

**OFFICE OF THE STATE ENGINEER (OSE)
PERFORMANCE & PAYMENT BOND INSTRUCTIONS**

No bond form other than the one provided by OSE will be approved without prior approval by the Attorney General's Office. The OSE bond form can be found at: <http://boa.sd.gov/state-engineer/forms.aspx>. The current version of the OSE bond must be used which can be confirmed by the date at the bottom of the form. No changes can be made to the language or content of the OSE bond.

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. Summary of date requirements (see below for further explanation):
 - The Bond must be dated on or after the date of the Agreement for Construction
 - Signature and Acknowledgement of Surety – Must be the same date as the Bond.
 - Power of Attorney – Must be the same date as the Bond.
 - Signature and Acknowledgement of Principal – Can be after the date of the Bond unless someone is signing under a Certificate of Authority.
3. "Strike-outs", "white-outs" and "write-overs" 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.
6. When addresses are required, the physical street address must be included. Bonds which have only a post office box for a required address will be returned.
7. Notaries – The individual who notarizes a signature i.e. the notary, cannot be a relative or family member of the principal or surety or of the individual who signs the bond for the principal or surety. Bonds that were notarized by a notary who is an apparent relative or family member will be returned.

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 and should be the address for the Surety's main corporate office, not a branch office.
4. Provide the State of incorporation for the Surety.
5. Provide the exact dollar amount from the Agreement For Construction.
6. Provide the date of the Agreement For Construction. **This is the date in the beginning paragraph of the Agreement For Construction.**
7. Provide the Project Name, Location, and OSE Project Number from the Agreement For Construction.
8. Attach a copy of the page(s) from the Agreement for Construction that contain the information requested in 5-7.

PAGE 2

1. Fill in the **signed and sealed date** of the Bond. **This date must be on or after the date of the Agreement for Construction (see above)**
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 name and title of the individual who signs for the Principal must be identical in all sections of the bond.

The individual who signs for the Principal should be the president, vice president, secretary, or treasurer as no other title will be accepted without a certificate of authority to bind the corporation. If the individual who signs the bond for the Principal 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 a president, vice president, secretary, or treasurer of the corporation and dated on or after the signed and sealed date of the bond but the same date as the Acknowledgement of Principal (see below).

- **If for a Partnership:** provide the signature, title, typed name, and business address. The name of the individual who signs for the Principal must be identical in all sections of the bond. 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.
- **The individual who signs for the Principal must have the authority to do so under the statement of partnership authority.**
- **If for an LLC:** provide the signature, title, typed name, and business address. The title used should be "Manager" or "Member". If the LLC is manager-managed, the individual who signs for the Principal must be a Manager of the LLC. If the LLC is member-managed, any member of the LLC can sign for the Principal. The name and title of the individual who signs for the Principal must be identical in all sections of the bond.
- 3. Complete the section pertinent to the Surety. The bond may be signed by an individual as Attorney-In-Fact for the Surety or by an officer of the Surety (president, vice president, secretary or treasurer of the company). The address must be the business address of the individual who signs the bond for the Surety. If the individual is signing as an Attorney-in-Fact, a Power of Attorney verifying the individual's authority must be attached to the bond (see the POWER OF ATTORNEY section below).
- **Surety's South Dakota License Number:** provide the Surety's South Dakota Insurance Division License Number.
- **Insurance Producer's Name and South Dakota License Number:** provide the name of the insurance producer. See: SDCL § 58-1-2. Provide the South Dakota Insurance Division License Number for the insurance producer or a statement why a license was not required.

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 acknowledgement section.

POWER OF ATTORNEY

1. If the bond is signed by an individual as Attorney-In-Fact for the Surety, a 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.
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, the following must be provided:
 - a) A letter certifying that a copy of the Power of Attorney is recognized by the company; or
 - b) A notarized Certificate stating that a copy of the Power of Attorney is recognized by the company.The letter or certificate must be signed by a president, vice president, secretary, treasurer or Attorney-In-Fact of the Surety.