A Consensus Approach to Performance and Payment Bonds

The AGC Risk Management and Surety Conference was held in-person during the first week of June and featured two sessions on a consensus approach to performance, payment, and other bond forms. ConsensusDocs recently updated 8 performance and payment bond forms, which feature cutting edge and practical techniques. Robert Duke, Vice President and Surety Counsel from Markel Surety, explained how a diverse group of stakeholders, including representatives from several large underwriters, participated in the ConsensusDocs working group to come up with better bond forms. NASBP and SFAA staff also participated in the revision of the bond forms. The panelists indicated that they would prefer these new bond forms to the American Institute of Architects (AIA) A312 bond forms.

Key Areas in Securing Bonds:

Robert Majerus, Vice President and General Counsel of Hensel Phelps, explained some of the key areas of what he likes to see when securing bonds, which his company typically requires on most of its projects. Majerus highlighted the benefit of a new self-help provision in the subcontractor
performance bond, the ConsensusDocs 706, stating it was state of the art and is the only industry bond form with such a provision. Kimberly Zanotta, Vice President and Counsel at Travelers, explained that utilizing a self-help provision is not a blank check and advised general contractors to be mindful to carefully segment costs used towards self-help work.

**Clear Process for Bond Forms Provisions:**

Majerus discussed the value of the clear and specific provisions in the bond forms, such as having a two-step process for the surety to respond proactively in troubled projects that includes, first, the surety to make an investigation with a defined investigation period (which defaults to 30 days) and, second, a specific course of remedial actions.

The whole panel agreed that the two-step process is more robust and proactive than the optional pre-termination meeting in the AIA bond forms. Greg Horne, Vice-President with Liberty Mutual Surety, strongly recommended that the industry get behind the use of these new bond forms. Attendees received legal continuing education for attending this program.

**To Receive a copy of the paper supporting the program click below:**

Meeting Different Expectations: A Consensus Approach to Bonding

PowerPoint Presentation – Meeting Different Expectations: A Consensus Approach to Bonding

By: Brian Perlberg, ConsensusDocs Executive Director & Senior Counsel

Access Revised ConsensusDocs Bond Forms
NASBP members can access the 11 revised ConsensusDocs forms here: [https://learn.nasbp.org/p/ConsensusDocs](https://learn.nasbp.org/p/ConsensusDocs). Note that agreement to the license and a NASBP login is required to gain access to these ConsensusDocs bond forms.

ConsensusDocs Debuts Webpage with Resources to Address Risks of Rising Project Costs

CEO Mark McCallum’s column in this issue of Pipeline and numerous NASBP SmartBrief articles describe a continuing trend of price escalation of construction materials in today’s market.
In fact, ConsensusDocs has compiled a webpage with resources to address price escalation. The webpage offers articles, federal resources, and state-level resources.

In these uncertain times, owners, contractors, general contractors, and subcontractors should consider price escalation/de-escalation clauses in their construction contract agreement at contract signing. Or if both parties agree, they can use the ConsensusDocs standard price escalation clause.


The NASBP membership can save 20% on ConsensusDocs document subscription packages

Because NASBP is an endorsing member of ConsensusDocs, the NASBP membership receives 20% off of their purchase of ConsensusDocs subscription packages from ConsensusDocs at the ConsensusDocs online store when the following discount code is provided when prompted during purchase, Promotion Code: NASBP100.

For more information, visit consensusdocs.org.
For information about the ConsensusDocs bond forms, visit nasbp.org.
NASBP also provides the ConsensusDocs bond forms for download from learn.nasbp.org.

NASBP is an endorsing organization of the ConsensusDocs coalition, an unprecedented effort by 40 industry organizations to identify industry best practices and to incorporate such practices in a new generation of consensus industry standard form documents.