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EXECUTIVE**

15th Annual  
Contractors' Guide To

# SURETY BONDING

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# 15TH ANNUAL CONTRACTORS' GUIDE TO SURETY BONDING

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- 50** Market Overview: Creating Sustainable Growth With Surety Bonds
- 57** Executive Insights
- 62** Aging Infrastructure Projects Call for Surety Bonding Protections
- 66** A Capitol Hill and State Legislative Update
- 68** Filling the Surety Industry's Generation Gap
- 70** The Power of Partnership: Choosing the Best Surety Agent For the Job
- 74** Bonding as an Empowerment Tool
- 78** How to Handle Higher Project Volume Without Overextending the Business
- 82** Always Verify a Bond
- 84** 2018 Directory of Surety Bonding Professionals

# Market Overview: Creating Sustainable Growth With Surety Bonds

BY BRYAN SURCOUF

**C**hanges in the surety market have created opportunities for construction companies across the nation to achieve controlled and sustainable growth.

A construction company must establish a strong network with legal and accounting professionals in order to be successful, but building a relationship with a surety bonding company places a contractor in a caliber of its own. Bonding capacity and prequalification transform businesses and help them prosper.

Industry experts agree: Now is the time to either establish or grow a relationship with a surety bonding company.

"With so much surety capacity available, creditworthy companies can find surety capacity on acceptable terms, and there is very little differentiation among the small, middle and large segments," says Ross Fisher, chair of The Surety & Fidelity Association of America Board of Directors and senior vice president of specialty commercial for The Hartford.

## **Small**

The small contractor market remains highly competitive. With

the expansion of the Small Business Administration's (SBA) Surety Bond Guarantee Program, there has never been a better time for small, emerging and disadvantaged firms. The program increased the guarantee percentage for its Preferred Surety Bond Program from no more than 70 percent to no more than 90 percent; increased the Quick Bond Application from \$250,000 to \$400,000; and guarantees bid, payment and performance bonds for contracts up to \$6.5 million (and up to \$10 million with a federal contracting officer's certification).

"In my 44 years in the surety industry, I have never witnessed as much surety capacity and availability for small contractors as we now have," says Howard Cowan, president of the National Association of Surety Bond Producers and principal of Cowan-Hill Bond Agency. "Small contractors will be able to grow their companies."

"Now is a perfect time to establish your first bonding line, even if you do not immediately need it," says Scott Paice, vice president and head of surety operations with FCCI Insurance Group. "Just like a

bank line of credit, the best time to get one is when you don't need it. If you establish some surety credit history now, it will be readily available when opportunities arise."

"The expansion of the SBA Surety Bond Guarantee program and various credit-only-based underwriting programs provide small contractors with additional options to obtain surety credit," says Steve Dorenkamp, vice president and claims manager for Merchants Bonding Company.

Adds Paice: "The bad news is the increased number of bidders that can now obtain bonding; even the ones that you didn't think would, or should, qualify. Not all contractors deserve to be bonded. A significant part of a surety's value and responsibility is in the prequalification process."

## **Medium**

The landscape of the medium market remains equally robust and competitive. As savvy companies incorporate bonding strategies into their business plans, many can move from the small to the medium market. The key to this transition is not to expand too quickly. Taking

on a project too complex, or outside the firm's scope of expertise, can damage the construction company's ability to successfully transition into the larger market.

"Middle market surety availability has grown as small contractor markets have expanded their capacity. This has been driven by strong results and favorable reinsurance terms. Due to consistently favorable loss ratios, surety capacity has expanded in the middle market as insurance carriers continue to invest in highly profitable lines of business, such as surety," says Antonio Albanese, vice president and head of surety for Nationwide Insurance Company.

"There appears to be no end in sight for qualified contractors to find sufficient surety capacity," adds Michael Cifone, senior vice president of surety underwriting for Hudson Insurance Group. "Capacity remains available in the specialty surety markets for contractors that have weak balance sheets, and successful contractors have an opportunity to increase capacity and improve terms and conditions. Contractors that struggled during the past year will also find surety support in this market."

Mike Specht, vice president of surety for Insurica, adds, "There is more than adequate capacity available for folks in the \$10 million to \$100 million annual revenue range. If you've developed a solid relationship with your surety, there's a good chance it will stretch for you."

### **Large**

Opportunity for growth abounds in the large market, but as projects

become increasingly complicated, so does the risk.

"With a lot of capacity and construction volume robust during the last five years, it's a buyer's market for surety bonds. The biggest issues facing contractors are finding the labor and supervision to successfully manage multiple projects. A professional surety agency that is well-versed in construction, including a reputation of integrity working with underwriters, can be a tremendous asset," says Mike Mitchell, vice chairman and principal of Graham Company.

"There are many surety providers for programs under \$250 million. Programs in excess of this range have fewer options on a sole or co-surety basis," says Kevin Waldron, senior vice president and director of construction for Chubb.

"There are certain sectors, such as oil and gas and health care, where the amount of work is increasing and larger contractors are taking advantage of that," adds Dorenkamp. "Underwriters are being challenged with creative delivery systems, such as public-private partnerships."

### **Losses**

Unforeseen circumstances can force even the most experienced and established contractor into default. Overall, there remains a downward trend in losses throughout the industry.

"Surety losses are down as contractor capacity and backlogs increase. There is a slight increase in delay notices related to the lack

of skilled labor," Dorenkamp says.

"Owners and general contractors supplementing labor and withholding contract funds (or assessing liquidated damages) to overcome delays will constrain cash flow and result in surety performance and payment bond losses."

"Contractors are benefitting by managing backlog, bonding back subcontractors and identifying onerous contract terms," Cifone adds. "Mitigating risk involves identifying and minimizing risks in project execution, understanding contract terms and working for the right owners. Concerns to attract and retain qualified workers grow as the construction workforce ages."

"While contractor defaults may be somewhat lower than anticipated, subcontractors need to be cautious of contract provisions that allow general contractors to supplement your labor forces to expedite the job schedule and then send you the bill at a later date," Paice says.

A strong, competitive market coupled with changes to the SBA Bond Guarantee Program means that construction companies are poised to grow into the future. Taking advantage of the opportunities to establish or expand a relationship with a surety company can empower construction companies to create controlled and sustainable growth. **CE**

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*Bryan Surcouf is communications manager for The Surety & Fidelity Association of America. For more information, email [bsurcouf@surety.org](mailto:bsurcouf@surety.org).*



## Nationwide®: Strength. Stability. Solutions.



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### COMPANY HIGHLIGHTS

- Nationwide® is U.S. Treasury listed and approved with a T-listing in excess of \$1.1 billion, one of the largest in the industry<sup>1</sup>
- A.M. Best Rating of A+ (Superior), FSC XV<sup>2</sup>
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Antonio Albanese

1. Nationwide Mutual Insurance Company, March 2015, <https://www.fiscal.treasury.gov>. 2. Affirmed July 2016 3. Affirmed April 2016

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## Your Success Is Their Success



**W**ith successful, profitable outcomes for both their contractor principals and appointed agencies, it's easy to see why Old Republic Surety has one of the best loss ratios in the surety business. Ensuring success through sharing best practices and surety knowledge continues to be a contributing factor in the company's double-digit contract market growth.

### CAPACITY

Old Republic Surety is well positioned to assist middle-market contractors with bond programs based on flexible, practical underwriting. The company writes contract bonds, bid bonds, performance and payment bonds, and maintenance bonds in all 50 states with bonding capacity currently at \$50 million. Each opportunity is unique and deserves the common sense underwriting approach for which Old Republic Surety is known. Your business' strengths are unique to you and deserve special consideration. Old Republic Surety will never use a computer-based algorithm to determine your success.

