

Subcontractor Performance Bond for Design-Build Projects



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- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it, and agree to be bound by its terms and conditions, and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.



SUBCONTRACTOR PERFORMANCE BOND FOR DESIGN-BUILD PROJECTS

*[Note: To be used with DBIA Document No 560, 565 or 570]
This bond form has been endorsed by The National Association of Surety Bond Producers and
The Surety & Fidelity Association of America*

SUBCONTRACTOR/PRINCIPAL: <i>(Name and address)</i>	SURETY: <i>(Name and contact information)</i>
DESIGN-BUILDER/OBLIGEE: <i>(Name and address)</i>	PROJECT: <i>(Name and location)</i>
AGREEMENT BETWEEN DESIGN-BUILDER AND SUBCONTRACTOR: <i>(also known as the Subcontract Agreement)</i> Dated: Amount:	BOND DATE: <i>(Not earlier than date of Subcontract Agreement)</i> BOND AMOUNT:

MODIFICATIONS TO THIS BOND:
(List modifications to this Bond below. If none, write "None")

BOND TERMS AND CONDITIONS

1 Binding Effect. The Subcontractor (which may be referred to in the Subcontract Agreement as “Design-Build Subcontractor”) and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Design-Builder for the performance of the Agreement between Design-Builder and Subcontractor (the “Subcontract Agreement”), which is incorporated herein by reference.

2 Intent of Bond. If the Subcontractor performs its obligations under the Subcontract Agreement, then the Surety’s obligations under this Bond are null and void, except to participate in meetings as provided in Section 4.

3 Waiver of Notice. The Surety hereby waives notice of changes to the Subcontract Agreement, including changes within the general scope, or of time or price, or to related lower-tier subcontracts or purchase orders.

4 Design-Builder’s Obligations. If there is no default in Design-Builder’s obligations under the Subcontract Agreement, then the Surety’s obligation under this Bond shall arise after the following steps have been taken by Design-Builder, as a condition precedent to a Bond claim:

4.1 The Design-Builder has first provided written notice to the Subcontractor and Surety at the addresses listed on page 1 of this Bond, that Design-Builder is considering declaring the Subcontractor in default and has requested and attempted to arrange a meeting with the Subcontractor and Surety, to be held not later than seven (7) days after receipt of Design-Builder’s notice, to discuss methods of performing the Subcontractor’s obligations under the Subcontract Agreement. This notice may be given contemporaneously with the seven (7) day cure notice under the Subcontract Agreement. If the Design-Builder, Subcontractor and Surety agree, the Subcontractor shall be allowed a reasonable time to perform its obligations under the Subcontract Agreement, but such an agreement shall not waive the Design-Builder’s right, if any, subsequently to declare the Subcontractor in default;

4.2 The Design-Builder declares the Subcontractor to be in default, terminates the Subcontract Agreement and notifies the Surety in writing; and

4.3 The Design-Builder has agreed to pay the balance remaining under the Subcontract Agreement (i.e., the total amount payable by the Design-Builder to the Subcontractor thereunder less amounts properly paid by the Design-Builder to the Subcontractor, the “Contract Balance”) to:

- .1** The Surety, in accordance with the terms of the Subcontract Agreement; or
- .2** Another subcontractor selected pursuant to Section 5.3 to perform the remaining obligations under the Subcontract Agreement.

5 Surety’s Obligations. When Design-Builder has satisfied the conditions of Section 4, the Surety shall promptly take one of the following actions, at the Surety’s expense:

5.1 Arrange for the Subcontractor to perform and complete the remaining obligations under the Subcontract Agreement, with consent of Design-Builder;

5.2 Undertake to perform and complete the remaining obligations under the Subcontract Agreement itself, through its agents or through independent contractors;

