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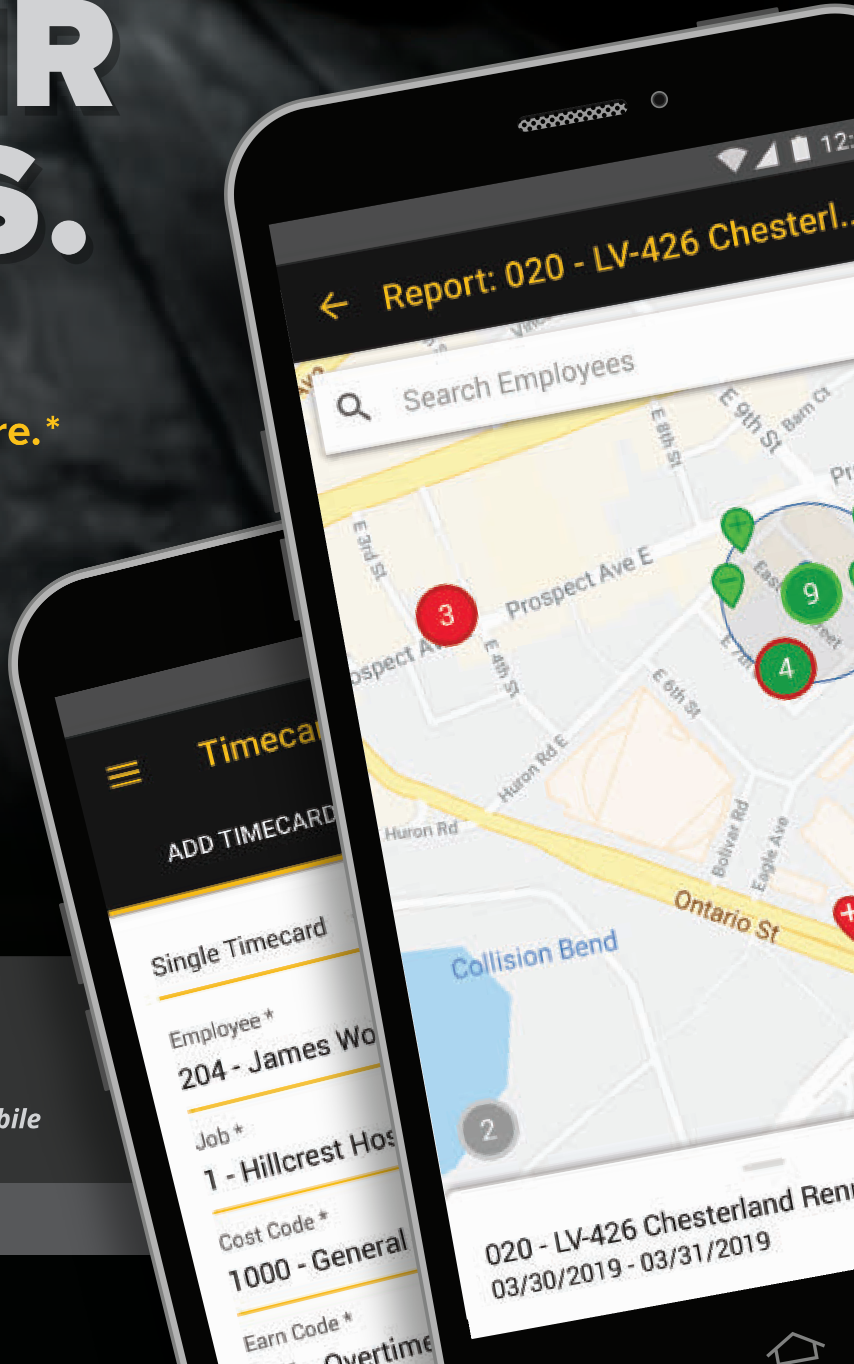

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NOVEMBER 2020

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Despite pervasive funding uncertainty, many highway contractors continue to ride a wave of projects that were already in the queue when the pandemic hit.

Cover Photo: Sain Associates

DEPARTMENTS

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Construction Executive (ISSN 1544-3620, Vol. 29, No. 9) is published 10 times a year by Associated Builders and Contractors Services Corp., 440 First St. NW, Suite 200, Washington, D.C. 20001. U.S. subscription rates: $15/yr. for members of Associated Builders and Contractors; $65/yr. for non-members. Periodicals postage paid at Washington, D.C., and additional mailing offices.
Postmaster:
Send address changes to:
Construction Executive, ABC Services Corp.
440 First St. NW, Suite 200
Washington, D.C. 20001

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- Work to Be Had: Prepare to Bid on Government Contracts
- Digital Twin: Hip or Hype?
- A Superintendent's Case for a Psychologically Safe Jobsite
- Combating a Projected Spike in COVID-19 Cases During Flu Season
- Termination of Construction Contracts
- Manage Supplier and Vendor Relationships as COVID-19 Disruptions Continue

UPCOMING WEBINARS

webinars.costructionexec.com

From Whiteboards to the Cloud: Why Contractors Are Choosing to Digitize Workforce Management

Nov. 11, 2 p.m. ET

Contractors are seeing that digital workforce management and mobile resource management (MRM) are the tools they need for connection in this moment and the future.

Sponsor: LaborChart

Developing Business Strategies to Help Contractors During Difficult Times

Nov. 18, 2 p.m. ET

Gain understanding of critical business reports and key data points that provide finance teams with a competitive edge during the "new normal."

Sponsor: Prophix

Measuring KPIs to Keep Projects on Track

Dec. 2, 2 p.m. ET

Measuring performance is challenging in the construction industry because each project is unique. Learn how to measure KPIs for a more efficient project.

Sponsor: Autodesk

Construction Executive's 2021 Economic Forecast

Dec. 16, 2 p.m. ET

Join Anirban Basu, chief economist for both ABC and CFMA, as he speaks to our current economic circumstances, the changes since our Mid-Year Forecast in June and his expectations for the industry as it enters 2021.

Sponsor: InEight

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INDUSTRY
INSIDER

The Next Four Years: What's at Stake

Prior to the coronavirus pandemic, construction CEOs' confidence was skyrocketing, and backlog was soaring, according to ABC's surveys. Construction spending hit a record $1.4 trillion per year, buoyed by a booming economy and record-low unemployment. The average hourly wage for construction workers has increased by 11.2% since January 2017, according to the U.S. Bureau of Labor Statistics.

Policy initiatives implemented by the most recent administration resulted in comprehensive tax reform, as well as significant steps to reduce the construction skills gap and expand workforce development opportunities.

Looking ahead to the next four years in a post-pandemic world, we need to keep this momentum strong. While what happens in Washington this November can seem far removed from our day-to-day lives, legislative decisions in the coming months and years could have dramatic impacts on construction businesses, the workforce and local communities.

Pending the outcome of this election, if lawmakers on both sides of the aisle can find common ground on contentious policy issues and secure a sustainable funding source that does not break the bank, an infrastructure bill could prove to be a bipartisan win—especially as America's schools, bridges and highways are deteriorating from coast to coast. The opportunity for an infrastructure investment is clear.

Our cover story, "Infrastructure: Paths to Funding" on p. 22, illustrates contractors' recent accomplishments in local jurisdictions and the major challenges they will face if federal funding is not secured.

In addition, this issue of the magazine is enhanced by the expertise of our friends in the surety bonding industry—The Surety & Fidelity Association of America and The National Association of Surety Bond Producers—whose members help contractors to avoid business risks, grow their portfolios and take on large capital projects. I encourage you to check out the series of articles beginning on p. 33 for an in-depth understanding of the current legal and legislative climate.

In the December issue, we look forward to publishing *CE*'s 2021 Construction Economic Forecast, with a corresponding webinar you will not want to miss, presented by ABC's Chief Economist Anirban Basu on Dec. 16. Visit webinars.constructionexec.com to secure your spot for this popular event.

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Publisher

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IN**BRIEF**

SBA and Treasury Announce Simpler PPP Forgiveness for Smaller Loans

ON OCT. 8, the Small Business Administration, in consultation with the Treasury Department, released a simpler loan forgiveness application for Paycheck Protection Program (PPP) loans of $50,000 or less. This action streamlines the PPP forgiveness process to provide financial and administrative relief to small businesses.

"The PPP has provided 5.2 million loans worth $525 billion to American small businesses, providing critical economic relief and supporting more than 51 million jobs," says Secretary Steven T. Mnuchin. "We are committed to making the PPP forgiveness process as simple as possible while also protecting against fraud and misuse of funds. We continue to favor additional legislation to further simplify the forgiveness process."

The SBA reports it will continue to process all PPP forgiveness applications in an expeditious manner. Visit sba.gov to download the new PPP Loan Forgiveness Application Form 3508S.

ConsensusDocs Revises Eight Forms, Releases Standard Prefabrication Contract

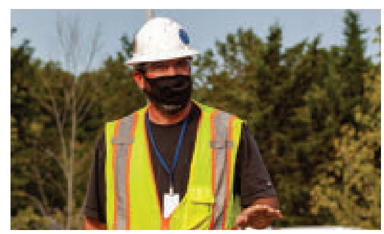
WITH ASSISTANCE FROM owners, general contractors, subcontractors and other industry stakeholders, the ConsensusDocs Coalition has published eight revised performance and payment bond forms. The ConsensusDocs 706 Subcontractor Performance Bond now includes a self-help provision. Other modifications include more definitive time requirements for sureties to investigate; a declaration of default or non-default upon investigation; and a threshold for which surety consent is required when contract orders increase the contract amount.

The ConsensusDocs Coalition also worked with the Modular Building Institute to release the new ConsensusDocs 753 Standard Prefabricated Construction Contract to address legal issues that arise for projects in which a constructor, general contractor, design-builder or construction manager contracts with a prefabricator to fabricate a component offsite that is later installed on a jobsite. For more information, visit consensusdocs.org.

AIHA Publishes COVID-19 Regulation Tool

TO SUPPLEMENT OSHA'S COVID-19-specific workplace guidance, the American Industrial Hygiene Association has released "Focus on Construction Health: COVID-19," a document intended to assist with the management of pandemic-related regulations on jobsites.

This nongovernmental tool provides information on the novel coronavirus, its symptoms and effects, as well as key information regarding exposure and spread, to include a seven-step plan for protecting workers and a job safety analysis. Visit aiha.org for more resources.



Update: SOP for Remote Site Inspections

IN JUNE 2020, *Construction Executive* covered survey results by the International Code Council of code officials and building and fire departments to discover how these individuals were keeping up with permitting and inspections.

Now more than ever, as the novel coronavirus continues to affect the industry, successful inspections are a critical facet of keeping sites and workers safe. With that in mind, ICC has published "Recommended Practices for Virtual Inspections," a set of guidelines based on the survey earlier this year (and other research).

The guidelines include best practices and step-by-step recommendations for remote inspections, which have become increasingly popular during the pandemic. Submit feedback at iccsafe.org/RVI.

First-Ever Concrete Global Summit to Be Held in 2020

THE FIRST-EVER GLOBAL Concrete Summit, hosted jointly by the National Ready Mixed Concrete Association and Grey Matters, will be held virtually from Nov. 30 to Dec. 10. The conference will bring together practitioners, researchers and policymakers to collaborate on the future of concrete construction. Topics include innovation, resilience, life cycle assessment, low impact development, social responsibility, human health and more.

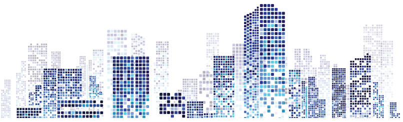
10 Best Cities for Construction Workers

ADVISORSMITH, AN INSURANCE information provider, has identified the top 10 cities for construction workers to thrive.

Using an analysis of salaries, job availability and cost of living in 383 cities across the country, data was sourced from the U.S. Bureau of Labor Statistics' most recent data release from May 2019.

While it was found that small to mid-sized cities are most likely to suit construction workers due to numerous factors, including salary opportunities, it should be noted that the recent economy may affect these results.

1. Springfield, Illinois. Average Construction Salary: $52,520
2. Farmington, New Mexico. Average Construction Salary: $34,770
3. Wheeling, West Virginia. Average Construction Salary: $45,040
4. Binghamton, New York. Average Construction Salary: $50,830
5. Huntington, West Virginia. Average Construction Salary: $42,920
6. Mount Vernon, Washington. Average Construction Salary: $56,480
7. Saginaw, Michigan. Average Construction Salary: $43,470
8. Decatur, Illinois. Average Construction Salary: $42,950
9. Fairbanks, Alaska. Average Construction Salary: $50,400
10. Evansville, Indiana. Average Construction Salary: $42,700



More U.S. Engineering Firms See Improved Finances Since March

DESPITE THE CHALLENGING economy, an increasing majority of U.S. engineering firm leaders (68%) say their firm's finances have improved or remained the same since COVID-19 paralyzed the marketplace in March—a significant increase over the 58% who affirmed the same in May, according to a recent ACEC Research Institute Business Impact Survey.

Conducted of 411 engineering firm leaders nationwide between Sept. 15-17, the survey shows that more firm leaders report slightly improved cash flows since May (33%-28%), while slightly fewer firms expect to take additional cost-cutting measures over the next 90 days compared to May (66%-73%).

At the same time, a large percentage of leaders either expect declines or are uncertain regarding most engineering markets over the next 12 months, especially in the commercial (48%), hospitality (39%) and public buildings (29%) markets, along with transportation and education (28%).

Leaders confirm that a vast majority of their offices (90%) are open for employees to go to work, but results show only 56% of employees are working in those offices. Three of four engineering firm leaders (74%), however, say they are "very flexible" when accommodating remote work by staff for various reasons.

In addition, 77% of leaders say they either definitely or probably will not allow staff air travel to meetings or events attended by more than 100, compared to 71% in May. For more information, visit acecresearchinstitute.org. CE

INDUSTRY EVENTS CALENDAR

Nov. 3-6
Advancing Preconstruction 2020
advancing-preconstruction.com

Nov. 10-12
Greenbuild International Conference & Expo
greenbuildexpo.com

Nov. 16-17
2020 America Recycles Innovation Fair & Summit
autodesk.com/autodesk-university

Nov. 17-20
Autodesk University
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March 9-11
ABC Convention 2021
Gaylord Texan

March 9-12
Work Truck Week 2021
Indianapolis

Send event notices and national, state and local news to **editor@constructionexec.com**

For a weekly analysis of news impacting the merit shop construction community, visit **abc.org/newsline.**

Develop Emotional Intelligence to Increase Leadership Skills During Uncertainty

BY VIVIAN MANDALA

Control is a strong internal drive for most healthy engaged adults. These past months have challenged this basic human need—and it's far from over.

Employee wellbeing is eroding, the continuation of COVID-19, political and social concerns, along with familial education outcomes, adds a great deal to an already stressed workforce.

Leaders have their eyes on the horizon for the next phase of "normal" while they balance revenue with growing expenses around technology and the transition to a fully remote team.

There's an equally critical item being pushed aside in construction and it will cause more disruption into the winter: employees' emotional wellbeing.

This wellbeing has very little to do with salary or workload. Instead, a great deal has to do with feeling connected, seen and heard.

Gallup shows employee preparedness for the continued management of business during COVID-19 are trending down. Employees and managers are 20% less likely than they were in May 2020 to strongly agree that:

- they feel well prepared to do their job;
- their employer has communicated a clear plan of action in response to COVID-19;
- their immediate supervisor keeps them informed about

- what's going on in the organization; and
- their organization cares about their overall wellbeing.

Gallup urges leaders to start with the managers when communicating. There is a difference between speaking with someone and being talked at. The difference is stark, especially when on the receiving end of both types of communication.

Managers are feeling extraordinarily stressed. Compared with May 2020, they're less engaged, informed or prepared. They also have worse work-life balance and physical wellbeing than their team members lower on the chain of command, whose wellbeing will also start taking a nosedive once managers can no longer cope.

Leaders should be communicating and engaging with their managers, but unless they understand how emotional intelligence works, it's likely to come across as autocratic and, at times, dictatorial.

