



# DID YOU KNOW?

## Mechanical Contractors Association of Toronto

The Mechanical Contractors Association of Toronto (MCAT) is the leader of the mechanical industrial, commercial and institutional sectors. The Mission of the MCA Toronto is to promote professionalism, cost-effectiveness, safety and productivity of mechanical services through education, labour relations, public relations and government affairs.

### Contract Surety

Contract surety bonds are used primarily in the construction industry. These bonds protect the *obligee (who you sign the contract with)*, from financial loss in the event that the contractor (principal) fails to fulfil the terms and conditions of their contract.

### Commonly Used Contract Surety Products

There are five commonly used contract surety products. The Prequalification Letter, Bid Bond and Consent of Surety/Agreement to Bond are used at the pre-tendering or tendering stage. The Performance Bond and the Labour & Material Payment Bond are used for contract performance.

Following are the descriptions of each of the 5 Contract Surety products:

#### 1. Pre-qualification Letter

A pre-qualification letter is not a bond, nor is it a legal commitment. It is a letter from the surety to the owner that confirms the "bondability" of its contractor client. By issuing this letter, the surety is acknowledging its business relationship and familiarity with the contractor. A pre-qualification letter is not binding.

A pre-qualification letter is used at the Request for Qualification (RFQ) or Expression of Interest (EOI) stage. An owner has the comfort of knowing the contractor has a relationship with the surety and the surety has a sufficient level of confidence in the contractor.

#### 2. Bid Bond

A bid bond is the most commonly used risk management tool at the tender stage. It is a legal instrument, enforceable by law and is a three-party agreement with specific obligations required by each party. A bid bond provides assurance to the project owner from the surety that the bidder is not only qualified, but they will take their tendering obligations seriously and will follow through on their commitments.

Bid bonds provide prequalification assurances that go hand in hand with performance and payment bonds. In other words, for a surety to provide a bid bond for a contract, the contractor must be pre-qualified and must meet the surety's criteria to be bondable from a performance perspective.

Should a contractor not enter into a contract after a bid bond has been posted, this may result in a claim\* against the bond for which the contractor will be held responsible (corporately and usually personally) for reimbursing the bonding company. The bid bond surety is normally 10% of the tender but can be higher as required. *\*The claim can only be for the **difference and up to the value amount of the bond.***

### What's Happening 2017

#### **Working at Heights Training**

*Local 46 - Available through October 1, 2017*

#### **MCA Toronto 54th Annual General Meeting**

*Blue Mountain Resort  
September 28-October 1*

#### **Advanced Leadership Institute**

*Massachusetts, USA  
Part I September 10-14, Part II November 5-10*

#### **Estimating 101**

##### **MCA Toronto Classroom**

*October 10, 17, 24, 31, November 21, 28  
Tuesday nights from 6:00 pm to 9:30 pm*

#### **WSIB Information Session**

##### **MCA Toronto Classroom**

*October 13, 2017 - 10:00 am to 12:00 pm*

#### **YEC Casa Loma Escape**

##### **Casa Loma, Toronto, ON**

*October 19, 2017 - 7:00 pm*

#### **Foreman Course**

##### **MCA Toronto Classroom**

*Part I: October 20, 27 November 3 (3 Fridays)  
Part II: November 10, 17 (2 Fridays)*

#### **CEC Dispatcher Training Program**

*MCA Toronto Classroom  
October 25, 26*

#### **MCA Canada 76th Annual Conference**

*Maui, Hawaii  
November 6-9*

#### **OPIA Plumbing Code Update Course**

##### **MCA Toronto Classroom**

*November 22, 2017 - 8:30 am to 4:00 pm*

#### **Construct Canada Tradeshow**

*Metro Toronto Convention Centre, Booth 641  
November 29-December 1*

### 3. Consent of Surety

A consent of surety is also commonly referred to as an agreement to bond. It is a legal commitment, but it is not a true bond as it is only executed by the surety, not the contractor.

It confirms to the project owner that should the contractor be awarded the job and execute the contract, the surety will provide the performance and/or payment bonds as per the terms outlined in the consent of surety. BUT, it is not an assurance that the contractor will enter into the contract, nor that the contractor will enter into the contract at the price quoted in the tendering process.

For a surety to step back from this obligation to issue performance bonds, it is likely that new and significant information has come to light between the bid and award phase.

### 4. Performance Bond

A performance bond is a bond that guarantees that the bonded contractor will perform its obligations under the contract in accordance with the contract's terms and conditions. The obligations under the contract includes that the project or equipment must be kept free of deficiencies for the specified term (usually 12 months or up to 2 or 5 years) from substantial terms of completion. Performance bonds are typically in the amount of 50% of the contract amount, but can also be issued for 100% of the contract amount. It should be noted that a surety is never liable for more than the total amount of the bond.

