

# THE BOTTOM LINE



E X C E L L E N C E I N  
B O N D I N G

April 2007

Vol. 9 Issue 1

## NYC Dept. of Transportation – New Permit Requirements

If you pull work permits for NYC Department of Transportation you have undoubtedly heard about their new Street Obstruction Bond requirement. The Dept. of Transportation has revised 34 RCNY § 2-02, changing some of the permittees' requirements for filing permit bonds in connection with all DOT permit applications. The new bond limits required are four-tiered:

- \$ 10,000 for a single permit per calendar year
- \$ 50,000 for 2 – 50 permits per calendar year
- \$100,000 for 51-100 permits per calendar year
- \$250,000 for over 100 permits per calendar year

Additionally, there were a considerable amount of changes made to the bond form itself. Because of these changes, the majority of the sureties who freely wrote the old Street Obstruction Bond are not willing to write the new bond in its current form.

The new bond will replace the old form that ran to both the Dept. of Transportation as well as the Dept. of Buildings. If necessary, you may still have to provide the old form for the Dept. of Buildings. The \$3,000 Plumbers bond and the \$3,000 Plumbers – Public Law 14 will no longer be required, but covered under the new DOT Street Obstruction Bond.

You may be wondering why the sureties have a problem with this bond. When the industry first was notified about the new requirement back in October 2006, the industry responded resoundingly to the City during a public hearing that was held in November. Various surety representatives as well as contractor associations were present at this hearing and explained to the City that the bond form the way it is currently worded was unacceptable.

Some of the provisions of the new bond that the sureties found unacceptable include:

— At the City's sole option the surety will either pay the full penal sum of the bond or fully complete the work and/or obligations including repair and maintenance specified to be performed under the Principal's permit, if the city finds the Principal has failed or neglected to fully perform and complete the work.

— The Surety has 25 business days after written notice from the City to commence and perform the work specified.

— Principal is required to replace or repair all deficient or defective work it performed and provide a maintenance guarantee for sixty months (5 years) after the completion of the work. Their failure to perform under the maintenance guarantee can trigger a bond claim.

— The original draft provided that the bond liability for one year cannot exceed the penal sum of the bond. Implying that the surety's liability will stack for each year the bond is in force.

These provisions, coupled with the increased bond limits, are problematic for most sureties.

The City feels that the current permit bonds required are insufficient to cover their costs and expenses in the event that a permittee fails to meet its obligations under the permit. The City feels that these changes in the permit bond will assist in greater quality assurance from the permittee.

As a result of the public hearings held in November and the City listening to all the concerns and they have made some changes to the original proposed bond form.

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### Contributing Staff

Denese Thompson  
Anthony Panno  
Michael Banahan  
Louis J. Spina

### Famous Quotes

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*The valuable person in any business is the individual who can and will cooperate with others.*

*-Elbert Hubbard*

*You can dream, create, design, and build the most wonderful place in the world, but it requires people to make the dream a reality.*

*-Walt Disney*

*...it is time we put aside such labels as "hard hats" and "blue collar" and give our skilled workers their due—craftsman and craftswoman alike—for the pride they have in their products, their work place, their company, and their country.*

*-Thomas A Murphy*

*Famous Quotes*

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*In the business world, everyone is paid in two coins: cash and experience. Take the experience first; the cash will come later.*

*-Harold S. Geneen*

*The only time the average child is as good as gold is on April 15th .*

*-Anonymous*

*Some men go through a forest and see no fire-wood.*

*-English Proverb*

*Going into business for yourself, becoming an entrepreneur, is the modern-day equivalent of pioneering on the old frontier.*

*-Paula Nelson*

*A wise man will make more opportunities that he finds.*

*-Frances Bacon*

*Doing the best at this moment puts you in the best place for the next moment.*

*-Oprah Winfrey*

**Your Relationship With Your Underwriter**

Articles about tremendous amounts of work coming out in New York City and the surrounding areas are showing up all over Construction periodicals. Over \$10 billion dollars worth of work in the next two or three years is said to be available. Most of this work consists of large-scale projects, but as always there is a substantial trickle down effect, that will lead to opportunities for many contractors. Now is a critical time to review your bonding capacity and more importantly your relationship with your current Surety carrier. Having the correct surety market for your specific needs will allow you to maximize your bonding capacity and hopefully obtain the goals you have set for your firm. You might already have the proper market. Then again you might not. Here are some simple ways to see if you might need to reevaluate your surety program.