This trend will only continue unless leaders start engaging in a human way, and the fastest way to learn is through emotional intelligence. Each is broken down and builds on the others.

Humans are social, emotional creatures, not disposable or replaceable. No two are the same, nor will they react the same in similar situations. It's time to start appreciating and harnessing those differences.

Construction is desperate for real leadership that understands and demonstrates that everyone matters, everyone has the capability of leading in different ways and at different times, and they are not interchangeable cogs in an unfeeling corporation.

Managers don't need more communication; inboxes overflow, Zoom meeting after Zoom meeting and virtual happy hours drag on, but everyone still feels disconnected.

What is needed is authentic, open communication. Now is the opportunity to break old habits, and start talking person to person.

Emotional intelligence is a scientifically proven system of human connection that has shown to improve performance, engagement and strengthen ties. It's also a skill set—one that can be taught and strengthened over time.

And it's sorely overlooked as a fundamental business skill and is the most effective way to connect with teams, so they feel appreciated, heard and understood.

Laura K. Murray, PhD, MA—a clinical psychologist and a senior scientist in mental health at the Bloomberg School John Hopkins—writes:

"There is no doubt that leadership will be one of the most heavily tested skills throughout the coronavirus pandemic.

"It's easy to read articles about how leaders 'should' or 'should not' behave or 'be.' In real practice, however, behavioral changes are hard and take practice, little by little. Emotional intelligence is at the core of being able to make these behavioral shifts and ultimately helping you attain all those adjectives describing stellar

Assessment Exercises

Here are two exercises leaders can use to create connections with teams, in the field and office.

Identify five individuals in your professional and five in your personal life that will give you candid unfiltered feedback. Ask them to answer the following questions (email is easiest, as it gives the receiver time to think):

- How well do I listen?
- Do I take time to understand others' perspectives before jumping into problem solving or planning?
- Do you feel I have invested in others' personal and professional development?
- Do I listen without interrupting?
- Do I listen fully without trying to fix the problem?
- Am I perceived as being open minded, caring and fair toward people I lead?

For those who are not working remotely: Get out into the field. Shadow an employee of the opposite sex, different background and/or culture with varying roles in your organization. Spend time with each person, paying close attention during break times. Ask thoughtful questions around their lives, where they come from and how they got to the position they have now, what their long-term plans are professionally and personally, and what they need to perform their jobs better.

Dig for problems with solutions and see if there are ways to break down information/system silos to connect teams cross-functionally.

> *Emotional intelligence is a scientifically proven system of human connection that has shown to improve performance.*

leadership. Research shows that EI accounts for nearly 90% of what sets high performers apart from others with similar technical skills and knowledge."

The emotional intelligence includes:

- self-awareness;
- self-management, including stress management;
- motivation;
- empathy; and
- social skills.

Making our way through this increasingly challenging time, pretending there is a "normal" just around the corner, is only worsening the toll.

The country faces a cold, gray winter with the continued rise of drug and alcohol abuse, depression and suicide. Start addressing emotional and social skills now so managers and teams have the skillset to cope with their individual realities.

The leadership role is critical. Not only in holding the line when it comes to standards and expectations around professionalism with AEC, but also helping others get through these times.

As with all other challenges, one can either shrink from it or step toward it more engaged, connected and influential. Emotional intelligence spearheads this growth and is worth the investment. CE

Vivian Mandala is the director of CMC Network, Brooklyn, New York. For more information, visit cmcworkforce.com.

How the Pandemic Evolved the Health Care Facility Inspection Process

BY KEYAN ZANDY

Inspections are par for the course with health care construction projects. These include inspections for internal quality control and safety, as well as those conducted by the A/E team, local municipalities and the state. Work is thoroughly reviewed many times throughout the lifecycle of a project, and firms focused on technology leverage many tools along the way to make the process easier for the construction trades, design partners and themselves.

However, regardless of other variables, the one given was that a person was physically present to conduct inspections. COVID-19 has changed all of that. Through lockdowns, travel bans, furloughs and social distancing, many of the people relied on for these required inspections are now unable to come onsite. To work around this constraint, the construction industry was forced to change rapidly—something that does not happen often—and the processes around building inspections began to evolve.

Over these past few months, many contractors have begun to implement a variety of tools and technologies to achieve effective virtual inspections. They've discussed the process and perspectives with a variety of experts to find out what is in store for the future of health care facility inspections in a post-pandemic world.

> "A solid internet connection, a fully charged device and good lighting are necessary.

Live Streams Via Smartphones and Video Conferencing Tech
In late March, the most obvious way to continue the inspection process was over live video conferencing. Through the use of a smartphone or tablet, the individual onsite could live stream a walkthrough to inspectors (via applications such as Facetime, Skype or Zoom) and show the inspector all items in need of review. This method worked quite well and has accomplished what, in the past, could have taken hours of travel from many individuals to be onsite.

But some challenges do exist. A solid internet connection, a fully charged device and good lighting are necessary. More significantly, it can be difficult for an inspector to see the big picture of the project while doing a virtual inspection. Rebecca Read, architectural review unit's manager for Texas Health and Human Services Commission in the regulatory services division for health care regulations section, explains how inspectors gain a greater awareness of the project when visiting the site in person.

"While the inspector will inspect a specific room, piece of equipment or area as defined by the project scope, the inspector is analyzing many things in an in-person walkthrough, such as, 'Are exit lights illuminated?' or 'Is there other work installed that should have been permitted?' They are able to view the project holistically as opposed to in pieces," Read says.

And it doesn't end there. The in-person aspect allows for sharing of relevant information across the spectrum, from owner to general contractor to inspector.

"We also see our inspections as learning opportunities for everyone involved," Read says. "For instance, we use the inspections to explain the code requirements to facility staff, so they can better understand the functionality of their space and its building systems. We also learn from the general contractors and subcontractors about how these systems work together from a


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Skiles Group

Skiles Group Superintendent Lucas Wilke uses a 360° camera and OpenSpace to capture and map project details on an active construction site.

constructability perspective. These collaborations are very difficult to achieve through a virtual visit."

If a contractor is currently relying on live streaming for aspects of inspections, the International Code Council (ICC) is a great resource. Their document, "Considerations for Virtual and Remote Inspections," which was created in response to "Maintaining Building Safety During the COVID-19 Pandemic," walks through:

- general considerations for remote inspections;
- setting up a virtual inspection process;
- steps for conducting a virtual inspection;
- what the contractor needs for virtual inspections; and
- additional considerations.

360° Virtual Walkthrough Technology

Using a 360° camera (some good ones to consider include Ricoh Theta, Insta360 and the Garmin Virb 360) and cloud-based software, it's possible to take clients, design teams and inspectors into construction spaces from the comfort and safety of their homes or offices. Products like StructionSite, HoloBuilder and OpenSpace allow inspectors to "walk" through the project, virtually, on their own time and at their own pace.

An added bonus is that these programs also serve as documentation tools. Jeevan Kalanithi, CEO at OpenSpace, says, "When we started OpenSpace a couple of years ago, we saw how much time was wasted in our industry due to professionals having to literally be onsite, at the right time, with the right people for almost every problem. A picture is worth 1,000 words, so we scaled up that idea up and created a tool that creates a visual record of a site—tracked over time—to reduce that waste. The pandemic has hit the 'fast-forward' button for our platform because what made sense in 2019 is a necessity now. Our customer engagement metrics are up by 500% since March."

Interactive, Cloud-Based Inspection Software

Another digital tool to facilitate inspections is FreightTrain, a cloud-based construction quality management platform from HTS, Inc. that streamlines the workflow process of creating, reviewing and approving inspection requests. This is extremely useful by itself, but FreightTrain's advantages don't end there.

"A real benefit is that FreightTrain can allow inspectors, subcontractors and field staff to understand where their inspections stand and see their issues in real-time via the interactive floor plan feature," says HTS's CEO Tom Gaunt.

FreightTrain's inspection request module also provides project teams with a visual representation of the status of all inspections and reports out key quality control metrics, such as inspection success rates. All of these make the tool beneficial even when the inspection itself can't be completed virtually.

"Some, like members of project's design team, may be able to attend inspections virtually, but California's regulations still require our inspectors to have personal knowledge through in-person site inspection, even with COVID-19," explains Tyler Bashlor, owner of Strategic Building Services, which provides health care inspection and quality assurance services throughout the state.

'The Enemy of Art Is the Absence of Limitation.'—Orson Welles

So much of what's ahead for AEC remains unclear and, as with most, the industry has been greatly impacted by COVID-19. But not

> *We've learned new ways to collaborate and work virtually to accomplish what used to be only face-to-face.*

all impacts are negative—constraints and barriers fuel innovations, ideas and workarounds. Chris Grossnicklaus, health care studio leader with Corgan Architects and Interior Designers, sees these progressions continuing to domino as we move ahead.

"Can we move early inspections to a virtual setting and keep in-person meetings for final inspections? Is there an effective hybrid solution, with a mix of in-person and virtual inspection teams being connected through a robust platform?" Grossnicklaus asks. "We don't know the answers to these specific questions, but we can see more clearly the direction where we're headed. Just as our workplaces have changed, so has the work of health care design and construction.

We've learned new ways to collaborate and work virtually to accomplish what used to be only face-to-face," he continues. "This is a good time to take these lessons learned and focus on making our processes efficient, reducing the time wasted in travel and scheduled meetings. It will be fascinating to see what remains and how we evolve in the future."

Keyan Zandy is COO of Skiles Group, a Richardson, Texas-based general contractor. For more information, visit skilesgroup.com.

P3 Infrastructure Projects: What the Private Sector Needs to Know

BY CHARLES RENNER AND WILL NULTON

The American Society of Civil Engineers estimates that the United States needs to spend $4.5 trillion by 2025 to fix the country's infrastructure. To understand the scope of this challenge, that figure is roughly one-quarter of the country's annual gross domestic product and would easily dwarf annual spending in key areas such as health care.

State and local governments, many already facing financial constraints prior to the impact of the COVID-19 pandemic, shoulder the greater share of the infrastructure burden, and this is not likely to change. (See "Paths to Funding" on p. 22.)

However, infrastructure spending provides benefits to the private economy that can far exceed the initial investment, even though these benefits can be difficult to measure and quantify.

"The rate of return to infrastructure investment is large; the median and average estimates of a review of dozens of studies on infrastructure indicate that each $100 spent on infrastructure boosts private sector output by $13 (median) and $17 (average) in the long run," says a 2017 Economic Policy Institute meta-study.

Recent Notable U.S. "Vertical" P3 Projects

Project	Location	Capex	Descritpion
Travis County Courthouse	Austin, TX	$344,000,000	430,000-square-foot civil and family courthouse facility procured in a design-build-finance arrangement with a private consortium headed by Hunt Development.
Arizona State University	Phoenix, AZ	$118,000,000	Will provide approximately 75,000-square-feet of academic space, along with a 207,000-square-foot residential component housing approximately 530 students.
Miami-Dade County Courthouse	Miami, FL	$340,000,000	Full DBFOM development of a 600,000-square-foot civil and probate courthouse to include the potential development of approximately 17 contiguous acres of city-owned property.
Michigan State University Research Center	Grand Rapids, MI	$85,000,000	A multi-building development with 205,659-square-foot facility dedicated to research, in addition to lease space for MSU and other stakeholders to support MSU research and health care innovation.
New London Harbor Energy Center	New London, CT	$157,000,000	Harbor development plan for State Pier in New London to be transformed into an offshore wind center.

Inframation.com

The projects included above have reached financial close since Jan. 1, 2019. Vertical P3 denotes project types outside of surface transportation.

Federal, state and local governments will increasingly seek to use such projects to provide stimulus to struggling economies post-pandemic and, to make these projects a reality, private participation through public-private partnerships (P3s) could begin to address the backlog of projects and aid in economic recovery.

The Benefits of P3s

The use of P3s as a model for delivery of infrastructure projects has expanded beyond surface transportation projects—which traditionally dominated P3s—to vertical projects, such as government facilities, student housing and stadiums, among other types.

Such growth can be expected to continue, despite (and in some ways due to) the impact of COVID-19. An increased number of P3 infrastructure projects can be expected for the following reasons:

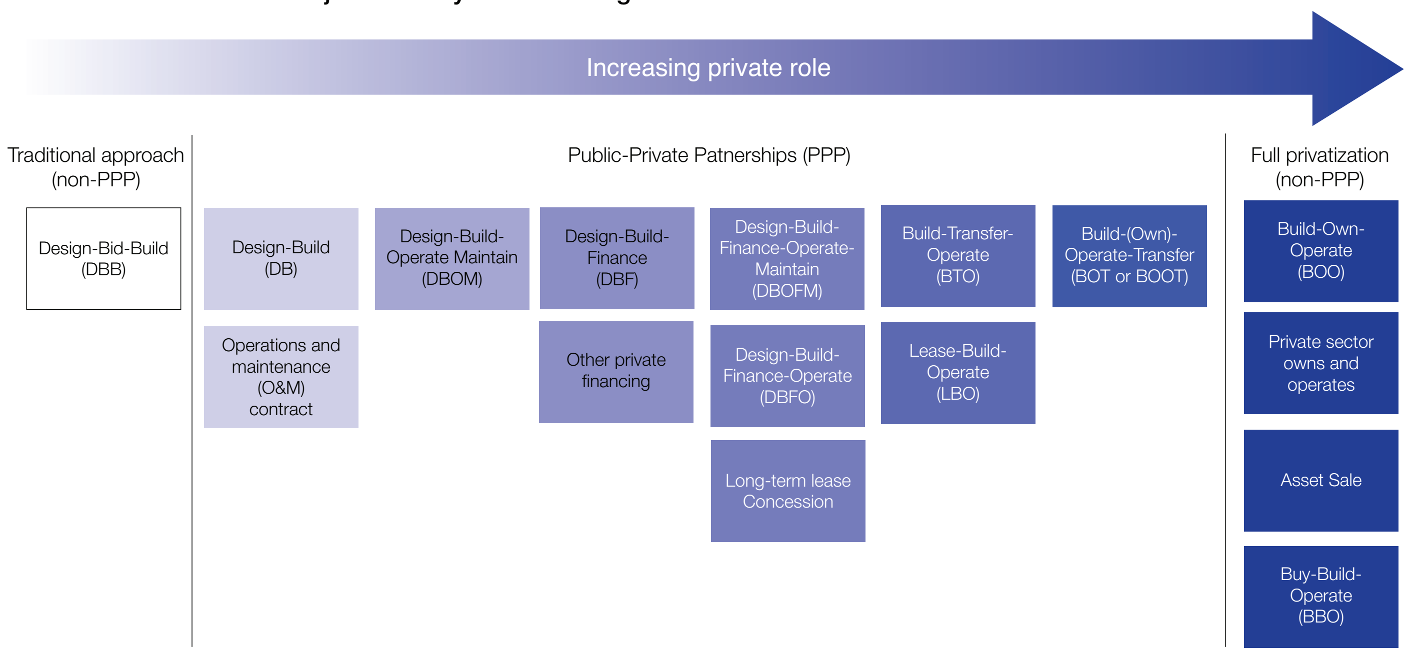
- Need. Major infrastructure investment was necessary before the impact of COVID-19 and remains so.
- Economic Benefits. Not only are infrastructure projects necessary, but the benefits of such projects include stimulus of local economies.
- Financial Constraints. Particularly given the state of municipal finance due to the COVID-19 epidemic, U.S. states and cities will need to be creative in marshalling the requisite resources, and the private sector has an important role to play in restoring infrastructure assets.

With no shortage of P3 RFPs in the second and third quarter of 2020, public entities seemingly will continue to turn to alternative delivery models in the current market.

The University of Idaho and the University of Maryland, for example, have issued RFPs for redevelopment of campus energy utilities. Cities in Illinois, Oklahoma and New Mexico, to name a few, have issued RFPs for mixed-use projects.

Given the expected continued increase in use of P3s as a delivery

Project Delivery Models Along a Continuum of Private Sector Involvement



model in the wake of COVID-19, more construction companies may wish to take advantage of new opportunities.