### COMPANY CONTACT

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 Brookfield, WI 53005  
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 appavlic@orsurety.com | orsurety.com

### COMPANY HIGHLIGHTS

- A.M. Best rating of "A"
- \$50 million contract bond capacity
- Licensed in all 50 states
- Writing surety bonds since 1923
- Subsidiary of Old Republic International

### PRODUCT HIGHLIGHTS

The FastBond program is designed for contractors who may need their first bond, or who only have occasional bond needs.

- Local underwriting
- Primarily based on credit score
- Ideal for accounts with no formal financial presentation
- Subjectivity is flexible
- All construction trades

### STANDARD BOND PROGRAMS

Need help setting up a standard bond program? Having a standard bond program in place offers contractors a more nimble approach to bidding on projects and turning them into profitable outcomes. Prequalification can give a contractor the opportunity to expedite the bond portion of the bid process. Understanding the bonding process is an essential element of a contractor's growth. If you need help positioning yourself with the right process in place, Old Republic Surety can help you get that done.

### CONTRACT BONDS FOR GROWING CONTRACTORS

Old Republic Surety has a bonding option for smaller, growing contractors through its FastBond program. Based mostly on credit score, its FastBonds not only offer a quick, flexible answer for a smaller bond, but it also opens the door for small contractors wanting to grow.



**AVAILABLE IN  
ALL 50 STATES**

**FLEXIBLE,  
COMMON-SENSE  
UNDERWRITING**

**FASTBOND 750  
PROGRAM  
FOR GROWING  
CONTRACTORS**

# **\$50,000,000 of Bonded Capacity BRING IT ON!**

Old Republic Surety Company has increased its bonding capacity 10-fold since 2004!

With \$50 million in capacity, we can handle the bonding needs of your middle market and larger contractors. The economy is improving, your customers are growing, and we're ready!



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Hudson Surety is comprised of an experienced group of underwriters with deep industry knowledge that enables us to offer creative, personalized solutions to our clients. We work closely with select agents throughout the United States to provide superior service.

Hudson Surety provides surety bond products for standard contract surety, commercial surety and specialty contract surety. We have the expertise to work with all types of contractors and the financial strength to grow with our valued principals.

### STANDARD CONTRACT SURETY

Regional knowledge of the construction marketplace has been an important element of our underwriting approach. Our contract underwriters work closely with our agency partners to understand our customers' needs in order to develop a surety program that supports their plans. Our client base consists of general contractors, as well as many specialty trade contractors.

### COMPANY CONTACT

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[hudsoninsgroup.com](http://hudsoninsgroup.com)

### COMPANY HIGHLIGHTS

- Rated A (Excellent) by A.M. Best, FSC XV
- Licensed in 50 states and the District of Columbia
- Treasury listing of \$45,316,000
- Regional expertise and superior client services
- Represented by select surety agents

### COMMERCIAL SURETY

Exceptional customer service and a broad appetite for both standard and non-standard risks have driven the success of Hudson's transactional commercial surety business. Our products include all types of license and permit bonds, custom bonds, public official bonds, court bonds and miscellaneous commercial bonds.

### SPECIALTY CONTRACT BONDS

For contractors that may not fit the underwriting criteria of the standard surety market, we offer an alternative solution utilizing tools such as collateral and funds control. We support the bonding needs of the contractor until they qualify for our standard surety program and participate in the SBA Surety Bond Guarantee Program.

The **Executive Insights** series is compiled by Donald Berry, national sales manager for *Construction Executive*. For more information on participating in a future Q&A, email [dberry@constructionexec.com](mailto:dberry@constructionexec.com).

# Executive Insights

**What documentation should a contractor bring to an initial meeting for establishing a bond limit?**

**SCOTT PAICE**  
VICE PRESIDENT, SURETY  
*FCCI Insurance Group*



Remember the TV show “Name That Tune,” where contestants competed to identify songs in as little as one note? Well,

that is what it seems like these days with the advent of “express bond” programs and limited informational requirements in this competitive market.

This may be great news for contractors looking to establish their first bonding line, but they may be selling themselves short in the long run. More information is always better, particularly when you want to stretch beyond your past experiences or if you run into any speed bumps along the way.

At a minimum, contractors should provide three years of corporate financial statements, current personal financials and a contractor questionnaire. Additional items regularly include aging schedules of accounts receivable, work-in-process schedules, bank line information, résumés on key personnel and references.

If you really want to develop a longstanding surety relationship, be prepared to discuss your current business plan and resist taking shortcuts.

**ANTONIO C. ALBANESE**  
VICE PRESIDENT - HEAD OF SURETY  
*Nationwide*



Distinguishing yourself from your rivals in today's highly competitive marketplace can create new opportunities

in the public work sector. To be eligible to bid on public work, you must obtain bid, performance and payment bonds. First, you must be prequalified by a surety that can establish parameters that will allow you to bid on this work.

Begin by finding a respected, professional surety bond agent. Then be prepared to share your corporate and personal financial statements, recent tax returns and a copy of your bank line. Bring a list of your largest completed projects, reference letters, relevant résumés, supplier contact information and any other information requested.

He or she will then help you find the surety that is the best fit for your goals. After vetting your background information, your new surety will establish a single and aggregate limit for you to pursue public work.

A long-term surety relationship is built on trust between both parties. Take the time to establish a solid foundation from which to grow.

**What should contractors know about purchasing surety bonding online?**

**THERESE WIELAGE**  
VICE PRESIDENT MARKETING  
*Merchants Bonding Company*



The relationship a construction company has with its professional surety agent and underwriting company is one that can

add great value. To secure surety bonding online without the benefit of surety professionals is rolling the dice on quality and value.

A construction firm using online tools should be sure it is working with a reputable company. Top sureties provide easy-to-use online tools, as well as provide expertise on things like onerous provisions in the contracts. Even online, they will promote a close relationship with a trusted team of financial advisers, including a surety agent, underwriter and construction accountant. This team will help a construction company navigate the complexities, protect itself from risks, and help the company with smart growth that is profitable, sustainable and compliant with the ever-changing regulatory climate.

To be pointed to reputable resources that provide easy-to-use online tools, look to the memberships of The Surety & Fidelity Association of America and the National Association of Surety Bond Producers.

SPECIAL SECTION:  
**CONTRACTORS' GUIDE TO SURETY BONDING**

**In what way does surety bonding protect subcontractors and suppliers working on a project?**

**ALAN P. PAVLIC**  
PRESIDENT & COO

*Old Republic Surety Company*



First, the requirement of surety bonding provides some assurance to subcontractors that there is sufficient financing for the project. Most

surety underwriters will undertake some due diligence to ensure that there is adequate financing in place. A savvy subcontractor and its surety will understand that the general contractor's surety has reviewed this issue and concluded that, in its opinion, satisfactory evidence of financing of the project is in place.

The primary protection for subcontractors on a bonded project is the payment protection offered by the payment bond. This is not an unconditional guarantee of payment, nor should it be. As long as the subcontractor/supplier can document its claim and comply with any statutory notice requirement and any notice requirements in the payment bond (subject to any contract defenses of the general contractor), the payment bond will respond to the claim.

The performance bond guarantees, under certain circumstances, that the project will be completed and the subcontractor/supplier will be able to count on that profit at completion.

**Is it helpful for a construction business to have a dedicated risk manager?**

**KEVIN WALDRON**

SENIOR VICE PRESIDENT

*Director, Construction  
Chubb*



It is helpful, but various considerations can affect how and by whom risk is managed within a construction company.

How much of a construction company's resources are dedicated to risk management may depend on its revenue, geographical footprint, complexity of work and particular construction discipline.

Everyone in a construction company participates in the risk management process at some level; however, the larger a company is, the further it ventures away from "home," the more complex and risky its projects are. In addition, the type of work the company performs itself and through others has an impact on the need for dedicated risk management resources.

