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CCDC 2024 BOND FORMS

Webinar Session for Project Owners

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WHAT THEY MEAN, WHAT TO EXPECT

Presenter



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Housekeeping Tips

- ★ Please ensure that you have selected either audio or call-in to listen to the session.
- ★ Type questions in the “Questions” panel and click “Send”.
- ★ Q&A will take place at the end.

The screenshot displays the GoToWebinar interface. At the top, a red notification box reads "Join the audio conference" with instructions: "Dial in using your phone or select Computer audio to use your mic & speakers." Below this, a vertical toolbar contains icons for audio, phone, and hand. The "Audio" panel is expanded, showing "Computer audio" and "Phone call" options. The "Phone call" option is selected. Below the options, the dial-in information is displayed: "Dial: +1 (914) 614-3426", "Access Code: 276-509-234", and "Audio PIN: 42". A dropdown menu shows "United States" and a link for "Problem dialing in?". Below the audio panel is the "Questions" panel, which contains a text input field with the placeholder "[Enter a question for staff]" and a "Send" button. At the bottom of the interface, it says "Multi sessions different registrants" and "Webinar ID: 980-960-603". The GoToWebinar logo is in the bottom right corner. Two large blue arrows point from the text on the left to the "Audio" and "Questions" panels respectively.

Disclaimer

- ★ The information presented in this session is not legal advice and should not be relied upon as such.
- ★ Those requiring legal advice should consult with an attorney.
- ★ The views and opinions expressed may not necessarily reflect the official policy or position of the Surety Association of Canada or any other agency, organization or employer.
- ★ This session is for information purposes only.



Background

- ★ Group charged with creating and publishing standard construction industry documents.
- ★ Four industry participant groups:
 - Contractor (CCA)
 - Engineers (ACEC)
 - Spec Writers (CSC)
 - Architects (RAIC)
- ★ Input from other stakeholder groups; e.g., SAC, Public Owners (all three levels), Private Owners.
- ★ SAC's Role is advisory/consultation only.
- ★ Published 3 bond forms: Bid, Performance and L&M Payment.
- ★ First update since 2002.



The CCDC220 Bid Bond

The CCDC220 Bid Bond

- ★ Provide assurance that contractor will provide the **required security** and **enter into the contract**.
- ★ Typically required in the amount of **10%** of tender.
- ★ If contractor defaults, surety pays the **difference between successful bid and second bidder**.
- ★ Tender must be **accepted** within time frame set out in tender documents.

The CCDC220 Bid Bond



- ★ Based upon 2002 version of CCDC 220 template.
- ★ Confusion around Tender/Bid/Closing Date.
 - Eliminate any reference to date within the bond; U.S. approach.
 - More comprehensive job description.
- ★ Validity Period – defined in bond.
 - As per tender documents or 60 days from closing.
 - Can be extended by additional 60 days.
 - Extended beyond 60 days with Surety's consent.

The CCDC220 Bid Bond



- ★ Provide required Bonds vs Security
 - Sureties are not in a position to guarantee other forms of security.
- ★ Contact Information
 - For use in the event of a claim.
 - Consistent with similar provisions in performance and payment bonds.
- ★ Quebec Clause
 - “Coverage Period” of one year; *Quebec Civil Code*.



Performance & Payment Bonds

Performance & Payment Bonds

- ★ Based on Ontario Forms 31 and 32 templates.
 - Removal of Ontario-specific references.
 - Quebec language for “Coverage Period”.
- ★ More detailed (7 and 13 pages respectively).
 - Additional Clarity and Responsiveness.
- ★ Built-in Claims Protocol.
 - Schedules for consistency and less delay.
 - Timelines to Acknowledge and Respond.
 - Undisputed amounts paid promptly.

The CCDC221 Performance Bond

- ★ Guarantees Contractor will **perform contract** in accordance with its terms & conditions.
- ★ Contractor must be **in default** and the **default must be declared** in order to file a claim.
- ★ **Owner must perform their obligations.**
- ★ **4 options** available to Surety:
 - Remedy the default
 - Complete the contract
 - Arrange for new contractor to complete
 - Tender payment

The CCDC221 Performance Bond

- ★ Better Communication/Collaboration:
 - Pre-Notice Meeting (Section 2); prevent default. At Obligee's discretion.
 - Post-Notice Conference (Section 5); address continuity issues during investigation.
- ★ More flexibility for Obligees:
 - Necessary Interim Work (Section 4); address emergency issues.
 - Mitigation Work (Section 5); Critical Path issues.

