE BASICS

Section 8(a) of the Small Business Act created a business development program for small disadvantaged businesses that offers participating contractors a broad scope of support, including federal contract procurement, financial assistance, mentoring, teaming and training, management assistance, technical training and surety bonding. The objective of the program is to provide these contractors with access to federal government contracting opportunities.

To qualify for the program, a contractor must be owned and controlled by a socially and economically disadvantaged individual who can provide supporting financial documentation. Additionally, contractors must meet appropriate size standards. The updated rules provide further clarity regarding social and economic disadvantage, as well as program duration and graduation.

Participating contractors are not guaranteed a contract under the 8(a) program, but they may receive sole-source contracts and bid for competitively awarded 8(a) contracts. Participants undergo periodic eligibility reviews and are subject to many SBA 8(a) program regulations, including restrictions relative to the contract type and size and the number of contracts awarded. While a company may not qualify as an 8(a) contractor, involvement opportunities arise out of the Mentor-Protégé program.

The SBA Mentor-Protégé program enhances the capabilities of 8(a) participants by partnering them with more experienced and well-established contractors. Protégés benefit from the mentors' management, financial and technical assistance, as well as increased access to government contracts via joint venture agreements. This assistance ultimately provides access to stronger surety relationships and capacity, which otherwise may be limited or unavailable to protégés. Mentors and joint venture participants also benefit from increased access to federal contracts and business development opportunities.

JOINT VENTURE AGREEMENTS

The SBA must approve all joint venture agreements pertaining to the performance of an 8(a) contract. Careful preparation is a must, as the SBA requires adherence to a lengthy list of contract provisions prior to approval. An 8(a) joint venture is permissible only when:

- the 8(a) contractor lacks the necessary capacity to perform the contract on its own;
- the agreement is fair and equitable;
- the venture is of substantial benefit to the 8(a) contractor; and
- the 8(a) contractor contributes substantial resources or expertise to the joint venture.

There are two types of 8(a) joint ventures, either between formally approved SBA mentor-protégé partners or between an SBA-approved 8(a) contractor and a non-mentor contractor. SBA-approved mentor-protégé joint ventures may contain a NAICS "large" contractor/mentor. Both types of 8(a) joint ventures adhere to different SBA regulations, including size and revenue standards.

New rules state the 8(a) firm must perform at least 40 percent of the work for each 8(a) joint venture contract, including mentor-protégé joint ventures. This 40 percent performance requirement also applies when 8(a) entities engage in other SBA set-aside contracts, such as HUBZones and service-disabled veteran-owned small businesses. Furthermore, an 8(a) joint venture awarded an 8(a) contract may not subcontract work to the non-8(a) joint venture partner, including a "large" business mentor, unless no other potential subcontractors are available. These changes will greatly impact prior industry practices relevant to who actually performs the work. Also, the 8(a) venturer must receive profits "commensurate" with the 8(a) venturer's work, rather than the former requirement of at least 51 percent of the profits.

The underlying project contract must be executed in the name of the joint venture entity and not the 8(a) contractor individually. Closer scrutiny of informal/silent joint ventures is anticipated, as 8(a) entities must meet performance of work and revenue requirements. Prime contractor/subcontractor arrangements or teaming agreements will be watched closely to find de facto affiliation equating to a de facto

joint venture, which in turn must comply with all 8(a) rules.

Firms providing third-party indemnity to a surety in order to help an 8(a) contractor qualify for bonding do not gain privity to the prime set-aside contract, including conditional provisions and afforded defenses. In this situation, if issues arise the surety may exercise any number of its options while third-party indemnity remains non-cancellable. When surety credit is obtained by virtue of a larger contractor's indemnity or collateral, ultimately providing increased access to 8(a) set-aside work, it is viewed as a strong indicator of affiliation (possibly creating a de facto joint venture) for SBA 8(a) purposes. Whatever the nature of the business relationship may be, contractors collaborating (either formally or informally) with 8(a) contractors should exercise due diligence.

PROCEED WITH CAUTION

The 8(a) program is a valuable resource to small and large businesses alike, but every contractor should proceed only after a full analysis. There are important business risks and contractual considerations for non-8(a) contractors and sureties to take into account when engaging either formally or informally with an 8(a) contractor. Fraud and abuse remain a concern.

Last year, the SBA directed the U.S. Government Accountability Office (GAO) to perform an audit of the 8(a) program. The GAO identified 14 ineligible construction companies that received $325 million in 8(a) sole-source and set-aside contracts. In most cases, participation in the program and contract awards were based on false statements and misrepresentations made by 8(a) contractors. The report recommended the program strengthen fraud protection controls. Subsequently, legislative committees conducted hearings and responded with the recently updated regulations.

Sureties also are taking necessary precautions. For example, as part of the bonding process, sureties may require a letter to be sent directly from their office to senior SBA 8(a) program officials detailing surety arrangements and disclaiming knowledge of, or investigation into, the 8(a) contractor's or joint venture's program compliance and eligibility. Sureties are concerned about providing credit for potentially fraudulent contractual situations, which may lead to suspension from bonding federal contracts and ultimately contribute to increased losses. 8(a) qualified and non-qualified 8(a) participating contractors risk varying degrees of punishment—including permanent suspension from contracting with the government—if found in violation of the SBA regulations.

