SURETY ASSOCIATION OF CANADA
YOUR BONDING RESOURCE

Canadian Construction Association

JOINT BULLETIN OCTOBER 2014

e-Bonds: The State of the Art

e-Bonds

Over the last several years alternatives have emerged that allow contractors and subcontractors to have bid bonds issued and delivered in an electronic form along with an electronic bid.

To date there is no consensus around the "best" way to approach electronic bonds, given that surety bonds are somewhat unique legal instruments and, historically, have had some legal requirements not found with other forms of contracts. Surety companies, owners, contractors and software designers appear to be taking a pragmatic and incremental approach that has allowed a few different approaches to gain acceptance.

What is an e-Bond?

An electronic bond, or "e-bond", is a digital substitute for a surety contract (a bid bond is a special form of contract) that is otherwise in writing, on paper and is signed, sealed and delivered. When a bond is produced on paper and is signed, sealed and delivered, the parties to the bond can rely on an intuitive understanding of what a "document" is as an artefact, and the significance of ink signatures and embossed seals on the paper all working together to make the bond an enforceable legal instrument, barring fraud.

In the move to a digital format, the paradigm of the unique physical artefact is replaced by a new paradigm involving bits of data saved digitally, coded rules for how the data is meant by the stakeholders to be interpreted, and a combination of coded and commercial rules around how the stakeholders intend to act.

The surety companies and other stakeholders now working with various online and electronic bond systems have done independent due diligence and appear to be satisfied that e-bonds can be valid and enforceable, and can have sufficient safeguards to ensure that e-bonds do not create new risks to contractors, sureties and tendering authorities or general contractors. It has been argued that for some approaches the process used to create an e-bond may even reduce risk around inadvertent mistakes and non-compliant bids, and may even prevent potential fraud and tampering.

How do e-bond systems work?

There are several different approaches currently available in the market, each having its advocates depending on the strategy of a tendering authority in the use of technology. This summary is very high level, and omits a lot of very important information—for example each system manages user access and authority, but the degree of control varies. Examples of approaches that have found acceptance in the market include:

- Systems that provide stakeholders with an automated workflow and are sometimes called **"online" bidding systems.** The e-bond is created and issued by the contractor and surety broker internally within the system workflow. B.C.C.A's BidCentral (with its technology partner Infinite Source Systems) is an example of this approach (www.bidcentral.ca)
- Systems that allow stakeholders to assemble and upload information and electronic files (documents) related to a bid. These are sometimes called **"electronic" bidding systems.** Digital files (.pdf for example) with images of a bid bond must be created externally by contractors and surety brokers, and can be uploaded along with other bid documents. *Merx* (www.merx.com) and the BSDQ system (www.bsdq.org) are examples of this approach
- Systems that allow contractors, surety brokers and surety companies to create an e-bond file (.pdf for example) with digital security features embedded in the file. The e-bond is created outside of any bidding system, and can be uploaded into an "electronic" or "online" bidding system, or transmitted among project stakeholders as an ordinary e-mail attachment without being tied to any other electronic or online bidding system. *SignatureMaster* by Xenex enterprises Inc. is an example of this **"portable" approach** (www.xenex.ca)
- Systems that combine some automated workflow with an ability to create a digital e-bond file that can be used within the workflow or can be transmitted independently of the workflow. Mobile Bonds is an example of this **hybrid approach** (www.mobilebonds.com)

What does it cost?

The costs of maintaining the electronic systems that enable the use of e-bonds appear to be either absorbed by the tendering authority or passed through to users in the form of transactional user fees. It is argued that for some systems new costs are offset by cost savings and efficiency over manual, paper and courier systems. To date there appears to be little uniformity around this issue. Details are available from any of the current system vendors.

Resources

In addition to the websites identified above, information on e-bonds can be obtained from the Surety Association of Canada (www.surety-canada.com).

The B.C.C.A and the B.C. law firm Jenkins Marzban Logan LLP have issued a publication providing background and a legal analysis of the enforceability and electronic bonds. This publication can be accessed at www.bidcentral.ca.