In a smaller, local company, the CFO may perform the risk management functions. But as a company grows, it may be necessary for it to add someone who specifically handles these functions, such as prequalifying subcontractors, managing the insurance and surety relationships, and obtaining the insurance coverages and surety bonding program for the company.

**How can construction project stakeholders resolve disputes efficiently?**

**MICHAEL A. MARRA**

VICE PRESIDENT CONSTRUCTION  
DIVISION

*American Arbitration Association*



Most construction clients expect the arbitration process to be fast and cost effective.

In response to that, the American Arbitration

Association's® (AAA) Supplementary Rules for Fixed Time and Cost Construction Arbitration, developed in conjunction with the National Construction Dispute Resolution Committee, were designed to give owners, contractors and construction professionals confidence that disputes will be resolved quickly and effectively.

These rules give parties the ability to consistently determine the time it will take from filing a demand to receiving an award, as well as forecasting the budget for this process.

By using the Supplementary Rules, parties can calculate:

- maximum number of days to complete the total arbitration process;
- maximum number of hearing days the arbitration will run;
- arbitrator costs throughout the arbitration process; and
- AAA case administration fees.

The rules complement AAA programs for effective mediation, arbitration and dispute avoidance. To learn more, visit [adr.org/construction](http://adr.org/construction).

**How do changes to AIA's principal A201 document impact contract language regarding bonding?**

**KENNETH W. COBLEIGH**

MANAGING DIRECTOR AND COUNSEL  
*The American Institute of Architects*



The new Insurance and Bonds Exhibit is the single most significant revision to the AIA contract documents. It allows flexibility in developing

project-specific insurance and bond requirements. The exhibit provides details pertaining to required coverages, prompts the parties to consider various optional coverages and encourages discussion between parties.

Article 11 of the A201 also was revised substantially in conjunction with the development of the exhibit. One notable revision to Article 11 is at section 11.1.2, which now requires that the bonds be purchased and maintained from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the project is located.

This change was made in response to a comment made by the National Association of Surety Bond Producers, one of the industry groups that reviewed A201-2017 during the revision cycle. The revision was made to help ensure that project bonds are issued by adequately capitalized and viable sureties.

**What are sureties looking for when underwriting for a construction company that may experience sudden growth?**

**MICHAEL P. CIFONE**

SENIOR VICE PRESIDENT – SURETY UNDERWRITING

*Hudson Insurance Group*



Sudden growth, when anticipated, can be a very profitable opportunity for a contractor. The surety looks for the reasons

behind the growth, as well as the infrastructure that is in place to execute the new growth.

Planned growth with known owners or general contractors in familiar territories is preferred. Contractors venturing out to new owners in unfamiliar territories usually raise concerns for the surety.

The surety also looks to see that the contractor has sufficient qualified personnel in place to oversee the new work. Adequate project supervision and skilled labor continues to be an issue in today's construction market. The surety is also concerned about the contractor's estimating skills and ability to maintain expected profits throughout the project.

Most contractors are not struggling to find work in this environment; instead, the struggles are seen in properly staffing their projects and executing projects in a timely manner.

**BILL WATERS**

VP CONTRACT UNDERWRITING

*CNA Surety*



Liquidity and the capacity to staff and manage the work are essential to successfully handling rapid growth. The biggest mistake a surety can make

is bonding more work than a contractor can fund and manage.

Growth consumes cash, and rapid expansion requires liquidity. Regardless of the profit potential that growth offers, a significant disruption in cash flow can be a death knell for a contractor.

But opportunity and cash are not enough to guarantee success. Without the right people to manage the work and provide financial oversight, more work means much more risk. Contractors frequently cite finding quality people as the biggest challenge they face in today's market.

Successful contractors were able to right-size their organizations to cope with the recession, but an even bigger challenge is whether they can effectively staff up to take advantage of the growth opportunities that the recovery cycle offers. Revenue growth is tempting, but if it's at the expense of the bottom line profits, is pursuing rapid growth really worth the risk?

SPECIAL SECTION:  
**CONTRACTORS' GUIDE TO SURETY BONDING**

**What are sureties looking for when underwriting for a construction company that may experience sudden growth?**

**MIKE MITCHELL**  
VICE CHAIRMAN AND PRINCIPAL  
*Graham Company*



Sureties are looking for three core fundamentals that are particularly important for a construction company experiencing rapid growth.

First, you need a strong balance sheet showing equity in the company, liquidity driven by good cash flow and accounts receivables that are consistently current.

Equally important, sureties value depth and experience for principals and senior management. It's critical to showcase that the company has built a track record for delivering projects on time and on budget.

Lastly, the support of a banking institution gives surety companies an additional level of comfort. As a construction company grows quickly and takes on a higher volume of projects, potentially with additional complexities, a sufficient line of credit readily shows there is a cushion in place should issues arise with payment or project delays.

**MIKE SPECHT**  
VICE PRESIDENT – SURETY  
*INSURICA*



Sureties are conservative by nature, so they appreciate a heads up about sudden growth in job size or backlog. An understanding of the contrac-

tor's thinking about managing the sudden growth, via a plan, will assist the bonding company.

If the growth is in the contractor's sweet spot (i.e., familiar owners, type of work and territory), the surety will look at this more favorably and stretch farther. Bonding companies would prefer that contractors proceed with caution with new owners, types of work and territories.

As we all know, growth eats cash. It's used to start new work, hire new people, purchase new equipment and pay down debt. Accordingly, the surety will want to make sure the contractor's working capital keeps pace with its growth.

If the contractor's balance sheet already supports the jobs and backlogs that are targeted, working capital won't be an issue. If analyzed working capital doesn't support where the contractor is headed, the surety will want profits to be retained in the company to maintain an adequate working capital to backlog ratio.

**CLINT DIERS**  
SENIOR VICE PRESIDENT  
*Marsh & McLennan Agency*



Sureties prefer to see firms take on growth in a gradual, calculated manner. Doubling or tripling volume in one year is of major concern, and

as history indicates, too much too quick can lead to a disastrous end result. Sureties thoroughly evaluate these opportunities and their potential impact on the organization when underwriting to support a significant increase in backlog.

Can the firm effectively manage the new work? The contractor should be able to answer this question internally and prepare for a detailed discussion demonstrating the experience, systems, people and resources required to manage the increased obligations successfully and profitably.

Equally important: Is sufficient capital and liquidity in place to cover the inevitable cash flow challenges that often accompany multiple project starts and increased volume? The surety will look for larger than normal liquidity reserves and banking support to cover a potential cash strain. In most markets across the country, project opportunities are abundant, yet labor, schedule and margin pressure remains a concern.

**What insights can you offer to contractors seeking to increase their bonding capacity to bid on larger government projects?**

**HENRY W. NOZKO, JR.**  
CHAIRMAN, PRESIDENT & CHIEF  
EXECUTIVE OFFICER  
*ACSTAR Insurance Company*



Patience and moderation can pave the way for greater bonding capacity. Avoid excessively high requests and demonstrate a quotient for consistency.

For example, if the largest prior project your organization

completed is \$500,000, don't ask for a \$5 million bond. That will likely result in a declination and might scare the underwriter. Your next bigger bond request should probably not be more than about twice the size of the largest prior completed project (in this example, \$1 million).

If your surety declines such a request, you most likely could find another surety to approve the higher bond amount. A fresh review from a new surety could

take a week to a month depending on the size and complexity of your organization and the surety conducting the review.

But be careful; a record of hopscotching around can spook a new surety.

If the \$1 million bonded project gets approved and successfully completed, it could be the bridge to a \$2 million bond approval and so on.

Patience and constraint will get you there.



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# Aging Infrastructure Projects Call for Surety Bonding Protections

BY ROBERT MURRAY

**A**t a time when local, state and federal government budgets are under mounting pressure, allocating the resources to refurbish America's aging infrastructure—the roads, bridges, railways, airports, water systems, pipelines

and other components upon which our economy depends—is an increasingly difficult challenge.