**Know your underwriter:** How familiar is your underwriter with your operation? Do you have an opportunity to meet with your underwriter? How does the underwriter feel about your abilities as a contractor? When

was the last time you discussed the goals of your firm with the bond company? If you have not met with your Surety underwriter in the past year you should make it a point to do so. Make sure you go over what your goals and future plans are. Discuss projects you want to go after and see what kind of reaction you get. Underwriters are analytical and they will want to understand the reasons for your growth plans and if you have the experience and finances to successfully implement your plans. The underwriter will probably provide you with some suggestions on ways that will help you improve your surety credit. What you ultimately want to have is a relationship where the surety underwriter is confident that you are financially stable and run a solid operation. Having this kind of relationship will be a big plus when those stretch situations present themselves.

**Do your Goals and Objectives match the Surety's appetite?:** Do your plans include working in New York City? If so, does your surety write bonds in NYC? This is one example when a Surety might not meet your needs. Size, scope and type of work are other areas. Make sure when you are meeting with prospective Surety companies you ask them questions. Continue page 4.....

**Subguard: So simple . . . It works.**

Contractor owners often ask the question - "How can it work?" With premiums sometimes 30-50% lower than contract surety premiums, and without surety underwriters analyzing financial statements and other data, contractors unfamiliar with Subguard often wonder how such a product can survive.

Since 1995, Zurich N.A. has promoted its surety-alternative product, Subguard, to large contractors, as another useful method of managing the risk of subcontractor default on their projects. Although Zurich is one of the largest providers of contract surety performance and payment bonds, it has also identified a niche market of Subguard Contractor consumers who prefer Subguard over traditional surety bonds for certain projects.

The 'secret' is in its simplicity. Zurich describes the development of Subguard as the product of listening to the basic complaints of Contractors over the traditional surety bond resolution process in a default setting. The theory underneath Subguard is also "basic" - -

i.e., Contractors can be in the best position to avoid and/or manage the default risk of subcontractors on their projects.

By creating a financial incentive for preventing defaults through return premiums - - thus directly increasing the Contractors' fees, Subguard 'simply' rewards Contractors for doing their business well.

Successful Subguard customers, of which there are many, often benefit from use of the product by realizing 30-40% more fee on their enrolled projects. They further enjoy a breath of default coverage often well beyond that which they are able to secure through traditional bonding. If you are interested in learning more about Subguard, feel free to call us at (516) 745-7500, and ask for Lou Spina or Mike Banahan.

*Mike Banahan joined Atlynx and Amerisc Corp. in November 2006. Before that, Mike was a Vice President with Zurich Construction, responsible for Underwriting and Sales of Subguard programs for contractors.*

NYC Dept. of Transportation—New Permit Requirement

Famous Quotes  
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They implemented the four-tier category so as not to cause a hardship to smaller companies that use fewer permits in a calendar year. They also amended the original number of days for written notice prior to cancellation from 60 days to 30 days. The new implementation date for these bonds to be filed is May 15, 2007.  
  
While these changes are good, they were not enough to get the sureties to agree to freely write these bonds. Everyone, sureties and contractor associations alike, is trying to work with the attorneys from NYC Dept. of Transportation to come up with a solution that will be for the betterment of all concerned.  
  
The sureties that are willing to write the smaller limit bonds will do so for creditworthy customers.

They may consider the larger bond limits but with very stringent underwriting conditions, up to and including posting 100% collateral. Active surety accounts with strong bonding programs should be able to get this bond without collateral. After all, how can a surety write an eight-figure performance & payment bond for an account and not the requisite Street Obstruction Bond  
  
We would like to see the bond provisions amended to make the form acceptable to all sureties while still giving the City the protection it needs. This will open the market place for contractors needing this bond.  
  
As of this writing, discussions are still being held and hopefully this matter will be resolved before the May 15<sup>th</sup> deadline. Contact Denese Thompson at 516-745-7504 with any questions/comments or if you hear anything new before we do.

*If you think no one cares if you're alive, try missing a couple of car payments.*

-Earl Wilson

*The will to win is nothing compared to the will to prepare.*

-Author unknown

*Imagination is more important than knowledge. Knowledge is limited. Imagination encircles the world.*

-Albert Einstein

*You are powerful, and your not being strong doesn't serve the world.*

-Dr. Joyce Brown

*Our greatest fear is that we are powerful beyond belief.*

- Nelson Mandela

*Live life as if it were created just for you.*

-- Maya Angelou

*Goals are dreams with deadlines.*

- Anonymous

*We have not passed that subtle line between childhood and adulthood until we move from the passive voice to the active voice—that is, until we have stopped saying "It got lost," and say, "I lost it."*

-Sydney J. Harris

*Never cut what you can untie.*

- Joseph Joubert

Fiduciary Liability Coverage – Should I Have This?

Absolutely!! If your firm has an ERISA plan and as required by Federal Law, the trustees have an ERISA Compliance policy in place, they should also give serious consideration to having a Fiduciary Liability Policy as well.  
  
