Moving Toward an Electronic Bonding World: Will COVID-19 Be the Impetus?

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The Request for Emergency Action

• What does it mean to you, your customers, and obligees?
• What are NASBP and SFAA doing to help?
• Where are electronic bonds already being utilized?
• What response have we received?
• Are you finding acceptance or resistance?
• COVID-19: A catalyst for change?
• What should our strategy be to drive long term change?
• Questions
The Request for Emergency Action - What Does It Mean To You?

- SFAA / NASBP Survey – Significant Concerns: Execution, Corporate Seal, Notary & Technology
- Joint SFAA, APCIA and NASBP Request for Action
- Two asks
  1. Mandate Acceptance of all Electronically Executed and Issued Construction and Commercial Surety Bonds
  2. Waive the Notary Requirement
PLATTE RIVER INSURANCE COMPANY
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That the PLATTE RIVER INSURANCE COMPANY, a corporation of the State of Nebraska, having its principal offices in the City of Middletown, Wisconsin, does make, constitute and appoint

Name of Individual

its true and lawful Attorney to enter, execute, seal and deliver for and on its behalf, any and all bonds, undertakings and contracts of suretyship, providing the same bonds or undertakings or contract of suretyship executed under this authority shall be issued in amount the sum of

Bond Amount

on behalf of

Principal

This Power of Attorney is general and is subject to being revoked by facsimile under and by the authority of the following Resolution: Adopted by the Board of Directors of PLATTE RIVER INSURANCE COMPANY at a meeting duly called and held on the 1st day of January, 2000.

Platte River Insurance Company and Capital Indemnity Corporation.

By

John L. Semmel, Jr., Chief Executive Officer and President

By

CAPITAL INSURANCE COMPANY
CAPITAL HEALTH RISKS INSURANCE COMPANY
Platte River Insurance Company

5/20/2020
What Are NASBP and SFAA Doing To Help?

Federal and State Advocacy - E-bonding

- Joint SFAA, NASBP and APCIA Request for Action
  - Congressional and Federal Request by Construction Procurement Coalition
  - Governors, State DOIs, and Specific Agencies
  - All Commissioners of Insurance + Senior DOI staff
  - Emails to Mayors across the U.S.
- Follow-up in conjunction with NASBP
  - Board of Directors and CBOs: Letters to Governors
  - NASBP: Local Member Outreach to Governors / Public Officials
  - Local Surety Associations: Letters to Governors / Public Officials
SFAA COVID-19 Resources

- SFAA Requests for Emergency Action
  - State, Federal, & Municipal
  - Resources for Interactions With Procurement Officials
  - Links to Executed Orders / Agency Guidance

- SFAA COVID-19 Resources
  - SBA PPP Loan Step-by-Step Guidance
  - 50 State Reference Chart for Non-Renewal/Cancellation Moratoriums
  - Fidelity Advisory to Protect Against Increased Cyber Exposure

- External Links and Resources to Help you Navigate the Crisis
  - 50 State Construction Delays Map (Construction Connect)
  - 50 State Map Where Construction Deemed Essential (Construction Connect)
  - NAIC, NCOIL, & AGC COVID-19 Resources
Where Are Electronic Bonds Already Accepted?

- Federal GSA & DOD Deviations - Flexibilities for Signatures and Seals on Bonds
- Companies / Brokers Using SFAAA Materials to Address Any Issues
- States With Formal Action Specific to Electronic Execution & Delivery:
  - TN Governor’s Executive Order
  - MN Department of Commerce Regulatory Guidance
  - VA Bureau of Insurance Statement
  - MI Governor’s Executive Order
  - IL Governor’s Executive Order
- 20+ States With Action to Allow Virtual Remote Notarization
- States Working Directly With Agencies to Confirm Acceptance of Electronic Signatures With Virtual Remote Notarization
- Continued Active Engagement With States – Many are Close
The Response - State Agencies & e-Bonding

- Excellent Responses and Reception to Request of Action
- Many Ongoing, Productive Conversations
- Questions/pushback:
  - Isn’t Remote Online Notarization (RON) Sufficient?
  - Isn’t the Uniform Electronic Transactions Act (UETA) Sufficient?
  - What Statutes and Rules Would We Need to Suspend?
  - Specific Examples of Electronic Bonding Not Being Accepted in Our State?

What Responses Have You Received?
Acceptance or Resistance?

CLICK ON CHAT WINDOW TO SHARE OR ASK QUESTIONS
COVID-19: A Catalyst For Change?

- Brief history of our advocacy for electronic bonding
- Lessons learned: Electronic procurement drives electronic bonding!
- Industry coalition developed guidelines
- Successes to date
- Example: Electronic bond with the required characteristics
Electronic Bonding

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Electronic Bonding replicates the bond execution process that exists today—the signing of the bond form by the principal and surety and physically delivering the form to the obligee electronically through the Internet or other electronic medium, or within a web-based environment without paper or delay. The electronic filing of surety bonds reduces processing costs and increases efficiency for all parties involved in the bonding process: government agencies and other obligees, contractors and other bond principals, surety bond producers, and surety companies.

The practice of transmitting and receiving bonds electronically is a modern technology that we continue to monitor and update our findings on this site.

SFIA and NASBP do not endorse any commercial products or services offered by these vendors.