However, the deplorable state of much of the nation's vital infrastructure, which earned a D+ grade from the American Society of Civil Engineers (ASCE), can no

longer be ignored. It is becoming an increasing drag on business productivity, as well as negatively affecting the convenience and safety of individual Americans.

As a result, a growing number of decision-makers are looking to public-private partnerships (P3s)

DELIVERED  
SMARTER



# WHAT IF?

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to answer pressing infrastructure needs. In recent times, P3 arrangements have enabled the successful completion of many high-profile builds around the nation, such as the new tollway express lanes of the LBJ expressway in Texas and the Rapid Bridge Replacement Project in Pennsylvania.

Given that budget proposals in the \$1 trillion range for infrastructure rebuilding programs are being discussed in Washington, D.C., the potential for a nationwide surge in P3 projects could present many contractors with significant business opportunities. But an infrastructure rebuilding boom also may result in more complex risk transfer challenges alongside those normally baked into any major construction program.

No matter how experienced a contractor may be in taking on traditionally financed public projects, winning a P3 infrastructure bid requires heightened awareness of the financial and political environment during all phases, from contract to completion. Risk allocation among multiple stakeholders, and the resulting complex interdependence of contractual relationships, remain key challenges on all P3 projects. Contractors actively pursuing such opportunities should make it standard practice to seek the assistance and insights of a professional surety team at the earliest stages, even as early as the RFQ/RFP phase.

Bonding requirements have helped assure the completion of public infrastructure contracts for

many decades and will continue to do so going forward. A surety bond is among the most time-tested methods of providing security for infrastructure rebuilds. They have much to offer to contractors, government entities and taxpayers in terms of protections.

Construction is an inherently risky business, especially large-scale, mission-critical infrastructure projects. A variety of factors can negatively impact the completion of a specific assignment. One such factor could be as simple as the selection of a contractor lacking adequate experience or financial resources for the scale and type of project being built.

A well-crafted surety bond strategy delivers risk mitigation advantages in two key areas. First, due to the in-depth prequalification process typically associated with the underwriting of performance bonds, contractors that may lack the proven capability for successfully completing a particular type of infrastructure program (such as a bridge or highway overpass) may be eliminated from consideration earlier in the planning phase. This can help provide greater assurance to decision-makers assigning the project.

Second, payment bonds provide greater economic security for local subcontractors and suppliers, which are often small business owners unable to absorb non-payment on a P3 infrastructure project. While a P3 contract transfers construction financing risk to private entities, the project remains public property and mechanics' liens are not typically an option to protect against

non-payment. In the absence of mechanics' lien rights, payment bonds help provide assurance that laborers, subcontractors and suppliers will be paid for work and materials even when a potential exists for unanticipated interruptions in private financing of public property P3 ventures.

Ultimately, surety bonds help ensure contract completion in compliance with the contract terms, protecting the interests of taxpayers and investors should a contractor default. The right surety team can be a major asset to a contractor undertaking a complex P3 infrastructure project. Experienced surety underwriters can help contractors navigate the nuances of the P3 procurement process and the complex relationships that exist between public and private stakeholders. Because they understand the continuum of risks associated with P3 projects, they can act as advocates for the contractor and for the project overall. They also can provide assistance in identifying project risks and can tailor bond language to meet the needs of various stakeholders, including concessionaires, lenders and rating agencies.

With the nation calling for urgent action on vital infrastructure improvements, rebuilding programs financed by P3 solutions are likely to grow in number, scope and cost. The surety industry will play an ongoing role in helping to rebuild America in the years ahead. 

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*Robert Murray is global head of surety at Zurich Insurance Group. For more information, visit [zurichna.com](http://zurichna.com).*



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# A Capitol Hill and State Legislative Update

BY LENORE MAREMA AND LAWRENCE LECLAIR

**D**uring his campaign for the presidency, one of Donald Trump's key initiatives was a \$1 trillion 10-year infrastructure spending package with funding from private investors and the federal government. Specifically, financing from private investments would secure public-private partnership (P3s) agreements to help address the nation's infrastructure problems.

President Trump recently has moved away from P3s by questioning their effectiveness, and the administration's focus for the remainder of 2017 will be on tax reform. As such, all signs seem to point to the unveiling of an infrastructure plan in early 2018.

However, states are not waiting for Congress to act. Eight states increased their gas tax this year to fund needed infrastructure projects, and 26 states have raised their gas tax in the last four years. But state budgets are tight for the foreseeable future, leaving little room for significant increases in spending.

## **Federal Activity**

Rep. Nydia Velázquez (D-N.Y.) sponsored an amendment to the House version of the FY 2018 National Defense Authorization

Act (NDAA) that exempts the Federal Miller Act from required indexing of the bond threshold for inflation. Periodically increasing the Miller Act threshold means that subcontractors and suppliers on federal construction projects will have no payment protection on increasingly larger projects. Members of the Construction Industry Procurement Coalition signed a letter in support of the Velázquez amendment and delivered it to the chairmen and ranking members of the House and Senate Armed Services Committees.

The annual defense spending bill is being reconciled in conference committee and is expected to reach the House and Senate floors sometime in December.

A provision included in S.1320, the Senate's version of the Federal Aviation Administration (FAA) Reauthorization bill, establishes P3 agreements for the construction and renovation of general aviation (GA) facilities, but it is silent on surety bond requirements. There was interest in the Senate to consider bonding requirements, but Congress was unable to reach a compromise on the FAA Reauthorization bill prior to the Sept. 30 funding deadline.

Subsequently, Congress approved a short-term extension to fund the FAA through March 30, 2018. Discussion among members of Congress regarding the importance of including bonds for P3 agreements for the construction of GA facilities will resume next year.

On the regulatory side, the Small Business Administration's Office of Surety Guarantees established regulations to:

- increase the guarantee percentage in the Preferred Surety Bond Program from 70 percent to not more than 90 percent;
- increase the contract amount for its Quick Bond Application from \$250,000 to \$400,000; and
- raise the threshold change order notice requirement from \$100,000 to \$500,000.

Finally, the construction industry awaits the release of proposed regulations to address the recent statutory changes adopted in the FY 2016 NDAA that restrict the types of assets that individual sureties can provide to secure their bonds on federal construction contracts. The industry anticipates that these regulations will be released in

the fall and will include a 60-day public comment period.

### State P3 Activity

This year, half of the states considered legislation authorizing P3s or expanding existing authority to use P3s. Even though procurement methods have evolved, construction remains a risky business, making the protections that surety bonds provide for taxpayers' investments and the payment guarantees for subcontractors and suppliers just as relevant and important in P3s.

Most new P3 laws enacted in the past five years require bonding of any construction, and that trend continued in 2017. The Arkansas and Oklahoma legislatures enacted legislation providing guidance on the terms and conditions for a P3, which require consideration of bonding. In Arkansas, regulations were promulgated that require bonding. In Oklahoma, the Little Miller Act was amended in 2012 to require bonding in P3s for construction on public land funded with public money, so bonding already is required.

Connecticut extended the authority for a P3 pilot project under an existing law that requires bonding for the P3s. Kansas enacted a new law to require contractors to provide payment and performance bonds in public works projects under a P3. Louisiana now allows the Regional Transit Authority to use P3s, which must follow the bonding requirements for any other transportation

project. Nevada authorized counties with a population in excess of 700,000 to use P3s for transportation projects under a new law that provides that payment and performance bonds may be required under the P3 agreement. It remains to be seen how that law will be implemented.

Oregon now allows the Port of Hood River to use private partners in tollway projects and requires any P3 to comply with prevailing wage and bonding requirements. Utah amended its procurement code to include P3s as another method of delivery for state and local public works projects, leaving bonding and other requirements applicable to P3s. West Virginia extended the authorization for the Division of Highways to enter into P3s for transportation facilities, which was set to expire this year.