How to Find Your Role in P3s

The first thing to remember regarding P3s is that the concept is broad and variable. P3s are best viewed as a spectrum of alternative project delivery models falling between the traditional design-bid-build approach and outright privatization. The roles available for private-sector participants, therefore, varies according to what elements of P3 are incorporated into a final agreement.

On a basic level, private sector participants fill four main roles: the developer, the financier, the operator and the contractor. Depending on a company's core competencies, that company may fill only one, multiple or all four private sector roles.

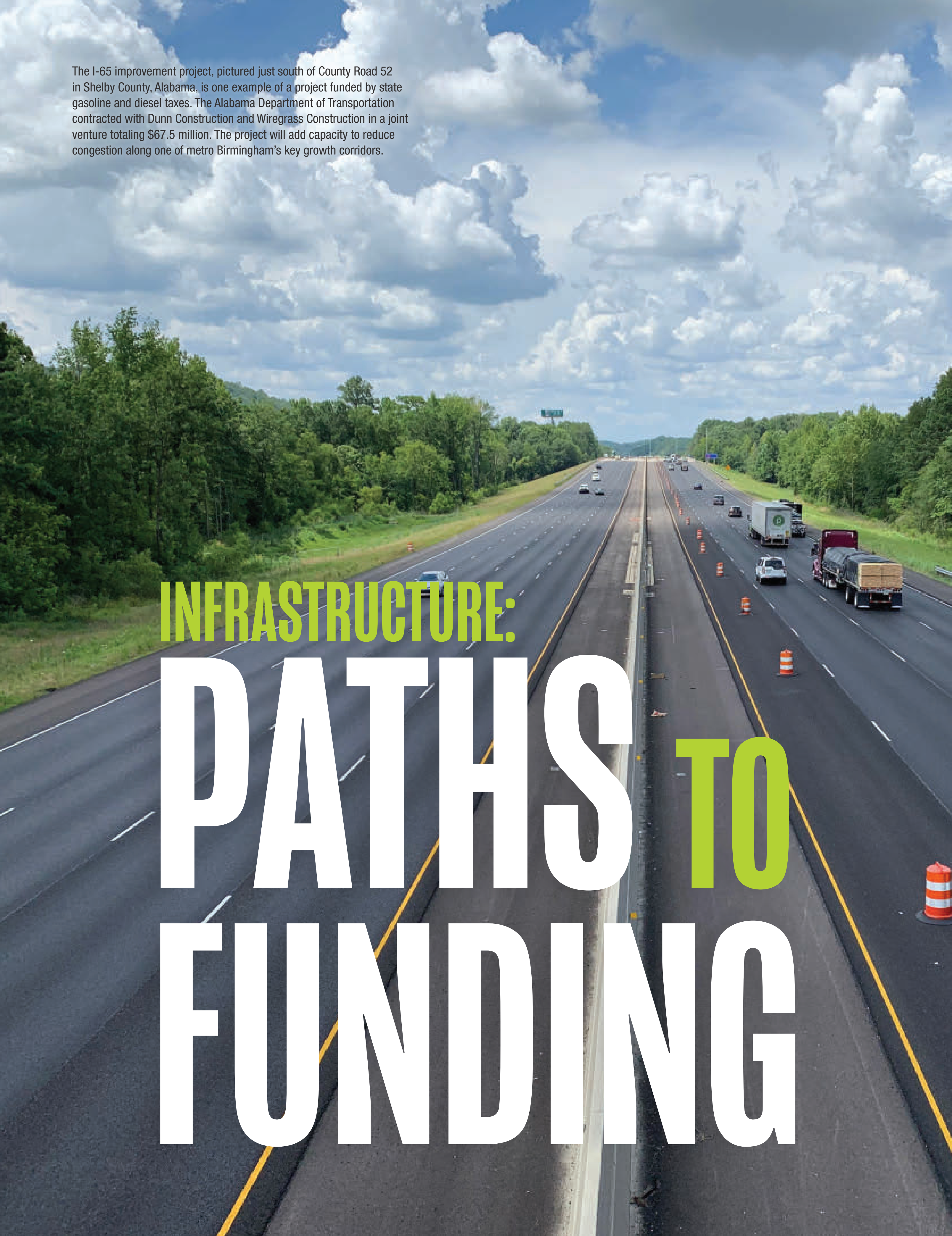
If a company can perform multiple roles, this flexibility will make it an attractive partner to the public sector. Consider core competencies and whether the contractor can develop further capabilities to provide flexibility for public partners.

For instance, in 2017, Garney Construction, based in Kansas City, Missouri, stepped out of its usual shoes to fill the financier role with the Vista Ridge Water Supply Project, a water pipeline project (the largest P3 water project in North America) in San Antonio, Texas, after the initial equity participant experienced financial distress. In completing the project as an owner, Garney bet on itself—it assumed substantial financial risks in winning the $927 million project, but its successful management of the project allowed the project to proceed and get closer to yielding returns on the investment.

Likewise, Clark Construction, one of the largest commercial and civil contractors in the country, along with affiliate Edgemoor Infrastructure and Real Estate, was able to fill multiple roles in the $350 million development of the University of Kansas' Central District Project. Edgemoor served as the master developer of a 55-acre tract, but also provided financing, design-build and operations for the assets, which included a 285,000-square-foot integrated academic science facility, a 26,500-square-foot student union, 1,250 beds of student housing in three buildings, a dining center and approximately 2,000 parking spaces.

For smaller firms, creating strong teaming relationships with larger companies that can fulfill multiple roles and provide the flexibility the public sector requires will put them in position to capitalize on the continued growth in the use of P3s in all segments of infrastructure development. CE

Charles Renner is a partner and Will Nulton is an attorney with Husch Blackwell LLP, Kansas City, Missouri, and both participate in the law firm's P3 practice. For more information, visit huschblackwell.com.



The I-65 improvement project, pictured just south of County Road 52 in Shelby County, Alabama, is one example of a project funded by state gasoline and diesel taxes. The Alabama Department of Transportation contracted with Dunn Construction and Wiregrass Construction in a joint venture totaling $67.5 million. The project will add capacity to reduce congestion along one of metro Birmingham's key growth corridors.

INFRASTRUCTURE: PATHS TO FUNDING

Sain Associates

Contractors Maintain Backlogs Despite Pandemic and an Uncertain Future

BY SAM BARNES

Things were already dicey for the U.S. infrastructure market going into 2020. The looming insolvency of the Highway Trust Fund and numerous failed local tax measures had many, if not most, states urgently lobbying for additional federal funding.

Those concerns turned to sheer panic during the "new normal" of the global pandemic, as local funding sources dropped precipitously and states struggled to balance budgets.

Sain Associates designed this roadway and bridge, located at South Industrial Park in Prattville, Alabama, as part of a joint project between the city of Prattville and Autauga County that received federal funding from the Department of Commerce's Economic Development Administration. The railroad tracks are owned by CSX Transportation.

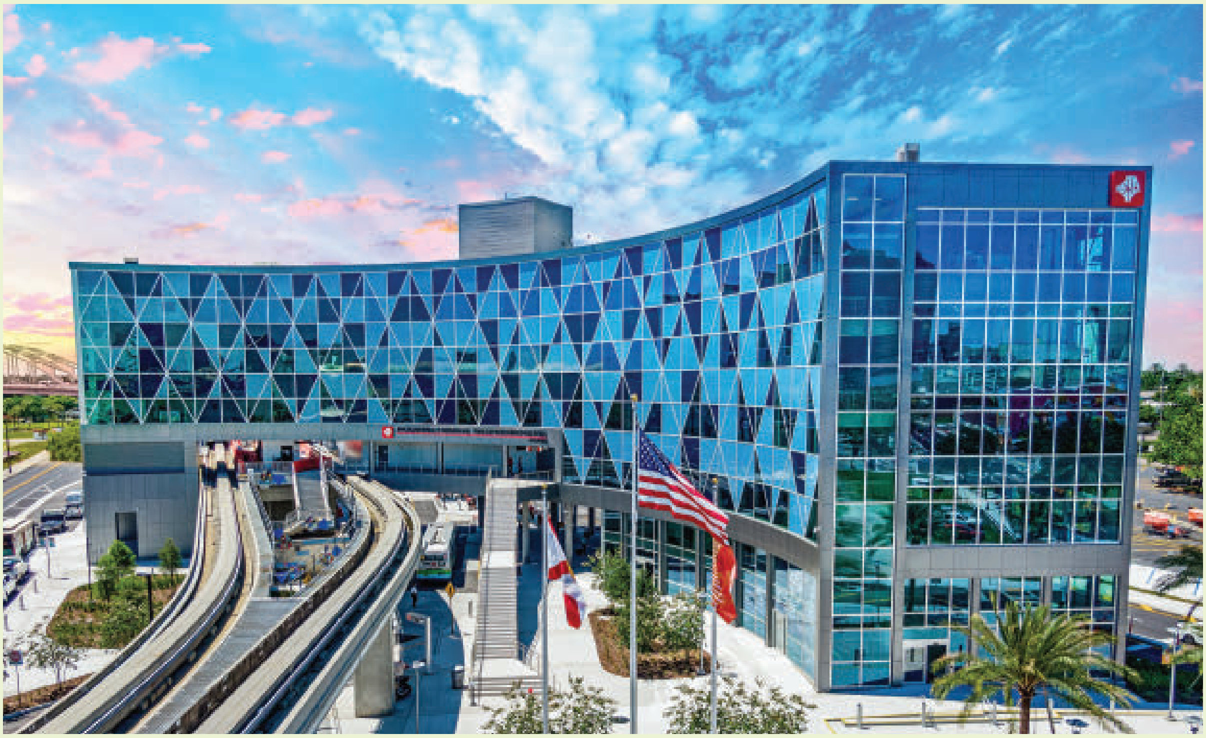
Anirban Basu, chairman and CEO of Sage Policy Group in Baltimore, as well as chief economist for Associated Builders and Contractors, says it's difficult to forecast what 2021 might look like "with any precision" in the current environment, but it's undoubtedly a bleak picture for projects relying solely on public dollars. "We're seeing the confluence of COVID-19, the federal government's failure to find new funding mechanisms, and the imminent insolvency of the Highway Trust Fund," Basu says. "Something has got to give."

The Trust Fund, which receives money from the federal fuel tax of 18.4 cents per gallon of gasoline and 24.4 cents per gallon of diesel fuel, could soon become insolvent without a tax increase or an additional funding mechanism. "The result is an astonishing level of uncertainty regarding the future of federal highway funding," Basu says.

The politicians can't simply stand still and do nothing.

Before, worries about the Trust Fund were less severe, as state and local governments could more easily generate their own financing. That's all changed, and states are hesitating to take on additional debt. It's not a unique problem—there are similar worries in the flood control, stormwater management and water services sectors—but surface transportation has the largest funding gap by far.

But Basu says there is a silver lining. "There should be an appetite for additional stimulus money in 2021, as the economy will still be reeling from the pandemic. The politicians can't simply stand still and do nothing. One is tempted to presume that early in the next administration there will be a sizeable



Jeffrey Leeser, Jacksonville Transportation Authority

The award-winning JRTC reached substantial completion in May 2020. Future phases (pending funding) could include connections to Amtrak, commuter rail or additional intercity rail.

Jacksonville Transportation Authority Gets Award-Winning New Digs

The construction industry is seeing notable signs of progress in the transportation sector—even during a pandemic. In April, the City of Jacksonville, Florida, unveiled its new $57.3 million Jacksonville Regional Transportation Center in the historic LaVilla District.

The multi-modal JRTC at LaVilla includes a stunning, five-story, 40,000-square-foot administration facility and a 10,000-square-foot, LEED Silver-certified Intercity Bus Terminal (IBT) linked via an overhead pedestrian bridge. The state-of-the-art facility acts as the epicenter for the city's transportation infrastructure and creates a seamless network of enhanced mobility options for the downtown Jacksonville business district and surrounding communities.

The futuristic administration building, designed by Pond & Co./Michael Baker International Joint Venture and constructed by Balfour Beatty U.S., has left a prominent mark on LaVilla's skyline, while marrying the area's history, form and function. "The building celebrates the union of LaVilla's historic cultural roots and exemplifies the economic opportunities and increased safety and mobility the JRTC will bring to the local community and its passengers," says David Campbell, project executive at Balfour Beatty in Jacksonville.

"Ultimately, it was the shared commitment of our project teams, designers and trade partners that resulted in the project's success."

JRTC at LaVilla's distinctive curvature features a glass mosaic of chromatic panels to emulate radiating diamonds on the building's exterior. The building's interior includes a first-of-its-kind custom insulation system enabling the building to be energy-efficient, saving the JTA on heating and cooling costs while mitigating noise and fulfilling visual uniqueness.

During construction, Balfour Beatty utilized advanced technologies and lean construction methods, including laser scanning and BIM, to cost-effectively and safely deliver the project. In recognition of the achievement, ABC's Florida First Coast Chapter has awarded the contractor with Project of the Year and Excellence in Construction Eagle Award honors.

Now operational, the facility serves as the transportation authority's downtown bus transfer facility, administrative headquarters and intermodal hub with direct connections to the Skyway and the IBT which serves Greyhound, Megabus and RedCoach lines.

What a $2.1 Trillion Investment Could Do

Economists and construction industry stakeholders have created models showing what a $2.1 trillion investment in public infrastructure could do. Associated Builders and Contractors, The Surety & Fidelity Association of America and multiple other organizations advocate that federal investment would restart green-lighted projects and significantly fuel economic recovery in the wake of COVID-19.

For example, S&P Global, in its report "Infrastructure: What Once Was Lost Can Now Be Found—The Productivity Boost," estimates the investment would add $5.7 trillion to the U.S. economy in the next decade and create more than 2.3 million jobs by 2024.

The short and long-term impacts are enormous.

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Average wages up 35 basis points per year

Income Rises
Personal income grows $2,400 by 2029

Money to Spend
Households spend $3.5 trillion more over 10 years

Sources: Surety.org and spglobal.com/en/research-insights/featured/infrastructure-productivity-boost-coronavirus.

infrastructure package at last emerging from the federal government."

As a temporary fix, Congress recently extended funding for federal government programs into Fiscal Year 2021, including a one-year extension of the FAST Act. The bill also transfers $10.4 billion to the Highway Account and $3.2 billion to the Mass Transit Account of the Highway Trust Fund to maintain solvency through FY 2021.

That provides market stability and avoids short-term disruptions, but it doesn't significantly increase funding above current levels or include any emergency "backstop funding" for DOTs or transit agencies. It also fails to address long-term Trust Fund issues or pandemic-induced declines in state funding.

"It will provide some stability to the markets and avoid short-term disruptions. That's what it was intended to do," says Jim Meads, president and CEO of Sain Associates, a Birmingham, Alabama, engineering firm. Meads is also a member of the American Council of Engineering Companies' Transportation Committee. "At a minimum, that's what most transportation stakeholders have been wanting, as it gives state transportation departments the ability to plan for the coming year."

For most states, however, it's not a sustainable solution. Shawn Wilson, secretary of Louisiana's Department of Transportation and Development in Baton Rouge, says his agency desperately needs additional resources and funding. "In order to continue preserving our existing roadways and building new roadway systems, we must have a reliable and steady revenue stream," Wilson says in a Sept. 15 public statement. "The state relies on a 20-cent gas tax to address infrastructure needs. After this, remaining revenue goes to the Transportation Trust Fund to address our current needs, which has lost more than 50% of its value since it hasn't changed since the 1980s.

"Without a steady revenue stream, new projects will be few and far between as the funding from the 1986 gas tax will be primarily used to maintain the system that is already in place," Wilson continues.

Basu says any long-term funding measure at the federal level will need to include a transformative overhaul of the Trust Fund. A flat fuel tax simply won't work in the long term, as it doesn't account for fluctuations in driver miles or the proliferation of fuel-efficient cars. "On top of that, the roads are being pummeled by larger fleets of trucks and more extreme weather," he adds.

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Doli Construction completed a phased culvert bridge in three months for PennDot as part of its PA Rapid Bridge Replacement Project in Lebanon County, Pennsylvania.