Electronic Bonding Process
A surety bond is a three-party agreement whereby the surety guarantees that one party (the principal) will perform its obligations owed to another (the obligee). Both the surety and the principal are liable to the obligee. Therefore, both the surety and principal sign the bond. When the bond is a paper document, the bond execution process generally follows the following steps:

- The surety agent prepares the necessary information on the bond form.
- The surety agent signs the bond as agent of the surety and attaches a power of attorney evidencing its authority to do so.
- The surety agent sends the bond form to the principal.
- The principal signs the bond form.
- The principal delivers the bond to the obligee.

An electronic methodology must translate these steps, which contain legal implications, from the "paper world" to the "electronic world."

Electronic Bond Execution Process
A major benefit to sureties is that bond obligations implement methodologies that are not restricted to a technology provided by a specific vendor. Sureties desire the ability to choose the technology or vendor that best meets their needs rather than be required to use a particular vendor. It is crucial that competition is fostered and several vendors enter the surety bond execution market, which will provide sureties and obligees with the ability to select a vendor by providing guidance as to the merits of principals, obligees, agents, and vendors and the legal requirements implicit in the bond execution process. This guidance presents a thought that is reflective of these interests.

Possible methodologies for bond execution are:
- "Transmitting" an electronic bond with digital signatures using secure messaging technology.
- "Delivery" in documents transmitted through a web-based bond clearinghouse or "virtual signing zooms."

Checklist of Required Characteristics
Any electronic bonding methodology must possess certain essential characteristics. These are:
- The methodology maintains the existing legal relationship and obligations among the parties.
- The filing process requires the verity of each party's signature.
- The process complies with the release of the surety and principal using digital signature technology.
- The method ensures that the signature of the surety and principal using digital signature technology is intact before the bond transaction.
- The method ensures that the signature of the surety and principal using digital signature technology is transferred to the obligee and is not altered.
- The method is based on the surety and principal using digital signature technology.
- The method ensures that the signature of the surety and principal using digital signature technology is transferred to the obligee.
- The method ensures that the signature of the surety and principal using digital signature technology is transferred to the obligee.
- The method ensures that the signature of the surety and principal using digital signature technology is transferred to the obligee.

The following are suggested characteristics:
- Use ACORD data standards.
- Integrate with the surety and principal using digital signature technology.
- Allow the principal to verify the identity of the surety and principal using digital signature technology.
- Remit the surety and principal using digital signature technology with the delivery of the bond.

Click and DORP are in the process of developing these methodologies with any vendor interested in carrying the surety bond market or obligees interested in developing an electronic bonding methodology.
eProcurement Bidding/Bonding Guidelines

INTRODUCTION

A coalition of organizations deeply involved in the procurement and bonding processes of public projects has joined together on the basis of common principles addressing the use and impact of electronic methodologies in the procurement process. The Associated General Contractors of America (AGC), the American Read & Transportation Builders Association (ARTBA), the National Association of Railroad Construction and Maintenance (NARCM), the American Society of Civil Engineers (ASCE), and the National Association of Surety Bond Producers (NASBP) representing the collective efforts of construction industry stakeholders, have developed the following document to assist public owners implementing electronic procurement and bonding initiatives. The purpose of this document is to promote the integrity of the procurement process in a manner that is cost-effective, transparent, and efficient.

All procedures and methodologies in this document are intended to be used exclusively by public owners and their agents to procure construction services. These procedures and methodologies are intended to encourage the use of electronic procurement and bonding processes in order to ensure the integrity of the procurement process.

PROCUREMENT BIDDING/BONDING GUIDELINES: GENERAL PRINCIPLES

Public entities should seek to establish an efficient, cost-effective, and transparent process for the procurement of construction services. The following guidelines are intended to provide guidance to public entities seeking to implement electronic procurement and bonding processes.

1. ELECTRONIC PROCUREMENT/BONDING GUIDELINES: Implementation of electronic procurement and bonding processes should be designed to ensure the integrity of the procurement process. Public entities应当 seek to establish a process that is cost-effective, transparent, and efficient.

2. INFORMATION AVAILABILITY: Procurement information on proposed projects, including project announcements, project plans and specifications, site visits, and other information, shall be made available to interested bidders. Interested bidders should be permitted to request any clarification of plans and specifications that is necessary to enable them to submit an offer.

3. ELECTRONIC PROCUREMENT/BONDING GUIDELINES: Public entities shall provide a mechanism for the submission of electronic bids.

4. INFORMATION AVAILABILITY: Procurement information on proposed projects, including project announcements, project plans and specifications, site visits, and other information, shall be made available to interested bidders. Interested bidders should be permitted to request any clarification of plans and specifications that is necessary to enable them to submit an offer.

This document is intended to provide guidance to public entities seeking to implement electronic procurement and bonding processes. Public entities应当 seek to establish a process that is cost-effective, transparent, and efficient.
Strategy For Long Term Change

- What we learned and may consider moving forward:
  - Evolve and build upon best practices for electronic bonding & procurement
  - Working group between NASBP and SFAA
- Provide information for where we are having success
- NASBP & SFAA Technology committees promote guideline-compliant solutions
- NASBP and SFAA can assist

Additional Suggestions?
Questions?

CLICK ON CHAT WINDOW TO SHARE OR ASK QUESTIONS