

PP012 – Unlicensed Surety Companies

Introduction

The Surety Association of Canada (SAC) has encountered a number of unlicensed surety companies across the country. These firms have not been subjected to any regulatory scrutiny and may be unable to meet their obligations in the event of a claim. While many of these firms are domiciled in Quebec, our members have also encountered unlicensed bonding companies from the U.S.A. and even from remote offshore locations such as the Caribbean and Europe.

Background

One of the primary mandates of the Surety Association of Canada is ensuring that the integrity and reputation of the surety industry in Canada is maintained. As part of this effort, SAC encourages Obligees to secure their investment with surety bonds issued by reputable, licensed sureties.

SAC Position

The Surety Association of Canada strongly advises Obligees to require bonds from all contractors providing services and to insist that these bonds be issued by insurance/surety firms which are duly licensed in the province where the work is taking place. In order to avoid any ambiguity at the time of tender, we recommend the use of the following language in tender documents, "Only bonds issued by insurers licensed in [jurisdiction in which work is undertaken] will be accepted as per the terms and conditions of the tender documents."

Whenever SAC encounters an unlicensed surety, it will endeavour to alert the regulatory authorities in the relevant jurisdiction and lobby to have a "Cease and Desist" order issued.

Summary

If you are uncertain as to whether a firm is licensed in your province/territory, SAC has a listing on its website of links to regulatory bodies. Please visit: www.suretycanada.com.

If you encounter an unlicensed surety, please contact us at (905) 677-1353 or by email at surety [at] suretycanada.com.

Glossary of Terms

Obligee

An individual or organization in whose favour an obligation is created and to whom a bond is given.

Principal

The individual or organization that bears the primary responsibility for fulfilling the obligation under the written contract referenced in the bond and that has the duty to perform for the Obligee's benefit.

Surety

The party to a surety bond who answers to the Obligee for the Principal's default or failure to perform as required by the underlying contract, permit or law.

This paper is intended to serve as a general guideline to assist members and other readers in responding to the issues discussed. Nothing contained herein should be construed as legal advice and readers are cautioned to consult with legal counsel for such advice.

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