With proper risk management strategies, including best surety practices, 8(a) program benefits are abundant. Joint venture and mentoring relationships promote business development and help foster expertise and long-term success in the construction industry. If abided by properly, this program provides contractors with increased opportunities to compete for federal 8(a) contracts and enjoy the benefits of federal set-aside funding.

Jeffrey Hendricks is assistant vice president of Willis' National Surety Practice. For more information, visit www.willis.com.

Need a Bond?

The U.S. Small Business Administration's (SBA) Surety Bond Guarantee Program can guarantee bid, payment and performance bonds for small and emerging contractors. By guaranteeing the surety company will incur between 70 percent and 90 percent of the losses and expenses if a contractor defaults, the SBA encourages sureties to issue a bond to a small business it otherwise would not bond due to inherent risks.

The SBA Bond Guarantee Program reaches out to:

- contractors with limited working capital or an insufficient track record of successful performances of construction contracts, but that can perform a particular contract;
- contractors that have been bonded in the past, but in the current economy cannot obtain the lines of credit needed to compete for larger projects; and
- contractors that are ready to bid on a bigger job than they have performed in the past.

For more information, visit www.sba.gov/about-offices-content/1/2891.

PUT AN OFFER WORTH UP TO $1,000[1] TO WORK.

HERE'S WHAT YOU CAN SAVE:	
$1,000	ABC Member Offer
$2,000	National Fleet Purchase Program (FVX)
+$1,672	Industrial Ladder Rack through GM Business Choice[2]
$4,672	Potential Savings

ABC members can get a private offer of up to $1,000[1] toward the purchase or lease of most new GM vehicles, including the Chevrolet Express and GMC Savana. Segment-exclusive features include all-wheel drive and available driver's-side swing-out door. Standard StabiliTrak™ and available OnStar®[3] are new for 2011. And both vans offer the 5-year/100,000-mile[4] transferable powertrain warranty.

Taking advantage of this private offer is easy:

1) Provide incentive code FBP to your dealer or fleet specialist.

2) Present proof of your ABC membership.

3) Choose an eligible vehicle(s) to purchase or lease.

For more details, visit **www.abc.org/gm**.

1 $500 or $1000 private offer depending on the model valid toward the purchase or lease of eligible 2011 and 2012 model year GM passenger cars, vans, SUVs and light duty truck models. Customer must take delivery by September 30, 2012. Not compatible with other private offers. Not valid on prior purchases. Compatible with many current incentives. Incentives are subject to change without notice. Excludes: Buick Regal; Chevrolet Equinox, Cruze, Corvette; GMC Terrain; all Cadillac models. See dealer for complete details.

2 To qualify, vehicles must be used in the day-to-day operation of the business and not solely for transportation purposes. Must provide proof of business. This program may not be compatible with other offers or incentive programs. Consult your local Chevrolet or GMC dealer or visit gmbusinesschoice.com for program compatibility and other restrictions. Take delivery by 9/30/12.

3 Call 1-888-4ONSTAR (1-888-466-7827) or visit onstar.com for details and system limitations.

4 Whichever comes first. See dealer for limited warranty details.

Shown with equipment from an independent supplier and is not covered by the GM New Vehicle Limited Warranty. GM is not responsible for the safety or quality of independent supplier alterations.

2012 DIRECTORY of SURETY BOND PROFESSIONALS

NATIONAL SURETIES

With a well-known reputation for delivering the "best service anywhere," ACSTAR provides bonding nationwide for contract and commercial surety needs in the standard and specialty marketplace.

ACSTAR Insurance Company
233 Main St.
New Britain, CT 06050-2350
www.acstarins.com
Henry W. Nozko Jr.
p: (860) 224-2000
f: (860) 229-1111
e: nozkojr@acstarins.com

An exclusive managing general underwriter for several "A" rated/T-listed companies. We specialize in non-standard surety with underwriting authority for most types of surety.

Allstar
1301 Hightower Tr., Ste. 210
Atlanta, GA 30350
www.allstarfg.com
Jeff Booth
p: (614) 501-8044
f: (614) 501-8086
e: jbooth@allstarfg.com

Arch Insurance Group brings a high level of understanding, claims and loss control expertise to both construction and surety marketplaces.

Arch Insurance Group
30 E. 7th St., 22nd Fl.
St. Paul, MN 55101
www.archinsurance.com
Construction
John Mentz
p: (651) 855-7100
Surety
3 Parkway, Ste. 1500
Philadelphia, PA 19102
David Finkelstein
p: (215) 606-1601

Bondex Insurance Company offers a new, innovative approach to surety bonding for the construction industry. Our staff utilizes the most modern, web-based surety bond management system, allowing our clients to issue their own bid bonds online. We are a direct writer with no agents or brokers, giving you greater control of your surety bond program.