With the Trump administration signaling that an infrastructure bill in Congress would include leveraging of private funds, federal financing and grants, as well as direct funding, states without P3 authority may seek a P3 law in 2018 to assure their participation in any new federal program.

### State Bond Thresholds

Three states considered raising their bond threshold to \$150,000. North Dakota and Washington raised their threshold to \$150,000, while negotiations in New Hampshire led to an increase in the state bond threshold from \$35,000 to \$75,000 (and to \$125,000 for local

governments). As more states look to the Miller Act thresholds, subcontractors, suppliers and workers will work on larger jobs without payment protection. This makes eliminating the indexing of the Miller Act all the more important.

In other action, a new law in Idaho established a \$50,000 bond threshold for public building and public works projects. There was no bond threshold under prior law. Indiana now allows state educational institutions to waive bonds for projects under \$500,000. Wisconsin eliminated the biennial indexing of its state and local bond thresholds for inflation. The new law freezes the state bond threshold at \$369,000 and the local government bond threshold at \$148,000. The thresholds were scheduled to increase to \$413,000 and \$165,000, respectively.

Local governments in Virginia sought to waive existing prequalification requirements for any projects under the \$500,000 state bond threshold. A compromise was reached to waive bonds only for Class A contractors and for no more than 10 contracts annually between \$100,000 and \$300,000. The waiver provisions expire July 1, 2021. 

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*Lenore Marema is vice president of government affairs for The Surety & Fidelity Association of America and Lawrence LeClair is director of government relations. For more information, email [lmarema@surety.org](mailto:lmarema@surety.org) or [lleclair@nasbp.org](mailto:lleclair@nasbp.org).*

# Filling the Surety Industry's Generation Gap

BY SCOT ALBRINCK AND COLIN LENGYEL

**W**ord of the construction industry's labor shortage is being heard loud and clear: Two-thirds of U.S. contractors are having a hard time finding qualified workers and possess a virtually nonexistent backfill of young talent entering the industry. But what about the surety professionals working behind the scenes? Are they facing the same challenges?

They are indeed. Both surety companies and agencies have a short pipeline of talent, with companies and headhunters alike struggling to fill well-compensated positions for strong corporations. To add to the dilemma, the large generation gap in the surety and insurance industry forces companies to choose between an individual who has perhaps five to seven years left of their career and a younger, mostly unproven (yet more motivated) individual to drive their business into the future.

Keeping in mind that a large portion of surety business doesn't frequently move (and long-term relationships reign), this presents a large question mark.

"Starting in the late 1990s and continuing through the 2000s, the insurance industry was largely forgotten as the hot ticket, with college graduates centered around Wall Street



and the booming tech environment," says Randy Noah, vice president of surety at Cincinnati-based AssuredPartners. "The insurance industry did a poor job of recruiting, training and retaining surety and insurance professionals during this time. Now, as the industry once again seeks talent, it is important to remember that insurance remains a strong and vibrant industry with immense opportunity in both the sales and underwriting arenas."

Qualified applicants currently trade back and forth among companies—looking for a change in scenery, upward mobility or perhaps a monetary increase. When an individual leaves one company, the incumbent company is often left scrambling to

retain the business and begin the long process of hiring the right replacement, imposing an extra burden on others within the organization to pick up the slack in the interim.

Job openings often can last a year or more. Combine that with "job hopping" becoming more normalized, and the backfill becomes more important than ever.

With a lack of formal surety education (many in the industry will describe how they "fell" into the field as opposed to choosing it), surety knowledge is largely gained by way of a finance or accounting major, on-the-job training and reading technical books. The pipeline for talented individuals begins post-college, making early recruitment difficult.

### **Finding Talent**

So where is talent found, and how does the surety industry go about avoiding another wave of the 20-year gap between the future leaders (with the majority now in their 30s and early 40s) and incoming industry talent? Encouraging new employees to participate in local and national surety and insurance organizations, and establishing mentoring relationships between surety professionals and insurance professionals, may provide key opportunities.

Now is the time to address educational involvement by collaborating with business and construction school programs. For example, a surety professional can volunteer to speak on behalf of the industry at colleges offering finance, business and accounting tracks to spark some interest in students who may not otherwise have a clear career path.

Presentations for students are available for download on the Surety Information Office website (sio.org).

In addition, getting students started early with internships (both high school and college) provides a path to future employment. Just don't forget to involve them in more interesting parts of the job, not just mundane tasks such as typing reports and entering WIP schedules.

Once those students are interested, encourage them to leverage their vast alumni networks at colleges and universities throughout the country—providing another business opportunity for not only themselves, but for the company as well.

This year at the Gamma Iota Sigma conference in Dallas, The

Surety & Fidelity Association of America (SFAA) expanded its efforts to recruit on behalf of the industry. Gamma Iota Sigma is an international business fraternity for students of insurance, risk management and actuarial science. Special webpages were created with links to member companies' recruiting websites and two industry professionals delivered a presentation to explain the role of a surety professional. The event was a success and SFAA looks forward to expanding its efforts in the future.

### **Mentoring Through Local and National Organizations**

Industry groups such as SFAA and the National Association of Surety Bond Producers, along with several local surety and construction groups, serve the interests of the industry well and provide opportunities beyond daily work life. Active involvement in these organizations can be a targeted effort on the part of surety companies and agencies alike; don't wait until employees are five years in to get them involved.

Individuals willing to immerse themselves in the field provide a voice for the industry; plus, they are much more likely to stay in the field and advocate on the industry's behalf. It's no secret that employee engagement is one of the keys to retention, and these groups provide yet another avenue toward achieving this goal.

Collaboration and mentoring are great tools for senior leaders to educate the industry and ensure business continuity. The Mentoring

Quick Guide was developed by the SFAA Diversity & Human Resources Advisory Committee's Learning & Development Work Group. This toolkit, available at [surety.org](http://surety.org), has comprehensive information focusing on four areas: leadership commitment and organizational accountability, talent acquisition strategies, learning and development, and engagement and networking.

From a surety perspective, while some agencies and brokers have dedicated surety departments and experienced surety producers, not all of them have the knowledge or the resources to provide formal bond training, yet most agencies still handle bonds. Mentoring helps agencies become more successful and well-rounded while expanding their role as a full-service fiduciary.

Preventing another talent gap in the surety and insurance industry will, like most things, take time to develop. A concerted effort by carriers and brokerages to prospect, develop and maintain a steady pool of talent is just as necessary as it is on the construction side.

The more proactive the industry can be with its recruitment and training, the less scrambling will need to be done. In effect, the generational gap in the surety industry will only be addressed by eliminating its existence down the road. 

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# The Power of Partnership: Choosing the Best Surety Agent for the Job

BY SCOTT PAICE

**T**hanks to several years of favorable industrywide results, there is plenty of capacity in the surety marketplace. Carriers and agents are aggressively competing for contractors' business. Most companies have probably received numerous solicitations from agents and brokers near and far, via the internet, promising larger programs, better terms and lower rates.