But while Congress is certainly aware of the problem, they're unlikely to make any big changes in the near term. "When they begin to run out of money, they simply take money from the general fund, shove it into the Highway Trust Fund and call it a day," Basu says. As a result, national debt increases while no new revenue streams are identified for infrastructure.

"They'll simply wait for the next moment of crisis," he adds. "It's quite conceivable that that's what will happen in 2021."

There are other challenges facing the highway industry in 2020. Alabama's Meads says the pandemic has made it difficult for most DOTs to project future highway needs, as traffic volumes have fluctuated wildly throughout the year. "We do a lot of traffic engineering work, and one of the struggles right now is determining what we use as our base data," Meads says. "We can't do traffic counts right now because it's not considered reliable data."

The industry is also adapting to sweeping changes to the 50-year-old National Environmental Policy Act (NEPA). On July 16, the Council on Environmental Quality (CEQ) finalized the act's overhaul, making changes to nearly every section of the regulations (they were last comprehensively updated in 1978). The new procedural provisions took effect on Sept. 14, 2020, and will have a significant impact on engineering firms performing environmental reviews on highway projects.

WORK SEEMS STABLE FOR NOW

Despite pervasive funding uncertainty, many highway contractors continue to ride a wave of projects that were already in the queue when the pandemic hit. That's especially true in states benefiting from their own local tax measures.

Meads says it's been a good year in Alabama, and he has yet to notice a decline in his backlog of projects mainly because of the state's increase in gas tax funding. The state passed the Rebuild Alabama Act in 2019, which raised the gasoline and diesel taxes by 6 cents a gallon in September 2019 and another 2 cents on Oct. 1, 2020, and Oct. 1, 2021, respectively. The 10-cent increase is expected to raise more than $300 million a year for road projects.

However, many of his city and county clients are experiencing decreases in revenues. "It's going to be interesting to see how funding will be affected (in 2021)," he adds. "There are so many large capacity projects that simply can't be funded because there's not enough money."

In Texas, Brian Lindsey, vice president of Brannan Paving Co., says his company's volume of chip seal

In another eight-month project, Doli Construction completed a culvert bridge and associated utility relocations in Montgomery County, Pennsylvania, for Whitpain Township, and the bridge now handles approximately 2,400 vehicles per day.

maintenance work is actually increasing, mostly due to highway tax initiatives passed there over the last decade. Texas voters approved Proposition 1 in 2014 to provide $1.7 billion in funding per year; and Proposition 7 in 2015—with an incredible 86% voter approval—to provide as much as $2.5 billion in funding per year if thresholds for sales and use tax revenues are reached.

That's translated into a business boom for the Victoria, Texas-based company, which is one of the largest chip seal contractors in the state. The contractor places about 1,200-1,500 lane miles of the product a year, with about 95% of the work funded by TXDOT. "There is currently about $300 million worth of chip seal work, and they're forecasting that to hit about $320 million next year," he adds.

Chip seal is the most popular method for maintaining roads in Texas, as TXDOT can get "more miles for the money" when compared to a traditional overlay, Lindsey says. That's important in a state with such a large geographical footprint. "We probably do more chip seal in a year than all 49 states put together," he says.

Jim Dacey, a founding owner of Doli Construction Corp. in Chalfont, Pennsylvania, says he hasn't noticed a huge impact to his work volumes either. Doli Construction entered the bridge market approximately three years ago as a subcontractor to Walsh Group of Chicago. Today, Doli performs most of its own work, typically constructing box culvert bridges.

If the market takes a downturn, Dacey says he'll roll with whatever comes his way and "get lean" if needed. As for 2020, "it hasn't been a problem for us. There's still a lot of work out there and everyone has been busy."

For now, Doli works within a 150-mile radius of its home base and is in the process of completing its first deck bridge. "Managing and providing our workers with a safe workplace so they can return home to their families every day remains our number one priority," Dacey says.

Nevertheless, the market hasn't been "picture perfect" during the pandemic. Brannon's Lindsey has noticed a drop in job applicants. Additionally, the supply chain has been significantly impacted by a worsening truck driver shortage, which raises the cost of a project as it leads to delays with aggregate and asphalt deliveries. "A lot of the older truckers are retiring," Lindsey says. "It's a huge problem right now, and we're bringing that up to TXDOT right now."

GETTING CREATIVE

Meanwhile, some states are experimenting with alternative funding mechanisms to fill the funding gap—Public Public-Private Partnerships (P3s) top the list—but with decidedly mixed results.

The pandemic has made it difficult for most DOTs to project future highway needs.

In the suburbs of Washington D.C., a P3 was formed to construct the $2 billion Purple Line light rail project, but later fell apart when the private sector component of the partnership vacated the agreement. Maryland transit officials are still trying to reach a settlement with Purple Line Transit Partners, the concessionaire managing the broader project, amounting to over $800 million in delay-related cost overruns. It could be Spring 2021 before a revised construction plan comes into focus for the disputed project.

And in Mobile, Alabama, the Alabama Department of Transportation was forced to remove the $2 billion I-10 Mobile River Bridge and Bayway project from its 2023 Transportation Improvement Plan following local opposition to the P3 approach. Many residents criticized the arrangement that ALDOT proposed to structure the project's financing.

Basu says these problems signal a systemic problem with P3s. "Some people talk about P3s as a panacea, and that they will solve all of our infrastructure issues, but that's not the case," he adds. "It needs to be able to generate revenue. If there's no revenue stream, then it's not a relevant solution."

He says other funding models have been more successful, such as the incorporation of user fees in Virginia, Texas and other states. "They're experimenting with fee-based High-Occupancy Toll lanes," Basu says. "If congestion is severe and one wants to get on a special lane that is tolled, they can pay extra. It enables them to offer a higher quality of service, while getting more revenue in the process." He admits, however, that it does little to raise funding for transportation needs outside of municipal areas. CE

Sam Barnes is owner of Barnes Communications LLC, and a freelance writer specializing in the construction industry. For more information, email sambarnes8@gmail.com.

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From left, Commerce Secretary Wilbur Ross, ABC Chair of the Board Tim Keating and Advisor to the President Ivanka Trump at the awards ceremony (Official White House Photo by Tia Dufour).

On Sept. 23, 2020, it was my privilege to accept the Pledge to America's Workers Presidential Award at a White House ceremony on behalf of ABC, our 21,000 members and our staff in Washington and at 69 chapters across the country. This honor was made possible by your hard work and successes connecting high school students, minorities, reentering citizens, veterans and women with rewarding careers in construction in more than 50 professions.

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18TH ANNUAL CONTRACTORS' GUIDE TO SURETY BONDING

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We would also like to acknowledge the dozens of surety industry underwriters, producers and allied professionals that have have supported this year's edition with advertising, in addition to the experts who have shared timely knowledge and expertise designed to help *CE* readers stay abreast of the latest trends in surety bonding during the COVID-19 global pandemic and its appended economic and safety concerns.

We hope to see you all again next year for *CE's 19th Annual Contractors' Guide to Surety Bonding*!

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[1] "Surety Bonds: List of Certified Companies," fiscal.treasury.gov/surety-bonds/list-certified-companies.html#n (7/1/2020)

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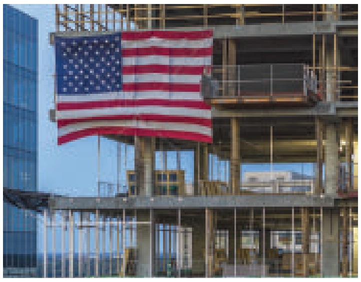
- Up to $1.5M single or aggregate with financial information
- Local underwriting
- Ideal for accounts with no formal financial presentation
- Flexible approach
- All construction trades

COMPANY CONTACT

Old Republic Surety Company
445 S. Moorland Road, Ste. 200
Brookfield, WI 53005
(800) 217-1792
orsurety.com

OLD REPUBLIC SURETY

Take on Projects with Complete Confidence



For 100 years, Old Republic Surety has embraced the nobility of labor by pushing through to find the best solutions for our partners. We appreciate the intricate details and the talent, knowledge and ingenuity required for each successful project.

We are a relationship-based surety that believes in open, honest and straightforward feedback. We challenge our customers for the right reasons and will never sugarcoat potential issues, but instead work together to find a solution.

While surety bonds are a necessity, we are determined to deliver more. We are our partners' ultimate support team, sharing our expertise to analyze risk and recommend solutions that benefit all parties.

In the end, we love what we do. It is a genuine privilege to support some of the hardest-working people in America as we help to fuel projects that connect people and improve our communities and our country.

COMMON SENSE UNDERWRITING

Old Republic Surety is well positioned to assist large and middle market contractors with bond programs based on flexible, common sense underwriting. Your business' strengths are unique to you and deserve the consideration we've been trained to provide—your success will never be determined by a computer program with Old Republic Surety as your surety partner.

STANDARD BOND PROGRAMS

Having a standard bond program in place offers contractors a more nimble approach to bidding on projects and turning them into profitable outcomes. Prequalification can give contractors the opportunity to expedite the bond portion of the bid process. We welcome the opportunity to be the surety partner for your standard bond program.

CONTRACT BONDS FOR GROWING CONTRACTORS

FastBonds are our bonding option for smaller, growing contractors. Based mostly on credit score, FastBonds not only offer a quick, flexible answer for smaller bonds, it opens the door for small contractors wanting to grow. Old Republic Surety can help you do that.

OLD REPUBLIC SURETY COMPANY

RESPONSIVE

RELIABLE

RESPECTED

Conquer your Challenges
Guide your Growth
See your Success

Old Republic will be your partner every step of the way. We offer experience, financial strength and an underlying desire for you to succeed. Let's get there together.

CONSTRUCTION EXECUTIVE

CORPORATE PROFILE:

LEADERS IN SURETY & BONDING

TYPES OF BONDS

- Bid Bonds
- Performance Bonds
- Payment Bonds
- Supply Bonds
- Subdivision Bonds

"

PHLY aims to create a support team around each project to ensure the best chance of success.

COMPANY CONTACT

Philadelphia Insurance Companies
One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004
(800) 873-4552
phly.com

PHILADELPHIA INSURANCE COMPANIES
A Member of the Tokio Marine Group

Be Sure About Your Surety Team

OUR MISSION

Philadelphia Insurance Companies (PHLY) is a team of motivated, high achievers committed to delivering innovative products and unsurpassed service to niche insurance markets. Our surety division is no exception.

For many projects, surety bonds are a requirement. However, PHLY knows the value a strong surety team can provide. PHLY aims to create a support team around each project to ensure the best chance of success.

OUR PEOPLE

PHLY's greatest asset is our people. All of our representatives have completed our propriety surety training program and are ready to provide support based on your unique needs. Additionally, PHLY has industry leading turnaround time and a 96% customer satisfaction rating. Our experienced staff are strategically located in all major time zones across the country to ensure your underwriter is in the office when you are.

OUR STRENGTH

Financial strength plays a large role in the capabilities of any surety team. Not only does it determine the single and aggregate bond limits they can extend, but it also can be an indication of how reliable they are when it comes to servicing debts.

PHLY has an excellent financial standing, with a rating of A++ (superior) from AM Best and an A+ rating from Standard & Poor. Furthermore, PHLY is nationally recognized as a member of Ward's 50 Benchmark Group of Property/Casualty insurance companies for outstanding achievement in the areas of financial strength, claims performance and consistently favorable underwriting results.

With superior risk management solutions, a national network of experts and robust financials, consider PHLY for your surety needs.

CONSTRUCTION EXECUTIVE

CORPORATE PROFILE:

LEADERS IN SURETY & BONDING

COMPANY HIGHLIGHTS

- Depth: One of the largest construction law firms in the United States
- Experience: Handles matters in all 50 states
- Recognition: Top-tier firm ranked by Chambers, Best Law Firms and Legal 500
- Entrepreneurial: Understands your business and the importance of adding value and improving your bottom line

"Smith, Currie & Hancock's attorneys are consistently best in class and client focused, and exceed expectations.

-Client Testimonial - Best Lawyers® "Best Law Firms" for 2021

COMPANY CONTACT

Smith, Currie & Hancock LLP
2700 Marquis One Tower
245 Peachtree Center Ave., NE
Atlanta, GA 30303
(404) 521-3800
smithcurrie.com

SMITH CURRIE & HANCOCK LLP

Construction Law and Government Contracts

Since 1965, Smith Currie & Hancock has served the construction industry and government contractors worldwide. Smith Currie's services cover design, contract preparation, negotiation, project administration and dispute resolution—from the ground up. Smith Currie combines geographic, gender, generational and cultural diversity with a thorough knowledge and understanding of the specific industries the firm serves to help its clients achieve their strategic objectives.

SMITH CURRIE & HANCOCK LLP 55 FOR 55

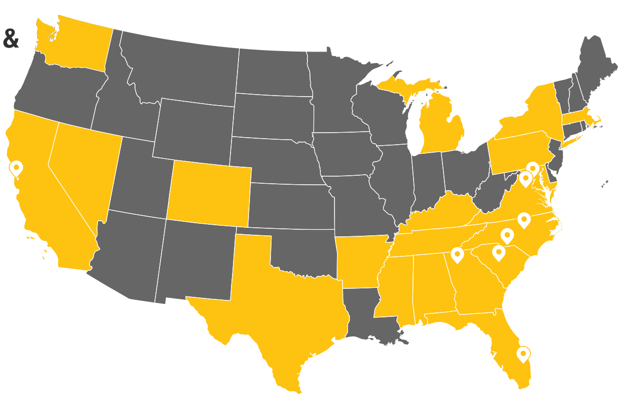
Celebrating 55 years with 55 projects to serve our communities.

CONSTRUCTION AND GOVERNMENT CONTRACTS

Smith Currie lawyers serve clients during all facets of a project, including: contract negotiation and preparation, labor and human resources issues, safety and health matters, insurance and bonding, contract administration, claims preparation, prosecution, and defense; and in all forms of dispute resolution. The firm advises on a wide array of public and private projects such as energy, infrastructure, industrial, commercial, healthcare and governmental works. Smith Currie is equally comfortable assisting clients entering the federal market and advising experienced federal contractors on bidding and procurement matters, project administration, claim preparation and prosecution, handling disputes at the various boards and courts, as well as defending clients against government investigations and claims.

ADMITTED STATES & OFFICE LOCATIONS

Atlanta, GA
Charlotte, NC
Columbia, SC
Fort Lauderdale, FL
Raleigh, NC
San Francisco, CA
Tysons, VA
Washington, DC



SURETY AND BONDING

Smith Currie knows how to deal with surety bond matters related to construction projects. We understand that bonding is crucial to project planning and execution to minimize performance and payment risks. We have advised clients on bond-related rights and obligations arising during contract bidding and performance, and we have represented various project delivery team participants pursuing and defending bond claims. Our surety and bonding experience covers private and public construction projects.

Tinubu Square
DIGITAL TRANSFORMATION

Tinubu Square Brings Cloud-Based Technology to the Surety Industry

CONSTRUCTION EXECUTIVE

CORPORATE PROFILE:

LEADERS IN SURETY & BONDING

Tinubu Square is the industry-leading SaaS platform vendor, enabling digital transformation for surety and credit insurance carriers worldwide. For over 20 years, we have delivered innovative, cloud-based software solutions and best-in-class services, allowing insurers to significantly reduce their exposure to risk and lower their financial, operational and technical costs. Today, we operate around the globe with offices in the United States, Canada, France, United Kingdom and Singapore. Our international footprint includes 30 of the top 60 worldwide surety and credit underwriters in more than 20 countries.

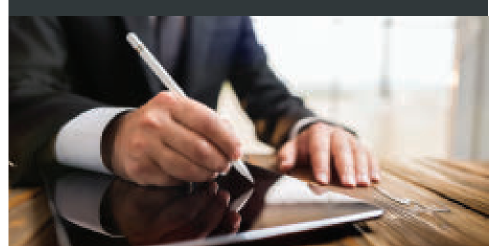
Expanding our surety expertise in the North American market, we have been able to provide insurance carriers the technology they need to grow in this increasingly fast-paced environment with Tinubu eSURETY®. Tinubu eSURETY® is a world-class, cloud-based solution, enabling carriers, brokers and MGAs to securely apply, quote, bond, issue and support every form of surety. Tinubu eSURETY® offers a powerful, direct-to-consumer experience on any device, from any browser, anywhere in the world. This robust cloud-solution can be fully white-labeled or integrated with the insurers' branding and messaging. The importance of choosing a surety platform to deliver bonds and the company standing behind the platform matter more than most people think.