Bondex Insurance
P.O. Box 6
30 A Vreeland Rd., Ste. 120
Florham Park, NJ 07932
www.bondexins.com
Phil Tobey
p: (973) 437-9650
f: (973) 377-4614
e: philt@dalegroup.com

CCI Surety, Inc. is a specialty bonding MGU. Representing several hard-to-place sureties. We can offer unique methods of suretyship through CCI Surety using funds control, SBA and collateral.

CCI Surety, Inc.
1710 N. Douglas Dr., Ste. 110
Golden Valley, MN 55422
www.ccisurety.com
p: (866) 317-3294
f: (763) 512-0430
e: info@ccisurety.com

CNA Surety has the capacity, experience and dedication to service a full range of contract and commercial surety bonds in all 50 states, Canada and Puerto Rico.

CNA Surety
333 S. Wabash Ave.,
Chicago, IL 60604
www.cnasurety.com
Bill Waters
p: (312) 822-2334
f: (312) 755-7276

The operations of Great American Insurance Group are engaged in property and casualty insurance, focusing on specialty commercial products for businesses and the sale of annuities and supplemental insurance products.

Great American Insurance Group
Great American Tower
301 E. Fourth St.
Cincinnati, OH 45202
www.gaig.com
Paul Haffner
p: (513) 369-5829
e: phaffner@gaic.com

The Guarantee Company is a specialty insurance company serving the needs of North Americans since 1872. In the USA we underwrite contract and commercial surety through our broad network of regional underwriting offices. For more information, go to www.gcna.com.

The Guarantee Company of North America
25800 Northwestern Hwy.
Ste. 720
Southfield, MI 48075
www.gcna.com
Stephen Ruschak
p: (248) 281-0281
f: (248) 750-0431
e: sruschak@gcna.com

The Hanover has been offering highly-rated surety capacity for more than 100 years. We excel at providing our agents with complete solutions to a wide-range of contract and commercial suretyship needs in all 50 states.

The Hanover Insurance Group
440 Lincoln St.
Worcester, MA 01653
www.hanover.com
Robert Thomas
p: (508) 855-3987
e: rthomas@hanover.com

The Insco Dico Group provides a full range of surety products, including subdivision, contract, and commercial bonds. With nineteen offices nationwide, Insco is dedicated to serving your bonding needs.

The Insco Dico Group
17780 Fitch, Ste. 200
Irvine, CA 92614
www.inscodico.com
Dan Young
p: (800) 782-1546
f: (800) 575-2162
e: daniel@inscodico.com

At Liberty Mutual Surety, we work closely with independent agents and brokers to responsively provide consistent small to large market bonding capacity for construction firms, manufacturers and suppliers, as well as commercial surety bonds for corporations and individuals on both an account and transactional basis.

Liberty Mutual Surety
Interchange Corporate Ctr.
450 Plymoth Road, Ste. 400
Plymouth Meeting, PA 19462
www.libertymutualsurety.com
Roland Richter
p: (877) 751-2620
f: (866) 547-4880
Safeco Plaza
1001 4th Ave., Ste.1700
Seattle, WA 08154
p: (206) 473-3799
f: (425) 376-6533
e: surety@libertymutual.com

NACS brings additional protection to national sureties by managing the receivables and payables throughout the course of the bonded construction project. We assist all construction firms including small, emerging and minority companies seeking the performance bonds necessary to secure construction contracts.

North American Construction Services, Inc.
1710 N. Douglas Dr., Ste. 109
Golden Valley, MN 55422
www.nacsescrow.com
p: (800) 936-6227
f: (763) 512-0430

Merchants Bonding Company is among the top 20 surety writers in the United States, and has achieved an "A" (excellent) rating with A.M. Best for 53 consecutive years. Merchants serves all 50 states and has offices in Des Moines, IA, Austin, TX, Dallas, TX and Seattle, WA.

Merchants Bonding Company
2100 Fleur Dr.
Des Moines, IA 50321
www.merchantsbonding.com
Michael Foster
p: (800) 678-8171
f: (515) 243-3854
e: mfoster@merchantsbonding.com

Nationwide® Surety & Fidelity has provided quality surety bonding products and services backed by our commitment to *On Your Side®* customer service for over 50 years. We work closely with Nationwide and independent agents to provide contract bonding capacity to small and medium-sized contractors.

Nationwide Surety & Fidelity
1100 Locust St.
Des Moines, IA 50391
www.alliedinsurance.com/allied/web/business/bonds.jsp
p: (866) 387-0457
f: (866) 508-4104

PHLY offers financially sound bonding options for well qualified contractors. The Surety Bond Program was designed to be the premier surety solution for America's small to medium-sized contractors.

Philadelphia Insurance Companies
1 Bala Plaza, Ste. 100
Bala Cynwyd, PA 19004
www.phly.com
p: (800) 873-4552
f: (610) 617-7940
e: phlysales@phlyins.com

Contract and commercial surety underwriter licensed in all 50 states, Puerto Rico, Virgin Islands and Dominican Republic.

