by Marla McIntyre

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SURETY BONDING—EXPAND YOUR ABILITY TO ACQUIRE WORK

Almost half of today's non-residential (single-family) construction takes place in the public sector where contract surety bonds are required by law as a way to protect taxpayer dollars. In addition, more and more private project owners or their lenders are stipulating bonding requirements on their construction projects. Prime contractors are also more frequently requiring subcontractors to obtain bonds.

In today's competitive marketplace, where according to the U.S. Census Bureau, the value of construction put in place excluding single-family residential construction is about $600 billion—about $275 billion of which is public—a contractor's ability to acquire work is becoming more and more limited if he or she has not arranged access to surety bonds.

The Miller Act

Contract surety was federally codified in the Heard Act of 1894, which was replaced by the Miller Act in 1935. States followed suit in a series of state acts commonly referred to as Little Miller Acts. The Miller Act and other related rules and regulations were designed to protect taxpayers' money on public contracts.

"In addition, these acts were designed to protect the financial well-being of the hardworking people who provide labor and materials to public projects," explains Gary T Dunbar, bond division president of Great American Insurance Co., Cincinnati, OH, and past chair of The Surety and Fidelity Association of America (SFAA) board.

Surety bonds are just as essential in private construction. The ability to obtain a surety bond is independent validation of the contractor's capabilities and is viewed favorably by banks as lending partners and private owners as potential customers.

Surety bonds provide contractors with a clear, distinctive advantage over unqualified competitors, and the ability to provide bonds sends a message of credibility and trust to the project owner. A surety bond assures the owner that an independent third party believes in the contractor's ability to perform the job.

Obtaining a Bond

Most surety companies issue surety bonds through professional surety bond producers. The first step in obtaining a surety bond is to contact a producer, also known as an agent or broker. A list of producers is available through the website of the National Association of Surety Bond Producers (NASBP) at www.nasbp.org/bond.cfm.

The producer guides the contractor through bonding, helps establish and foster a relationship with a surety company and assists in managing the contractor's surety capacity. After meeting with the contractor and gaining an understanding of the firm's business and needs, the producer customizes the contractor's submission for the surety's specific requirements. The producer then submits the account to a surety company best matched to the contractor's profile and needs.

The surety underwriter examines the contractor's entire business operations and must be satisfied that the contractor is capable of completing the project. This process, known as pre-qualification, assesses the contractor's financial strength and ability to support a viable business.

Benefits of Surety Bonds

In today's construction market, the value of pre-qualification is high. Not all contractors qualify for bonds. The fact that a contractor has a relationship and bonding capacity with a surety company is a strong indication of the contractor's qualifications.

Experienced surety underwriters and bond producers can be two of a contractor's greatest assets. These professionals have access to a wide variety of resources to assist contractors. For example, the surety team interacts with a cross-section of the construction industry and can assist the contractor with professional references such as construction accountants, lenders and attorneys.

For contractors involved in private construction, it is critical to know the source of the project owner's funding. Many contractors have faced bankruptcy because they did not verify funding. The surety frequently insists on knowing the source and adequacy of funds before it will commit to bonding a project.

Many sureties also review contracts to identify contract terms, general condition requirements or anomalies in the specifications, or bond forms that may be onerous, unacceptable or add undue risk.

The surety team can also help contractors develop a continuity plan to protect their families, estates, partners, creditors, employees and assets.

Surety Bonding Advantages

- Builds contractor's credibility with owners and bankers
- Confirms contractor's ability and qualifications to perform job
- Provides contractor with a competitive edge
- Validates contractor's financial strength and soundness
- Enhances contractor's ability to acquire work
- Demonstrates contractor's self-confidence in abilities
- Provides value-added services
- Offers access to experienced advisers for contractor's strategic business team
- Is a seal of approval of contractor's character

Programs and Resources

The surety industry is committed to helping new and emerging contractors obtain their first bond, increase their bonding capacity and ultimately become better businesses. The ability to obtain surety bonds gives contractors the support and resources they need to increase their contracting opportunities, compete for market share and grow.

"We have the opportunity to help create great future contractors by pulling together groups of interested professionals that can mentor disadvantaged companies on their way to becoming great contractors," Dunbar says. "We can develop strong new surety risks by combining the business skills of well-trained professionals with honest and hardworking disadvantaged contractors."

Three Washington, DC-based nonprofit organizations serve as valuable resources for contractors:

- The Surety Information Office (SIO)—Offers complimentary information and materials for contractors who want to learn more about contract surety bonds in public and private construction. Visit www.sio.org for more information.
- The Surety and Fidelity Association of America (SFAA)—Represents members who are engaged in the business of suretyship. SFAA has developed a Model Contractor Development Program to educate new and emerging contractors about surety bonds and assist them in becoming bondable. Visit the "Development and Diversity" section of SFAA's website at www.surety.org for more information.
- The National Association of Surety Bond Producers (NASBP)—Represents more than 5,000 professional surety bond producers who specialize in surety bonding. Visit www.nasbp.org for more information.

Many other programs and resources are also available to contractors:

- Local surety associations—Organizations composed of surety company and bond agency representatives who address local surety bond interests. Access associations via www.sio.org/lsadirectory.html.
- Small Business Development Centers—Provide technical assistance to contractors in many locales. For details, visit www.sba.gov/sbdc/index.html.
- SBA Surety Bond Guarantee Program—Helps small and emerging contractors who have the knowledge and skills necessary for success but lack the combination of experience and financial strength to obtain bonds through traditional commercial channels. Contact SBA at 202.205.6540 or visit www.sba.gov/osg for more information.
- U.S. Department of Transportation (DOT)—Offers a bond guarantee program for transportation and transportation-related construction projects. The program provides new and emerging contractors with opportunities to obtain bid, payment and performance bonds. For more about the U.S. DOT program, visit osdbu.dot.gov and select OSDBU Services from the index at the top of the page.
- Mentor-Protégé Program—Improves participation in several state transportation-related projects by providing opportunities for new and emerging contractors to hone their business skills through close work with established contractors. Some programs are designed to increase minority participation in state highway construction projects, while others aim to elevate the volume of projects that emerging contractors are capable of bidding on and profitably performing. To learn more about mentor-protégé programs or state DOT programs, contact the state DOT office. ■

Marla McIntyre is executive director for the Surety Information Office (SIO) in Washington, DC. SIO is the information source on contract surety bonds in public and private construction. A nonprofit organization, SIO is supported by The Surety and Fidelity Association of America (SFAA) and National Association of Surety Bond Producers (NASBP). McIntyre can be reached at 202.686.7463 or mmcintyre@sio.org. Visit www.sio.org.