The ERISA Compliance policy protects the participants and beneficiaries of the plan from any **dishonest acts** committed by the Trustees, but do not protect the Trustees from exposure to litigation and personal liability. Even with a participant-directed plan, plan fiduciaries can be held liable for a variety of reasons, including the election of plan investment options, monitoring those investments and educating employees of those options.  
  
There are certain practical steps that you can take to minimize your exposure.  
  
First, we recommend that you become educated as to your duties, responsibilities and liabilities as a plan fiduciary. If you have any questions/concerns, solicit the aid and advise from a competent consultant or attorney who is familiar with ERISA.  
  
Secondly, consider taking out Fiduciary Liability Coverage. The following are just a few claim examples that have occurred to small and large businesses alike:

**\$350,000** – Two employees approaching retirement age discovered they had never enrolled in the company's 401(k) plan. The employees sued the company and plan trustees alleging the plan administrators failed to properly advise them how to enroll and that enrollment was not automatic. The value of the alleged lost benefits exceeded \$150,000 and defense expenses were in excess of \$200,000.  
  
**\$440,000** – Trustees of a profit sharing plan were accused of improperly concentrating plan investments in a single industry and in a limited number of stocks. The plan fiduciaries were found to have breached their fiduciary duties by failing to diversify the plan's investments. Damages were \$320,000 and legal fees were \$120,000.  
  
**\$120,000** – Due to a miscalculation by plan fiduciaries, the plan was under-funded and benefit payments were incorrect. The Dept. of Labor found plan fiduciaries had breached their fiduciary duties and assessed a penalty against them for which they were personally liable in the amount of 20% of the recoverable funds.  
  
If you are interested on obtaining a quote for this coverage, please contact us and we'll be glad to assist you.

## Your Relationship With Your Underwriter

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What geographic territories do they write bonds in? What are their single and aggregate limits? What type of contractors do they prefer to write and why? You should be interviewing the surety as much as they are interviewing you.

There are many qualified sureties out there. Should your current surety not meet your specific needs you should start searching for a new market. You should look for that long-term surety relationship where you can establish a familiarity with your underwriter. Find out if the surety is capable of meeting your current and future needs and strive to gain the underwriters confidence in you. As a contractor you will have to provide the information the surety is looking for. It will show your commitment to the Surety and will pay big dividends when an opportunity for growth presents itself. Present articles indicate that over the next two to four years there will be an abundance of work coming out. If you are looking to grow, now is the time to act. Good Luck.

## Company News

**Atlynx** is pleased to announce the hiring of Natalie Morgan to our staff. Natalie is working in our Garden City office, assisting the Account Managers with handling both Contract and Commercial surety accounts.

**Women's Insurance Network of Long Island (WINLI)** held it's annual Charity Auction at Crest Hollow Country Club on March 28, 2007. The event was a great success. The money raised was donated to Special Olympics and Cold Spring Harbor Labs for breast cancer research. If you are interested in finding out more about this organization, contact Denese Thompson.

The Long Island Chapter of **Construction Financial Management Association (CFMA)** is holding their Annual Golf Outing jointly with the NYC Chapter on Thur. May 24, 2007 at the Harbor Links Golf Course, Pt. Washington, NY. For details about registering and sponsorship, contact Mary Pat Costanzo @ Grassi & Co. PC –mcostanzo@grassicpas.com. Proceeds to benefit Contractors for Kids ([www.contractorsforkids.org](http://www.contractorsforkids.org)).

**Contractors for Kids** will be holding their 2nd Annual Golf Outing June 11, 2007 at Stonebridge Golf Links and Country Club, Smithtown, NY. Registration deadline is June 1, 2007. For more information contact CFK at 631-816-2600 or go to their website— [www.contractorsforkids.org](http://www.contractorsforkids.org)

## Letter from the Editorial Staff

This newsletter is designed with our readers in mind. All inquires and ideas regarding this or future newsletters are appreciated. Please send all inquires to me at [denese@esuretybond.com](mailto:denese@esuretybond.com). If you know anyone who you feel would like a copy of our newsletter, please let us know so that we can include them in our mailing list. Please let us know if you would like to receive this newsletter via e-mail. Check our website at [www.atlynx.com](http://www.atlynx.com) for past editions of our newsletter.

## Disclosure

The Bottom Line is published by Atlynx Surety Brokers LLC, 777 Zeckendorf Blvd, Garden City, NY 11530. Phone (516) 745-7520. A service for our clients, contacts and friends, it is meant to provide useful business information and practical advice and encourage its readers to keep up with all the latest developments. These articles are not intended to provide a complete discussion of the subjects presented. Because each situation is unique, we advise you to contact us before acting upon any of the following information or planning ideas contained in this newsletter. Any questions you might have about any topics mentioned in this newsletter, please contact our office.

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