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**“PUNCH TO SUBSTANTIAL AND
FINAL COMPLETION”**

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SUMMARY

This paper **"PUNCH TO SUBSTANTIAL"** addresses a situation, where the **"SURETY's"** **"PRINCIPAL"** was a General Contractor for a municipal building. The **"PRINCIPAL"** had been defaulted and terminated by the **"OBLIGEE"** for abandonment of the project and non performance of the remaining Contract work. **"PRINCIPAL"** had antagonized **"OBLIGEE"** to the point of open hostility. **"OBLIGEE"** demanded that **"SURETY"** arrange for completion of the Project.

The **"SURETY"** investigated and determined that the **"OBLIGEE"** had properly terminated the **"PRINCIPAL's"** contract. **"SURETY"** engaged a "Construction Management Consultant" to assist the **"SURETY"** in meeting its obligations and to minimize lost, cost and expense in the handling of the Performance Bond claim.

PROJECT DESCRIPTION

The **"PRINCIPAL's"** scope of work was for the construction and completion of a large, solid masonry all brick, Municipal Building. The building was one story at the front and two stories in the rear. The project had been abandoned by the **"PRINCIPAL"** during August 1996. By the end of September 1996, the weather in the central states area was starting to get cold and damp. Winter was fast approaching and time was of the essence. The electrical power was on in the building, however, the heat for the building was by gas through the air handlers. The gas line was not installed to the meter, so there was no easy way to heat the building. There was no insulation installed in the roof area at the bottom of the trusses. The work was totally subcontracted to local subcontractors and specialty suppliers for supply and installation of the specialty items. There were twenty-eight subcontractors and twelve specialty suppliers utilized on this project. The work was approximately 75% complete. The project site had been abandoned by the **"PRINCIPAL"** and all the subcontractors had de-mobilized and had left the project site. The subcontractors and specialty suppliers were all filing claims for their earned not paid work.

The **"PRINCIPAL"** had little or no labor on the Project. Principal was basically a construction broker; a sure sign of potential trouble.

SITE INSPECTION & INVESTIGATION

The **"SURETY"** requested the "Construction Management Consultant" make a visit to the jobsite in order to determine: the condition of site and the work; the percent of work completed; the quality of the work and what the projected completion date for the remaining work was compared to the original contract scheduled completion date. The **"SURETY"** wanted enough information on how to get to Substantial Completion so the Township could get the Certificate of Occupancy and occupy the building, **"SURETY's"** goal was to avoid L.D's and complete the project before winter shutdown.

During this site visit the claims of the “*PRINCIPAL*”, the “*OBLIGEE*”, the subcontractors and the specialty suppliers were reviewed. The Consultant also identified suppliers to subcontractors because there appeared to be many second and third tier claims.

SURETY’S OPTIONS

The “*SURETY*’s” options at the time were:

1. Prepare a “Request for Quotation” bid package and solicit bids to complete the work. This would take approximately six to eight (6-8) weeks. The effort would include: walking the site with the bidders, obtain the bids, review the bids (negotiate with “*OBLIGEE*”) and award a contract. This would have activated the liquidated damages provisions and exposed the work in place to weather damage.
2. Negotiate a new contract with a new general contractor. However, this approach could present a warranty problem and take several weeks to resolve at a premium price.
3. “*SURETY*” takeover and complete the Project using the “*PRINCIPAL*’s” subcontractors and specialty suppliers, who were ready to mobilize and familiar with the Project. Many subs had materials on order, or available and had indicated they would sign a Ratification Agreement with the “*SURETY*”. This method required the services of a strong “Construction Management Consultant” and a local Field Superintendent to supervise the subcontractors.

SURETY’S ACTION

On the basis of the field investigation report the “*SURETY*” decided the best course of action was for the “*SURETY*” to take over and complete the project using the “*PRINCIPAL*’s” subcontractors and specialty suppliers. The subcontractors and specialty suppliers were advised that if they would come back to the project and complete their remaining work for the amount remaining in their subcontract and sign the “*SURETY*’s” Ratification Agreement, they would then be paid for their “earned not paid” work.

The “*SURETY*” requested the “Construction Management Consultant” to stay at the jobsite full time on a weekly basis, until Substantial Completion and the partial Certificate of Occupancy was issued. It was now October, the weather was very cold and the building was starting to get cold and damp. The building needed some heat inside to prevent the laid in ceiling tile from sagging. The electrical forced air heaters at the two main entrances were removed from the wall alcoves and put in the vestibules with the forced hot air facing into the building. These units were left on continuously and provided enough heat to keep the inside of the building at 40 degrees.

During this period the “Construction Management Consultant” met with all the subcontractors and specialty suppliers to determine exactly, from their records, what they had been paid to date by “*PRINCIPAL*”, and what their actual earned unpaid amounts were. These amounts were checked at the jobsite against the “*PRINCIPAL*’s” poor to non-existent accounting records. An actual determination of the work in place for each subcontractor was verified. Each subcontractor was required to complete the “*SURETY*’s” Ratification Agreement along with a notarized Proof of

Claim. A subcontract/specialty supplier computer spread sheet was maintained at the jobsite. This kept track of the original subcontract amount; change orders approved by "PRINCIPAL"; revised subcontract amount; all payments made by the "PRINCIPAL"; subcontract balance; earned not paid; unearned and earned retainage. This spread sheet was kept current in the field by the "Construction Management Consultant" (See Exhibit 1).