- Opportunities arise and change rapidly: The platform, used by brokers and provided by carriers, should react in-sync to contractors' response to changes and bids.
- On-the-go accessibility: Solution and service response matters when submitting a bond online, in the office and in the field.
- Dashboard analytics and reporting: The surety platform should assist the broker and the contractor to visualize cash flow, scheduling and project milestones.
- Full compliance with global regulations: The platform provider should have the experience and resources to keep up with rapidly evolving technology and all surety industry requirements.

COMPANY HIGHLIGHTS

- 170+ employees
- Global offices in the United States, Canada, France, United Kingdom and Singapore
- Currently serving 30 of the top 60 global surety and credit under writers in more than 20 countries
- Tinubu Square offers a unified platform for credit insurance and surety
- Tinubu eSURETY® enables the quick distribution of digital surety bonds to carrier networks

THE DIGITAL TRANSFORMER OF CREDIT INSURANCE & SURETY



COMPANY CONTACT

Tinubu Square
1319 Lake Drive
Casselberry, FL 32707
(904) 395-1610
tinubu.com

CONSTRUCTION EXECUTIVE

CORPORATE PROFILE:

LEADERS IN SURETY & BONDING

COMPANY HIGHLIGHTS

- Largest privately-owned surety writer in the industry*
- Surety specialists since 1904
- 20 regional locations across the country
- A- "Excellent" AM Best Rating
- $72 million in combined Treasury Listing

*Surety & Fidelity Association of America – Top 50 Writers of Surety Bonds 2019.

"

Our resources are dedicated to four major lines, making us one of the most comprehensive sureties in the industry.

-Ken Chapman, Executive Vice President, Surety

COMPANY CONTACT

IFIC Surety, a member of IAT
kenneth.chapman@iatinsurance.com
(973) 776-8455
ific.com

IFIC Surety
A Member of IAT Insurance Group

Surety Experts. Steadfast Partners.

As one of the largest privately-owned surety providers, International Fidelity Insurance Company (IFIC)—a member of IAT Insurance Group—offers products to construction and non-construction companies and individuals. We are recognized for our commitment to underwriting a broad range of surety risks and for loyalty to our customers through unpredictable business cycles. With deep expertise, we have the flexibility to underwrite based on both the tangible and intangible qualities of our clients. We focus on the underwriting of each account or bond request based on its own individual merits. Through close partnerships with our network of independent agents, our regional offices have the resources to make quick, informed underwriting decisions.

Today, we operate out of 20 regional office locations throughout the United States, servicing four major business lines: contract, commercial, subdivision and specialty.

Our primary focus includes small- to mid-sized contractors (e.g., general contractor, subcontractor, engineering and heavy highway) performance and payment bond obligations. In addition, we offer a comprehensive commercial surety suite of products, such as compliance, probate, financial guarantees, customs, commercial contract and many other obligations.

Partnering with an experienced surety agent and surety provider is a best practice for successful contractors. We can help with that.

Peckar & Abramson, P.C.
COUNSEL TO THE CONSTRUCTION INDUSTRY

Peckar & Abramson, P.C.

COMBINING A COMPREHENSIVE UNDERSTANDING OF THE LEGAL AND PRACTICAL ISSUES AFFECTING SURETIES WITH THE NATION'S LEADING CONSTRUCTION PRACTICE

Sureties are calculated risk takers, which means they need legal advisors who thoroughly understand the intricacies of laws governing their rights and obligations, as well as the complexities and realities of the construction industry in both the public and private sectors. The lawyers at Peckar & Abramson have a combined understanding that allows them to provide efficient, insightful and effective counsel to sureties.

We understand that a claim against a performance bond, payment bond or other construction bond sets off a complex series of interrelated events that require a surety to quickly evaluate the facts and circumstances behind the claim and understand its rights and obligations in order to develop an effective strategy. We are dedicated to minimizing loss and avoiding unnecessary litigation. However, when necessary, we leverage our litigation and dispute resolution experience to protect our clients' interests. Peckar & Abramson has successfully resolved performance bond, payment bond, indemnification and subrogation claims through litigation and ADR in matters throughout the United States and abroad.

Our attorneys draw upon this combined understanding to assist our surety clients with matters involving:

- Performance and payment bond claim investigation, analysis, response and litigation;
- Meetings with bond principals, obligees and indemnitors;
- Negotiation, drafting and management of takeover, tender and completion arrangements;
- Enforcement of indemnity rights and prosecution of indemnity actions;
- Enforcement of subrogation rights and prosecution of subrogation actions;
- Contesting a bond principal's default termination and pursuit of principal's affirmative claims;
- Protection of sureties' rights in bankruptcy proceedings and receiverships;
- Negotiation and drafting of bond and indemnification documents; and
- Monitoring of tender arrangements.

We recognize that sureties place a premium on pragmatic, sensible and cost-effective solutions. Our experience allows us to provide high-quality representation while never losing sight of our clients' priorities and putting Results First®.

Peckar & Abramson's Surety Practice is chaired by Michael C. Zisa who practices in the Washington, D.C., office.

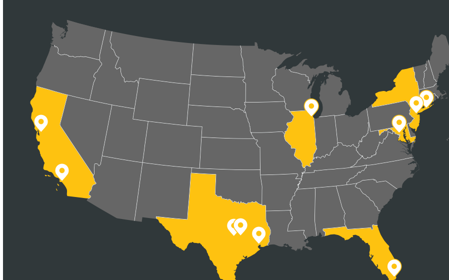
CONSTRUCTION EXECUTIVE

CORPORATE PROFILE:

LEADERS IN SURETY & BONDING

"We recognize that sureties place a premium on pragmatic, sensible and cost-effective solutions.

OFFICE LOCATIONS:



Los Angeles, CA; Oakland, CA; Washington, DC; Miami, FL; Chicago, IL; River Edge, NJ; New York, NY; Austin, TX; Dallas, TX; Houston, TX

COMPANY CONTACT

Peckar & Abramson, P.C.
2055 L Street, NW, Suite 750
Washington, DC 20036
(202) 293-8815
mzisa@pecklaw.com
pecklaw.com

SPECIAL ADVERTISING SECTION

EXECUTIVE**INSIGHTS**

What terms should contractors include in all contracts going forward in light of the pandemic?

Force majeure language should be a key component of contract forms moving forward. While the term may not be included, language addressing delays and time extensions is a must.

BRENDAN SCHRIBER
VICE PRESIDENT, SURETY
IFIC Surety, a member of IAT Insurance Group

Less often discussed are escalation clauses, which allocate the risk between the contractor and owner when the cost of material or labor increases.

STEVE DORENKAMP
VICE PRESIDENT/CLAIMS MANAGER
Merchants Bonding Company

Who is who? What's the difference between an agent, underwriter and attorney-in-fact?

Agents match surety bond seekers with insurance companies, while underwriters analyze the risk of approving a bond. An attorney-in-fact is legally empowered to act on behalf of the surety company.

SANDI BENFORD
VICE PRESIDENT, SURETY DIVISION
Philadelphia Insurance Companies

How do you think the pandemic will permanently change the construction surety bond industry?

I see a renewed focus on nationalization versus globalization, something not seen in many years. Sureties and brokers have streamlined underwriting and the delivery methods of bonds.

RICHARD HALLETT
PRINCIPAL, DIRECTOR OF SURETY
Marsh & McLennan Agency

How do you think the pandemic will permanently change the construction surety bond industry?

Wet-ink signatures and embossed corporate seals will be replaced with electronic signatures and may eventually lead to the elimination of notarized signatures.

ANTONIO C. ALBANESE
VICE PRESIDENT – HEAD OF SURETY
Surety | Management Liability and Specialty

The immediate and dramatic change to our way of life caused by the pandemic has allowed for widespread adoption of new tools and technology across our businesses.

BROCK MASTERSON
SENIOR VICE PRESIDENT, CONSTRUCTION GROUP DIRECTOR, CONSTRUCTION SURETY
Chubb

It is wise to partner with a strong nationwide surety company that understands your needs and can readily weather the different business cycles.

ANDREW A. DICKSON
SVP, HEAD OF SURETY
Hudson Insurance Group

Those who possess integrated communications that enable "state of the art" decision-making and streamlined business processes will benefit in this pandemic.

DANIEL FITZGERALD
VICE PRESIDENT SURETY, AMERICAS
Tinubu Square

Electronic bonds are becoming more acceptable. What is the future of electronic bonding?

I think there are no good reasons to go back to the days of paper-and-wet-ink signatures on bid, performance and payment bonds; digital is the future of surety bonds.

MARK MUNEKAWA
PRESIDENT
National Association of Surety Bond Producers (NASBP)

Its widespread use ensures surety's continued presence within the greater financial community, and increases the ability to compete with other credit instruments.

AL WRIGHT
SVP, MIDDLE MARKETS
CONTRACT SURETY
Crum & Forster

What are "consequential damages," and how can contractors evaluate this risk?

If consequential damages cannot be waived, capped or narrowed in the contract, take a broader view. Consider the project characteristics in pricing the risk.

DAN POPE
REGIONAL VICE PRESIDENT, SOUTHWEST REGION
Old Republic Surety Company

What key elements should contractors consider when implementing a change order management strategy?

Contractors often unwittingly wind up performing change order work for free because field personnel may not compare the contract documents to field conditions.

HENRY W. NOZKO, JR.
PRESIDENT
ACSTAR Insurance Company

What are the roles of a bond underwriter and a bond producer?

It is the producer's responsibility to present the contractor in the best light to the most appropriate underwriter with the most appropriate surety.

CLIFF SPICKLER, CWCA
CONSTRUCTION AND SURETY PROFESSIONAL
INSURICA

First know where your bond underwriter and bond agent sit, so you can then understand where they stand.

DONALD T. JOHNSON
ASSISTANT VICE PRESIDENT - SURETY
CNA Surety

Working together, the surety underwriter and surety bond broker can establish a tailored program to help put the contractor in a position to succeed.

DARRIN J. OELKE, AFSB
REGIONAL UNDERWRITING OFFICER
Travelers Insurance

What advice do you have for contractors considering making a claim on a surety bond?

Contractors considering making a claim on a bond should ensure they carefully read the bond. Failing to follow the strict requirements in the bond may be fatal to a claim.

SHOSHANA ROTHMAN
ATTORNEY
Smith, Currie & Hancock LLP

Read all the insights these industry leaders have to share at ConstructionExec.com/ExecutiveInsights

EXECUTIVE **INSIGHTS**

How can having a qualified construction CPA help increase your bond line?

An experienced construction CPA firm can be vital by helping to communicate a contractor's needs with the bonding company through proper financial reporting and documentation.

MICHAEL CESCHINI
MANAGING MEMBER
Ceschini CPAs

How does a surety adjust a CPA-prepared financial statement to calculate a construction firm's bond program?

Not only is the level of CPA financial reporting critical during the bonding process; the experience and reputation of the CPA in the construction arena are equally vital.

TODD FEUERMAN
DIRECTOR
Ellin & Tucker

What best practices should a construction company adhere to when navigating their contracts today?

It is more important than ever for companies to consider their dispute resolution options when drafting new contracts.

MICHAEL A. MARRA
VICE PRESIDENT
American Arbitration Association International Centre for Dispute Resolution®

What should a construction firm take into account when deciding to terminate for default?

Before making the decision to terminate, contractors must also consider how they will complete the terminated contractor's work.

MICHAEL C. ZISA
CHAIR, SURETY AND CONSTRUCTION RELATED INSURANCE DEFENSE
Peckar & Abramson, P.C.

Surety Bonding Would Provide Peace of Mind for P3s

BY LEE COVINGTON

Infrastructure is the backbone of a healthy economy. It enables trade, powers businesses, connects workers to their jobs and gives more than 325 million people in the United States the means necessary to live and work in their communities. The need for modern, efficient and reliable infrastructure is at its all-time high; however, the cost of infrastructure improvements in our country far exceed the available funds at the state and federal level.

Due to the lack of funding, many public entities are considering public-private partnerships, also known as P3s, as a way to finance and complete necessary infrastructure projects.

Unlike traditional methods of construction for public works projects, P3s allow private partners to participate in the design, financing, construction, operation and maintenance of a project. The public entity signs a contract with a private partner, committing public funds to repay the private partner, plus a profit, over a period of time ranging 30 to 99 years. The private partner chooses and pays the construction contractor and oversees the construction project.

P3s are transforming the way public infrastructure projects are being completed; however, a critical aspect is often overlooked—the need for surety bonding protection. Rebuilding the nation's infrastructure is essential, but doing it without the protection of a surety bond should not be an option.


Lee Covington

Risky Business

Although procurement methods have evolved—including the increased use of P3s—construction risks remain the same. Contractors can run into financial difficulty on public projects for a number a reasons, particularly during uncertain economic times.

Over 100 years ago, the U.S. adopted a policy requiring surety bonds on all public works projects. These bonds guarantee that funds will be available to complete the project and pay the subcontractors, suppliers and workers on the job even if the contractor defaults. But what happens if a surety bond is not in place? Multiple stakeholders are at great risk.

At this time, bond requirements for P3s vary from state to state, and thus the extent of protection varies greatly. Without a surety bond in place, taxpayers bear the burden of paying any excess completion costs should a contractor default. Subcontractors, suppliers and workers can be left unpaid and cannot lien public property for payment. Public officials are left to handle angry constituents, unemployed and unpaid workers, and a tarnished reputation for not completing projects they had promised.

Surety Bonds Empower Contractors

In addition to the completion and payment protection surety bonds provide for infrastructure projects, another primary benefit of bonding is the surety's prequalification of contractors. Sureties perform a robust review of a contractor and their projects as part of their underwriting of the contractor. The surety provides a bond only to contractors that are financially capable of performing the work. The surety examines the contractor's experience in the type of work to be performed, ability to work in the region where the project is

> *Without a surety bond in place, taxpayers bear the burden of paying any excess completion costs should a contractor default.*

located, current work in progress and overall management, as well as its capital and record of paying its obligations. This broad view by the surety ensures better diligence in vetting project bidders.

With surety bonds backing their projects, public agencies can be assured their projects will be completed, mitigating the financial risk to the stakeholders involved. Experienced sureties can also help private entities resolve issues before and during the term of a P3 project.

Surety bonds empower contractors. Contractors have access to more work when they are backed by surety bonds than by soley relying on their own balance sheet. This significantly benefits small, emerging, disadvantaged and minority contractors.

Modernizing TIFIA

Bonding protects taxpayer dollars, ensures project completion, supports economic growth, and protects local small business subcontractors and suppliers. Along with several construction industry stakeholders, the surety industry is advocating for federal laws, such as the Transportation Infrastructure Finance and Innovation Act (TIFIA), to be modernized, requiring P3s to follow the same payment and performance security requirements as all traditional (non-P3), federally funded construction delivery methods.

While P3s provide a mechanism for greater private-sector participation in all phases of the development, operation and financing of transportation projects, a proposed amendment is needed to clarify that performance and payment security is required to protect the public interest, regardless of the construction delivery method.

Through their bipartisan bill, Promoting Infrastructure by Protecting Our Subcontractors and Taxpayers Act, Reps. Stephen Lynch, D-Mass., and Troy Balderson, R-Ohio, are seeking to ensure these critical bond protections are included on TIFIA-financed projects as they would be for any other federally funded project.

Securing the Future

The recent pandemic-induced financial downturn has fueled a heighted interest in surety bonds for P3 projects. Public agencies and investors want to protect their investments in any economic environment. Surety bonds offer assurance that the contractor is capable of completing the contract on time, within budget, and according to specifications. Requiring bonds not only reduces the likelihood of default, but with a surety bond, the owner has the peace of mind that a sound risk transfer mechanism is in place. The burden of construction risk shifts from the owner to the surety company.

