

Working with third party guarantors – how to get them on board

Problem-Solving Options to gain a guarantor's full commitment

IMPORTANT: READ THIS FIRST!

Developers, In3 Affiliates, and advisors:

Do not send or otherwise offer solutions to perceived problems before you are *absolutely certain* their expressed concern has been *fully* understood. You may have to dig until you surface the true objection(s), if there are signs of hesitation, nervousness, or sometimes just unarticulated fear or skepticism. This is normal. So, always verify before offering *any* solutions, such as “Let me see if I have this right: you’re saying _____, correct?” Even getting an initial “no” response would offer them a chance to “tell it like it really is.”

Even better (true mastery of the skills you use when handling such a pivotal topic), once you show them you understood their concern or issue, then ask the would-be guarantor **how they would propose to revolve it** [“it” being their concern or concerns, whether expressed or not].

But again, only ask them for their ideas once you’ve verified that you actually understood their concern, thus demonstrating that you are truly listening to not just the words they say but also that you’re actually recognizing their *intended meaning*, grasping and playing back the “bottom line” issue as they perceive it.

Why use these practices? Here are good reasons:

1. **They’re more likely to accept a solution they came up with.** Facilitation/coaching is better than offering advice, when practicable. When asked for their initial ideas, they will often come up with solutions themselves that are (when feasible) actually easier to implement, more cost-effective, or otherwise more likely to work than the “standard” responses listed below. Coaching works!
2. Because sometimes when you show them you truly “get it” (and you demonstrate understanding by *not* arguing or resisting their objection) **that alone can be validating and thus becomes part of the solution that is needed.** People often change (relax into having been heard) and their fear subsides when they are “met” right where they are,

and nobody argues or disagrees or otherwise makes them feel they are wrong, needlessly skittish, or off base, etc. It is easy for even professional people to express a concern only to watch it be invalidated. That destroys good will and trust that has been built up this far. Invalidation can easily occur if they are led to believe you see their fear as unfounded or irrational (even if you honestly think it is). Their concern is real to *them* (at first)!

3. And because offering a solution to an issue you did not actually understand can backfire. Offering solutions too soon, and/or to the wrong issue, can actually make things worse, where such unskillful communication can easily undermine trust/respect, and when getting close to an agreement, can serve to “snatch defeat from the jaws of [almost] victory.”

The potential guarantor(s) are at the table for a reason, namely, that they want the contract to do the work and get paid [well] for it. Once they are comfortable with In3’s CGP process, which does a fantastic job of protecting all non-fraudulent parties, they will usually come to appreciate the advantages that this funding model brings to the project finance world. It does require careful and skillful communication for the parties to realize that the process and program are trustworthy.

To get over that initial hump, consider offering or suggesting an “enhanced” fee for their part in bringing the guarantee. It is economically worth it – money well spent. If necessary, also consider offering them (as part of the contract negotiations) a very modest equity carried interest, as well, if appropriate. That aligns incentives, but many or most developers don’t want the contractor to own any equity, and larger firms also don’t want or prefer that, so hold this back as a bargaining chip.

Better practices include “shopping” for the right EPC/GC firm, gaining competitive offers and using those results to appeal to the adults in the room. History shows that this program’s funding, and the role that EPC/GC firms can play as project guarantors, works out well for all parties.

Problem-Solving Options to gain a guarantor's full commitment

Perceived Problem or Concern

Financial Guarantee provided by EPC/General Contractor or OEM/integrator firm that is being interviewed (typically once short-listed) to work on a project. Concern is they do not yet know the funder and are initially without a direct relationship with them.

Concern that payments to the EPC/GC won't start on schedule, or that subsequent payments could be delayed. Concern that payments will not be forthcoming at all.

Response/Possible Solution(s)

- Two interlocking agreements are put in place to fund projects, namely (1) the project's EPC/GC Agreement between the Developer and the Contractor, and (2) the project's Loan Agreement between the Developer and the Funder (a US-based Single Family Office, SFO). It is thus understandable that, at first, the Contractor would be uncomfortable with the idea of providing a financial guarantee because there has not yet been mutual KYC or other customary due diligence. The Parties will ordinarily hold one or more meetings (as conference calls, typically) to discuss these arrangements, and to satisfy mutual KYC requirements, before any binding agreements are executed. The EPC/GC/vendor agreement and project funding are conditioned upon the Contractor bringing an acceptable guarantee to the Beneficiary (SFO) as the last step to reach financial closing. To start, the Beneficiary asks for draft verbiage of the proposed instrument from their bank to gain acceptance by one of the SFO's receiving banks.
- These two agreements, taken together, form the commercial context for the financial instrument's purpose: project completion surety.
- If, upon review and acceptance of the contracts, the guarantor is still uncomfortable, either a side letter/agreement can be put in place between the Contractor and the Family Office, or the EPC agreement itself can show both the developer and the Family Office as parties to the agreement. There is also a Special Purpose Vehicle (SPV) that owns the project's assets that can be tied into the contractual arrangements if or as needed.

