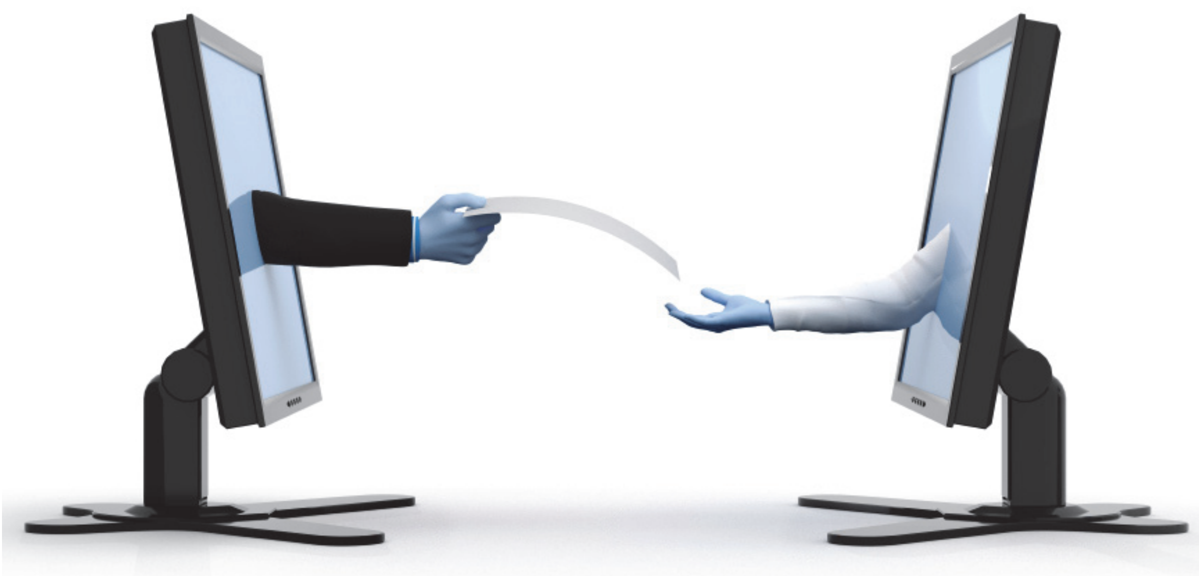
SURETY ASSOCIATION OF CANADA
YOUR BONDING RESOURCE

Digital Bonds the Way of the Future – and the Present

White Paper



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Introduction

Moving through the third decade of the 21st century, an ever-increasing number of public bodies at all levels of government are requiring tenders to be submitted digitally via an automated on-line bidding platform. These tender documents typically require that the bid be accompanied by a digitally prepared Bid Bond or Consent of Surety.

With the onset of the COVID-19 pandemic (Spring 2020), the previous routine task of creating, executing, and delivering hard copy multi-party documents in a physically distanced world has become maddeningly complicated. In response, the Surety Association of Canada (SAC) has encouraged construction purchasers to expand their use of digital bonds to the contracting phase by accepting electronic performance and payment bonds as well. Owners, for the most part, have taken SAC's advice, and digital bonds may well replace their paper equivalent in a post COVID world.

Yet as encouraging as this trend may be, SAC continues to be confronted with confusion, unfamiliarity and even skepticism about the nature of digital bonds, and their benefits.

What is a Digital Bond; and What Is Not

By way of a working definition, a digital bond is a surety instrument that is created in an on-line e-bonding system and uploaded to an automated on-line tendering platform (e.g. MERX, eSolutions), or delivered by email. In addition, it must meet the three threshold criteria identified by SAC as essential to any legitimate digital bond:

1. ***Integrity of Content:*** The assurances 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:*** Assurances that the document was duly executed by the parties identified and that it is enforceable in law.

The key here is that the document includes embedded security protocols that provides an owner with assurances that the digital bond was signed, sealed, and issued by the signatory, and that it had not been tampered with.

To better understand digital bonds and the benefits they offer to the bidding and contracting process, it is important to first understand the difference between a true digital bond and a "facsimile" of a bond. SAC often encounters tender documents which allow for (or even require) bid bonds to be prepared manually and then scanned into a portable document format (PDF) file and transmitted to the owner along with the tender. Such documents are sometimes erroneously referred to as "electronic" bonds.