Surety bonds are a simple, yet effective way to protect the interests of public owners, investors, taxpayers, subcontractors, suppliers and workers.

Lee Covington is president and CEO of the Surety & Fidelity Association of America. For more information, visit surety.org.

Getting the Band Back Together: How a Surety Team Can Hit the Right Notes

BY MICHAEL SENECAL

When business is on an even keel, it's relatively easy to get work done. But things get tougher when unforeseen challenges such as COVID-19 disrupt the status quo.

Just as a singer is supported by guitar, bass and drums, the most effective surety bond producers call on different forms of expertise to ensure they hit the right notes during client conversations.

The quality of music, however, depends not just on the ability of the individual musicians, but also on how well they play together. Surety bond producers and contractors that build agile support networks see more bids and projects through to orderly completion and set themselves up for sustained superior performance. In addition, when fundamentals are in place, surety teams can more assuredly anticipate and respond when change happens, as it inevitably does.

Over the past few cycles, nothing has brought as much change to construction surety as COVID-19. Stoppages and shutdowns, supply chain and worker disruptions, as well as unprecedented financial challenges put the onus on contractors—and the teams they have around them—to perform like rock stars.

Those who can make that happen will emerge from COVID-19 bigger and better than ever. So, if you have let your professional relationship with your surety bond producer and other surety team advisors wane or fall by the wayside during the last period of growth, it's time to get the band back together.

A Relationship Business

As president of Skillings Shaw & Associates, located in Lewiston, Maine, and as a National Association of Surety Bond Producers (NASBP) past president and an instructor at the association's prestigious William J. Angell Surety School, Robert Shaw is a prime example of a surety bond producer who is accustomed to playing that upfront role, orchestrating success for construction clients.

Robert Shaw

COVID-19 just makes that responsibility more acute. In a relationship-based business, Shaw is all about putting the most effective team possible around the table.

"That ends up helping all of us," Shaw says. "Teamwork clearly helps the contractor, but it helps our team, too, because in a situation like what's going on with COVID-19, surety companies are making credit decisions based on historical information. Moving forward, figuring out how all of that works and what the ramifications are is key."

David Jean

Frequently consulting with Shaw and serving many of the same construction markets in New England are: David Jean, a CPA at Portland-based Albin, Randall & Bennett, who leads his firm's construction services group and serves on NASBP's CPA Advisory


Robert Ruesch

Council; Robert Ruesch, partner at the Portland-based Verrill Dana law firm; and Ralph Pulver, vice president of the construction services/ bond practice at Travelers in nearby Hartford and also a faculty member at the NASBP Surety School.

"When I have people who are experts in the construction world in their respective trades, but also extremely knowledgeable relative to what's happening now, that allows me to work with my contractors and folks at surety companies to maximize capacity during these unprecedented times," Shaw says.

Bottom-Line Implications of COVID-19

In terms of financial impact, Jean reports, COVID-19 has implications from the bidding stage to project completion, with effective communication among all pertinent advisors key to ongoing viability.

"Advisors need to be talking proactively with their contractor clients about best practices—what we're seeing in the industry, what changes are taking place, and how they can better prepare to deal with all the uncertainty," Jean says. One of those is the impact of job slowdowns on profit potential.

"As some private work dries up, that means more contractors chasing public work," he says. "And with more people bidding on public work, margins are tighter. What this is going to look like next year nobody knows, but contractors need to start preparing."

Access the NASBP Virtual Seminar "Getting the Band Back Together" at learn.nasbp.org/products

Access the NASBP Podcast "#18 Advising Construction Clients: A Conversation With a Surety Bond Producer and CPA" at letsgetsurety.org

Cost increases for materials, along with safety and risk mitigation costs and even costs for remote work, are also impacting the bottom line, both for backlogged jobs and new bids, Jean says. Issues syncing up the sequence of subcontractors, all of whom are involved in a project and are all facing the same challenges, introduce even more inefficiency.

"In general, our clients are finding they're not as productive as they have been," Jean says.

At least during the initial phase of the pandemic, PPP funds were able to mask some of the worst financial impacts for many construction businesses that would otherwise have been struggling, especially those in jurisdictions for which construction was temporarily locked down. Depending on how the government elects to dispense any additional economic support, however, PPP might have simply delayed any eventual downturn.

Managing the Legal Ramifications of Change

In an unpredictable business environment, maintaining communication integration with accounting, project management and estimating system backbones protects against loss of documentation for items of negotiation that should be part of an electronic job file.

"That's more important today than ever, because things are in flux and plans that have previously been made are changing," Jean says.

Ruesch adds that COVID-19's potential disruption of formerly stable personal relationships puts even more emphasis on the importance of good documentation.

"People change positions, especially now, and that highlights the need for written documentation and communication," Ruesch says. "These days, I'll call somebody up on the phone or we'll have a Zoom and establish that direct line; but the importance of discipline and adhering to notice provisions cannot be overstated. The reason is that, in the context of a dispute, there's an inclination among people in a courtroom or arbitration setting to not believe something happened if there's not a contemporaneous piece of paper or an email that documents it," he says.

That still holds true for parties in negotiating relationships even when they've been working together for years, according to Ruesch. "There's often a reluctance to send an email or take a position because you don't want to upset the person who's going to receive it," he says. "It's important to appreciate that there's a way to communicate a position without necessarily being adversarial."

In these areas and others, professionals like Ruesch and Jean contribute their expertise in uncovering and assessing the impact of change on contracts—and vice versa.

"There's no better advice I could give to a client in any of my roles within the construction industry than to identify problems early and be proactive in communicating about them," Ruesch says.

The Team Imperative

That's exactly why the most successful contractors surround themselves with carefully selected business professional advisors: bond professionals like Shaw, financial professionals like Jean and construction lawyers like Ruesch, along with insurance professionals, systems IT professionals and others.

Ralph Pulver

"For the privately held company, this team may serve as a quasi-advisory board," Ralph Pulver says. "These advisors not only know their own professions really well, but also become intimately knowledgeable about the construction companies they serve."

"No good question can be out of bounds," Pulver adds. "When COVID-19 hit, one of our clients said to me, fire away with any and all questions about how we're dealing with this because we're in uncharted waters."

For the contractor advisory group, then, collaborative work becomes a requirement.

"COVID-19 found us all quickly placed in that territory, with topics like force majeure clauses, PPP loans, new ways of looking at project safety and the necessity of assessing the financial impact of work delays and cancellations; the list goes on," Pulver says. "It's critical to keep the communication ongoing, and I think those advisers are doing an incredible job of boiling down all the available information and telling them what's most important."

Getting Contractors Their Share of Work

In the heat of this past summer near Lewiston, Shaw held a get together with a few of his construction clients. The goal was to get everybody up to speed about some of the changes that had recently been made in the PPP program.

"I have a friend who has a field and a barn," Shaw says. "I invited about 10 or 12 of my contractors, and we're all out in the field because it seemed like the right thing to do, with the proper hand sanitizers and face masks and a couple of beers. And we just kind of stood around for an hour or so and chatted."

"The interesting thing about our business as surety bond producers is that the end products we provide all look the same; my bond looks like my competitors' bonds," Shaw says. "What sets everybody apart is the knowledge and resources we bring to the table that enable our clients to maximize their bonding capacity."

And the band plays on. "If somebody who has a weakness needs some help and I can get one of these guys involved, they make me look good," Shaw says. "My job is to make sure the right team is in place—that we have the band ready to make the kind of music we want to make. When we do that, our contractor clients achieve their goals and objectives."

Michael Senecal is a freelance writer for the construction and insurance industries and a regular contributor to publications by Naylor Solutions and NASBP. For more information, email msenecal@gmail.com.

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Electronic Signatures for Surety Bonds: Widespread Adoption Needed

BY LAWRENCE LECLAIR AND JULIE ALLEYNE

The COVID-19 pandemic has forced many U.S. businesses to become more flexible with the way they operate and conduct business. When state governors began to issue stay-at-home and/or social distancing orders earlier this year, the surety industry was confronted with adhering to these orders while attempting to meet the traditional federal, state and local requirements surrounding the acceptability of surety bonds.

In most jurisdictions, in practice, a surety bond is accepted as fully executed by most governmental authorities when it includes a

“Executing surety bonds electronically is not a new practice.

wet signature, a raised corporate seal and notarization. Because this practice requires the close, physical presence and proximity of multiple persons, including a public notary, it runs afoul of social distancing and stay-at-home orders, in addition to needlessly endangering human health.

In short, the current practices required by most public owners of executing physical copies of bonds is unworkable and imprudent during the COVID-19 crisis in order to maintain a safe environment for those executing, delivering and receiving surety bonds. Adherence to such practices also is less efficient and is simply an outdated practice, as the advent of technologies and legal authority permitting execution and delivery of electronic bonds with digital signatures and seals is here and equally enforceable.

Executing Surety Bonds Electronically

Executing surety bonds electronically is not a new practice. Commercial surety bonds, for example, have been submitted electronically for years in the form of mortgage broker and customs bonds. To date, no issues have arisen with the enforcement of electronic bonds in these sectors. Nearly 20 years ago, the surety industry recognized the need to eventually transition from submitting paper bonds with wet signatures to electronic bonds by creating a joint initiative, focused on electronic bidding and bonding.

With the assistance of construction industry stakeholder organizations, this joint initiative between NASBP and SFAA created an educational best practices whitepaper, "eProcurement Bidding/Bonding Guidelines," to assist public owners with implementing electronic procurement methodologies and system characteristics that respect the interests of all parties. The whitepaper (available at suretyautomation.org) was intended to establish common parameters for all public owners in the electronic procurement and bonding process.

While a few states did adopt acceptance of electronic bid bonds through the state departments of transportation, acceptance was not widespread beyond those state departments.

The Legal Environment

Uniform Electronic Transactions Act

The electronic issuance of surety bonds meets the legal standards for the historic wet signature and notary requirements. The Electronic Signatures in Global and National Commerce Act (E-Sign), which is largely based on the Uniform Electronic Transactions Act (UETA), provides that a contract relating to interstate commerce may not be denied legal effect solely because an electronic signature or record was used in its formation.

E-records and e-signatures have the same legal effect as paper contracts and handwritten signatures, subject to specific exceptions not applicable in this context. However, E-Sign and UETA both provide that all parties must consent to doing

business electronically. And therein lies the issue for the surety industry.

While nearly all states have adopted some form of UETA, the challenge is the public owner must consent to receipt of the surety bond in this manner. Recently, the Texas Department of Insurance issued Bulletin B-0035-20 to assist surety bond companies in the performance of their duties during the COVID-19 outbreak. TDI's bulletin, however, stipulates that all parties must agree to conduct business electronically in this manner.

Remote Online Notarization (RON) Model Act

According to the National Notary Association, 24 states have adopted the RON model to allow for acceptance of remote online notarization prior to the pandemic. While the RON model seems to be advancing in the states, not all these states have issued regulations. For the surety industry, it is not a practical, workable solution during the COVID-19 crisis under the current RON model because:

- it's not widely accepted in all states;
- most of those states which have adopted RON require a notary to first register with and receive certification by the state before utilizing RON;
- some states require an in-person presence to use RON; and
- while the model may address other industries such as real estate agents and attorneys, it does not specifically address surety transactions.

During stay-at-home orders, a number of governors issued Executive Orders to allow for some form of virtual online notarization to adhere to social distancing standards, which was helpful to the surety industry as this solution did not require preregistration or the use of a particular platform as in the case of RON.

Need for Immediate Action

The surety industry quickly realized that elected and appointed decision-makers and public procurement officials needed to be educated about the potential health risks associated with traditional execution and delivery of surety bonds during a pandemic in order to comply with social distancing orders.

Subsequently, the surety industry, in early April, along with its construction allies, began a grassroots information campaign targeting federal, state and local elected/public procurement officials, which included background materials requesting such leaders/officials consider issuing emergency orders requiring acceptance of electronically executed and delivered contract surety and commercial surety bonds due to the COVID-19 pandemic. The request stated the following:

1. With respect to all construction bonds, all government agencies and officials shall accept surety bonds and powers of attorney containing e-signatures and


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> *"Officials needed to be educated about the health risks associated with traditional execution and delivery of bonds during a pandemic.*

e-corporate seals affixed to each document and shall waive the requirement of a notary.

2. With respect to all commercial surety bonds, government agencies and officials shall accept all surety bonds and powers of attorney containing e-signatures and e-corporate seals affixed to each document, and shall waive the requirement of a notary.

Notable Successes

Because of the surety industry's dogged effort, several state and federal agencies acted by temporarily allowing bonds to be submitted electronically. Most notably, the U.S. General Services Administration, one of the federal government's largest procurer of construction services, issued a FAR Deviation (Class Deviation CD-2020-05) for sureties to use electronic signatures in lieu of manual signatures and which eliminated the requirement for any seals. Soon thereafter, the Department of Defense issued a FAR Deviation (DARS 2020-O0016) providing flexibility to DoD contracting officers regarding "original documents, manual signatures, seals and notarization in order to facilitate certain essential contracting procedures."

In May, the Small Business Administration issued notice (CONTROL NO.: 5000-20026) that the Surety Bond Guarantee Program will accept electronic signatures on certain program documents.

Several states also took affirmative action in response to the request, resulting in the issuance of temporary emergency orders, although those referenced below have since expired.

- Georgia: EO June 16, 2020, mandated contracting officers accept electronic signatures and corporate seals and waived in-person notarization.
- Michigan: EO 2020-41 in essence required the use of electronic signatures, as well as remote notarization and witnessing, unless wet signatures were expressly required by law.
- Minnesota: Department of Commerce & Department of Administration issued regulation/guidance accepting bonds with electronic signatures.
- Tennessee: EO 28 suspended the notarization requirement on surety bonds and allowed all government departments and officials to accept electronic signatures and corporate seals.
- Wisconsin: Department of Facilities Development and Management moved to accept electronic bid, performance and payment bonds, as well as remote online notarization.

Much Work Needs to Be Done

Prior to the COVID-19 pandemic, advocating for the adoption of electronic bonds was not viewed as a priority for the surety industry. However, the COVID-19 pandemic acted as a catalyst for renewed focus on the need for transitioning to electronic bonding.

It is vital that public procurement officers, in tandem with the construction and surety industries, work together to find a viable alternative to the execution of surety bonds while continuing to achieve the public policy purpose of protecting state and federal taxpayer funds and the downstream parties that rely on surety guarantees of performance and payment.

NASBP and SFAA are exploring a long-term strategy to focus their energies and efforts to advance the acceptance of electronic surety bonds and will continue to partner with their contractor friends to enlist industry-wide support and guidance on this critical matter. CE

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Risk Protection: Force Majeure Agreements Take on Renewed Relevance

BY MICHAEL E. CARSON

Force majeure clauses have been standard in contracts dating back hundreds of years in the United States—and even longer in Europe. "Force majeure," which is French for "greater force," removes liability for unforeseen events that prevent parties from fulfilling contractual obligations.

In a year defined by the COVID-19 pandemic, these clauses have gone from boilerplate basics to something worthy of further examination and attention in order to minimize risk for all parties involved in a construction project. Prior to COVID-19, drafters might have considered a localized or regional event that would lead to invoking a force majeure clause. It is doubtful, however, that anybody envisioned the impact on such a world-wide scale.

Understanding the Agreements
Force majeure clauses cover unforeseen events, a broad term that encompasses both acts of God and human-caused incidents.

These range from natural disasters like earthquakes and hurricanes to acts of terrorism, strikes, political strife, government actions, war and other difficult- or impossible-to-predict disruptions. When such an event occurs, the force majeure clause attempts to remove, or at least reduce, uncertainty as to the rights and liabilities of the parties to the agreement.

Sureties issue performance bonds, which are intended to provide additional assurance that a contractor will perform the terms and conditions of a construction contract. If, for example, a bonded contractor goes out of business, the surety may be obligated to step in and complete the construction project, find a replacement contractor or make a payout to the owner. Whether the surety's obligation is triggered is dependent upon several factors that are defined by the underlying contract, the terms of the performance bond and applicable legal concepts.

