Completing bond claim documentation

Continuing our look at routinely encountered legal issues through the eyes of two fictitious electrical distribution companies. **by Daniel Goldberg**

When we last left Alvin Amp, owner of Distributor in a Rush, he had made a payment bond claim for materials he sold on a public job in July 2010, and the claim had been denied (read all about it in the April issue—just go to tedmag.com and click on "Digital Edition"). Amp has since figured out that Long Gone Electric, the electrical subcontractor that had given him the purchase order, was out of business, and it now seemed like he was not going to be paid at all. Amp had paid his vendor for the materials and was trying to figure out exactly what went wrong. As much as he hated to admit it, he needed help.

Generally speaking, when a payment bond claim is submitted, the first communication from the surety is to its principal under the bond. The reason for this contact is twofold: to let the principal know it received the claim and to ask the principal to review it.

In Amp's case, Long Gone Electric had simply ignored the surety's request, putting the surety in the position of having to undertake an investigation without the assistance of the principal. As part of the investigation, the surety sent a proof of claim form to Amp, who paid no attention to it—which was his first mistake. He had violated one of the most basic rules of a bonded job, which, at a minimum, include the following:

- Get a copy of the payment bonds on the job.
- Read the bonds to determine who the principal is under the bond.
- Determine what types of notice have to be given.
- See how a claimant is defined.
- Pay attention to how the surety responds to the claim.

The April column examined how general contractors and subcontractors who are bonded often want to try to find a resolution that avoids affecting their bonds. This is because a claim can result in the surety lowering the total amount of bonds it is willing to place, lowering the principal's bond rating, and increasing the premium charged.

In addition, to cover themselves, sureties obtain indemnity agreements from their own principals, which make certain individual owners of the company directly liable to the surety for its losses. In Amp's case, then, the surety will have a claim against the owner of Long Gone Electric, individually, for any claim that is paid by Long Gone Electric's surety to Distributor in a Rush. The risk of having to pay under an indemnity agreement is another reason general contractors and subcontractors want to try to resolve bonded claims.

PLUGGED IN: Sureties paid nearly $10B on contract bond claims from 1995-2008. *(SFAA; surety.org)*

WHAT HAPPENED TO AMP'S CLAIM

The claimant section under a payment bond often provides some details on how to submit a claim. It will also spell out what types of notices are required. The safest course of action is to assume all payment bonds are different, get a copy of the payment bond, and read it to figure out both where you fit in the claimant bond chain and the type of notice that is required.

Once the surety got the claim, it sent a proof of claim form to Distributor in a Rush asking for information to substantiate his claim—and that is what Amp ignored.

Traditionally, a proof of claim form will include information about the claimant's company, how much is owed, and how much has been paid. It also will require that backup documentation (including quotes, agreements, invoices, and proofs of delivery) be submitted.

It's absolutely critical to never try to recover anything on a bonded job that does not belong on the job. If, for example, Long Gone Electric is out of business, and Amp was owed $11,323 on a stock account in addition to the amount that he was owed on the bonded job, he should not seek to move a single invoice from the stock account over to the bonded job. In addition to the fact that this is illegal and inappropriate, he would forever destroy his integrity in the surety world, which is the most important thing a company can have when submitting a claim.

Another bad move is simply submitting a raft of documents without any explanation or organization. This is the equivalent of telling the surety, "Here, you figure it out." Instead, organize all of the materials for the surety. Tie everything out to the job—even so far as pointing out the deficiencies in your own claims. (For example, it wouldn't be inappropriate to include something like this where necessary: "Enclosed please find all of the invoices supporting Distributor in a Rush's $32,330 claim. A proof of delivery has been attached to each invoice. Please note, however, that we have not been able to locate the proof of delivery for Invoice XBC-2 in the amount of $132.78.")

In short, following the basic bond rules goes far in getting what you are owed; had Amp done so, it's much more likely his claim would have been paid. ■

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