

**OFFICE OF THE STATE ENGINEER
PERFORMANCE & PAYMENT BOND INSTRUCTIONS**

No bond form other than the one provided by the Office of the State Engineer (hereinafter OSE) will be approved by the Attorney General's Office without their prior approval. Electronic versions of the enclosed bond form may be obtained from the web page of the Office of the State Engineer, providing the exact wording is retained: <http://boa.sd.gov/divisions/engineer/>

GENERAL NOTES

The most common errors include lack of titles, lack of acknowledgements, and incorrectly dated acknowledgements. The State of South Dakota requires that:

1. All bonds must be acknowledged and signed by both the Principal and Surety or Attorney-In-Fact. Signatures on the bond form must be original. In order to easily distinguish an original signature from a photocopied one, it is strongly recommended that signatories use ink colored other than black (such as blue) for writing signatures.
2. The Power of Attorney must be dated the same day as the bond.
3. "Strike-outs" and "white-outs" are unacceptable. Such bonds will be returned for re-execution.
4. The Performance and Payment Bond must be an original document. Photocopies, including color photocopies, will be returned for re-execution.
5. Ignoring or skipping any of the bond instructions will likely lead to an error or omission that will be cause for the bond to be returned for re-execution.

PAGE 1

1. Provide the Bond Number at the top of Page 1.
2. Fill in the name and business address of the Contractor (Principal).
3. Fill in the name and business address of the Surety. The Surety's address must be consistent with the address on the Power of Attorney. Be sure to use the Surety's main corporate office address, not a branch office address.
4. Provide the State of incorporation for the Surety.
5. Provide the exact dollar amount from the Agreement For Construction on the Performance and Payment Bond.
6. Provide the date that the Principal entered into contract with the Oblige. **This date is the date that appears on the Agreement For Construction.**
7. Provide the Project Name, Location, and OSE Project Number from the Agreement For Construction on the Bond.

PAGE 2

1. Fill in the **signed and sealed date** of the Bond. **This date cannot be before the date of the Agreement for Construction, and must be the same date that is used on the Power of Attorney.**
2. Complete the section pertinent to the Principal:
 - **If for an Individual:** provide the signature and typed name.
 - **If for a Corporation:** provide the signature, title, typed name, and business address. The principal must be the president, vice president, secretary, or treasurer. The name and title of the Principal must be identical in all sections of the bond.

No other title will be accepted without a certificate of authority to bind the corporation. **IF** the Principal executing the bond is **NOT** the president, vice president, secretary, or treasurer of the firm, a corporate officer must verify that such individual has the authority to execute bonds on behalf of the corporation by attaching a certificate of authority to bind the corporation. The certificate of authority must be signed by the president, vice president, secretary, or treasurer of the corporation and dated the same day as the bond.

- **If for a Partnership:** attach to the bond a statement of partnership authority which includes:
 - i. The name of the partnership;
 - ii. The street address of its chief executive office and of one office in South Dakota, if there is one;
 - iii. The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership.
 - iv. The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership.

- **If for an LLC:** provide the signature, title, typed name, and business address. The Principal must be the **Managing Member** of the LLC. The name and title of the Principal must be identical in all sections of the bond.
3. Complete the section pertinent to the Surety. The bond may be executed by an Attorney-In-Fact for the Surety Company or an officer of the Surety Company. The address must be the business address of the Surety that was used on Page 1. The individual who signs this section must have his or her signature acknowledged on Page 5. A Power of Attorney verifying this individual's authority must be attached to the bond.

4. Insurance Information Section:

If the Surety company is not based in South Dakota, then one person listed on the Power of Attorney must fill in all sections for the Surety on Page 2, including the Individual, Partnership or Corporate Surety Section and the insurance section. If the Surety company is based in South Dakota, then a separate agent with his/her name on the Power of Attorney is able to fill in the insurance section.

- **Surety's South Dakota License Number:** provide the Surety's South Dakota Insurance Division License Number.
- **Attorney-in-Fact's Name:** this is the name of the agent who is producing the Surety Bond.
- **Attorney-in-Fact's South Dakota License Number:** provide the South Dakota Insurance Division License Number for the agent who is producing the Surety Bond.

PAGES 3-5: ACKNOWLEDGEMENTS

1. **Acknowledgement of Principal:** choose the pertinent acknowledgment section (Individual, Partnership, Corporation, or LLC). The name and title of the acknowledged party must be identical to those provided on Page 2. The acknowledgment of the Principal must be completed and **dated on or after** the signed and sealed date of the bond.
2. **Acknowledgement of Surety:** choose the pertinent acknowledgment section (Corporate Officer or Attorney-In- Fact). The name and title of the acknowledged party must be identical to those provided on Page 2. The acknowledgment of the Surety must be completed and **dated the same date** as the signed and sealed date of the bond.
3. Check to be sure that each section is correctly completed by the notary, including the notary's signature and date of commission expiration. If a rubber seal is used, take care that the seal does not obscure any of the information provided in the acknowledgment section. The Principal and the Surety must be notarized separately.

POWER OF ATTORNEY

1. The Power of Attorney must be attached to the bond and be dated the same date as the **signed and sealed date** of the Bond (Page 2). The Attorney-In-Fact acknowledging the bond must be identified in the Power of Attorney as having the power to bind the surety. Do not have two different attorneys-in-fact acknowledge your bond and Power of Attorney.
2. The Power of Attorney must be an original document, not a copy. A raised seal or watermark should be present to identify it as an original. If the Power of Attorney attached to the bond is a copy and not an original, we need one of the following:
 - a) A letter certifying a copy of the Power of Attorney is recognized by the company.
 - b) A Certificate stating a copy of the Power of Attorney is recognized by the company.

The letter or certificate stating that a copy of the Power of Attorney is acceptable should be executed by a president, vice president, secretary, treasurer or attorney in fact of the bonding company.