#### *Performance Bonds & Service Contracts*

Sureties often receive requests from their clients to issue bonds for contracts that provide ongoing services such as HVAC or Sprinklers maintenance which can extend for periods of five years or more. A growing trend toward longer terms for such service and maintenance contracts prompted the surety industry to develop multi-year performance and payment bonds that would contain a renewable feature. Many governments and agencies across the country have adopted these new bond forms as their standard security requirement on long term service contracts.

Multi-year bonds aren't only for long term service contracts. Construction contractors are often called upon to provide extended warranty protection against defective workmanship and materials and to furnish bonds which guarantee this obligation. To address this risk, the Surety Association of Canada has developed two versions of a multi-year renewable maintenance bond. One version is used in circumstances where the Principal has posted a performance bond on the project and the bond only responds to maintenance/warranty claims that do not fall under the performance bond's umbrella. The second version is for stand-alone warranty obligations where no performance security has been issued.

The multi-year renewal bonds acknowledge the overall contract term, but also stipulate an 'initial term' period for the bond as well as the 'renewal term' periods. The initial term will typically run for a period of one to three years; following which the surety and principal have the option of extending the protection by a Continuation Certificate for a series of renewal terms, typically of one or two years in duration. It should be noted that if the surety or contractor chooses not to extend the protection for the coming renewal term, this does not constitute a default that could trigger a claim under the bond.



## WSIB Information Session

Friday October 13, 2017 – 10 am to 12 pm

At the June 6, 2017 Meeting of the Safety Committee, request was made for the scheduling of a WSIB Information Session to provide MCA Toronto Members with timely information on WSIB Programs related to Chronic Mental Stress, Asbestos, Rate Framework Program.

In response to discussions held at that meeting, a WSIB Information Session has been scheduled for Friday October 13, 2017 from 10:00 am to 12:00 pm at the MCA Toronto Office. Please plan to attend this session where important & timely information will be shared on:

- **Chronic Mental Stress** - Presented by Carmen Mancini (ED, Operations) and Kerry Towndrow (Assistant Director, Policy)
- **Asbestos** - Presented by Janice Pollard (Manager, Occupational Disease)
- **Rate Framework System** - Presented by Richard Fink, Workplace Safety & Insurance Lawyer

Registration information to follow by email or please contact the MCA Toronto Office if you would like to register for this session at 416-491-9004.

## Ministry of Labour Falls – Ladder Safety Blitz

The Ministry of Labour will be conducting blitz inspections in construction sector workplaces and construction sites starting October 2, 2017, lasting until November 24, 2017. This blitz concerns safe ladder use, specifically:

- \* used according to manufacturer's instructions
- \* the condition of equipment
- \* set up and use

Please contact the MCA Toronto Office for additional information and reference materials re proper use of Step Ladders in Construction.

### Labour and Material Payment Bond

A labour and material payment bond guarantees that the bonded contractor will pay defined claimants for goods and/or services supplied for the bonded project. A claimant under a labour and material payment bond is a trade contractor or supplier who has a direct contract with the bonded contractor to supply goods or services to the bonded job. Lower tier subs or suppliers are not usually protected under the standard labour and material payment bond. It's very important to note that a payment bond is a companion document to the performance bond and the two should be executed together. Bonding companies typically will NOT issue a payment bond as a "stand alone" obligation. Like performance bonds, owners typically ask for 50% of the contract amount, but labour and material payment bonds can also be in the amount of 100%. The surety can never be liable for more than the total amount of the bond.

Although an obligee is named as a "trustee" under the bond, this is only for administrative purposes and does not mean the owner is obliged to act on a claimant's behalf. Claimants can claim against the bond directly.

Timing is everything when it comes to payment bonds. In order to make a valid claim, it must be submitted before the expiration of 120 days from the last day the claimant worked on the project or furnished materials to the project. With respect to holdback amounts, a claim must be made before the expiration of 120 days from the day on which the claimant should have been paid in full under the contract.

The bond amount applies to all claims from defined claimants. Any litigation or action under the bond must be initiated before one year from the time that the bonded contractor ceased work on the bonded project.

### Types of Contracts Secured by Surety

The most common types of projects secured by surety in the public sector are:

1. Construction contracts;
2. Service contracts (e.g. HVAC maintenance, Sprinklers Maintenance)

### Industry Licensing Requirements

In Canada, surety bonds may only be issued by companies licensed to do so, either federally, or by one of the provincial insurance regulatory bodies. The requirements to obtain such a license are demanding and applicants are required to demonstrate financial solvency and sufficient strength to meet potential claims obligations. Only firms that are licensed to sell surety bonds in Canada may become members of the Surety Association of Canada.