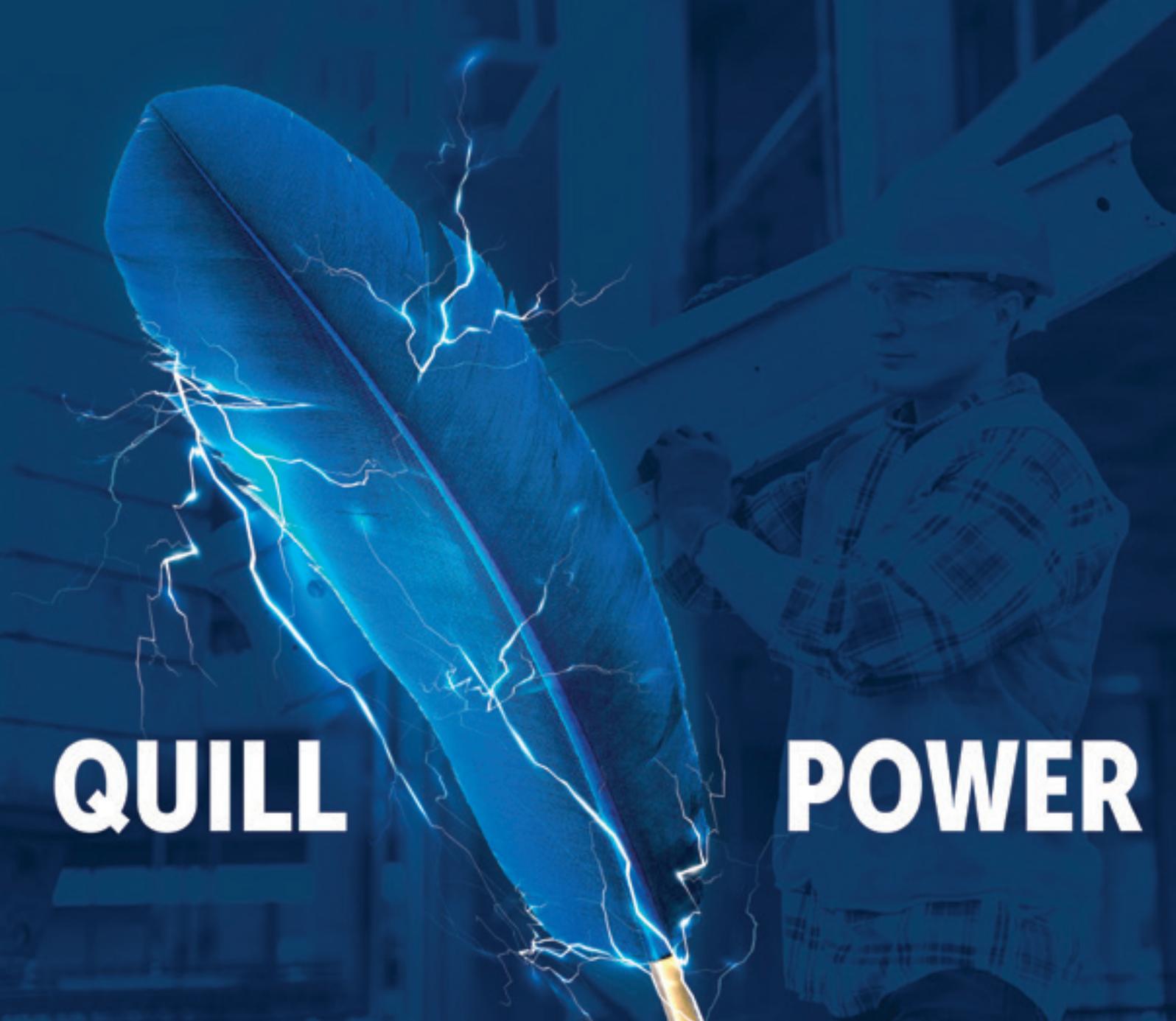
In today's soft market environment, practically any licensed insurance agent can help a firm obtain bonding. It is a buyer's market right now and a great opportunity for contractors to establish their first bond line or reevaluate their current situation.

As with any relationship, choose a partner carefully. A professional surety bond producer can be a contractor's most trusted and valued ally.

For firms that are new to surety or who are considering a change, following are several questions to consider.

- Does the agent truly listen and care about the business?
- Have they invested their time to understand the company's business plans and specific needs?
- Can they be trusted to keep financial information and bid estimates confidential?
- Is the agent part of the company's inner circle when it comes to providing strategic advice?
- Is the agent always available when needed? Do they have sufficient support staff?
- Do they execute and deliver bid and performance bonds in a timely and accurate manner?
- Do they have multiple surety markets available to them?
- Do they do enough business and have enough clout within those markets?
- Have they matched the company with a surety that best fits its needs, not just their own?
- Do they have a backup market in place for the company's account?
- Do they anticipate the company's needs?
- Do they help review contract documents and bid specifications?
- Do they help identify and resolve onerous contract provisions?
- Do they have experience and advice in handling a surety claim situation?
- Can they make introductions to other customers, subcontractors, suppliers and business owners?
- Can they identify and introduce other professional service providers, such as certified public accountants, construction attorneys, industry experts and safety professionals?
- Are they active and invested in community and charitable organizations?
- Are they invested in industry associations, such as Associated Builders and Contractors?

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casualty agents or brokers as their sole distribution channel. Most of these agents are independent and represent one or more carriers. There are literally thousands of agents and brokers, although there has been a tremendous amount of consolidation during the past several years. The individual the contractor is dealing with is just as important (if not more) than the organization for which he or she works.

While the universe of licensed agents is vast, the number of agents or brokers that specifically specialize in surety is much narrower. Some of the best agents were once underwriters on the carrier side and can guide contractors with firsthand experience and perspective. There are also many "bond only" agents who do not deal with other insurance coverages and specialize only in bond placements and service.

A good resource for surety bond producers and information is [nasbp.org](http://nasbp.org), the website for the National Association of Surety Bond Producers (NASBP), which helps members stay informed on current issues and educational opportunities.

Whether a contractor selects a small local agency, a national broker, an NASBP member, a specialist or a generalist, one size does not fit all and there is no right or wrong answer. The best fit typically comes down to who works the hardest for the company and who that company likes and trusts the most.

**“ A professional surety bond producer will not push program parameters that cannot be sustained.**

#### **Buyer Beware**

Contractors need to be wary of prospective agents offering to “over-serve” them. While it is tempting to hear offers to double or triple a bond program, these are often short-term, attention-grabbing enticements. If it sounds too good to be true, it probably is.

A professional surety bond producer will not push program parameters that cannot be sustained. With skilled labor in short supply and rising materials and health care costs, one of the biggest risks today could be biting off more than you can chew.

True program parameters should be based on the company's past experience and its financial wherewithal, not the whim of the competitive marketplace and aggressive marketing.

#### **Annual Review**

Available bond line capacity is a contractor's lifeline. Program parameters and underwriting appetites can change each year, or even throughout the year, so it is important to know where the business stands with its surety provider at all times. The agent should be on top of this to ensure there are no disruptions throughout the year. This works both ways; the contractor

needs to provide timely and accurate information as well.

Material decisions or changes should be discussed with the surety agent before they are implemented. If the agent is afraid to ask or relay questions or concerns, it could result in a roadblock at the most inopportune time and may cost the contractor the ability to make that last-minute bid and obtain work.

An agent should schedule annual meetings (for active accounts) with the surety underwriter. A face-to-face meeting can go a long way to improve both parties' comfort level. The agent should coach the contractor prior to any meeting and be an active participant in the discussion. It is their job to represent the contractor in the best possible light and make recommendations to maximize the firm's bondability and profitability.

A strong surety producer can be a powerful partner and an invaluable member of a contractor's core team. Choosing the right surety partner can be one of the most important business decisions a contractor makes. 

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*Scott Paice is vice president of surety for FCCI Insurance Group. For more information, email [spaice@fcci-group.com](mailto:spaice@fcci-group.com).*

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# Bonding as an Empowerment Tool

BY JOANNE BROOKS

It's a fact: Small businesses are the backbone of the American economy. And surety bonding is the lifeblood of any successful contractor, regardless of size.

Another fact: Construction is a risky business. Contractors often face a myriad of challenges during the life cycle of a construction project.

Recognizing these facts, the United States government has required surety bonds on public works projects since 1894, and increasingly, many prime and general contractors use bonds for prequalification and the payment and performance assurance on private work. There is no doubt that surety bonds protect taxpayer and owner dollars, as well as ensure that subcontractors and suppliers (that properly perform work) are paid.

