

PP021 – Bonds in a Digital World

Introduction

The Surety Association of Canada (SAC) strongly supports the automation of the suretyship process and has undertaken the promotion of responsible use of technology in bidding and bond issuance as one of its goals. The Association’s role is that of a facilitator and advocate and the Association is not involved in the actual process of issuing surety bonds – paper or digital.

The Association has not developed, nor will it promote or recommend a proprietary software system for the creation, execution and delivery of digital surety bonds.

Background

Electronic bid submissions benefit all those involved in the tendering process for the following reasons; 1) tender laws require strict, error free compliance, 2) time pressure associated with tender closings, 3) more environmentally friendly, and 4) the cost savings for all parties involved in the tendering process.

SAC Position

The Surety Association of Canada believes that regardless of the e-tendering system used, it is vitally important that the end-user trusts the process and is assured that the “document” (digital surety bond) received is as valid as any paper equivalent. In that regard any electronically generated surety bond should meet three threshold criteria:

1. Integrity of Content

The assurance that the document received is the true document executed and the content has not been changed or altered.

2. Secure Access

Restricting the access to the document to those authorized to view and/or download it.

3. Verifiability/Enforceability

Assurance that the document was properly executed by the parties identified.

Summary

The Surety Association of Canada can't overemphasize the importance of ensuring that the digital surety bond that an Obligee receives is properly executed and verifiable. Scanned copies of paper surety bonds do not meet the criteria outlined above.

For owners that are considering moving to an e-tendering system, the Surety Association of Canada strongly recommends that you reach out to the Association. The Association would be happy to work with you to ensure that the bonding community is aware of your plans and timelines to ensure a smooth transition. Experience in other jurisdictions has taught us that rushing into new technologies without consulting with the industry and colleagues within your own organization can create more problems than it solves. Once your organization has decided on its new e-tendering system, it would be beneficial to run a mock tender with bidders. The Surety Association of Canada has found that owners that run mock tenders and provide the industry with advance notice that they are implementing a new e-tendering system are very successful in transitioning from paper to e-tendering.

As noted in the introduction, the Association has not developed, nor will it promote or recommend a proprietary software system for the creation, execution and delivery of digital surety bonds – however, SAC has assessed a number of digital bonding solutions and those evaluations can be found on the SAC website (www.suretycanada.com).

Glossary of Terms

Obligee

An individual or organization in whose favour an obligation is created and to whom a bond is given.

Principal

The individual or organization that bears the primary responsibility for fulfilling the obligation under the written contract referenced in the bond and that has the duty to perform for the Obligee's benefit.

Surety

The party to a surety bond who answers to the Obligee for the Principal's default or failure to perform as required by the underlying contract, permit or law.

This paper is intended to serve as a general guideline to assist members and other readers in responding to the issues discussed. Nothing contained herein should be construed as legal advice and readers are cautioned to consult with legal counsel for such advice.

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