

Strategy

TIPS FOR WORKING WITH YOUR SURETY

by William H. Strop

Confronted with some of the worst economic conditions in living memory, many builders have focused on survival, whether simply keeping the lights on or just paying the few employees they have left. All too often, builders have unnecessarily sacrificed long-term survival in favor of short-term thinking. When the economy improves (which it will), one group of builders will be poised to take advantage of new opportunities at the expense of all others: those who can quickly demonstrate strong bonding capacity. Builders who are unable to show capacity are also ensured a position in next recovery: the sidelines. Even before a recovery, builders with bonding capacity will be well-positioned to take advantage of government stimulus spending, while those who have carelessly allowed their bonding capacity to slip away will be left with only regret. The good news? Preserving your bonding capacity, even in current conditions, is possible if you plan carefully and don't lose sight of your long-term business strategy. In sum, make your surety your new best friend, or else.

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■ **Tip #1 — Keep The Lines Of Communication Open:** Most sureties understand that builders are in a difficult business and, on top of that, are facing difficult economic conditions. Sureties judge builders by how they behave during both good times and bad. If you are having financial problems it might be tempting to “duck” calls from your surety. However, failing to communicate with your surety while claims are being made against its bonds is one of the fastest ways to destroy your relationship. Resist the temptation. If you foresee problems, contact your surety immediately, explain your side, provide your defenses and supply all back-up materials. If you begin communications before your surety is even aware of potential claims, you can avoid and pre-empt miscommunications which make sureties nervous. Nervous sureties do not write new bonds. Never ignore calls from your surety if you want to keep the relationship.

A good illustration of this is a contractor for one troubled high-rise condominium tower now nearing completion in downtown Miami. The contractor developed a strategy of communicating with its



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surety only when it had good news to share and could demonstrate that the problems being raised by the owner were under control. As good news became more and more scarce, the contractor's communications with its surety stopped almost entirely. The contractor's surety became so concerned that it posted a large loss reserve and filed a lawsuit against not only the owners of the contractor but also their wives for collateral pursuant to the indemnity agreement. The business relationship between the contractor and the surety is now irretrievably broken.

■ **Tip #2 — Be Blunt:** Builders are also tempted to provide an overly-optimistic version of the truth. Whether articulating defenses, describing the status of the project, or estimating completion timelines, builders frequently provide the “rose-colored glasses” version. This approach is counter-productive. When you are unable to support your representations about the status of a project, back-up your defenses or meet overly-optimistic deadlines, your surety will lose trust. Your surety may not only stop writing bonds, but may become aggressive in pursuing its indemnity rights and seeking collateral. On the other hand, candor and keeping promises will both increase your surety's confidence in you and enable it to handle the situation as efficiently and as cost-effectively as possible. Stringing your surety along to buy time in the hope that a miracle will happen simply will not work. When a project is “sinking fast,” seeking the assistance of your surety with completion can avoid the owner's termination and can avoid completion costs and attorneys' fees for your surety. That would make your surety happy.

■ **Tip #3 — Payment Plans Make Sense:** Despite the best of intentions and even herculean efforts, sometimes defaults and bond claims are unavoidable. Nevertheless, you can take steps to plan for the future and save bonding capacity. For example, by agreeing to a pay-

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ment plan, even if the payments are small, you can demonstrate your good faith, that you intend to honor your commitments, and that you intend to stay in the business in the long-term. Your surety will notice and the goodwill might salvage your relationship. One South Florida public school builder suffered a series of severe financial reversals all in a short period of time. The contractor proactively contacted its surety in order to get assistance with completing the project and avoid the high costs and wasted expenses of default and termination. The contractor offered to enter into a payment plan to reimburse the surety for its expenses. By forming this partnership, the project was completed on time, the surety avoided potentially catastrophic losses, and the relationship between the contractor and the surety continues to endure.

Strategies Which Do Not Work

Some strategies to build bonding capacity consistently fail. Most common among these is to simply close down a troubled business and re-open it under a new name. Another is to evade fully disclosing the required information when applying for bonds. Any credible surety is aware of these strategies. In addition to potential civil and criminal liability, a false or incomplete disclosure will likely destroy your relationship with your current surety and make it impossible to find another. A frank disclosure of a negative history might prevent you from obtaining bonding from some sureties, but might also serve as evidence of credibility and honesty which will persuade other sureties to take a risk. Even if you have to start with smaller bonds and build your way back up, an honest and forthright approach is the best strategy for long-term survival.

Time To Make A Decision

Now is the time to make a decision: do you want your business to be a temporary blip on the radar or a long-term player? If you want to be a long-term player, consider investing in your relationship with your surety. To do so, take every opportunity to show your surety that you are responsible, responsive, forthright, and that you take your promises seriously. With that approach, your surety can be a partner in prosperity rather than a threat to your future.

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