Proposed Solutions:

- Additional layers of protection can be used such as a mutually appointed escrow agent, [custodial account](#) (rarely used, but available) or other special payment instructions between the involved banks.
- Funding begins with reimbursement to the guarantor for any fees paid to their bank (called "margin") as would be stated in the EPC/GC/OEM agreement with the Developer. Ask us for boiler-plate language.
- Note that the initial callable value of the instrument, no matter what the face value (FV), is zero. In fact, prior to the first draw, it can be withdrawn, taken back or "unwound" without consequence. We can't think of a reason why anyone would do that, after the effort of reaching closing, and with vendor payments to follow, but the effective call value is nonetheless limited to the amount of funding transferred against it at any given point, up to the full FV. Watch [explainer video](#).
- The SFO cannot make an irrational claim or call, draw upon or otherwise "cash" the guarantee instrument. It must remain in place until the project reaches Commercial Operation Date (COD), and is meant to serve as the touchstone for resolving any issues that crop up between the Developer and Contractor and/or any subs. Upon COD, the guarantee is released (technically, it is allowed to expire), which is

Perceived Problem or Concern

Response/Possible Solution(s)

Concern that the guarantee could be or will be called, or that its issuance could cause undue or uncontrolled risk exposure to the Contractor.

an important point of differentiation between a traditional loan guarantee and this one – the Developer repays the loan to the Funder without a lien or the surety/security of a traditional loan guarantee.

- The only reason we would ever consider calling the instrument is in case of obvious fraud. See the next common concern or [FAQs](#) below.
- The project’s funding schedule is pre-approved by our bank in monthly amounts and thus locked down per the commercial contractual commitments that are put in force ahead of asking the Contractor’s sending bank to deliver the guarantee.

Concerns that the guarantee could be called without cause, without evidence of fraud, malfeasance, or uncured breach of contract, or otherwise that it could be “cashed” (drawn on), misused or abused, ... are quite a normal initial reaction, but just not based on the facts. The reality is that it is quite difficult for the Funder or anyone else to make a claim short of obvious (provable) fraud, given the underlying rules for such “demand guarantees” ([URDG ICC 758](#) or similar rules as the sending bank may prefer). As shown by [third party legal review of these rules by Reed Smith](#), or [two June 2020 case studies](#), the burden of proof a contractual breach occurred, following a reasonable cure period, would be on the SFO. In all our operating history this has never happened, and really must not – calling an instrument would be a strong negative reflection on all of us in the eyes of our bank.

Proposed solutions:

- The instrument is governed by the Loan Agreement that you will be able to inspect before delivery of the guarantee to the funding bank.
- The Contractor’s bankers (relationship managers) may be able to add perspective, but note that this instrument is also sharply contrasted with the more familiar (commodity) Documentary Letters of Credit, which use underlying cash to pay the seller once a satisfied buyer agrees it has received goods that fulfill the seller’s contractual obligations. Here, used for project finance (an innovation of the SFO) completion surety, the guarantee’s underlying asset (whatever the issuing bank agrees to accept) is released, given back to the asset’s owner, not “cashed”. Further tips on communicating with banks/bankers of the sponsoring EPC/GC/OEM/integrator firm at in3finance.com/bankers

Request In3’s deck for pitching EPC/GC guarantors (can be tailored), or review **Frequently Asked Questions:**

[What does the Capital Guarantee cover? What purpose does it serve? How do I obtain one?](#)

[Where does the money come from? Is it “guaranteed” as well? Funding terms & conditions?](#)

[How do invested/loaned funds get paid out?](#)

[How can the capital guarantee be used?](#)

[What reassurance is there that the guarantee, once sent, will not be misused, called or cashed in?](#)

[Under what circumstances would the guarantee be called?](#)

[What are the differences between the various types of qualifying capital guarantees? Use which one?](#)