The "SURETY" then prepared a typical Takeover Agreement with the "OBLIGEE" in order to protect the penal sum of the bond ensuring that any sums the "SURETY" disbursed in completion of the project would be applied towards the reduction of said penal sum.

The "SURETY", through the "construction management consultant", hired a field superintendent on a weekly basis. The field super reported to the on site "Construction Management Consultant". The Field superintendent was to supervise the subcontractor's completion of their remaining work. The "Construction Management Consultant" scheduled and oversaw the total compliance in closing out the contract.

PUNCH TO SUBSTANTIAL

Once the subcontractors were prepared to go back on the jobsite the "Construction Management Consultant" met with the Architect to go over the Punch list work items that would get the project to Substantial Completion. Detailed work list of these items were prepared [see Forcon paper NESFCC, October 24, 1996 - "Evaluating Punch List" by Paul Sowa] The field super then started to complete the substantial completion punch list items with the subcontractors.

During this time the "Construction Management Consultant" and the Architect met with the "OBLIGEE" and asked if they would be willing to cut the checks to the subcontractors for their "earned not paid" work from the contract balance, "OBLIGEE" agreed to do this only if the field "Construction Management Consultant" reviewed and approved the amount and gave the "OBLIGEE" the proof of claim. This was done and the "OBLIGEE" started cutting the checks as requested. The punch list for the substantial completion was completed and approved by the Architect and the "OBLIGEE". The Substantial Completion Certificate was signed and the "OBLIGEE" was given a partial Certificate of Occupancy four weeks after the subcontractors returned to the site. The full Certificate of Occupancy was given to the "OBLIGEE" four weeks after the partial Certificate of Occupancy.

PAYMENT BOND CLAIMS

During the punch to completion time the "Construction Management Consultant" reviewed the payment bond claims from material men that had not been paid for materials they had supplied. Each claim was checked against the material purchase order and receiving tickets. A proof of claim was requested from each supplier. When the proof of claim was received from the supplier, materials were checked to see if they were in place or stored.

FINAL COMPLETION

All the subcontractors were contacted to supply their close out documents and warranties along with the as built drawings as required by the project specification. The Final Payment application for the remaining contract balance including the subcontractor retainages was prepared by the "Construction Management Consultant" and was sent to the Architect with all the required close

out documents.

CONCLUSIONS AND RECOMMENDATIONS

Sureties are always receiving Performance Bond claims with deadlines on the project. These deadlines can be school openings or bad weather or other critical owner occupancy issues that will substantially hurt the work in place.

The use of an experienced "Construction Management Consultant" well versed in contract administration; scheduling; estimating; procurement; site office administration; drawing and specification interpretation and contract accounting to assist the "SURETY" in meeting its obligations in a manner that protects the "SURETY'S" assets, worked well on this project. Although this approach requires the "Construction Management Consultant" to stay at the jobsite for a few weeks, the cost is reasonable when compared to delay and liquidated damage charges. This process also avoided damage to the building because of the lack of heat.

This approach is recommended for projects that have short durations to complete and 98% of the work is done by subs. The surety claims person needs to understand what the big picture will look like when all the costs are totaled. Time costs a lot in certain cases. The damage a hard winter would have inflicted on this project would have been substantial. The quick action to heat the structure using the electric forced hot air heaters from the entrance vestibules saved thousands of dollars.

The "OBLIGEE" cooperated because of the "SURETY's" quick action and assisted the "SURETY" in problem solving by cutting checks to subcontractors and specialty suppliers. Liquidated Damages were waived.

The subcontractors and specialty suppliers were encouraged when they saw money flowing quickly once the "SURETY" became involved. The subcontractors that were posturing for extras and delay damages were firmly dealt with by the "Construction Management Consultant". They all finally got the message and agreed to finish for their remaining contract balances thus saving the "SURETY" additional costs and possible attorney fees and interest.

A seasoned surety claims person looks at the big picture, discusses the "what ifs" and acts promptly. Knowing how to package a successful discharge of the "SURETY's" obligation and saving those additional damage and delay costs for are learned by understanding the type of job you have. Some elements to look for are:

- What was "*PRINCIPAL's*" scope of work to be done by it's forces.
- Possible impacts on work such as weather, Owner delays, etc.
- Claims by subcontractors for delay damages.
- Availability of Insurance Coverage.
- Owner's attitude.
- Owner's Attorney's attitude.

Additional costs, that always show up when there are delays on a project can be avoided if the surety claims handler recognizes the elements of the uncompleted contract. Packaging these elements into a plan with a forceful "Construction Management Consultant" will successfully discharge the SURETY'S bonded obligation and save those additional costs.

FIGURES

In this case there was \$317,200.00 in contract balances. Cost to complete was \$356,034.00. L.D.'s of \$22,500.00 were avoided, plus potential damages to the project itself. Surety incurred LAE's of \$46,379.26. This was a successful resolution of a Performance Bond Claim.