Yet, when bonding is mentioned to small, emerging or minority contractors, there can be a great deal of trepidation and a sense of defeat. The simple truth is that the requirements needed to run a strong, thriving business are the same requirements needed to become bondable.

The Surety & Fidelity Association of America (SFAA) is leading the effort to educate small, emerging and minority contractors



Angela Berry Robinson (right), director of diversity contract compliance for Ferrovial Agroman US Construction Companies, Joanne Brooks, and Kai Earle-Marion (left), DBE manager at The Lane Construction Corporation gather at SFAA's Construction Diversity & Inclusion Summit 2.0 in Washington, D.C.

Angela Berry Robinson (right), director of diversity contract compliance for Ferrovial Agroman US Construction Companies, Joanne Brooks, and Kai Earle-Marion (left), DBE manager at The Lane Construction Corporation gather at SFAA's Construction Diversity & Inclusion Summit 2.0 in Washington, D.C. on why bonding matters, and changing the conversation from bonding as a barrier to bonding as an empowerment tool that leads to controlled growth, job creation and legacy wealth.

Successful contractors understand that construction is a risky business and that risk mitigation includes

not only achieving excellence in one's craft, but also handling the back-office issues of accounting, engineering, human resources and law. A surety professional helps contractors determine their strengths and weaknesses. Bonding benefits small contractors by ensuring payment, but also because the bonding process helps businesses understand their viability.

One benefit of a surety is that it can provide objective analysis of a contractor's business and financial health. Sureties are likely to say "no" if a particular project is out of a contractor's area of expertise, if it is not in their interest to pursue



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the work, or if a contract contains unfavorable terms and conditions. A surety looks beyond just winning work—focusing instead on viability and profitability, and helps the contractor consider what risks a particular project might pose.

Because surety professionals have the pulse of the marketplace, they can provide invaluable insights. The surety also is keenly aware of what factors lead to contractor distress and failure. The surety looks at the broad picture, not at just one project. It can assess the risk and determine if risk-shifting makes sense for the contractor, given the company's financials and performance record.

When a conflict arises, the surety's services are invaluable because it can independently assess the situation in pursuit of the best outcome. The surety wants the contractor to complete its work, and it often only takes the surety being there to assist with cash flow or other support to help the contractor through a short-term crisis. The strength of the surety's balance sheet stands behind the contractor, ensuring that projects get completed and bills get paid on time.

The surety industry has a long-standing commitment to assisting small, emerging and minority contractors with becoming sustainable contractors. The SFAA developed the Model Contractor Development Program® (MCDP) in 2000 to give disadvantaged contractors the educational and practical tools necessary for them to become successful business owners and bond ready. The MCDP consists of an educational component and bond readiness

component, during which participants work one on one with surety professionals to get their finances and bond applications in order.

In 2010, the SFAA partnered with the U.S. Department of Transportation (DOT) to implement the Bonding Education Program to assist Disadvantaged Business Enterprises (DBEs) in becoming bond ready and meeting requirements to bid on and win transportation-related construction and services contracts. Through these programs, contractors learn to develop a trust-based relationship with a licensed surety, become bondable, and have the ability to successfully bid on contracts and win profitable work. Since 2010, the SFAA has held more than 100 Bonding Education Programs, and contractors have achieved approximately \$700 million in bonding.

The federal government's commitment to small, emerging and minority contractors is further exemplified in the Small Business Administration's (SBA) Bond Guarantee Program. Working in conjunction with the surety industry to assist these contractors, the program has historically provided surety bond guarantees between 70 percent to 90 percent to participating sureties on qualified, yet more risky businesses. The law changed recently, and now the bond guarantees are up to 90 percent. In the SBA program, sustainable contractors are developed through the combined effort of private industry and public support.

Recently, the SFAA held its Construction Diversity & Inclusion Summit 2.0 in partnership with the

Airport Minority Advisory Council, and featuring the National Forum for Diversity in Construction. The SFAA and its partners recognize that small and emerging contractors benefit the most from the bonding process when it is tied to procurement opportunities. Working with prime contractors, the SFAA is steadily increasing the pool of qualified DBEs that are capable of bonding and participating in the building of American infrastructure.

The summit also highlighted private owners that understand the benefits of bonding and are focused on empowering contractors to take advantage of job opportunities. For example, Johns Hopkins University has provided educational opportunities for contractors to learn how to build strong businesses and achieve bondability.

Because obtaining bonding is an ongoing process, taking advantage of education opportunities will benefit contractors for years to come. Once a contractor understands the fundamentals, it can begin to grow in a measured and sustainable way.

For small, emerging and minority contractors, bonding may seem intimidating at first. However, those that are willing to learn about the process and put in the time and effort will come to recognize that being bondable is an invaluable asset that leads to strong, sustainable businesses. 

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*Joanne Brooks is vice president and counsel at The Surety & Fidelity Association of America. For more information on the benefits of bonding or the programs offered by SFAA, visit [surety.org](http://surety.org).*

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# How to Handle Higher Project Volume Without Overextending the Business

CARL CASTELLANO

**H**igher project volume—whether it's more projects of the same size or the same number of projects at an increased size—can place stress on any contractor. The starting point for handling that stress is the business plan, which should be prepared and continually updated. Accordingly, contractors that decide to increase project volume should only consider doing so after careful planning.

Keep in mind, the business plan for well-run organizations incorporates the five Ms: money, machine, material, manpower and methodology.

## **Money**

As contractors grow in volume, cash flow becomes increasingly important. The business plan should include monthly (if not weekly) cash flow projections, which will help determine the projected excess cash balances as well as the need for additional cash. The amount of cash needed will help determine the requirements for additional capitalization from

stakeholders or borrowing from lending institutions.

Well-run contractors maintain positive relationships and partner with their lending institutions. Accordingly, share the business plan with the company's lending institution when trying to obtain the required financing, such as a working line of credit.

## **Machine**

The goal of a well-run contractor is to maintain just enough equipment to execute its work without resulting in too much idle equipment which, of course, results in excess overhead costs. The business plan should include revenue and cost (including equipment) projections to help determine the forecasted "machine" required.

As business volume grows, contractors should consider the various options available to increase their equipment fleet (if needed), including outright purchasing, leasing, lease-to-own or a combination of these, and the resulting impact on their balance sheet, income statement and cash flow.

## **Material**

The business plan should include cost projections, including materials and, for these purposes, subcontracted work. Well-run contractors maintain good relationships with their vendors and subcontractors with the goal of not only obtaining favorable payment terms, but also partnering with them to assist in receiving priority delivery time for materials and high-quality subcontract crews.

One way to bolster top-line volume is to increase the amount generally subcontracted. Obviously, contractors should enjoy a favorable relationship with their subcontractors and secure their exposure by at least bonding the subcontractors critical to the performance of the project.

