



2022 Risk Management in Underground Construction Course



Surety.
Be Guaranteed
to Succeed.

Underground Risk Management Through Surety



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Today's Speaker



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Introduction

- Surety Industry Update
- Underwriting Approach & Prequalification
- Trending Risks & Solutions
- Risk Mitigation Considerations & Resources



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A construction worker wearing a red hard hat and a high-visibility safety vest is inspecting a large, dark pipe in a tunnel. The worker is standing on a concrete structure, and the tunnel walls are made of stone or concrete blocks. The scene is dimly lit, with a bright light source at the end of the tunnel creating a strong glow. The overall atmosphere is industrial and focused.

Surety Industry Overview

Surety Industry Overview

2020 Results

- \$6.9B Gross Written Premium
- 22.8% Loss ratio
- Top 50 Carriers wrote 95.8% of all premium with 22.7% loss ratio
- Top 15 Carriers wrote 70.5% of all premium with 18.6% loss ratio

Q3 2021 Results

- \$5.6B Gross Written Premium
- 17.2% Loss ratio
- Top 50 Carriers wrote 94.6% of all premium with 19.9% loss ratio
- Top 15 Carriers wrote 67.6% of all premium with 18.8% loss ratio



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Surety Industry Overview

- Overall health of the surety industry is strong.
- Many sureties elected to conservatively increase reserves over the past two years.
- Loss Ratios remain in-line with historical results - credit to responsible underwriting and contractor execution.
- No significant loss impact as a result of COVID thus far.
- Surety capacity in the market continues to grow.
- Some sureties are starting to tighten underwriting requirements.

**AM Best downgraded the surety industry in April 2020 from Stable to Negative in anticipation of increased severity and frequency of losses.



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A yellow excavator is positioned in a deep, narrow trench, likely for utility work. The trench walls are made of brown earth. In the background, a worker wearing a blue shirt and an orange safety vest is visible. The scene is set outdoors under a cloudy sky, with utility poles and power lines visible in the distance. The overall image has a semi-transparent overlay.

Underwriting Approach & Pre-Qualification

Underwriting/Pre-Qualification

CAPITAL

proprietary, comprehensive,
continuous insight and
assessment of financial
capabilities

CHARACTER

business and employment
practices;
relationships/reputation with
Project Owner, GC's/CM's,
subcontractors, suppliers,
banks, surety community,
industry involvement

CAPACITY

informed, comprehensive
and objective insight and
assessment of resources
and capabilities



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Underwriting/Pre-Qualification

What is the underwriter considering for underground projects?

Financial Stability

- Cash, Working Capital & Net Worth
- Bank Line Capacity
- Minimal Leverage/Debt

Experience

- Like Size and Scope of Work
- History with Owner/Engineer
- Territory Knowledge

Capacity

- Equipment Needs
- Subcontractor Pool
- Project Management Experience

Project Risk

- What is it?
- Where is it?
- How much is there and how is it addressed?



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An aerial photograph of a construction site, showing a large area of cleared land with various materials and equipment scattered across it. The image is overlaid with a semi-transparent grey filter. At the bottom of the image, there is a solid blue horizontal bar. The text "Trending Risks & Solutions" is centered in white, bold font over the grey overlay.

Trending Risks & Solutions

Trending Risks & Solutions

Contractor responsibility for Right of Way approvals and utility relocation.

- Not always the case but can delay project start/completion time, compress schedule and increase costs.
- Establish clarity for responsibilities upfront in RFI/RFP process as well as document communications.
- Ensure adequate time in schedule and apply additional costs, contingency and overhead for potential LD's.

Unforeseen underground conditions.

- Conduct independent testing and utility locates to supplement data from owner.
- Require reasonable force majeure, change in conditions, rock and/or water intrusion clauses in contract.
- Execute additional work under change orders versus owner directives.



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Trending Risks & Solutions

Supply chain disruption & price escalations.