*Information for this article was provided courtesy of the Surety Association of Canada and reviewed in consultation with Mr. Brian Edmunds of Rosenberg & Parker of Canada, Inc an MCA Toronto Associate Member.*

## Mesothelioma Research & Screening Program



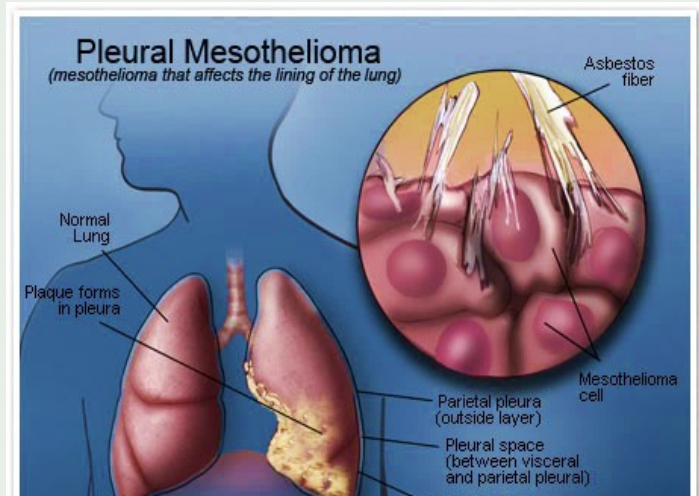
On Wednesday September 13, 2017, a meeting was held with Representatives of the Princess Margaret Cancer Foundation and Clinical Leaders of the Princess Margaret Mesothelioma Research & Screening Program. The meeting was well attended by over 25 representatives from MCA Toronto, Industry Associations and Union Counterparts.

Dr. Marc de Perrot, Thoracic Surgeon, delivered an informative presentation on the development of "Pleural Mesothelioma" due to Asbestos exposure. Dr. de Perrot stressed the importance of continued clinical studies and research that are required to develop more effective detection methods (i.e. blood tests) to provide earlier diagnosis and better prognosis for Mesothelioma patients.

Also in attendance was Dr. Penelope Bradbury, Medical Oncologist. Dr. Bradbury and her colleagues are driving forward the medical oncology trials that evaluate new drugs that could combat Mesothelioma.

Malka Green, Associate Campaign Director and Greg Lichti, Vice-President, Development with The Princess Margaret Cancer Foundation, stressed the crucial need for financial support required for continued operations of the Mesothelioma Research Program. MCA Toronto will continue to support the Mesothelioma Research & Screening Program.

Further developments will be communicated regarding the possibility of increasing financial support through combined efforts & contributions of MCA Toronto, Industry Associations & Union counterparts.



### MCA Toronto Past Presidents Events



Several of the MCA Toronto Past Presidents and members of the current Board of Governors gathered on September 14, 2017 for the Annual MCA Toronto Past Presidents Event. It was a great gathering where the group shared stories and reminisced over a game of Golf at the Whirlpool Golf Course followed by a delicious dinner at the Watermark Restaurant at the Hilton Hotel, Niagara Falls, ON.

### MCA Toronto Committee Appreciation Event

On September 22, 2017 MCA Toronto hosted a great Committee Appreciation Event at Sightlines Restaurant to watch the Toronto Blue Jays beat the New York Yankees 8-1. There were over 150 in attendance from MCA Toronto Contractor & Associate Members, MCA Toronto Past Presidents, representatives from the UA Local 46 JTAC, OPTC, ORAC, IHSA, etc..

We were also pleased to have amongst us three Mechanical Engineering students from Ryerson University who have expressed their keen interest of being involved with the MCA Toronto & Ryerson University Student Chapter initiative.

Thank you all for your support in making this another successful MCA Toronto event.

### We Want to Hear from You!

Your input is greatly valued! If you have any questions, suggestions, comments or concerns regarding the Did You Know Newsletter, please forward by email to: [vieira@mcatoronto.org](mailto:vieira@mcatoronto.org).

### Call for Committee Members

We are looking for enthusiastic MCA Toronto Members to join the Education Committee, Young Executives Committee and to participate in the UofT Student Chapter initiative. If you are interested in participating, please email [vieira@mcatoronto.org](mailto:vieira@mcatoronto.org).

**MCA TORONTO YOUNG EXECUTIVES**  
**ARE INVITED TO PARTICIPATE IN THE**  
**CASA LOMA ESCAPE**  
**Thursday October 19, 2017**  
**Arrival Time: 7:00 p.m.**  
**Escape Game Time: 7:30 p.m.**