The CCDC221 Performance Bond

- ★ Timelines for Surety Response:
 - 4 days to acknowledge receipt of Notice (Section 3.2).
 - 20 days to provide “Surety’s Position” (Section 3.3).
- ★ More clarity around protection (Section 7).
- ★ Features to expedite and streamline claim processing (Schedules A, B and C).
 - Standardized Claim Notice, Acknowledgement and Response.

The CCDC221 Performance Bond



Ready-for-Takeover (RfT)

- ★ Introduced in the 2020 version of CCDC 2 Contract as a substitute for “Substantial Performance”.
- ★ Is achieved when eight specified conditions (including Substantial Performance) have been met.
- ★ CCDC proposed that RfT be substituted for SP in suit limitation clause of performance bond.
- ★ RfT is a term specific to CCDC contracts and may not apply to owner generated contracts.

The CCDC221 Performance Bond



Ready-for-Takeover (RfT)

- ★ Following lengthy discussion, SAC and CCDC reached accommodation:
 - ★ Section 12.1; three separate triggers. Earlier of:
 - Where CCDC contract is used, earlier of RfT and 2 years + 180 days from SP.
 - ❖ Obligee must inform surety w/in 10 days when RfT is achieved.
 - For non-CCDC contract, 2 years from SP.
 - 2 years from Notice of Default.

The CCDC221 Performance Bond



Ready-for-Takeover (RfT)

- 12.1 *It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (a), (b) or (c) below:*
- (a) *If the Contract contains “Ready-For-Takeover” requirements as that term is defined in a CCDC contract: the earlier of the date of Ready-for-Takeover and 180 days after substantial performance of the work, as defined in lien legislation where the work under the Contract is taking place, provided that the Obligee shall have provided the Surety with a copy of the written confirmation of Ready-for-Takeover within ten (10) business days after such written confirmation was issued under the Contract;*
 - (b) *If the Contract does not contain “Ready-For-Takeover” requirements, as defined in a CCDC contract, or if the written confirmation required by subparagraph (a) above is not provided to the Surety within the time prescribed in subparagraph (a): the date of substantial performance of the Contract as defined in the lien legislation where the work under the Contract is taking place; and*
 - (c) *The date on which the Notice as defined in Section 1.1 in respect of the default that is the subject of such suit or action is received by the Surety under this Bond.*



Labour & Material Payment Bond

The CCDC222 L&M Payment Bond

- ★ Guarantee that the contractor (Principal) will pay all direct subcontractors/suppliers for materials and services provided to the bonded project.
- ★ Claimants may only claim for goods and services **supplied to the bonded job.**
- ★ Claimant must be able to **document their claim.**
- ★ Claim must be filed within **120 days** of the last day worked or the date material shipped.
- ★ **One year** to file suit.

The CCDC222 L&M Payment Bond

- ★ Timelines for Surety Response:
 - 3 days to acknowledge receipt of Notice and request Information (Paragraph 8 a.).
 - 25 days to provide “Surety’s Position”; 10 days from receipt of Information (Paragraph 8 b.).
 - Position must specify amounts in dispute and reasons for dispute.
 - 10 days from delivery of Surety’s Position to pay any undisputed amounts.
- ★ Features to expedite and streamline claim processing (Schedules A, B and C).

The CCDC222 L&M Payment Bond



Trustee vs Non-Trustee

- ★ Privity of Contract / 3rd Party Beneficiary Rule; need for “Trustee” form of bond.
- ★ Several Provinces (e.g., Ontario) allow for direct claims from 3rd party Claimants.
- ★ Paragraph 3; Obligee is trustee only in jurisdictions where 3rd Party Beneficiary Rule applies.

The CCDC222 L&M Payment Bond



Trustee vs Non-Trustee

- 3. In respect of any jurisdiction in which a Claimant is prohibited by law to commence any suit or action to enforce payment under this Bond, the Principal and the Surety hereby jointly and severally agree with the Obligee, as trustee, that the Obligee holds this Bond in trust for the purpose of allowing a Claimant to commence such suit or action.*

The CCDC222 L&M Payment Bond



Vallard vs Bird Construction

- ★ “Trustee” provision not intended to impose hard trust obligations on Obligee.
- ★ February 2018; SCC rules that Bird as Obligee was liable for full range of trust obligations.
- ★ Paragraph 4 explicitly limits trust obligation to those under a “bare trust”.

