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# **SUBCONTRACTOR'S PAYMENT 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'S PAYMENT 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*

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

**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 pay for labor, services, materials and equipment furnished by Claimants for use in the performance of the above-referenced Agreement between Design-Builder and Subcontractor (the “Subcontract Agreement”), which is incorporated herein by reference.

**2 Intent of Bond.** If the Subcontractor promptly makes payment of all sums for all labor, services, materials, and equipment furnished for use in the performance of the Agreement, then the Surety’s obligations under this Bond are null and void. Otherwise the Surety’s obligations shall remain in full force and effect.

**3 Notice of Claim.** Every Claimant who has not been paid in full before the expiration of a period of ninety (90) days after such Claimant provided or performed the last of the work, services or labor, or furnished the last of the materials or equipment for which said claim is made, may have a right of action on this Bond.

**3.1** Claimants shall provide written notice to the Surety and send a copy, or notice thereof, to Design-Builder and Subcontractor, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim, and the last date such work, services or labor were performed, or the last materials or equipment were furnished in furtherance of the Subcontract Agreement.

**3.2** If Claimant does not have a direct contract with Subcontractor, the notice shall identify the person or entity with whom Claimant contracted and who has not made payment to Claimant.

**4 Surety’s Obligations.** When a Claimant has satisfied the conditions of Section 3, the Surety shall promptly take the following actions at the Surety’s expense:

**4.1** Send an answer to that Claimant, with a copy to the Design-Builder and Subcontractor, within sixty (60) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any disputed portions or amounts.

**4.2** Pay or arrange for payment of any undisputed amounts.

**5 Bond Liability.** The Surety’s total obligation shall not exceed the Bond Amount, plus the amount of reasonable attorney’s fees provided for herein.

**5.1** If the Surety fails to discharge its obligations under Sections 4.1 or 4.2, the Surety shall indemnify the Claimant for the reasonable attorney’s fees the Claimant incurs thereafter to successfully recover any sums found to be due and owing to the Claimant. If Claimant does not recover the entire amount claimed in its notice under Section 3, then such attorney’s fees shall be reduced in proportion to the amount actually recovered.

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

**6 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.

**7 Dispute Resolution.** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the State in which the Project is located. Such suit or action must be filed within one (1) year from the date: a) on which the Claimant sent a claim to the Surety pursuant to Section 3.1; or, b) on which the Claimant last performed labor or services or furnished

materials or equipment on the Project, whichever occurs first. If the provisions of this Section 7 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

**7.1** 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 any party against the Surety to enforce the Surety's obligations under this Bond.

**8 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.

**9 Copy To Be Furnished.** Upon written request of any person or entity appearing to be a potential Claimant on this Bond, Subcontractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

**10 Claimant Defined.** A Claimant is any individual or entity having a direct contract with the Subcontractor or having a contract with a lower-tier subcontractor that has a direct contract with the Subcontractor to furnish services, labor, materials or equipment for use in the performance of the Agreement.

**10.1** A Claimant may include amounts owed by the Subcontractor for design and other professional services furnished or performed by Claimant regardless of whether such services might form the basis for a mechanic's lien under applicable State law.

**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 Subcontractor Bonds.** If this Bond is issued for an agreement between the Subcontractor and a lower-tier subcontractor, the term Subcontractor in this Bond shall be deemed to be the bonded lower-tier subcontractor and the term Design-Builder shall be deemed to be Subcontractor.

**13 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 Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

<b>SUBCONTRACTOR (AS PRINCIPAL)</b> Company:	<b>SURETY</b> 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

SAMPLE