Surety One
5 W. Hargett St., 4th Fl.
Raleigh, NC 27601
www.suretyone.org
Carlyle Poindexter
p: (800) 373-2804
f: (919) 834-7039
e: underwriting@suretyone.org

For more than 100 years, Travelers has enjoyed a rich heritage as a leader in the surety industry. Travelers provides a variety of surety products and services to general and heavy contractors, construction managers and subcontractors of all sizes.

Travelers Bond & Financial Products
1 Tower Square
Hartford, CT 06183
www.travelersbond.com
Gregg Lyon
p: (860) 954-2416
e: glyon@travelers.com

Wells Fargo Insurance Services provides a unified resource to help our customers meet the more stringent requirements of the surety industry to ultimately prequalify for the work our customers are seeking.

Wells Fargo Insurance Services
330 Madison Ave., 7th Fl.
New York, N Y 10017
https://wellsfargo.com/wfis
William F. Maroney
p: (917) 368-6838
c: (917) 882-6307
f: (212) 681-9261
e: william.f.maroney@wellsfargo.com

XL partners with contractors to address the rapidly changing construction environment by developing and delivering surety capacity tailored to the contractors needs.

XL Group
300 E. Lombard St., Ste. 1470
www.xlgroup.com
David Hewett
p: (410) 385-8401
f: (410) 385-8010
e: david.hewett@xlgroup.com

Zurich Surety helps U.S. and internationally based customers succeed by offering meaningful surety capacity and consistently delivering value added underwriting and risk management insights through a relationship based approach.

Zurich
600 Red Brook Blvd.
Owings Mills, MD, 21117
www.zurichna.com/surety
Jerry Haley
p: (410) 559-8723
f: (866) 947-1075
e: gerald.haley@zurichna.com

NATIONAL BROKERS

Building wealth and creating opportunity in partnership with our clients.

Aon Construction Services Group
www.aon.com
Bill Marino
p: (888) 678-7310
e: bill.marino@aon.com

Lockton is one of the top brokers for surety, professional liability and construction insurance.

Lockton Companies
www.lockton.com
Patrick Pribyl
p: (816) 960-9017
e: ppribyl@lockton.com

M.B. McGowan & Associates is an independent insurance agency that specializes in surety credit acquisition. Founded in 1999, we represent some of the largest insurance companies in the world. We bring an expertise to our clients that few of our competitors can provide.

M.B. McGowan & Associates Insurance Agency, Inc.
7250 Redwood Blvd., Ste. 110
Novato, CA 94945
www.mbmcgowan.com
Michael B. McGowan
p: (415) 892-1080
f: (415) 892-1039
e: mmcgowan@mbmcgowan.com

Rutherfoord, one of the largest risk management and insurance brokerage firms in the U.S., provides exceptional expertise and service to a broad portfolio of clients in commercial property and casualty, risk management, surety, employee benefits, and personal insurance.

Rutherfoord
www.rutherfoord.com
Mark Bundy
p: (757) 491-1100

REGIONAL FIRMS

ALASKA

At HUB International Northwest, LLC, you'll find some of the most experienced construction insurance and surety experts in the Pacific Northwest. With 27 years of industry experience on your side, you can be confident that our surety products and services are designed to meet the needs of just one business: Yours.

HUB International Northwest, LLC
12100 NE 195th St., Ste. 200
Bothell, WA 98011
www.hubinternational.com
Mike Murphy
p: (425) 489-4519
f: (425) 485-8489
e: mike.murphy@hubinternational.com

CALIFORNIA

Since 1925, we have provided surety bonds and insurance for contractors and developers. Our strength is developing a responsive surety program and being your determined advocate.

Alliant Insurance Services, Inc.
701 B St., 6th Fl.
San Diego, CA 92101
www.alliantinsurance.com
Lawrence F. McMahon
p: (619) 849-3832
f: (619) 699-2110
e: lmcmahon@alliantinsurance.com

2012 DIRECTORY OF SURETY BOND PROFESSIONALS

At Gallagher Construction Services, it's no accident that construction is our middle name. Building surety programs for contractors is our specialty. We do more than help protect your business, we help build it!

Gallagher Construction Services
1 Market, Spear Tower, Ste. 200
San Francisco, CA 94105
www.ajg.com
Susan Hecker
e: susan_hecker@ajg.com
Brian Cooper
p: (415) 391-1500
f: (415) 391-1882
e: brian_cooper@ajg.com

When you need expert construction and surety support, our distinguished 20 year track record yields confidence and unprecedented efficiency. From pre-bonding evaluations to comprehensive surety and construction claims consulting, and from construction management to construction defect investigation, call on the one company engineered to exceed your expectations.

Guardian Group, Inc.
2350 W. 205th St.
Torrance, CA 90501
www.guardiangroup.com
Todd Bauer
p: (310) 320-0320
f: (310) 320-0120
e: todd.bauer@guardiangroup.com

For more than two decades, South Coast Surety has provided surety support to contractors. As a national surety agency we can provide that much needed extra in experience and response.