5.3 Obtain bids or negotiated proposals from qualified subcontractors acceptable to Design-Builder for a contract for performance and completion of the Subcontract Agreement, arrange for a contract to be prepared for execution by Design-Builder and a subcontractor selected with Design-Builder’s concurrence, to be secured by performance and payment bonds equivalent to those for the Subcontract Agreement, issued by a qualified surety. The Surety shall: a. make

available as Work progresses sufficient funds to pay the cost of completion of the Subcontract Agreement; and, b. pay to Design-Builder the amount of damages as described in Section 7;

5.4 Waive its right to complete the Work under Sections 5.2 or 5.3, and reimburse the Design-Builder the amount of its reasonable costs to complete the Work; or

5.5 Deny liability, in whole or in part, and notify the Design-Builder in writing, citing reasons therefor.

6 Design-Builder's Rights. If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Design-Builder to the Surety demanding that the Surety perform its obligations under this Bond and stating that the Design-Builder shall be entitled to enforce any remedy available to the Design-Builder. If the Surety proceeds as provided in Section 5.4, and the Design-Builder refuses the payment, or the Surety has denied liability, in whole or in part, under Section 5.5, the Design-Builder shall be entitled without further notice to enforce any remedy available to it.

7 Damages Covered. In any event, the Surety's obligations to the Design-Builder, and the Design-Builder's obligations to the Surety, shall not be greater than those of the Design-Builder and Subcontractor to each other, respectively, under the Subcontract Agreement. Subject to commitment by Design-Builder to payment of the Contract Balance, the Surety is obligated without duplication for:

7.1 The responsibilities of Subcontractor for correction of defective Work and completion of the Project;

7.2 Additional legal, design professional and delay costs resulting from Subcontractor's default, and resulting from the actions or failure to act of Surety under Section 5; and

7.3 Liquidated damages, or if no liquidated damages are specified in the Subcontract Agreement, actual damages caused by delayed performance or non-performance of Subcontractor.

8 Bond Liability. If the Surety elects to act under Sections 5.1, 5.3 or 5.4, the Surety's total liability shall not exceed the Bond Amount.

8.1 The Surety shall not be liable to the Design-Builder or others for obligations of the Subcontractor that are unrelated to the Subcontract Agreement, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.

9 Beneficiaries. No right of action shall accrue on this Bond to any person or entity other than Design-Builder or its heirs, executors, administrators, or successors, unless some other party is named in this Bond as a dual obligee.

10 Dispute Resolution. All disputes related to this Bond shall be instituted in any court of competent jurisdiction in the location in which the Project is located and shall be commenced within two (2) years after: a. the Design-Builder declares the Subcontractor in default under Section 4.2; or, b. Substantial Completion of the Project, whichever occurs first. If the provisions of this Section 10 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

10.1 In the event of bankruptcy of the Subcontractor, the Surety agrees that the Subcontractor is not a necessary or indispensable party to any legal action by Design-Builder against Surety to enforce the Surety's obligations under this Bond.

11 Notice. Unless otherwise noted below, written notice under this Bond to Surety, Design-Builder or Subcontractor shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)

For Claims on this Bond:

(check appropriate box)

Use the contact information shown on page 1; or

Use the following alternate contact information:

(fill in Surety claims administrator contact information below)

12 Statutory Compliance. If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.

13 Warranty Obligation. The Surety's obligations to the Design-Builder for warranties of the Subcontractor shall be the same as those required of the Subcontractor under the Subcontract Agreement, subject to the time limitation in Section 10. Unless otherwise stated below, the Surety's obligation for such warranties excludes: a) products, materials or equipment covered by a manufacturer's separate warranty; and b) claims by the Design-Builder first noticed to Surety in writing more than one year after the effective date of such warranty as specified under the Subcontract Agreement.

(List below any exceptions to the above limitations on Surety's warranty obligation, if any)

14 Authorization. The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Subcontractor, intending to be legally bound hereby, subject to the terms set out above, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

SUBCONTRACTOR (AS PRINCIPAL) Company:	SURETY Company:
Signature:	Signature:
Name and Title:	Name and Title:
	Corporate Seal
	(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

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Contact us



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