What Are Sureties?

Sureties are subsidiaries or divisions of insurance companies that issue contract and commercial surety bonds. The vast majority of surety bonds in the United States are written by these insurance companies regularly engaged in the business of acting as a surety.

Are surety companies regulated by the state?

Yes. Surety companies typically are authorized and qualified to do business by the state insurance commissioner where they are domiciled and in the jurisdiction where the bond is issued. The state departments of insurance regulate surety companies, which must meet minimum capital requirements, file periodic financial reports in those jurisdictions where they are authorized to do business, and are subject to market conduct investigations, among other regulatory requirements and actions.

There have been significant abuses and fraud in the past when unregulated or unlicensed sureties were permitted to issue bonds. With no oversight, there is no assurance that the assets backing the bonds are real. If the assets pledged to support the bonds are of little or no value, bond obligees and claimants are left with no viable protection in the event of a default.

How can an owner protect itself against unlicensed or unauthorized sureties?

It is critical that construction industry stakeholders, including owners, confirm that the surety issuing bonds for a project is licensed in the jurisdiction of the project and that the bond has been authorized by that surety. Anyone can perform this confirmation by undertaking the two-step process below:

1. Check the authority of the surety to issue the surety bond:

- ✔ Contact the state insurance department to determine if the surety is admitted in the jurisdiction of the project. Generally, sureties must have a certificate of authority from the insurance commissioner in each state in which they conduct business. The National Association of Insurance Commissioners provides a map with links to all state insurance departments, at http://www.naic.org/state_web_map.htm. Some states list admitted sureties on the insurance department website, but a quick call to the department will ensure the most current and complete information.
- ✔ Consult the U.S. Department of the Treasury Listing of Approved Sureties, Department Circular 570. To provide surety bonds on federal construction projects, a corporate surety must possess a

>>>

certificate of authority from the U.S. Treasury Department. A listing of certified surety companies approved to provide bonds on federal contracts, known as Circular 570 (or the T-List), is posted by the Financial Management Services, Surety Bond Branch, of the Department of the Treasury, at https://www.fiscal.treasury.gov/fsreports/ref/sureyBnd/c570.htm.

2. Verify that the surety actually authorized the issuance of the surety bonds:
   - ✔ Contact the surety directly to receive verification that the surety bond has been duly authorized. All sureties listed in the Circular 570 identify a specific contact phone number. In addition, 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, in the SFAA Bond Obligee Guide, at http://www.surety.org/page/User_Information.

What factors does a surety consider in the underwriting and prequalification process?

One of the primary benefits of bond requirements for construction projects is that, before a surety will issue bonds on behalf of a contractor, the surety will perform a contractor prequalification. Contractor prequalification, as performed by surety underwriters, involves a thorough and continuing process for reviewing and evaluating balance sheets, work-in-progress schedules, and financial statements. Surety underwriters also evaluate factors such as the risk under the specific contract for which the contractor seeks a bond, the contractor's entire work portfolio, past performance, experience, operational efficiency, managerial skills, business plan, and reputation for integrity.

Obtaining bonds is more like obtaining bank credit than purchasing insurance. Different sureties will stress varying factors during the underwriting process, but almost all will consider the following factors:

- ✔ Financial capacity
- ✔ Net worth
- ✔ Cash flow
- ✔ Assets
- ✔ Credit score
- ✔ Work in progress
- ✔ Work history, including expertise and experience
- ✔ Banking relationship
- ✔ Nature of project to be bonded
- ✔ Character of the contractor

What can the owner expect in a default situation?

A performance bond provides assurance that an obligee will be protected if the principal fails to perform a bonded contract. It is a "safety net." If the contractor breaches the contract and the owner declares the contractor in default, the surety has an obligation to the owner, under the performance bond, to honor the obligation. The surety has both a right and a duty to promptly conduct an independent investigation of the owner's allegation that the contractor is in default under the contract and the contractor's position that it is not in default.

The process of making a bond claim is governed by the entire body of construction law and precedents associated with the construction industry. The surety must respond to the owner upon notice of default without jeopardizing the right and defenses of the contractor as it conducts its investigation. A surety is obligated to respond to a claim after investigating the facts associated with the alleged default of the contractor.

To contact a NASBP surety bond producer near you, go to the NASBP Surety Pro Locator at **suretyprolocator.nasbp.org**, a directory of NASBP professionals specializing in surety bonds. For more information and to Be Guaranteed to Succeed, visit **www.nasbp.org/guaranteed**.

PROFESSIONALS IN SURETY BONDING
NASBP
EST. 1942