South Coast Surety
1031 Calle Recodo, Ste. D
San Clemente, CA 92673
http://southcoastsurety.com/
Steven Swartz
p: (949) 361-1692
(800) 361-1720
f: (949) 361-9926
e: surety@southcoastsurety.com

CONNECTICUT

Groundbreaking insurance & bonding programs specialized for your business with more than 60 years of experience in all types of construction surety. Please visit our blog at bddinsurance.com/blog

Bruen Deldin DiDio Associates
1062 Barnes Rd., Ste. 303
Wallingford, CT 06492
www.bddinsurance.com
Jeffery P. Deldin
p: (800) 660-6934
f: (203) 269-8155
e: jdeldin@bddinsurance.com

DELAWARE

A leading insurance, risk management and employee benefits brokerage and consulting firm. Offers customized programs designed to align with organizational goals and drive bottom-line growth.

Conner Strong & Buckelew
40 Lake Center Executive Park
401 Rte. 73 N.
P.O. Box 989
Marlton, NJ 08053
www.connerstrong.com
Travis Shaffer
p: (877) 861-3220
f: (856) 552-4985
e: tshaffer@connerstrong.com

FLORIDA

Full service insurance agency, specializing in construction insurance, surety bonding and employee benefits.

Dawson Companies
1615 S.E. 47th Terr.
Cape Coral, FL 33904
www.dawsoncompanies.com
Matt Bevins
p: (239) 542-1533
f: (239) 542-5527
e: mbevins@dawsoncompanies.com

HAWAII

Backed by 75 years of surety experience, First Insurance Company of Hawaii surety products are designed to serve emerging to mid-sized construction companies. In addition, First Insurance provides the largest risk and safety management department in Hawaii as well as a strong construction insurance team that strives to meet the needs of local contractors.

First Insurance Company of Hawaii, Ltd.
1100 Ward Ave.
Honolulu, HI 96814
www.ficoh.com
Melissa Current
p: (808) 527-7609
f: (808) 628-2547
e: melissa.current@ficoh.com

MARYLAND

Centennial Surety is one of the largest bond specialists in the region. Through our extensive bonding network, we can service contractors of any size.

Centennial Surety Associates, Inc.
1514 Jabez Run, Ste. 100
Millersville, MD 21108
www.centennialsurety.com
Michael E. Schendel
p: (410) 888-9110 X205
(301) 725-1855
f: (301) 725-2430
e: mike@centennialsurety.com

NEW JERSEY

C&H Agency is one of the only insurance agencies in the tri-state area to provide commercial insurance and surety bonds solely to the construction industry.

C&H Agency, Inc.
P.O. Box 324
Totowa, NJ 07512
www.chagency.com
Laura Renne
p: (973) 890-0900
f: (973) 890-9038
e: lrenne@chagency.com

A leading insurance, risk management and employee benefits brokerage and consulting firm. Offers customized programs designed to align with organizational goals and drive bottom-line growth.

Conner Strong & Buckelew
40 Lake Center Executive Park
401 Rte. 73 N.
P.O. Box 989
Marlton, NJ 08053
www.connerstrong.com
Travis Shaffer
p: (877) 861-3220
f: (856) 552-4985
e: tshaffer@connerstrong.com

NEW YORK

Groundbreaking insurance & bonding programs specialized for your business with more than 60 years of experience in all types of construction surety. Please visit our blog at bddinsurance.com/blog.

Bruen Deldin DiDio Associates
621 Clocktower Commons, Rt. 22
Brewster, NY 10509
www.bddinsurance.com
Jeffery P. Deldin
p: (800) 660-6934
f: (845) 279-8482
e: jdeldin@bddinsurance.com

OHIO

Full service insurance agency, specializing in construction insurance, surety bonding and employee benefits.

Dawson Companies
1340 Depot St.
Cleveland, OH 44116
www.dawsoncompanies.com
Kyp Ross
p: (800) 860-0090
f: (440) 356-3732
e: kross@dawsoncompanies.com

Lockton Puts Clients First with Construction Focus

LOCKTON CONSTRUCTION SERVICES

MAIN OFFICE
444 W. 47th St., Ste. 900
Kansas City, MO 64112

CONTACT
Patrick T. Pribyl
Senior Vice President/ Team Leader
National Surety Resource
p: (816) 960-9017
e: ppribyl@lockton.com

www.lockton.com

COMPANY HIGHLIGHTS

- One of the top five brokers for surety, professional liability, and construction insurance
- More than $1.5 billion in annual construction premiums
- More than $110 million of annual surety premiums placed
- More than 300 Construction Services Associates, 70 of whom specialize in surety
- An intentional process to help connect clients with business opportunities
- Software-supported services to help general contractors prequalify subcontractors and manage downstream payment risk
- Tools for proprietary profit trending and credit modeling analytics
- Substantial ENR Top 200 client relationships

Pictured in the photo are John Mundy (left) and Patrick Pribyl (right).

