



Electronic

surety bonds

a tendering process
for the 21st century

by **Steven D. Ness**

“E-commerce” has become the buzzword of the new century as businesses in every sector struggle to keep up with the bombardment of technological advances that become available literally at the touch of a button. Automation has come to virtually every aspect of commercial endeavour: from procurement, through production to inventory control, administration and delivery.

In keeping with this trend, the construction and surety industries are exploring the use of technology to enhance the level of service provided to their clients and to streamline their administrative processes. In the construction/surety world, the tendering process lends itself very well to automation for several reasons:

- Time pressures involved in the bidding process are considerable – being even one minute late can mean disqualification. An automated

approach where documents are delivered instantaneously can alleviate the last-minute pressures of a tender closing.

- The laws of tendering require strict, error-free compliance with the bid documents. Automated creation of the bid bond and other tender documents can significantly reduce the chance of errors, which can lead to a bid being declared informal.
- The ease and economy of transmission: Not only is delivery easier, faster and “greener” (i.e. smaller carbon footprint), it is far less expensive and can reduce or eliminate the mounting courier costs.

The challenge of change

As is the case with any major change, the shift from paper to a digital environment is not without its

challenges. In addition, the unique nature of the surety product and process magnifies some of these issues and adds a few more.

E-tendering has been described as the train that's always coming but never seems to arrive. Despite the tsunami of technology that pervades every aspect of personal and commercial life, the construction community has been frustratingly slow to embrace the tools of automation to streamline the tendering process.

Such hesitation may be understandable given the natural human reluctance to stray from one's comfort zone and adopt a radically different approach to a century-old practice. Other factors come into play as well: lack of manpower and resources; concern about the stringent rules governing bidding practices, etc. Whatever the reasons, however, the construction industry in Canada has made relatively little progress in automating the tendering process.

On the bright side, our sluggishness in responding to the automation challenge affords us an opportunity to learn from the mistakes of others and more effectively manage the upcoming changes. In the United States, a number of public owners, particularly state departments of transportation, grabbed the electronic tendering bit between their teeth and ran with it, without consulting with the industry or even each other. The result was a patchwork quilt of incompatible technologies and divergent approaches that continue to create chaos and confusion across the country.

If we take one lesson away from the American experience it should be this: consult, consult, consult. Work with the industry to develop a broad based approach that addresses the needs and constraints of all stakeholders to the tendering/bonding transaction.

From a technical standpoint, there's good news. The technology to create, record, execute and deliver electronic bid bonds is readily accessible and indeed there are a number of commercially available electronic surety systems, some homegrown, others developed in the US.

That said, regardless of the system used, it is vitally important that the end-user trusts the process and is assured that the "document" received is as valid as any

paper equivalent. In that regard any electronically generated document should meet three threshold criteria:

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.

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The Surety Association of Canada can help

The Surety Association of Canada (SAC) strongly supports the automation of the suretyship process and has resolved to direct its energies and resources toward assisting construction buyers with the transition to an automated tendering process. We urge construction buyers who are contemplating a move to electronic tendering to visit the SAC website: www.suretycanada.com.

Visitors to the "E-Bonding" section (found on the top ribbon of the home page) will find a wealth of resource materials and supporting information, which can be accessed and downloaded by construction purchasers and other stakeholders.

The SAC will provide hands-on assistance to owners who are moving toward an electronic tendering system – assistance which includes:

- Providing general guidance to project owners and assistance in navigating the transition to an automated environment. This includes the publication of *Designing Electronic Pathways Together: A Blueprint for Electronic Bonding* (accessible on the SAC website).
- Setting criteria for electronic delivery systems to ensure integrity, verifiability and enforceability of any electronic document delivered. For the most part, these criteria are set out in the document entitled: *Evaluation Guidelines: Electronic Bonding Technologies* (accessible on the SAC website).

- Consulting with project owners to provide tips and assistance in setting up and implementing workable electronic bond requirements.
- Acting as a liaison to bring the various stakeholder parties together to facilitate the resolution of any problems that may arise (e.g. technological, implementation issues).
- Evaluating existing systems against SAC established criteria. Copies of the assessments of existing software packages are available to project owners and their representatives by contacting the SAC office at 905-677-1353, or by email at surety@suretycanada.com.


How you can help yourself

Here are four tips for public construction buyers that are considering automating their tendering process and requiring electronic bid bonds:

1. **Don't do it alone:** Once more, consultation is the key. Work with industry groups to arrive at a solution that works for everyone. This will ensure buy-in from contractors and sureties, and prevent the confusion and frustration that can wipe out the advantages of “going electronic” in the first place (i.e. reduction of errors that lead to non-compliant tenders).
2. **Don't try to reinvent the wheel:** Public owners and others sometimes try to be innovative by designing their own in-house system for electronic tendering and bond issuance. The product of their efforts is invariably inferior to the commercially available systems that were developed by software professionals. More to the

point, such proprietary systems can only be used for tenders and/or bonds issued to that particular owner, thus forcing contractors and sureties to maintain multiple systems which in turn creates the confusion that can result in non-compliant tenders.

3. **Be flexible:** By all means be diligent in setting the criteria and ground rules for the acceptability of an electronic bond (i.e. verifiability, integrity, security, compatibility with bid system, etc.). Once these criteria are set however, leave it to the contractors and sureties to decide how to meet them. Again, the marketplace offers a choice of systems and methods which can provide secure and verifiable electronic documents.
4. **Take the time to get it right:** Experience in the US has taught us that rushing into things can create more problems than it solves. Carefully consider your criteria once you've consulted with the industry and colleagues within your organization. Once you've decided on a program and approach, test it out to make sure it can work in practice; ideally via a pilot project. Finally, give the industry time to prepare and adapt to the change by phasing in the move to automation and allowing for both paper and automated tenders.

Change is never easy. This is especially true for fundamental changes in the way one goes about their business. That said, if the change is prudently managed with an effort to address the transitional concerns of all parties to the transaction, many of the pitfalls can be avoided. 

Stephen Ness is president of the Surety Association of Canada. The Surety Association of Canada is happy to answer questions you may have or to provide suggestions and assistance as you take the initial steps to automating the tendering process. Contact SAC at 905-677-1353, or surety@suretycanada.com.

