

BONDS, GUARANTEES AND WARRANTIES

NOTIFICATION TO SURETY

- Communication with Surety
 - Any claims or potential claims
 - Invite the surety to attend weekly meetings to further the communication

CONTRACT/BOND LANGUAGE

- Applicable Contract and/or Bond Language
 - Always review
 - Be aware of and follow any provisions regarding notification of claims
 - Have a specific understanding regarding the termination procedures

MONITORING

- Monitoring Status of Project
 - Protect the district by looking out for problems
 - Monitor daily logs for activities
 - Monitor architect's meeting minutes
 - Documentation
 - Maintain a current list of subcontractors and significant suppliers
 - Maintain stop notice information and escrow agreement status

TERMINATION

- Informed decision to terminate contractor has been made
 - Records must demonstrate
 - Material breach of the contract
 - Gave the contractor opportunity to cure the breach
 - Contractor has failed to cure the breach
 - Breach is not excused or justified

SUBSTANTIAL PERFORMANCE

- Where a general contractor has substantially performed, it cannot be terminated for abandoning a project
 - Experienced legal counsel should be consulted

TERMINATION

- Termination of Convenience
- Terminating a Contractor's Right to Proceed with Work
 - Proper Documentation
 - Notify the Surety

TAKEOVER AGREEMENT

- District may demand that the surety take over the project
- Benefits
 - Surety manages the project
 - Surety typically obtains an assignment of any existing subcontracts
- Downside
 - District loses some control over the project

COMPLETION CONTRACTOR

- District may bring in a completion contractor
- Seek to recover costs
- District maintains control of the project

IMPORTANT CONSIDERATIONS

- Insurance Coverage
- Proposals
- Communication with Subcontractors

COMPLETION COSTS

- Maintain detailed records
 - To support claim against the contractor and its surety
- Copies
 - Send copies of such cost records to the contractor and surety on a regular basis