A scanned PDF file is ***not*** a digital instrument, but a picture/image of a manually prepared bond. They are certainly expedient and, technically speaking they are "electronic" in the sense that the act of scanning a document involves the use of technology. However, scanned PDFs are not prepared using an on-line e-bonding system and cannot easily be integrated into the bidder's on-line tendering platform. More to the point, they do not meet the SAC threshold criteria discussed above.

The very nature of a scanned PDF file makes it impossible to verify its authenticity without independently confirming with the issuer. Nor can an owner verify that the document received, was the true document issued and that the original had not been tampered with or altered in any way. In a worst-case scenario, the authenticity of such non-verifiable documents could become the subject of a legal challenge by the issuer.

Digital Bonds vs Paper Bonds: The Benefits

For providers of bonds (sureties, brokers, contractors), the most obvious benefit to "going digital" is the expedience of a streamlined and automated bond issuance process. In the paper world, a bond is prepared, signed, and sealed by a surety or broker. It must then be forwarded to the bonded Principal for a second signature and seal, before being physically delivered to the end user as part of a bid package. Contrast this with the digital bond process where everything is done in real-time through an on-line e-bonding system on the issuer's desktop. No paper, no physical seals, no couriers.

Far more importantly, a true digital bond will meet all three of SAC's threshold criteria, providing end-users with assurances of built-in verifiability and integrity. There will be no need to contact the issuer for independent confirmation of validity. Indeed, with these embedded safeguards, a digital bond is more reliable and verifiable than its hard copy equivalent.

Another positive side-effect of the digital trend will be a reduced chance of errors or improper execution. Among the more common complaints voiced by project owners is the frequency of improperly completed tender bonds that result in a tender being disqualified.

An e-bonding system serves as an electronic editor against these kinds of errors and will not allow the bond to be released unless all fields are completed and the electronic signatures/seals have been affixed.

SAC is pleased to report that despite rumours to the contrary, digital bonds are now widely, even universally available across the industry. The five years between 2015 and 2020 saw the demand for digital bonds explode and in response, surety providers across the country have upgraded their processes to meet this demand. It is safe to say that as we approach the end of 2020, any broker or company that is seriously engaged in the surety business will have the capability to provide a digital bond.

Lastly, from an environmental standpoint, any automation of paper-heavy processes will lead to a diminished carbon footprint. Simply put: digital bonding provides a green alternative to the traditional approach.

Moving to Digital Bonds

From a technical standpoint, the technology to create, record, execute and deliver electronic bonds is already commercially available. SAC has identified three vendors, with automated document creation systems that are capable of creating reliable and enforceable digital bonds which meet the three threshold criteria. Each system differs slightly in approach with different capabilities, focuses and objectives.

These three vendors are:

- Mobile Bonds - www.mobilebonds.com
- Trisura Guarantee Insurance Company - www.trisura.com
- Xenex Enterprises - www.xenex.ca

The Surety Association of Canada has conducted a detailed assessment of each system as to their capabilities and approach. Copies of these assessments can be accessed from the SAC website.

It should be noted that all three systems can interface with the commonly used on-line tendering platforms across the country and produce documents that can be uploaded as part of a tender package to those platforms. In the case of performance and payment bonds, each is also capable of issuing a "standalone" digital bond which can be delivered to the end-user via email.

Owners, brokers, and contractors will find that the transition from paper to digital bonding is simple and easy with no requirements for long implementation procedures or new hardware. For brokers and sureties, we suggest that you reach out to one of the accessed vendors who can review the process to create digital bonds.

For project owners, it is even easier. Once you have made arrangements to set up an on-line tendering platform, simply specify that any bonds submitted must be in provided in a verifiable digital format or e-bond. SAC would be happy to provide you with suggested language to be included in tender documents.

More information about digital/e-bonds and surety bond products can be accessed on the SAC website. For information about the various e-bonding systems and their technical details, we encourage stakeholders to reach out to the vendors directly.

The Surety Association of Canada recommends the use of digital bonds as an industry best practice. Our team are available to assist owners, contractors, and other stakeholders to help ease the transition and provide a sense of comfort and assurance about the value of the digital approach.

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.

For more information: www.suretycanada.com