Like most of the contractors Lockton serves today, our roots are humble. In 1966, Jack Lockton, a 28 year-old surety underwriter decided to trade the security of Glens Falls Insurance for an opportunity to start his own construction-oriented agency.

It wasn't easy. Two national brokers had dominated the construction space in Kansas City for decades. They both had more experience and resources. But Jack knew why he started the business: to provide contractors with a level of service that was so extraordinary that it would not be available anyplace else. This vision, combined with Jack's unmatched passion, drove our intitial successes.

Today, Lockton's construction clients include several of the ENR Top Engineering, General Construction and Specialty Contractors. In fact, Lockton's penetration into the ENR Top 100 has been substantial with significant new business wins during the past two years alone.

Lockton's private ownership enables us to focus on client needs, instead of quarterly results. This provides clients unfettered access to Lockton's resources.

While many companies focus on innovations that improve their own productivity and profitability, Lockton is externally focused on their construction clients to develop innovative services and solutions.

There have been significant personnel changes within the construction brokerage community during this challenging economic environment. But the executive leadership for Lockton Construction Services remains stable, including Grover Simpson, John Mundy and Patrick Pribyl, all with more than 20 years of tenure with the company.

While Jack Lockton was lost to cancer in 2004, Jack's brother and Lockton Chairman David Lockton, spends significant time in construction. Jack's three sons are also in the business, each with significant construction experience. Ron Lockton is President in Kansas City, Steve and Don Lockton are sales professionals. All four Locktons serve on the company's Board of Directors.

DID YOU KNOW?

Lockton is the largest privately owned insurance broker in the world.

30% of it's U.S. revenue is derived from Construction Services.

Lockton has 59 offices in Asia, Europe, Middle East, North America, Latin America and South Africa.

2012 DIRECTORY OF SURETY BOND PROFESSIONALS

Haughn & Associates, Inc.

Specializing in the construction industry for more than 25 years by providing insurance and surety bonds in 30+ states. We can design a program to specifically meet your needs.

Haughn & Associates, Inc.
6050 Tain Dr.
Dublin, OH 43017
www.haughn.com
p: (614) 789-6800
f: (614) 789-6822
Michael W. Haughn
e: mhaughn@haughn.com
Brian Haughn
e: bhaughn@haughn.com
Tom Gillies
e: tgillies@haughn.com

Huntington Insurance

Bonds. Insurance. Benefits. Experienced team of construction specialists. Maximizing your profitability for over 110 years.

Huntington Insurance
105 E. Fourth St., Ste. 200
Cincinnati, OH 45202
www.huntingtoninsure.com
Herb Reeder
p: (513) 762-5195
c: (513) 502-7874
e: herbert.reeder@huntington.com
Pat Corcoran
p: (330) 430-1318
c: (330) 361-1313
e: pat.corcoran@huntington.com

PENNSYLVANIA

Conner Strong & Buckelew

A leading insurance, risk management and employee benefits brokerage and consulting firm. Offers customized programs designed to align with organizational goals and drive bottom-line growth.

Conner Strong & Buckelew
40 Lake Center Executive Park
401 Rte. 73 N.
P.O. Box 989
Marlton, NJ 08053
www.connerstrong.com
Travis Shaffer
p: (877) 861-3220
f: (856) 552-4985
e: tshaffer@connerstrong.com

Huntington Insurance

Bonds. Insurance. Benefits. Experienced team of construction specialists. Maximizing your profitability for over 110 years.

Huntington Insurance
310 Grant St., 2nd Fl.
Pittsburgh, PA 15219
www.huntingtoninsure.com
Ryan Burke
p: (412) 667-6553
c: (412) 667-2620
e: ryan.burke@huntington.com
Peter Burke
p: (412) 667-6550
c: (412) 719-1555
e: peter.burke@huntington.com

WASHINGTON

HUB International

At HUB International Northwest, LLC, you'll find some of the most experienced construction insurance and surety experts in the Pacific Northwest. With 27 years of industry experience on your side, you can be confident that our surety products and services are designed to meet the needs of just one business: *Yours.*

HUB International Northwest, LLC
12100 NE 195th St., Ste. 200
Bothell, WA 98011
www.hubinternational.com
Mike Murphy
p: (425) 489-4519
f: (425) 485-8489
e: mike.murphy@hubinternational.com

UPCOMING ABC MEETINGS & EVENTS

2011 Attorneys Conference

DEC. 7–9, 2011
Westin Georgetown
Washington, D.C.
www.abc.org/AttorneysConference

2012 BizCon®

FEBRUARY 21–22, 2012
Arizona Biltmore
Phoenix, Ariz.
www.abc.org/BizCon

22nd Annual Excellence in Construction Awards

FEBRUARY 22, 2012
Arizona Biltmore
Phoenix, Ariz.
www.abc.org/Excellence

2012 EDCON&EXPO

APRIL 24–27, 2012
Henry B. Gonzalez Convention Center
San Antonio, Texas
www.abc.org/EdCon

2012 ABC LEGISLATIVE CONFERENCE

JUNE 12–14, 2012
Capital Hilton
Washington, D.C.
www.abc.org/LegCon

2012 ABC INSTITUTE
For Leadership and Professional Development

NOVEMBER 13–15, 2012
Hilton Austin
Austin, Texas
www.abc.org/Institute

MARK YOUR CALENDAR NOW and make plans to attend these outstanding ABC and construction industry events!