## **Manpower**

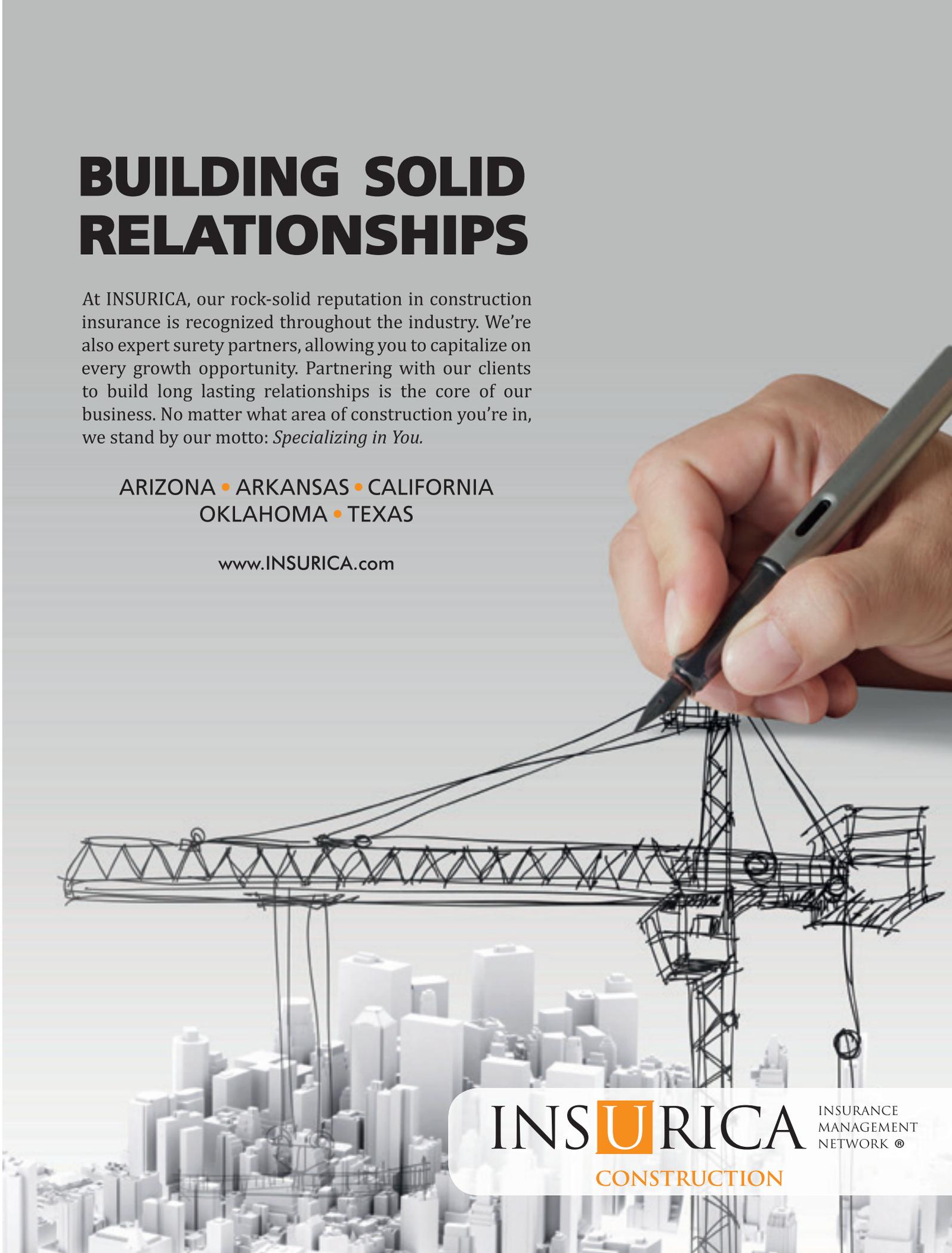
The business plan should include labor cost projections covering all categories: field labor, project management, superintendents, estimators, and accounting, information technology, administrative and executive staff. In the current

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A hand holding a pen is shown in the upper right corner, drawing a construction crane. The crane is a detailed line drawing that spans across the middle of the image. Below the crane, there is a 3D rendering of a city skyline with various buildings of different heights and shapes. The background is a light, neutral color.

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environment, maintaining competent and adequate manpower in all categories is one of the industry's greatest challenges.

As volume increases, contractors should consider their staff's experience handling larger projects, multiple projects, various owners, etc. As volume grows, more stress will be placed on manpower (including subcontractors). Ultimately, manpower could be the driver of the amount by which the company can grow.

#### Methodology

Well-run contractors design and embrace systems and procedures to positively impact their bottom line. Methodology includes the organization plan, checks and balances, estimating, scheduling, project management, cost, financial systems and reporting. As volume grows, there will be a greater dependency on accurate and relevant reports to assist with profitability management, as well as meet potential requirements from various project owners that may not have been previously experienced.

Finally, the business plan should address business continuity not only from a financial perspective (usually involving life insurance), but also from an operational perspective. The plan should be developed on a rolling five-year basis and continually updated as conditions change. Remember, proper prior planning prevents poor performance. 

*Carl Castellano is vice president of contract surety for Philadelphia Insurance Companies. For more information, email [carl.castellano@pbly.com](mailto:carl.castellano@pbly.com).*

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# Always Verify a Bond

BY HOWARD COWAN

**A**lthough the vast majority of contractors, surety bond producers and underwriters are ethical professionals, the number of sophisticated fraudulent bonds is increasing. Therefore, it is imperative for a beneficiary of a performance or payment bond to verify the authenticity of every bond before acceptance. This can be accomplished by a simple two-step process that will determine if the surety is licensed to do business in the state where the project is located and if the surety has authorized the bond.

First, contact the insurance department in the state where the project is located. With few exceptions, sureties must possess a certificate of authority from the insurance commissioner in each state where it is licensed to conduct surety business. The National Association of Insurance Commissioners offers a map on its website ([naic.org/state\\_web\\_map.htm](http://naic.org/state_web_map.htm)) that provides a link to all state insurance departments. Or, call the appropriate state's insurance department to get the most current and complete information.

A second great source of information on whether a surety is authorized to do business in

**“** *Surety companies are not immune to financial difficulties up to, and including, insolvency.*

a particular state is the U.S. Department of the Treasury Listing of Approved Sureties, Department Circular 570, often referred to as the Treasury List of Approved Sureties. The circular lists every state in which a surety is authorized. Approval by the Treasury Department is required to write bonds on federal projects. As part of the approval process, the Treasury conducts a financial review of every listed surety to determine the maximum size of any single bond that the surety can provide. A beneficiary can access the list at [fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm](http://fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm).

Surety companies are not immune to financial difficulties up to, and including, insolvency. Obligations under surety bonds usually are not covered by state insolvency funds. As a result, it is important to monitor a surety's financial rating by organizations such as A.M. Best and a surety's

current standing with the U.S. Treasury Department and with the state insurance department where the surety is authorized to do business. If a surety is placed into conservatorship (a form of bankruptcy for insurance companies), outstanding bonds may be problematic. Any beneficiary should immediately demand that the original bonds be replaced with new bonds from an acceptable surety. This can be extremely challenging.

The second area of essential verification is to determine that the surety actually authorized the execution of the bonds. Treasury Circular 570 includes a specific telephone number to contact listed sureties for verification. The Surety & Fidelity Association of America administers a program in which surety companies voluntarily agree to receive inquiries for the purpose of verifying the authenticity of surety bonds. For more information, visit [surety.org/page/VerifyYourBond](http://surety.org/page/VerifyYourBond).

To verify the bond, the surety will need specific information, such as the bond number, the name of the principal, the name of the obligee, the amount of the bond, the execution date, a description of the project and the name of the attorney-in-fact.

The verification process also can help catch unintentional human errors. Producers, who are members of the National Association of Surety Bond Producers, must occasionally execute bonds on projects that have already started.

The owner, architect/engineer or contractor may have simply let the bond requirement slip through the cracks. Upon the surety's verification of the original requirement for bonds and its confirmation that compliance with work and payment obligations has taken place, surety bonds can be executed.

Although fraudulent bonds are relatively rare, the financial consequences of relying on one can be devastating. Projects may not be completed or may incur large cost overruns. Subcontractors,

suppliers and laborers may not be paid and may have to file liens on private projects or absorb losses on public jobs. While the verification process requires time and effort on the part of a beneficiary, it is well worth it. **CE**

---

*Howard Cowan is principal of Acrisure, LLC dba Cowan-Hill Bond Agency, Lubbock, Texas, and president of the National Association of Surety Bond Producers. To find a professional surety bond producer, go to "Get a Bond" at [nasbp.org](http://nasbp.org).*

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