The CCDC222 L&M Payment Bond



Vallard vs Bird Construction

4. *The Bond or the trust under Section 3 does not impose on the Obligee any legal, equitable or other obligations or duties to any Claimant, including but not limited to any obligation to notify any Claimant of the existence of the Bond or the trust.*

So..
What does it mean?

BUSINESS
~~**AS**~~
UNUSUAL

Timely and Responsive



Performance Bond:

- Prompt acknowledgement and response from Surety.
- Must provide reasons for declination or for inability to determine liability.
- Opportunity for problem solving & communication; pre and post notice.
- More flexibility – mitigation work, necessary interim work.
- More clarity of coverage.



Payment Bond

- Must provide reasons for disputed amounts.
- Pay undisputed amounts within 10 days.

A few Tips...

Communication

- ★ The new bond form allows for more interaction and collaboration between the surety and the project owner.
- ★ Pre-notice and post-notice conferences.
- ★ Necessary interim work, Mitigation Work.
- ★ Inform Surety when issues arise.

A few Tips...

Read the bond & understand the terms

- ★ Surety Claim process is interactive and requires responses from owner; e.g. Necessary Interim Work.
- ★ Ensure key staff is familiar with the response requirements.
- ★ Consult with counsel, consultants, knowledgeable staff.
- ★ Make sure systems are in place to allow for quick release of information to surety.

A few Tips...

Work with the Surety in the Event of a Claim

- ★ Cooperation is crucial; despite the circumstances.
- ★ Submit Notice of Claim as per Schedule A.
- ★ Ensure requested information/documentation submitted promptly and thoroughly.
 - Reduce likelihood of “Option C” response.
- ★ Allow Surety Access to site and key people.
- ★ Flexibility wherever possible.

A few Tips...

Keep Expectations Realistic

- ★ While claim process is enhanced, a bond can't make problems disappear.
- ★ Delays are often inevitable.

Frequently Asked Questions

Will the CCDC bonds be the new industry standards and replace the SAC created forms?

As of May 21st, the new 2024 bonds became the recognized CCDC standard replacing prior versions. While the SAC bonds will still be available when required, these will no longer be actively promoted by SAC as the association's advocacy efforts will be focused on the CCDC bonds. Indeed, several high-profile owners will likely continue to call for the SAC created bond forms.



Frequently Asked Questions

Does CCDC publish other standard surety instruments such as a Consent of Surety?

The three forms discussed are the only bond documents published under the CCDC banner.

The creation of standard Consent of Surety template was discussed, but there are no plans to adopt one at this time.

The only other surety-related document is CCDC 22 - *The Guide to Construction Surety Bonds*. SAC is currently working with CCDC to update this document which should be ready for publication in Fall 2024.



Frequently Asked Questions

When calling for a bond, should we require the contractor and surety to provide the entire document including the schedules?

The attached schedules are an integral part of the instrument and the protection it provides. The schedules themselves are referenced in the text of the bond at several points and it was for this reason that they were made part of the instrument, rather than published as standalone documents.



Frequently Asked Questions

Do the new bonds provide more protection to project owners and trades and suppliers?

The level of protection under the CCDC bond forms has not changed. The bonds are still conditional instruments with set remedies. What they will do is provide more clarity and more responsiveness including timely acknowledgement and resolution of claims submitted.



Frequently Asked Questions

Can the new bonds be used for long term service contracts; e.g., waste management, snow removal?

The CCDC bond forms were designed and created for use on construction obligations. Ongoing and long-term service contracts are better secured using the SAC Multi-Year Renewable bond which was designed for this purpose. The template for this bond is available from the SAC website at:

<https://suretycanada.com/SAC/Surety-Bonds/Contract-Surety/SAC-Bond-Forms/SAC/Surety-Bonds/SAC-Bond-Forms.aspx>



Frequently Asked Questions

Will sureties tighten their underwriting requirements or raise premiums as a result of these new changes?

Each individual surety will make its own determination as to any changes to underwriting / pricing / administrative requirements. That said, most sureties have indicated that they don't anticipate any changes to current practices.



Need more Information? Visit the SAC Website



SURETY BONDS

>> Surety Bonds

▼ Contract Surety

Bonds for Tendering

Labour and Material Bonds

Performance Bonds

▶ SAC Bond Forms

▼ Standard Bond Forms

CCDC Bond Forms 2024

[https://suretycanada.com/
SAC/Surety-Bonds/CCDC-
Bond-Forms-2024.aspx](https://suretycanada.com/SAC/Surety-Bonds/CCDC-Bond-Forms-2024.aspx)

Less Frequently Asked Questions



THANK YOU!

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