Visit www.abc.org for the latest information on all ABC meetings and events.

ABC
Associated Builders and Contractors, Inc.

2012 DIRECTORY OF SURETY BOND PROFESSIONALS

SURETY BONDING ADVISORS & CONSULTANTS

ARBITRATION

American Arbitration Association
Dispute Resolution Services Worldwide

The AAA's rules and procedures have set the standard in the construction industry. Learn about AAA's construction dispute avoidance and resolution services by contacting aaaconstruction@adr.org.

American Arbitration Association
230 S. Broad St., 12th Fl.
Philadelphia, PA 19102
www.adr.org
Michael A. Marra
p: (215) 731-6136
f: (215) 732-5002
e: marram@adr.org

CPA FIRMS

Benitez & Company CPAs

Construction industry specialists providing financial statement preparation, surety bond credit analysis, income tax preparation and planning, litigation support, contractor software implementation, and estate and trust planning.

Benitez & Company CPAS
8001 Coral Way
Miami, FL 33155
www.benitezcpas.com
Juan F. Benitez
p: (305) 261-8589
f: (305) 261-8585
e: juan@benitezcpas.com

CK

Construction industry specialists providing banking and bonding credit enhancement, financial statement preparation, strategic income tax planning and minimization and a vast array of consulting services.

Castellano, Korenberg & Co.
313 W. Old Country Rd.
Hicksville, NY 11801
Daniel A. Castellano
p: (516) 937-9500
f: (516) 932-0485
e: dcastellano@ck-co.com

CBIZ

CBIZ is a leading provider of accounting, tax and consulting services to the construction industry. Assurance services can be provided through our association with Mayer Hoffman McCann P.C., an independent CPA firm.

CBIZ
401 Plymouth Rd, Ste. 200
Plymouth Meeting, PA 19462
www.cbiz.com
Tony Stagliano, CPA, CCIFP
p: (610) 862-2420
f: (610) 862-2470
e: tstagliano@cbiz.com

GRASSI & CO.

Our expertise in the construction industry is widely regarded, having the most comprehensive construction practice in the region, providing services for over 300 construction companies.

Grassi & Co.
50 Jericho Quadrangle, Ste. 200
Jericho, NY 11753
www.grassicpas.com
Geri Gregor, CPA
p: (516) 256-3500
f: (516) 256-3510
e: cpas@grassicpas.com

When you join the more than 2,000 contractors in the STEP safety program, you'll get results.

SAFETY PAYS!

The numbers prove it![1]

40% LOWER INCIDENCE RATE[2] for fewer worker injuries and higher morale	**93%** FEWER OSHA CITATIONS PER INSPECTION[3] for fewer project delays and out-of-pocket costs
17% LOWER EMR[4] for savings in workers' compensation premiums	**35%** LOWER DART RATE[5] for higher employee productivity and more time on the job

The ABC Safety Training Evaluation Process (STEP) program provides guidance for creating a better safety program. The benchmarks help you monitor and adjust your company's efforts to build a safer work environment. Now is the perfect time to find out how your company can improve its jobsite safety and its bottom line.

Get started today! Contact your ABC chapter office or go to www.abc.org/STEP.

Associated Builders and Contractors, Inc.

[1]Figures based on 2010 STEP data compared to 2009 Bureau of Labor Statistics industry averages. [2]Incidence Rate represents the number of OSHA recordable incidents per 100 employees per year. [3]OSHA Citation Rate represents the number of citations per OSHA inspection. [4]Experience Modification Rate (EMR) (MOD Factor) measures a company's safety performance against similar businesses over the past three years and is one of the factors used to determine workers' compensation rates. [5]DART Rate represents the number of OSHA recordable incidents that involve "Days Away, Restrictions and Transfers" per 100 employees per year.

1309_0510

2012 DIRECTORY OF SURETY BOND PROFESSIONALS

Plante Moran's multidisciplinary team of business advisors addresses business issues, including succession planning; financial planning; audit; tax planning and consulting; efficiency issues regarding construction processes; operations assessment and development; and technology enhancement.

Plante Moran
27400 Northwestern Hwy.
P.O. Box 307
Southfield, MI 48307-0307
www.plantemoran.com
Thomas Doyle
p: (248) 223-3402
f: (248) 352-0018
e: thomas.doyle@plantemoran.com

LAW FIRMS

Bradley Arant Boult Cummings LLP has approximately 400 attorneys in seven offices, and has a nationally-ranked construction practice.

Bradley Arant Boult Cummings LLP
One Federal Pl.
1819 Fifth Ave. N.
Birmingham, AL 35203
www.babc.com
James F. Archibald III
p: (205) 521-8520
f: (205) 488-6520
e: jarchibald@babc.com

Sedgwick's Construction Practices Group, comprised of nationally recognized lawyers, represents the spectrum of participants in construction projects. Services range from review and drafting of construction documents to handling large scale disputes in litigation.