Takeover and completion agreements are a contractual mechanism through which a surety may be involved in the completion of a construction project. The takeover agreement is generally between the project owner and the surety, and it provides that the surety will arrange for completion of the construction project. A completion agreement may be a separate agreement that is generally with a completion contractor who has been retained to perform the original scope of work.

The Impact of COVID-19

The fallout from COVID-19 has been extensive. International and domestic supply chains have been disrupted, which can have an impact on the ability of some contractors to complete projects on time or even at all. Workers exposed to COVID-19 may fall ill or may be in mandatory quarantine for a lengthy period if they are exposed to the coronavirus, causing labor-related delays.

If the contract doesn't contain a force majeure provision or if the provision doesn't specifically mention epidemics or pandemics, the contractor may be exposed to liability without a contractual remedy for extensions of time or increases in compensation. In this case, the obligee may have an argument that the contractor must still perform the work. Then again, the contractor may argue that its performance should be excused for reasons including an impossibility, impracticability or frustration of purpose argument.

The ambiguity of a force majeure clause or lack thereof may result in lengthy and expensive litigation, which is undesirable to all parties. This has become an issue for sureties as bonded construction companies are terminated and sureties are being asked to perform, despite facing some of the same challenges that may have led to the termination. When negotiating takeover and

> *Cooperative solutions to COVID-19-related project disruptions involve extensions of time as opposed to financial change orders.*

completion agreements under such circumstances, a surety must consider the labor and supply chain disruptions, increased costs and scheduling impacts resulting from the pandemic.

In addition to labor shortages caused by illness or quarantine requirements, in some jurisdictions significant shutdowns have been required by governmental executive action, which may result in delays. In some cases, owners are still demanding that the surety meet scheduling deadlines and obtain labor and materials without allowance for the COVID-19 impact.

The surety should attempt to address and negotiate these issues up front, both regarding prior impacts and potential future impacts that may arise as the pandemic continues. In the alternative, the surety should attempt to include a clear reservation of rights and its own force majeure clause that addresses COVID-19 as a means to preserve its rights to negotiate, arbitrate or litigate these issues when the project is complete.

Mitigating Risk When Disasters Strike and Before Termination

When an unforeseen and arguably force majeure-level event disrupts a construction project, the best outcome usually occurs when all parties—the surety, principal and obligee—work together toward a mutually beneficial resolution before termination. This often requires flexibility of terms.

For example, a paving contractor on a major municipal project had dozens of crew members out of work as a direct result of COVID-19. This put the future of the project at risk. To continue work with limited crew members would mean the project would take longer to complete. More importantly, this would increase expenses as the contractor would need to extend the rental of necessary equipment and keep traffic control staff on the payroll for a longer period. The surety, contractor and municipality agreed the best approach would be to temporarily cease work until a full crew was available to do the work as planned rather than argue about change orders related to inefficient work and extended general conditions.

Another project involving a bonded HVAC contractor was going to be delayed when a contractually required material was not obtainable due to the government shutdown and resultant supply chain impact. Rather than insisting upon the specifically sourced material, the interested parties were able to agree to accept a substituted material from another vendor.

In general, cooperative solutions to COVID-19-related project disruptions involve extensions of time as opposed to financial change orders. No matter what the solution, the best results occur when all parties are flexible and work together.

The Future of Contracts

Force majeure provisions are often written in general language. For a long time, this was considered enough, as entities often agree on what constitutes a standard unforeseeable event and the provision is infrequently activated. However, the onset of the COVID-19 pandemic and its far-reaching impacts underscore the need to further consider the language within a force majeure clause.

To limit exposure, it is important to consider a force majeure clause to ensure it provides specific language about pandemics, epidemics and other public health emergencies. This language must be clear to limit liability, especially during a time when a global pandemic is no longer an abstract possibility but rather a foregone reality. The ability to foresee a pandemic and its fallout allows for the argument that the force majeure clause no longer covers its impacts, unless the clause explicitly includes a pandemic as a force majeure event.

The COVID-19 pandemic is a reminder that all parties should regularly revisit standard clauses and provisions to ensure they are offering the best protection possible against shifting risks. CE

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Subcontractor Failure to Pay Employee Wages Could Fall on General Contractors

BY MICHAEL C. ZISA

General contractors must realize the risk of being held liable for a subcontractor's failure to pay timely and proper wages to their employees and/or lower-tier subcontractors.

Maryland, Virginia, California and the District of Columbia have recently rolled out laws that create a significant risk for general contractors to consider. The laws impose joint liability on general contractors for a subcontractor's failure to pay timely and proper wages to their employees and lower-tier subcontractors.

As a result, general contractors have the potential to pay twice for labor, in addition to bearing the responsibility for statutory liquidated damages and attorney's fees that are imposed for violations of these laws, which in some states include treble (three times) damages. Therefore, it is essential for general contractors to understand these laws and develop strategies to protect themselves from violations.

Specific Codes of Law

The D.C. Wage Payment and Collection Law (WPCL), D.C. Code § 32-1301, et seq., requires employers to pay timely wages to their employees; and if they fail, the employer is liable, as liquidated damages, for 10% of the unpaid wages for each working day that the failure persists, or an amount equal to treble the unpaid wages, whichever is smaller. The WPCL goes on to provide that the subcontractor and general contractor shall be jointly and severally liable for these violations.

Similarly, in Maryland, the General Contractor Liability for Unpaid Wages Act (GCLUWA), Md. Code Ann., Lab. & Empl. § 3-507.2(c)(1), states that a general contractor shall be jointly and severally liable for its subcontractors' failure to pay employees in accordance with Maryland wage laws. The GCLUWA not only applies to

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the subcontractors, but also applies to lower-tier subcontractors. In addition to being held liable for the unpaid wages, the general contractor will also be held liable for liquidated damages, which is up to an amount not exceeding three-times the wage, as well as reasonable attorney's fees and other costs.

In Virginia, Va. Code 11-4.6 makes general contractors on construction projects over $500,000 liable for any wages its subcontractors of any tier fail to pay. Further, general contractors are deemed to be the employer of the subcontractor's employees for the purposes of Va. Code § 40.1-29, which imposes civil and criminal penalties on employers in the case of unpaid wages. The criminal penalties range from misdemeanors to felonies, depending upon the amount of unpaid wages.

In California, Cal. Labor Code § 218.7 holds the general contractor jointly liable for unpaid wages, benefits or contributions that a subcontractor owes to an employee who performed work under the contract. However, the general contractor is not jointly liable for any liquidated damages.

Statutory Protections

The laws do provide some level of protection for the general contractor. For example, the Virginia law includes a good-faith exception, providing that a general contractor may be held liable only if it can be demonstrated that the general contractor knew or should have known that the subcontractor was not paying its employees the wages (Va. Code Ann. § 11-4.6). Therefore, if the general contractor can prove it acted in good faith, it can avoid liability for its subcontractors' violations.

Additionally, most of the statutes contain an indemnity provision requiring the subcontractor and lower-tier subcontractor to indemnify the general contractor for any wages or fees that it pays as a result of its joint liability. The laws in Maryland, Virginia and the District of Columbia each state that, except as otherwise provided in the subcontract, the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties or attorney's fees due to the subcontractor's violations unless the violations were due to the general contractor's own violations of prompt payment. (See Md. Code Ann., Lab. & Empl. § 3-507.2(c)(1); Va. Code Ann. § 11-4.6(D); and D.C. Code § 32-1303(5).)

California's law does not include such protection. Moreover, the value of this protection is dependent on the financial strength of the subcontractor. In other words, if the subcontractor is insolvent, the indemnity obligation is worthless.

Because of the limitations of the statutory protections, general contractors must consider proactive measures to reduce the risks associated with these laws. Although the type of protections will vary depending on applicable laws and the specific subcontractor, the following are recommendations to reduce risks:

- Strengthen the contractual indemnity language to require indemnification for all wage violations.
- Consider requesting personal indemnity from the subcontractor's owners or other guarantors for such violations.
- Revise subcontracts to contain specific default language for a subcontractor's or lower-tier subcontractor's wage violations, and allow for set-off against payments due on other subcontracts.
- Require subcontractors to provide payment and performance bonds that cover wage violations or liability resulting from the same.
- Require subcontractors to provide certified payroll documents along with records confirming payments and require subcontractors to obtain similar documentation from lower-tier subcontractors.
- Ensure proper vetting of potential subcontractors and work with subcontractors that have a trusted past performance history and that have strong reputations.

While these laws are still relatively new, several states and the District of Columbia are making a big push on enforcement. Further, a similar law is currently pending before the Illinois legislature; and it is expected that other state legislatures will follow suit.

General contractors are advised to stay informed of the laws where they are working and take the necessary precautions to avoid the potentially harsh penalties associated with these laws.

Michael C. Zisa is chair of the Surety and Construction Related Insurance Defense Practice Group at Peckar & Abramson, Washington, D.C. For more information, email mzisa@pecklaw.com.

Working Capital: It's Not Just Math

BY CARL OLIVERI

Contractors constantly ask advisors this question: "What do you see out there?" That's a big question and deserves a big answer. In a highly competitive, fast-paced marketplace that is constantly in flux, contending with the same issues that other industries face, the construction industry also manages to be an industry that is unique in its ability to be innovative.

While each construction company is different in terms of its approach to building, one similarity exists at the core—an entrepreneurial nature. And the one thing all entrepreneurs want to know is: "How am I doing compared to my peers and competition?"

One of the best ways to answer this question is with benchmarks. And one of the most powerful benchmarks for a construction company is working capital. For a user of a contractor's financial statement, such as a surety and a professional surety agent, working capital is a great indicator of a contractor's immediate financial prowess.

Asset and Liabilities

Working capital is the difference between a company's current assets and current liabilities. It is a measurement of the company's operating efficiency and financial health for the next operating cycle (generally, the next 12 months but could be longer). For a construction company, quite simply put, working capital is the financial capacity to perform on the current backlog.

According to Greg Horne, assistant vice president at Liberty Mutual Surety, the base premise of working capital starts with the question: "How is the construction contractor going to fund the company until the payment requisitions come in?"

Kevin McCann, vice president—surety division, Philadelphia Insurance Companies, adds:

"Sureties may look at some components of working capital differently, but ultimately we want to understand the liquidity of the company to keep operations funded for the next year.

"Sureties may look at some components of working capital differently, but ultimately we want to understand the liquidity of the company to keep operations funded for the next year."

The composition of the balance sheet can start to answer these inquiries but, in practice, working capital is not a pure ratio, especially considering the recent changes in Generally Accepted Accounting Principles' (GAAP) revenue recognition model (Accounting Standards Codification "ASC" 606: Revenues from Contracts with Customers). As part of those changes, upfront cash outflows (such as bond and mobilization costs), which in the past would have been considered job costs and generated book revenue, need to be analyzed for the potential reclassification as prepaid job costs. By definition, this method would increase working capital but, in reality, does it?

While it does depend on the specific contractor and circumstances surrounding those costs, generally, under ASC 606, if it is determined prepaid expenses are job-centric (that is, can be attributed to a specific job), working capital credit can be extended.

Certain assets, Horne says, are discounted while others are deeply scrutinized in his analysis. Items like inventory and general prepaid expenses are often written down by 50%, which may not be enough in some cases. As time passes between when the CPA completes procedures and analysis and when the surety receives the report, underbillings are "audited" again, this time by the surety.

"We typically want to understand what is causing an underbilling and why the contractor has not been able to bill for these costs, especially if the contractor is deeply into or fully extended on a line of credit," Horne says.

There will always be items sureties want to get a better understanding of beyond prepaids and underbillings. These revolve around aged and unbilled receivables.

"Regardless of the condition of the market, the surety needs to understand the composition of working capital," says Barry Shabashkevich, vice president of Sompo International–Surety. "Specifically, how old are the receivables and when will the unbilled receivable turn? What's the true liquidity?"

That very question leads to the analysis of another ratio, receivable turnover.

Supplementary Information

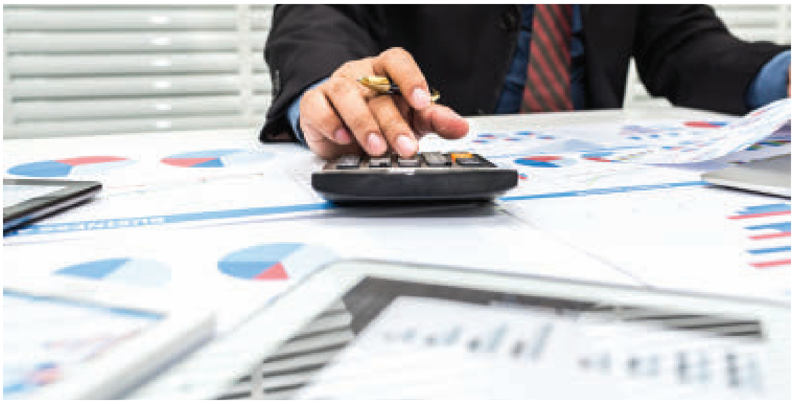
When analyzing a construction company's financial statement, Shabashkevich delves into the included supplementary information relevant to the construction industry, such as the schedules of contract receivables, contracts completed and contracts in process. These schedules supplement (no pun intended) the surety's working capital analysis by providing a starting point to forecast cash receipts on a project-by-project basis and establishing how backlog and the associated gross profit will be recognized over the next operating cycle. In other words, using the supplementary information in conjunction with the current working capital ratio, the surety can forecast "tomorrow's" level as part of the underwriting purposes.

But the analysis does not end with the numbers. Off-balance sheet, it is also important for the surety to understand the customer that the contractor is working for; specifically, what the customer's payment habits are in terms of the requisition approval process, turnaround time and whether upfront/mobilization costs can be requisitioned.

"Whom a contractor works for and how that customer pays are important to the process," Horne says, especially if the customer is new.

External Complications

In April 2020, as part of a larger stimulus package, the federal government implemented the Paycheck



Protection Program (PPP) as a measure to counter the financial impact businesses were experiencing as a result of the COVID-19 pandemic. The spirit of the program was to allow companies, meeting certain requirements, to apply for a loan with favorable repayment terms; those companies would have the option to be forgiven the loan, if the monies were used on payroll and related employee benefit expenses. In other words, if used for wages and employee benefit costs, the loan would transform into a grant.

Even though the construction industry, especially in the middle market, was a direct beneficiary of this program, the PPP adds a wrinkle to the working capital equation. As loans were granted, contractors saw an infusion of cash offset by a current and long-term loan payable. At present, the construction industry has had no issue in meeting the utilization requirements for these funds to warrant forgiveness, which means that by the end of 2020, or in early parts of 2021, the PPP loan payable amounts being carried on the contractor's balance sheet will flow through operations and become a permanent increase to equity, net of income taxes as of the date of this article.

While on the surface this seems like an immediate increase to contractors' working capital capacity, most credit providers, including sureties, are taking a "wait-and-see approach." As this is an unprecedented program, which has changed a number of times since its implementation, the conservative approach is to analyze working capital without the PPP, in the instance that the program's forgiveness guidelines change again or if the loan (or a portion of the loan) is not forgiven and has to be repaid.

The working capital analysis will soon face another complication as ASC 842 Leases is adopted, effective for nonpublic entities on Dec. 15, 2021. The guidance will require all long-term leases to be capitalized on the construction company's balance sheet. In other words, the contractor will recognize a "right of use asset" similar in nature to property and equipment, offset by a current and long-term obligation under the remaining life of the lease. The key here is the contractor will be reporting a new current liability with no offsetting asset.

As noted by Kevin McCann, this will have an impact as to "how working capital is analyzed." But there could be some relief, as most sureties will make the connection that there is a current portion of the capitalized lease to consider.

Cash Is King

Users, such as the surety community, including professional surety agents, will rely on the work and opinions of CPAs regarding the financial health of a construction company. It is important that the CPA industry understands how the surety looks at working capital so the CPA industry can design the appropriate procedures around the riskier components of this metric.

No two working capital cases are alike, and the process applied to a general contractor should not be the same for a trade contractor.

