



AGC
THE CONSTRUCTION
ASSOCIATION

Meeting Different Expectations: A Consensus Approach to Bonding



**AGC's 2021 Construction Risk
Management Two-Part Program**

2021 Surety Bonding and Construction Risk Management Conference

#AGCRisk2021

risk.agc.org

Our Speakers Today



Robert Duke

Vice President and Surety
Counsel

Markel Surety



Gregory Horne

AVP – Contract Surety
Underwriting Officer

Liberty Mutual Surety



Robert Majerus

Vice President and General
Counsel

Hensel Phelps Construction
Co.



Kimberly Zanotta

Assistant Vice President &
Counsel

Travelers Casualty & Surety
Company

Perspective of the Obligee

Perspective of the Bond Principal

Contract Bond Experience (SFAA)

	Written Premium	Direct Incurred Loss
2017	\$3,536,117,668	\$523,568,524
2018	\$3,768,411,483	\$522,256,877
2019	\$3,938,088,093	\$954,954,500

Perspective of the Surety (underwriting)

Perspective of the Surety (claims)

ConsensusDocs Revised Bond Forms

- Form 260 – Performance Bond
- Form 261 – Payment Bond
- Form 706 – Subcontractor Performance Bond
- Form 707 – Subcontractor Payment Bond
- Form 470 – Design Build Performance Bond (liable for design costs)
- Form 471 – Design Build Performance (not liable for design costs)
- Form 472 – Design Build Payment Bond (liable for design costs)
- Form 473 – Design Build Payment Bond (not liable for design costs)

Two-step process for surety response

3. If Owner has declared the Constructor in default and Owner has provided written notice of such declaration of default to Surety at the address set forth in §5, Surety shall after receiving notice immediately commence an independent investigation of the default. Such investigation shall be completed within [___] Days. If nothing is indicated above the timeframe shall be thirty (30) Days. In the event Surety determines that (a) Constructor is in default, (b) Owner is not in default, and (c) after Owner terminates Constructor for cause, Surety shall: [LIST OF REMEDIES]

Self-help (in subcontract bond form)

4. After Constructor has provided Surety with written notice of default, and during Surety's investigation and any subsequent period before the commencement of work under §3 (i)–(iii), Constructor shall have the right, but not the obligation, to perform, correct, and supplement Subcontractor's work to the extent necessary to mitigate damages caused by the default. In such event, Constructor may deduct the reasonable costs incurred from the Subcontract Balance.

Penal sum increase

2. The Bond Sum shall automatically increase with additive change orders issued to the Contract; provided, however, that the initial Bond Sum shall not increase more than [_____] percent in the aggregate absent the Surety's written consent. If a percentage is not indicated in the preceding sentence, then the Bond Sum increase threshold to require Surety's written consent shall be twenty-five (25) percent. Surety's refusal to consent to an increase above the threshold in the Bond Sum is not a breach of this Bond.

Questions and Thank You!