- Line up multiple sources that can guarantee delivery by certain dates.
- Getting price guarantees from suppliers, providing owners/obligees with prices that are fixed for a period of time.
- Purchase materials in bulk and store when possible to hedge against price volatility.
- Determine if alternative materials are acceptable.
- Incorporate material escalation clause into contract.
- Clarify force majeure triggers – pandemic, trucker strike, etc.
- Establish reasonable payment terms amongst all parties.
- Include provision for schedule extension in event of supply chain disruption or material delay.
- Utilize Supply Bonds.



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Trending Risks & Solutions

Owner dictation of approach, sequencing or equipment/material to be used.

- In these cases, upfront documentation of the contractor's issues with the approach and how it may impact the project are helpful in a dispute.
- There have been cases where an owner demands that the contractor work out of sequence (sections or phases that are not linear or in close proximity), leading to significant cost escalations and inefficiencies. Pricing should include anticipated delays/scheduling costs.
- On tunneling (TBM) or micro-tunneling projects where an owner specifies a certain equipment manufacturer – communicate and make pre-bid appeals to the owner for clarification, and at times, recommend an alternative approach or choice of equipment.
- Delays due to owner purchased material should generate an extension of the schedule. Establishing this and any compensatory element should be a part of contract documents.



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Trending Risks & Solutions

Extensive liquidated damages and/or consequential damages.

- Contracts on major tunneling projects have attempted to include both LD's and consequential or actual damages. Ideally only clearly defined LD's are preferable with mutual waiver of consequential damages stated in the contract.
- Consequential or actual damages can be difficult to quantify and mitigate. If they exist, establishing clarity within the contract as to what constitutes these damages can help keep costs in line. This also helps facilitate transparent communication between owner & contractor.
- Make sure you are not responsible for damages for delays that are beyond your control. Language should be included which allows for an extension of time to complete your work if delay is beyond your control.
- Bond subcontractors to mitigate against damages and delays.



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Trending Risks & Solutions

Increasing warranty and insurance requirements.

- Long-term warranty provisions beyond the typical 1-3-year timeframe are being more frequently required initially – increasing point of negotiation.
 - Bonded warranty periods beyond one-year carry additional costs. Typically, sureties will only provide bonded warranties up to three years – annually renewable options are available after that.
 - Consult with surety agent and carrier early on to address this in the bonds and contract.
- Extensive insurance requirements – i.e. \$50MM general liability policy, pollution policy requirements vary between states/municipalities, etc.
 - Flow down of these provisions can be troublesome for subcontractors that cannot provide higher limits, and realistically should not have to.
 - Request insurance agent to review the contract provisions to ensure proper coverage is in place.



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Risk Mitigation Considerations & Resources

Risk Mitigation Considerations & Resources

Pre-qualification of Subs

- Good Guy Letters
- Bid Bonds
- Reach out to broker & surety network

Confirmation/Tracking of Financing

- Find out the sources – public, private, combination, etc.
- Common practice prior to release of bonds

Subcontractor Bonds

Supply bonds



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Risk Mitigation Considerations & Resources

Broker & Surety Partners

- Bonding support and consultation
- Insurance requirements review
- Subcontractor and owner recon
- Contract & Bond Form review
- Third-party engineering consultation
- Dispute avoidance

Broker and surety are partners and a resource for all parties.



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Need a Bond?

Find a Bond Producer at the New NASBP Surety Pro Locator

suretyprolocator.nasbp.org

The image shows a laptop displaying the NASBP Surety Pro website. The website header includes the NASBP logo and the text "NASBP Surety Pro". Below the header, there is a navigation menu with links for "HOME", "ABOUT US", "HOW TO USE", and "WWW.NASBP.ORG". The main content area features a search bar and two columns of "FEATURED ADVERTISER" boxes. Each box contains a logo and a message: "Place your company's message here! The NASBP Surety Pro Locator helps you reach potential customers ready to build greater success with the help of a surety professional. This placement option is the leading step of your choice." A circular seal for "PROFESSIONALS IN SURETY BONDING" is visible in the bottom right corner of the laptop screen, with "EST. 1942" at the bottom.

NASBP Directory of Bond Producers

Q&A

NASBP Resources for Contractors

<https://www.nasbp.org/guaranteed/resources/contractor>



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