Surety Association of Canada
Announces New Bond Form for IPD Projects

May 27, 2020 – Mississauga, ON – On May 7, 2020, the Board of Directors of the Surety Association of Canada (SAC) gave its approval to a new specialty bond form designed for use with Integrated Project Delivery (IPD) projects. The new bond template had been under development for more than a year and is designed to be used in conjunction with the standard CCDC-30 - Integrated Project Delivery Contract.

The IPD model seeks to create a team approach where all parties enter into a single contract, and where the decision making, the risks and the profits are shared. Proponents of the model suggest that this approach should minimize, if not eliminate the adversarial dynamic that can develop when each party pursues its own interests; and hopefully incentivize more cooperative and collaborative relationships.

Like any non-traditional project delivery approach, IPD presents a new set of challenges to the construction industry as it works to create a sustainable and workable model that puts the theory into practice. One such challenge surrounds risk mitigation and in particular, the risk of contractor (or other party) failure. In discussing the need for protection against that risk of contractor failure, SAC has found that IPD proponents will often dismiss these concerns. They point to the all-hands-on-deck approach of the IPD arrangement and suggest that this coordinated focus on the common interest diminishes any such risk to the point of being insignificant.

SAC President Steve Ness suggests that this simply is not the case. “Bonding companies have learned the hard way that the risk of contractor default doesn’t always originate within the four walls of the project itself. Many and perhaps most of the issues that give rise to project contractor failure are business/finance related and may have little or nothing to do with that contractor’s ability to successfully perform the work on any particular project.” he said. Ness pointed out that replacing a failed contractor mid-way through a construction project can be an expensive proposition, begging the question: What will happen should a major participant in an IDP contract become insolvent?

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In response to this challenge, SAC has developed a template performance bond that responds to the unique structure and working dynamics of the IPD project arrangement. In creating this new product, SAC undertook a comprehensive review of the complex inter-relationships between parties to IPD contracts. From there, the drafting team identified the points of vulnerability to that risk of failure of the project contractor and/or one of the other construction participants to the IPD team.

While the new bond template is intended for use with the CCDC-30 standard, it also seeks to be flexible enough for use with modified versions of this document and for other variations on the IPD theme. A few highlights and observations:

- The new bond arrangement contemplates that each construction participant in the project will post its own bond that guarantees the performance of its obligations under the IPD Contract. Thus, there may be several bonds on any given project, posted by each of the major construction parties.

- As the source of project funding and ultimate bearer of the financial risk of a cataclysmic event, the Owner is the logical choice as obligee/beneficiary under the bond. The SAC IPD Performance Bond identifies the Owner as the sole obligee under the instrument.

- The SAC IPD Performance Bond will protect the Owner from any increase in costs of completing the Principal's Work under the IPD Contract following that Principal's default and termination under the terms of the IPD Contract. This will include any additional direct costs (shortfall) to complete the Principal's work along with any HST/GST and Owner's expenses (as defined in the bond).

- A claim on the bond can be advanced when the Principal is in default of its obligation and its participation in the project has been terminated by the other members of the IPD team.

Ness re-emphasized that no contractual arrangement, no matter how well-intentioned or collaborative, is risk free. "The risk of a major contractor insolvency or failure, if not adequately managed can have catastrophic consequences to the project and all of its participants. A surety instrument specifically created for use on IPD projects will go a long way to mitigating that risk."

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A specimen copy of the new SAC IPD bond along with a "User's Guide" that explains its features can be reviewed and downloaded from the SAC website at https://www.suretycanada.com/SAC/Surety-Bonds/SAC-IPD-Performance-Bond.aspx.

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About the Surety Association of Canada:

The Surety Association of Canada (SAC) is the national trade advocacy association that represents the interests of the surety industry across Canada. Its members consist of primary surety firms, surety reinsurers, surety/insurance brokers, and other organizations that provide related and complementary services to the surety industry.

While the majority of the surety industry's premium revenue is derived from construction contract bonds, SAC also represents the interests of those organizations that focus on non-contract or commercial surety. SAC does not represent or advocate on behalf of the fidelity bond industry.

Since its formation in 1992, SAC has become a trusted resource for construction purchasers, design professionals, contractors, suppliers and other stakeholders in construction and business communities. SAC has developed its own bond forms in response to industry need and in consultation with the construction industry.

SAC and its members regularly meet with owners, contractors, other associations and related organizations to educate them about surety bonds and the suretyship process. SAC also monitors legislation across the country that will impact its members and works diligently to advance the surety cause with lawmakers and government officials.