Typically used in the construction industry, Contract Surety Bonds protect the Owner (known as the “Obligee” or beneficiary) from financial loss in the event the Contractor (the “Principal”) fails to fulfil their contractual obligations with the Owner. The Surety provides its guarantee by co-signing the bonds with the Contractor, to allow the Surety’s financial resources to back the commitment of the Contractor. Similarly, subcontracts can also be bonded, whereby, for example, a specific Subcontractor would be the “Principal” and the General Contractor would be the “Obligee” or beneficiary of the contract surety bonds.

There are different forms of Contract Surety that The Guarantee offers during the various stages of the construction cycle. Prequalification Letters are provided during the Pre-Tender stage; Bid Bond’s and Consents of Surety are provided during the Tendering Stage; Performance, Labour and Material and Lien Bonds are provided during the Construction Stage; and finally Maintenance bonds are typically issued during the Post Construction stage.

**Our Contract Surety Bonds**

**Pre-Qualification Letter**
Commonly requested at the Request for Qualification (RFQ) or Expression of Interest (EOI) stage – the Pre-Tender Stage – the Prequalification Letter is not a bond, but rather a letter from the Surety to the Owner confirming the bond ability of the Contractor. This is a non-binding commitment from the Surety with respect to the Owner’s specific project as at this early stage the contract details have yet to be fully determined therefore, the Surety must reserve the right to review project details before providing a firm commitment to provide bonds. This is sometimes referred to as a “Sunshine Letter” and provides the Surety’s acknowledgment of its business relationship and familiarity with the Contractor. An Owner then knows that the Contractor has an established relationship with the Surety and the Surety has confidence in the Contractor’s ability to undertake the referenced project and is favourably considering providing bonds for the project upon satisfactory review of the project details.

**Bid Bond**
Requested by the Owner at the Tender Stage, the Bid Bond provides financial assurance to the Owner that the bid has been submitted in good faith. It also provides assurance the Contractor intends to enter into the contract at the price tendered, should they be successful in their bid. If the Contractor does not fulfil this obligation, they may be liable for the lower of (a) the difference between their price and that of the next lowest bidder or (b) the limit of the Bid Bond. The amount of the Bid Bond is generally a fixed percentage – 5 to 10% of the bid price.

**Consent of Surety**
Also used at the Tender Stage, the Consent of Surety (sometimes referred to as an Agreement to Bond) is an undertaking by the Surety to provide Performance and Labour & Material Payment Bonds for the Contractor if their tender is accepted by the Owner and a written contract entered into. The Consent of Surety is a commitment only made by the Surety. It is important to note, however, this does not guarantee the Contractor will enter into the contract.

**Performance Bond**
At the Construction Stage, upon execution of a written contract between the Contractor and the Owner, a Performance Bond protects the Owner from financial loss should the Contractor fail to perform the Contract in accordance with the contractual obligation. While generally requested by the Owner in the amount of 50% of the original contract price, the bond can also be issued for up to 100%. The Surety is not liable for more than the total amount of the bond.

For a claim to be made under the Performance Bond, the Contractor must be in default (as defined in the Contract) and the Owner must have declared the Contractor to be in default. Also, the Owner must have fulfilled their contractual obligations. From a practical perspective, however, an Owner may want to call the Surety if it appears the project is not progressing well. The Surety can discuss the Owner’s concerns with the Contractor, and may be able to assist in preventing a default situation. The bond typically contains a two year suit limitation period.

*Note that there are many different forms of Performance Bonds an Owner can request. The above is being provided for general knowledge. Please always refer to the Performance Bond in question for specific details on coverage.*
**Labour and Material Payment Bond**

Also issued during the Construction Stage, and used in conjunction with the issuance of a Performance Bond, a Labour and Material Payment Bond (L & M) guarantees that the Contractor will pay certain subcontractors, labourers, and material suppliers associated with the project. Eligible claimants under the L & M are those having a direct contract with the bonded Contractor to supply goods or services to the bonded job. As with the Performance Bond, the L & M is generally issued for 50% of the contract amount, but can also be for up to 100%. The surety cannot be liable for more than the total amount of the bond.

It is important to note the Labour & Material bond contains a time period for giving notice of claims. Typically this begins from the last day the claimant worked on the project or furnished materials to the project and ends 120 days from this date (or, for holdback amounts, 120 days from the day on which the claimant should have been paid in full under the contract). A one year suit limitation period also applies.

*Note that there are many different forms of L & M Bond an Owner can request. The above is being provided for general knowledge. Please always refer to the L & M Bond in question for specific terms and coverage details.*

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**Maintenance Bond**

For projects that have maintenance obligations beyond the usual one year period, then a Maintenance Bond can be requested. This type of bond provides security in the event that a Contractor is unable to maintain and/or repair deficient work under the contract within a specified time period.

**Lien Bond/Release of Lien Bond**

Also known as a Release of Lien Bond, this bond is used during the Construction Stage and is generally requested by the Contractor when required to discharge a lien against the real estate on which the construction project is taking place. A lien bond acts as security in place of cash or project funds having to be deposited by the Contractor to the Court. With the lien removed from the property the progress payments for the project can continue while the matter is being resolved. In the event that a lien claim is successful then the bond guarantees the Contractor’s payment if it is not able to satisfy the Judgment.

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