One recommendation is to analyze working capital both with and without the under- and overbillings, because underbillings are a current asset that does not add to the contractor's ability to fund the project, and overbillings are a current liability that do not detract from the contractor's ability to fund the project.

But in the end, all sureties, other creditors, and advisors to the construction industry share the same sentiment: cash has been, is, and always will be king.

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Are Shortages Coming in 2021? Not If Contractors Create a Backup Plan

BY RICHARD SGHIATTI

Today's project management software systems and processes—along with education and experience—can make project and construction managers more savvy and efficient than ever.

What construction professionals shouldn't forget, though, are backup plans.

Smart managers assume that any project could be disrupted. Trouble spots could be in materials availability and cost, labor supply for projects, and/or along the supply chain. The construction manager who anticipates disruptions and creates backup plans has the best chance to deliver a project on time and within budget.

One reason: Political, economic and financial shocks to the economy can be improved through regulatory, political, financial, diplomatic and other means. By contrast, it's not clear what fixes might work for the pandemic, how much is needed, and how long they'll take.

The tendency may be to load up on work while it's available and worry about doing it when the time comes. That's not necessarily the right risk to place on a company's capital.

Construction is a necessity, but jobs are being postponed or canceled nonetheless. Owners might not be bullish if they don't know what to expect or even when the uncertainty is going to clear.

Aside from the current pipeline, contractors can't know what to expect for job bids in 2021. Public projects (roads, government buildings and schools) depend on tax revenue, another uncertainty. In the Southeast, for example, bridge inspections have indicated significant maintenance work is needed. In 2021, should tax revenues fall short, it's possible the state could divert tax dollars to bridge maintenance and postpone other roadwork to the following year's budget.

Another possibility, though, is that an economic recovery and/or an effective coronavirus vaccine could move construction into a higher gear in a hurry. Canceled or postponed jobs could come back on line.

The construction manager, no matter the circumstances, must try to avoid the financial, professional and reputational fallout from a delayed or incomplete project. That's especially true given the experience and expectations many construction firms had in 2020 and might face in 2021.

Here's a look at three of the risks for which managers need backup plans.

Materials: Shortages and Higher Costs

In 2020, there hasn't been much evidence about concrete or steel shortages. However, prices on concrete products (+1.3%), cement (+1.4%), ready-mix concrete (+0.9%) and concrete pipe (+1.3%) have ticked up year over year through August. Concrete ingredients and related products (+3.9%), construction sand/gravel/crushed stone (+4.7%), and concrete block and brick (+3.6%) have gone up at higher rates, according to the U.S. Bureau of Labor Statistics Producer Price Index.

By contrast, the category of lumber and wood products has gone up in price 11% in 12 months through August, although shortages don't seem evident. These prices might be touched by hurricanes in the Southeast and wildfires in the West.

The recommended hedging of this would be to require a price hold and guarantee availability for delivery from suppliers of the material.

Labor Shortages

There is no general way to categorize labor shortages in construction. The field hires a range of workers—carpenters, electricians, steel and iron welders/fabricators, project managers, supervisors, equipment operators and more.

Even within one category, labor varies. For heavy equipment operators, for example, the skill set for a highway construction project—which requires meticulous, smooth grading—calls for a greater skill than for a shopping center project.

Contractors traditionally hire subcontractors to help them deal with hiring and onboarding of workers. But they might experience a nuisance when subcontractors spread their existing workers among a number of jobs.

Contractors are shortening leashes to minimize these annoyances. When a contractor receives a "complaint letter" from an owner, that contractor in turn has to call out its own labor force and subcontractors. Small to mid-sized contractors can be especially affected.

In response, surety claims departments open claims for these situations.

If there's a spike in tax revenue and a surge in work, the industry may face a labor crunch in certain lines. If labor prices head upward, it might be because some contractors are keeping their top talent, making them off-limits to others. Contractors that pay

top talent what they're worth are better positioned.

Other companies may face high price tags or job candidates who are solid, but don't fully fit the needs of the project. They may require grooming and training—and while "growing your own" is a proven success model, the contractor must have the luxury of time. Hiring from outside can expand a company's network of revenue sources and bring in fresh perspectives, potentially sparking future best practices or smarter, faster ways of tackling tasks.

Whether to promote from within or to hire from outside is a question that only management can answer. Either way, there's always a learning curve when hiring a new employee. In the high-pressure construction environment, the labor risk is also heightened. Managing workers to deliver the project at the right quality levels has always been a risk, and the pandemic heightens the risk.

Generally, my sense is that workers are available and getting jobs done, despite the high-anxiety environment presented by COVID-19. This only goes to prove how resilient and risk-minded contractors are in today's market.

Supply Chain Disruption

This realm of the contractor's world seems to be the most stable of the three risks discussed in this article. But if bidding on work, contractors may need two supply chains or suppliers. It comes down to having that backup plan. And adjust costs accordingly in case an alternative is needed. This may fall into a "contingency" bucket to cover the increased cost.

Supply chains can be affected for contractors when they hold off on bidding and/or planning phases for work, given the current economic uncertainty. Projects don't break ground the day after a bid is submitted, but contractors must commit to a timeframe of 45 to 60 days out. It can be problematic when project timelines begin six to nine months out.

Recommended hedging of this would be to require a price hold and guarantee availability for delivery from multiple suppliers. Going with the most trusted (but not necessarily the least expensive) provider may be the best course to get the job done on time and to earn the profit expected.

Meanwhile, it's important to keep up with activity outside the United States Foreign economies can impact U.S. material stockpiles, equipment and the economy.

Heading into 2021, contractors should make sure the organization has supply chain availability in advance and anticipate shortages of materials and labor the economy can bring. Make those backup plans.

Richard Sghiatti is regional vice president in Atlanta for Old Republic Surety Co., an A.M. Best A+ rated carrier member of Old Republic Insurance Group.

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What Contractors Don't Know About Equipment Leases Could Cost Them a Fortune

BY MARC BETESH

In the age of the coronavirus, every business owner has learned how important it is to have the financial means to withstand a prolonged period of disruption. One of the ways companies tend to preserve cash is to lease equipment rather than buy it.

In the construction industry, it's often more prudent to lease when the need for specialized equipment may be required for only a short period of time on a single job or the cost of ownership is out of reach. However, businesses need to be extremely diligent with the management of those leases or they can inadvertently cost themselves a fortune.

Lease Expirations

When and how a lease ends is just as important as when it commences. Too many companies don't pay attention to the fine print in these documents, and penalties and charges can continue to add up—obliterating any of the cost savings the company had initially hoped to realize by leasing in the first place. Executives might make one of several common mistakes.

- **They don't have quick visibility to the expiration dates.** With surprising frequency, many companies continue to pay past the expiration of their lease agreements, racking up months—or sometimes even years—of additional payments without realizing it.
- **They aren't aware of penalties.** Companies don't return equipment on time, or in the agreed upon condition, and incur significant penalties.
- **They pay premium fees on devalued equipment.** Lease payments are based on the value of the equipment being leased, and at the end of a lease the residual value of the equipment is only a fraction of its original value. Many companies make the mistake of extending their leases without adjusting the payments to account for this reduced value.
- **They don't track costs over time.** If executives aren't evaluating the costs of a lease long-term, they may end up paying three or four times the value of the actual equipment.

Lease Financing Costs

Leasing is designed to allow businesses to rent equipment instead of buying it. However, that convenience comes at a price, and executives must fully understand what that price is before entering into a lease agreement. Watch out for the following pitfalls.

- **Paying high interest rates:** When an executive pays to lease equipment over time, interest is built into the payment structure. It is critical to have a clear understanding of that interest component and not just evaluate a lease based on the monthly payments.
- **Failing to negotiate the interest rate:** Companies may be able to refinance an existing lease at a lower rate if there are changes in market conditions and interest rates or a change in the value of the equipment. In the same way that a person can refinance the mortgage

on a home, businesses can refinance the interest and principal payment on a lease with the existing lease holder or a new provider. Be aware that negotiating a reduction in payments would cause a "remeasurement" under the new lease accounting rules.
- **Missing the economies-of-scale advantage:** Organizations with multiple leases may have the opportunity to aggregate lease agreements to secure more favorable terms with the existing lease holder or a third-party bank.

In the construction industry, leasing heavy equipment such as excavators, haulers and loaders functions much like leasing a car. The dealer estimates the loss of value of the equipment over the life of the lease, adds an interest rate and calculates the lease payments.

When the lease expires, the dealer expects the asset to be returned on the agreed date and in the anticipated condition. Noncompliance with those terms can lead to penalties and additional fees. If an individual decides to extend the lease, the monthly payments should be recalculated based on the new (lower) value of the asset at the time of the extension. Alternatively, the lessee may opt to purchase the asset.

Best Practices in Equipment Lease Management

Best practices for equipment lease management, or management of any leased asset, include the following.

1. **Read the fine print.** Look for hidden fees, costs, penalties and potential risks in these clauses, specifically the following.
   - **Default provisions:** A default provision should provide a clear indication of potential penalties for failing to meet any condition of the lease.
   - **Termination clauses:** Similar to default clauses, the termination section may also include potential negative actions for failure to meet the terms of the contract.
   - **Force majeure and service-level clauses:** Both of these typically focus on the ability of an asset to perform its duties. For example, if a contractor leases a crane and it is inoperable, the clause outlines the responsibilities of the lessor in this scenario. However, it does not necessarily absolve the business from the need to make lease payments on the equipment.
2. **Evaluate lease-versus-buy options.** Thoroughly evaluate the lease versus buy implications and financial impact, including the following.
   - **Innovation over time:** If a business is leasing equipment over three years or more, advances in technology or regulatory requirements might make it necessary or more desirable for a company to have new equipment every few years.
   - **Cost of ownership:** In certain circumstances, purchasing equipment may be less expensive than leasing equipment over a long period of time. Total cost of renting and ownership should be evaluated side by side.
   - **Control of assets:** Some organizations may prefer purchasing over leasing assets if they have a need to control certain aspects of the equipment usage that may be restricted in a lease agreement.
   - **Cash flow management:** Companies may not want to tie up capital through a purchase even if it is more cost-effective. Organizations may prefer to minimize a financial commitment in the short-term.
3. **Keep tight controls.** Proper management of lease agreements can mitigate risks and reduce costs.
   - **Audit all leased assets:** Conduct annual or biannual audits on all lease agreements to ensure compliance with terms and conditions and to avoid defaulting and other penalties.
   - **Implement lease management software:** Use lease management and accounting software to manage multiple, complex leases and track trigger dates and events closely. Best-in-class lease management solutions will provide a return on investment in hard and soft-dollar savings in less than two months.

It is never too late to negotiate, or renegotiate, lease agreements—especially when market conditions have changed. Executives should evaluate every aspect of their operations and restructure lease agreements for assets and property to conserve cash and gain better control over their portfolios. CE

Marc Betesh is founder, chairman and CEO of Visual Lease. For more information, visit visuallease.com.

Robins & Morton

Robins & Morton's Duke Health project team in Durham, North Carolina, worked alongside the hospital's staff to plan a special 10th birthday surprise for cancer patient, Reese Loggins. At the request of his dad, the project team was able to hoist Reese's birthday gift — a new bike— to his room window using their crane while singing "happy birthday" from the jobsite below.

Making a Lasting Impact

BY MAGGIE MURPHY

Making a lasting, positive impact is ingrained into the purpose shared by Robins & Morton's 1,200 team members and extends from the jobsite into the community.

"Our people are passionate about the work they do," says Aimee Comer, Robins & Morton's vice president of people and development. "They know the things they build will be part of the community long after they finish construction, and that instills a sense of caring about their neighbors. It's something we see at every project, and at our offices. It's part of our culture."

In that spirit, the company's Giving With Purpose program was established to strengthen the communities where team members live and work through grants and in-kind donations.

"Over the years, Robins & Morton, along with its team members, trade partners and vendors, donated millions of dollars and immeasurable time to charities, volunteer organizations and outreach programs," Comer says. "Giving With Purpose streamlines our process for supporting charitable giving requests, including those community organizations and efforts identified by our team members to help their neighbors."

In 2019 alone, Robins & Morton made more than $1.4 million in charitable grants. That does not include the thousands of dollars generated through team member participation in community-based fundraisers, such as walks and 5ks. Additionally, last year its team members spent 620 hours volunteering as teams and gave more than 2,800 hours of their personal time to community causes.

"I'm amazed at how our people will rally around a cause, from supporting United Way to wearing pink for breast cancer awareness," Comer says. "Recently, some of our veterans started a RED (Remember Everyone Deployed) Shirt Friday campaign to support outreach programs for veterans."

Reflecting passion for their work, many Robins & Morton team members are active in industry outreach such as mentoring and jobsite experiences for students. That dedication to the next generation of industry leaders is also expressed through the company's support of the Robins & Morton Construction Field Laboratory at Auburn University.

The pandemic has limited opportunities for traditional community involvement events, but Robins & Morton team members are responding creatively. After completing a senior living facility, team members helped design and construct plexiglass partitions so that residents could see and interact with loved ones. With much of their work taking place at hospitals, team members are finding opportunities to support health care staff, including banners, encouragement parades and providing meals. They've also kept up with activities such as food drives and turned traditional walks into virtual events.

Through their recently launched Building for Tomorrow challenge, team members are encouraging each other to level up their community involvement with suggestions for social-distancing compliant activities. The campaign will also provide a lead-up to the holiday season.

"This has been a tough year for everyone, so we wanted to end 2020 in a positive way," says Senior Marketing Coordinator Amanda Bradley, who initiated the campaign. "We believe we can do that by finding ways to make things a little better in each of the communities we call home."

Maggie Murphy is managing editor of Construction Executive. For more information, email murphy@abc.org, visit constructionexec.com or follow @ConstructionMag.

VIEWPOINTS

Q: What is the No. 1 risk for construction, heading into 2021?

RICH HENRY
PRESIDENT, NORTHERN PACIFIC REGION
McCarthy Building Companies
San Francisco, California

The uncertainty brought about by COVID-19 remains a looming risk for the construction industry. Because our business requires a large amount of planning and work done in advance, we've been able to continue jobs that were already in progress, as well as projects that were in the design phase when the pandemic started.

However, the last eight months have seen a significant number of delayed or canceled projects, and the full impact remains unknown. Clients are hesitant to pull the trigger on new projects, and the industry can't predict when new work will resume. The ripple effects of the uncertainty make it challenging to forecast materials procurement and workforce management.

On an individual level, our crew members are dealing with juggling regular full-time work schedules, accommodating distance learning for kids and the dynamics of leaving home for essential work without risking the health of vulnerable housemates.

FORREST McNABB
PRESIDENT – NATIONAL
Big-D Construction
Ogden, Utah

In addition to the pandemic, 2020 has included earthquakes, record winds (including a derecho in Iowa), hurricanes, wildfires, chaos across the country and manpower challenges that our teams have dealt with—not to mention their own personal challenges from time to time. To top this off, this year's election season has created a divide between the citizens of this country greater than we have seen in history.

I am amazed at how our people continue to march forward every day for the good of our organizations, customers, associates and their families. The health and wellbeing of each person in our industry is the biggest risk we face as we prepare to leave the unforgettable 2020 behind.

As we head into 2021, we need to continue to focus on being more empathetic and understanding. Our critical industry has allowed us to display the resiliency of our people and the great work they bring to our organizations. Our job is to make sure that our greatest asset is our top priority.

ERIC PYLE
BUILDING DIVISION MANAGER
Bell & Associates
Brentwood, Tennessee

The impact of COVID-19 on our economy will be the biggest challenge for the construction industry in 2021 and beyond. Some forecasts show that Q1 of 2021 will be slow for new construction, which presents a risk for the industry.

To mitigate this risk, contractors will need to prepare for the potential of subcontractor default due to aggressive bidding, overcommitment to projects and the lack of qualified workforces. This will increase the demands on management staff, including construction managers and owners, to address issues early.

Supply chain, including availability of materials and the global manufacturing market, will continue to be affected. It is likely that designers will be forced to source domestic products to keep projects on schedule.

Despite these challenges, I believe the amount of construction backlog across the country will mitigate the overall impact of the pandemic, and the industry will continue to thrive. CE