Sedgwick LLP
801 S. Figueroa St., 19th Fl.
Los Angeles, CA 90017-5556
www.sedgwicklaw.com
Marilyn Klinger, Partner
p: (213) 426-6900
f: (213) 426-6921
e: marilyn.klinger@sedgwicklaw.com

WTHF is top-ranked in construction law by Chambers, the Legal 500, and the U.S. News-Best Lawyers "Best Law Firms" Report. Serving client needs worldwide via offices in Virginia, California, Nevada, Washington, and Germany.

Watt, Tieder, Hoffar & Fitzgerald, LLP
8405 Greensboro Dr., Ste. 100
McLean, VA 22102
www.wthf.com
Robert G. Watt
p: (703) 749-1000
f: (703) 893-8029
e: contactus@wthf.com


Mr. POWER,
Meet Mr. Fuel Economy.
Say hello to EcoBoost™ – 365 horsepower. 420 lb.-ft. of torque.
22 highway mpg.* Introduction's over. Let's go to work.
This is the future of truck
THE 2011 F-150
FIND OUT MORE AT FORD.COM
BUILT Ford TOUGH
3.7L | 5.0L | 6.2L | ECOBOOST
4 NEW ENGINES
*Optional. EPA-estimated 22 hwy mpg 4x2; 21 hwy mpg 4x4 shown. 3.5L V6.
ABC BUSINESS PARTNER
ABC MEMBERS! Visit www.abc.org/ford to learn about enhanced fleet discounts with Ford.

2011 Construction Executive Reprints

Elevate Your Market Perception with Custom Reprints from Construction Executive

For more impact, include the front cover of Construction Executive with your advertisement or other supplied materials.

Custom reprints from Construction Executive are highly effective marketing tools. A reprint of an authoritative article instantly elevates your firm's market perception and positions you as an industry expert. Reprints can be backed up with your company logo and office locations, a full-page ad or other supplied materials. Custom reprints make excellent handouts for trade shows, sales calls and presentations. Digital reprints enhance your website and email marketing efforts. Digital reprints are included free with every printed reprint order, or can be ordered separately.

CUSTOM REPRINT PRODUCTION:
A $50 setup fee accompanies all custom reprint orders to traffic the requested pages and get the job set up in production, billing and quality-control systems. Professional graphic design services are available for ad removal, repaginating articles, reflowing copy and incorporating customer-supplied materials. Call us with your reprint idea for an estimate of design fees.

Construction Executive Reprint Price List

Economy Service — Delivery in 14–16 business days. Expedited delivery available.

# PAGES	250	500	1,000	2,000	3,000	5,000	10,000
1	$ 375	$ 495	$ 645	$ 895	$1,045	$1,295	$1,695
2	495	595	795	995	1,145	1,395	1,795
4	945	1,095	1,295	1,545	1,775	1,995	2,595
6	1,295	1,395	1,495	1,945	2,345	2,895	3,595
8	1,695	1,895	2,095	2,795	3,045	3,495	4,245
12	1,995	2,245	2,495	3,345	3,695	4,195	5,095
16	2,375	2,675	2,995	3,695	3,995	4,545	5,875

Prices shown are for full-color reprints on heavy-weight, high-quality 100# gloss text stock. Other paper stocks and quantities can be quoted on request. Every reprint order includes a complimentary PDF version for your email and website marketing efforts.

PDF-Only Reprints: For email and website marketing usage only. PDF version is FREE with any printed reprints purchase.

Front Cover (optional): $100
1st page of article: $75
2nd page of article: $50
Each additional page: $25

SPECIFICATIONS

SPECIFICATIONS: Finished size of reprints is 8 ⅜" × 10 ⅞". Four-page reprints are folded to 8 ⅜" × 10 ⅞". Six-page reprints are tri-folded to 8 ⅜" × 10 ⅞". Reprints of eight, 12 and 16 pages are folded, stapled and trimmed to 8 ⅜" × 10 ⅞". The words, “Reprinted by Permission” and copyright notices will appear in small type on all reprints.

SHIPPING: Reprints are shipped via FedEx Ground. Rates vary based on price and destination. Typical turnaround is 14 to 16 business days from receipt of order to delivery. Rush services are available; call for pricing.

COPYRIGHT NOTICE: Construction Executive articles are copyright © ABC Services Corporation, all rights reserved. Unauthorized photocopying, scanning, printing or distribution of copyrighted articles in print or electronic format is strictly prohibited.

AUTHOR'S NOTICE: Contributors to Construction Executive receive several copies of the issue in which their article is published. Reprint rights are not granted to magazine contributors.

TO ORDER REPRINTS, CONTACT:

Donald R. Berry
National Sales Manager
p: (908) 852-7466
e: dberry@constructionexec.com

Stephen B. Donohue
Regional Sales Manager
p: (609) 760-0702
e: sdonohue@constructionexec.com