To Add a Co-Surety or Not

BY STEVEN SCHMIDT

The decision to add a co-surety to a company's bonding program is never an easy one, nor is it usually straightforward. It is important to consider capacities, loyalty, personalities and even feelings. The marketplace saw a lot of co-surety activity from 2003 through 2007, as contractors were growing in volume and overall capacity in the surety marketplace was limited.

Today, substantial capacity exists in the surety market and many contractors are beginning to revisit volume levels they enjoyed at their peaks several years ago. Many of the existing sureties have increased their capacity to handle accounts, and a handful of new sureties have entered the large end of the surety marketplace. The reasons for adding a co-surety today are different from those of seven or eight years ago.

Contractors rely heavily on their professional brokers to help them navigate the world of surety. There are some good reasons to add a co-surety to a surety program, and there are arguments not to add a co-surety or additional co-surety.

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For some customers, this is a particularly complicated decision because some programs have many co-surety partners.

The primary reason to add a surety is if the firm's existing surety does not have the capacity to handle its surety needs today or at some point in the near future. Ideally, the company and its broker have been in touch with its surety and concur that additional capacity might be required to support business strategies.

Two important considerations are: What surety should be added, and how much of the program will it handle? A new surety partner needs to understand the business and be comfortable with its business plan. It also is helpful if the sureties get along with each other. Should the new arrangement be split evenly, or should the existing surety retain a bigger piece given its experience and loyalty? If there are more than two sureties, who gets how much of the program, and what is the reason for splitting it this way? The contractor's broker may help work through some of these decisions.

Risk management is another reason large contractors consider adding sureties to their programs. Does an additional surety bring some unique expertise or experience? What happens to the contractor's ability to secure and execute work if its current surety experiences financial issues?

Some bond forms stipulate that bonds will have to be replaced if the surety's financial ratings fall below a certain level. It might be difficult to replace a bond on an ongoing project, so having two or more sureties on the bond might make this need to replace a bond highly unlikely.

Along similar lines, what happens to the contractor if a dispute arises with its surety company? Having a second surety already on the bond program may put the contractor in a stronger position than having a surety in the traditional "backup" role. Presumably, the remaining surety could pick up the slack while a new surety is brought into the mix should one of the sureties decide to exit.

Keep in mind, a co-surety program may not always be the right fit. Is adding a new surety going to cause hard feelings with the firm's existing surety partner? If so, can they get over it? Adding a surety involves a new indemnity agreement. It also introduces more complexities and more underwriters—and potentially more questions and more surety meetings. Should they be joint meetings with both or all sureties, or separate meetings with each? A broker can assist with sending requested information to each surety, which then have a chance to review the account and project information and ask questions.

A hint of competition among the sureties may be a good thing for the contractor. Which surety responds the quickest? Which asks the best questions? Which asks the least informed questions? Which demonstrates the most knowledge about the contractor's business?

The additional capacity and stability provided by adding a second (or more) surety has its benefits. Whether these are worth the additional indemnity agreements, meetings and questions is up to the contractor and its broker to decide.

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