

e-bonding

by guest columnist, Joann Brnjas

Until recently, the business of bonding (an off-shoot of the insurance industry) was cloaked in business practices more suited to the 17th century than the modern world. Bonds were written up as deeds under seal, using archaic language. The statute of frauds required performance and similar bonds to be in writing and signed by the surety. Bonds were not effective until an original version of the bond was delivered to the customer in whose benefit the bond was issued (the "obligee").

In the late summer of 2000, Ontario, Saskatchewan and Manitoba enacted legislation to facilitate the conduct of electronic commerce. Other provinces have since followed suit. This legislation permits contracts, formerly required to be evidenced in writing (including bonds), to be recorded in electronic form. Electronic "signatures" are also permitted. The Ontario act requires "reliable assurance as to the integrity of the information ... from the time the document ... was first created in its final form." In effect, it is now possible in Ontario to create bonding commitments entirely through an electronic transaction.

As the following article makes clear, the bonding industry now seems to be moving quickly towards widespread use of electronic bonding. Using current American practice as a guide, where an electronic bonding process is employed, the bond obligee, receives electronic verification from a third party that the agent that executed the bond on behalf of the surety company was authorized to do so. This electronic verification will confirm that the bond was executed by a named surety, in favour of a specified obligee concerning an identified project, for a specified bond amount. The confirmation provided also records the execution date and gives a verification number.

Steve Bauld and Kevin McGuinness



Steve Bauld, former purchasing manager at the City of Hamilton, is now VP of the Ontario General Contractors Association.



Kevin McGuinness is a lawyer with Ontario's Attorney General.

Together they have collaborated on several books about procurement and leadership, and were regular contributors to *Summit* magazine's column "In our opinion."

SURETY BONDS HAVE long since played a major role in the development of the economy. Their main purpose is to provide a security guarantee to the performance of a contract and to compliance of legislation. Even today, there are no true comparable risk mitigation replacements to surety bonds. Many organizations have moved, or are moving, to implement electronic procurement processes. Electronic procurement will not be complete until surety bonds are received and digitally filed with the tender submissions. As a purchasing officer, you need to know the bond is there and that it's real.

Procurement capabilities, particularly within centralized service centres, are finding that applications to advancing efficiency are high on the agenda. Where electronic bidding and tendering applications are already adopted, the natural next step to complete e-procurement (particularly for construction buying) is e-bonding.

Where e-procurement applications have not yet been developed, you may want to consider the full package – tendering, bidding and bonding – as a whole. Receiving an electronic bid package and then having to wait for a paper bond is a problem to which many procurement, construction and bonding experts are seeking solutions.

Getting a bond delivered electronically is one thing; ensuring it's real needs to be the same thing. There is no sense investing in processes and technologies that cast doubt on the very mechanism that helps you protect tax payer dollars, no matter how convenient.

But how can you be sure your information technology strategy for e-procurement incorporates the necessary checks to ensure digital bonds are in fact real and valid? Let's look at the more obvious mainstream processes and the various applications that could be considered.

For your interest...

Along with consulting firm Accenture, and other eminent authors like D. Neef and Tim Minahan who write on supply chain issues, Steve Bauld and Kevin McGuinness (and two of their articles in *Summit* magazine: February and March 2005) are cited frequently in a Master thesis written by Lucas Rulff. Rulff references their expertise as it relates to performance management and the measurement of supplier performance. If you want to read the thesis (just 67 pages), Google the title below.

Supplier Relationship Management: Developments in Co-operative Initiatives

Master thesis in Business Administration, April 2006

By Lucas M. Rulff

Supervised by: Gunnar Agren

Blekinge Institute of Technology School of Management

... you complete me

Several differing applications continue to appear in the marketplace to respond to the need for e-bonding solutions. Opportunities to contribute to the validity of a bond might potentially exist in many of these applications, however, particular attention to business rules and processes surrounding the signatory execution of the bond and collaborating applications leading up to its execution should be at the top of your solution assessment criteria.

For example, surety bonds can be executed only by individuals who have been designated “attorney-in-fact” of the bonding company in question. Will you be able to identify who exactly signed the bond? Does this individual have a power of attorney that empowers him or her to commit the surety? Online power of attorney management applications have considerable potential to significantly increase confidence by capturing rights and agreements between surety insurers and their representative bonding agents.

A bond fully created, executed and delivered electronically could potentially be processed through various stakeholder systems, requiring an examination of business rules along the way for each application to ensure it satisfies the needs of all parties to the bond.

The development of collaborative business rules for each system application (and other complementary applications that exist, such as applying for a bond online) presents an opportunity for overall “big picture efficiencies.” One of the biggest challenges facing e-procurement, relative to bonding, is the development of excessive system solutions presenting various combinations of applications and services. Should the pendulum swing beyond a simple solution, operational challenges will quickly arise from the need to accommodate various passwords, procedures, system interfaces and varying forms of end products.

Another top of mind challenge is the legal environment. Other than the provinces of Ontario and Nunavut, legislation does not exist to recognize the validity of a document executed under seal.

Many governments are moving steadily towards a purely electronic system of contracting. However, since governments often require suppliers to provide bid, performance, warranty, and labour and material payment bonds, a full transition to electronic contracting has been delayed.

And, other than Quebec, bonds – like deeds and unlike contracts – must be “signed, sealed and delivered.” Corporate digital seals do not currently exist that exactly match current long-standing traditional paper seals.

The trend to e-bonds still progresses despite challenges. The Surety Association of Canada is highly supportive of a healthy and collaborative transition. E-bonding is an important missing piece of e-procurement.

Completing e-procurement strategies with an e-bonding solution beyond construction buying and beyond simple bid bonds presents longer term strategic decisions by the procurement industry both in the legal environment and in the operational environment. Bid bonds for services and project contracts are a good place to start. E-bonding will complement well the e-bidding and e-tendering applications already in place.

The Surety Association of Canada (www.suretycanada.com) has developed a draft ‘blueprint’ to collect and establish standardized business requirements to attain effectiveness within the operational arena and continues aggressive lobby initiatives for an effective legal environment. *MM*



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