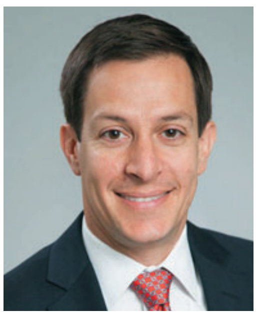
2016 NASBP Annual Meeting Session

PRACTICAL INSIGHTS: WHAT YOU NEED TO KNOW

Joint Ventures in CONSTRUCTION



BY MICHAEL C. ZISA

The following is an introduction to the continuing education (CE) course for bond producers that will be held at the NASBP Annual Meeting & Expo and NASBP Regional Meetings.

A JOINT VENTURE is a partnership between one or more companies to take on a commercial enterprise. Joint ventures have been used in the construction industry for years but have become increasingly common as projects continue to become larger, more complicated, and more specialized. There are a number of reasons joint ventures are appealing in today's construction market—joint ventures allow companies to share risks, resources, knowledge, and expertise and increase bonding capacity and market reach. For example, a large construction company may have the experience, resources, and bonding capacity to perform a megaproject but have concerns because the project is located outside of its typical geographical market. A smaller contractor may have knowledge and experience regarding the local market but not the experience, resources, or bonding capacity to compete for the megaproject on its own. A possible solution: a joint venture that allows the contractors to partner and pool their respective strengths to pursue the megaproject.

While the opportunities presented by joint ventures are enticing, contractors (and sureties providing bonds to the joint ventures) must understand and carefully consider a number of factors before taking the leap into the world of joint ventures. At NASBP's Annual Meeting & Expo in May in Colorado Springs, CO, a panel of attorneys from the national construction law firm of Peckar & Abramson will draw on our experience to discuss what contractors and surety professionals need to know about joint ventures. Specifically, the interactive presentation will identify the different forms of joint ventures, explain advantages and disadvantages associated with each, and discuss the liability between the partners to the joint venture. We will also explain the distinctions between a joint venture agreement and a teaming agreement.

The panel will also discuss the essential terms of the joint venture agreement—from basics such as members, purpose, ownership, and duration to more complex issues and terms involving capitalization, management, profit sharing, default, indemnification, and dispute resolution. How will the joint venture be financed at the outset and during performance? Who will serve as the managing partner and who will manage the day-to-day operations of the joint venture? What are the voting requirements for different types of joint venture action? How and when will profits and losses be shared? What happens when one of the partners is in default under the terms of the joint venture agreement? How will disputes between the joint venture partners be resolved? These are all essential questions that must be carefully considered and addressed in the joint venture agreement in order to avoid costly disputes between the joint venture partners. The panel will use real-world experiences to discuss these topics.

An area where joint ventures opportunities have flourished is with federal government programs such as the Small Business Administration's 8(a) program that "sets aside" contracts for qualified small and disadvantaged businesses. The joint venture relationship in this area raises a myriad of compliance issues that contractors and sureties must understand in order to stay out of trouble. The panel will discuss the requirements of these programs along with other special joint ventures topics, such as design-build joint ventures and mentor-protégé joint ventures.

Finally, the panel will address issues and considerations for sureties and surety professionals when bonding a joint venture. It will explain the underwriting process, which includes review of the capacity, capital, and character of all partners in the joint venture and the terms of the joint venture agreement. You'll learn about an "angel deal" and why it raises red flags in the underwriting process. We will also discuss the typical indemnity requirements for bonding a joint venture and key practical issues that bond producers must understand when assisting clients to obtain bonds for a joint venture.

The presentation will be chock-full of useful information that will help bond producers and other surety professionals identify issues for your clients that are considering taking the leap into the world of joint ventures.

Michael C. Zisa is a partner in the Washington, DC office of Peckar & Abramson, P.C. and focuses his practice on construction, surety, and government contracts law and chairs his firm's Surety Practice Group. Zisa was recently recognized again by Washington, DC Super Lawyers in the areas of construction litigation, surety and government contracts. Zisa, along with several colleagues from his firm, will once again jointly present with NASBP the "Federal Construction Contracting Seminar," which will be held this year on June 9 in Washington, DC. Register at www.nasbp.org. Zisa can be reached at mzisa@pecklaw.com or 202.293.8815.