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Why Your Surety Needs All That Information



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Navigators Surety Bond Request Form

Contractor (name/address):

Project Owner/Obligee (name/location):

Project (name/location):

Scope of work: _____

Special Conditions: (Design/Build, site, hazardous materials, etc.) _____

BID BOND

PERFORMANCE/PAYMENT BONDS

BID DATE: _____

CONTRACT DATE: _____

SPECIAL BOND FORM? _____
(IF YES, PLEASE ATTACH FORM)

BOND DATE: _____

ESTIMATE: _____

CONTRACT PRICE: _____

BID GUARANTEE: _____

PERFORMANCE: _____ % PAYMENT: _____ %

COMPLETION TIME: _____

***IF OWNER/OBLIGEE IS PRIVATE, THE FOLLOWING IS MANDATORY PRIOR TO BOND APPROVAL.**

LIQUIDATED DAMAGES: _____

- 1) Copy of the Contract
- 2) Evidence of Owner-Financing

RETAINAGE: _____ %

BID RESULTS:

SUBCONTRACTED: _____ %

1ST BIDDER: _____ \$

Attach complete subcontractor breakdown showing trade name and approximate subcontract value.

2ND BIDDER: _____ \$

3RD BIDDER: _____ \$

WORK ON HAND: _____

APPROVAL:

UNDERWRITER/DATE: _____

CONDITIONS (if applicable): _____



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Contractor (name/address):

- This should be the Principal named on the bond
- Affiliates or Subsidiaries can affect Indemnity Agreement
 - Fronting Arrangements”
 - Teaming
- Joint Ventures



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Project Owner/Obligee (name/location):

- The Named Obligee on the Bond
- Can be public owner, private owner, GC, etc.
- Prior experience with Owner
 - Not only yours
 - Surety's knowledge of them
 - Good or Bad
 - Surety's experience with Contract Terms/Conditions or Bond Forms
 - Surety's experience in getting changes done to benefit you/them
- In Territory or Out of Territory



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Scope of work: _____

Special Conditions: (Design/Build, site, hazardous materials, etc.) _____

- Detailed Description if preferred
- Nature of Project Compared to Your Traditional Work
- Assists with the Risk Assessment for Underwriter
- Special Conditions Important
 - Full Disclosure Needed
 - Can affect the rate charged (Design/Build)



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BID BOND

BID DATE: _____

SPECIAL BOND FORM? _____
(IF YES, PLEASE ATTACH FORM)

ESTIMATE: _____

BID GUARANTEE: _____

- Important to note it is a Bid and not “Final” Bond Request
 - Response time with a bid date
- Special Bond Forms, Particularly if it is a Private Construction or Subcontract Bid
 - Not the same as a Public Bid Bond
- Estimate should be your estimate, not Engineers Estimate unless that is the best option available
- Bid Guarantee in Dollars or Percentage
 - Found in Bid Specs



Subcontract Bid Bond Language

NOW, THEREFORE, if the Obligee shall accept **the original bid** of the Principal and the Principal shall enter into a Contract, **acceptable to both the Principal and Surety**, with the Obligee in accordance with the terms of such bid, and give such bond or bonds, **in a form acceptable to both the Principal and Surety**, with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay the Obligee the difference, not to exceed the penalty hereof, between the amount specified in said original bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED AND SUBJECT TO THE CONDITION PRECEDENT, that any claim brought or to be brought against the Surety to recover hereunder must be presented, in writing, to the Surety, attention of (Surety Company), Claim Department, (Surety Company HO Address), within sixty (60) days after the date set forth below.



Private Construction Bid Bond Language

NOW, THEREFORE, if the Obligee shall accept the original bid of the Principal and the Principal shall enter into a Contract, acceptable to both the Principal and Surety, with the Obligee in accordance with the terms of such bid, and give such bond or bonds, in a form acceptable to both the Principal and Surety, with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay the Obligee the difference, not to exceed the penalty hereof, between the amount specified in said original bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED AND SUBJECT TO THE CONDITION PRECEDENT, that (i) any claim brought or to be brought against the Surety to recover hereunder must be presented, in writing, to the Surety, attention of Surety Claims Dept., (Surety Company Name and Home Office Address), within sixty (60) days after the date set forth below; and (ii) **neither the Principal nor the Surety shall be bound hereunder unless the Obligee, prior to execution of said contract, shall provide evidence acceptable to the Principal and the Surety that adequate financing has been formally committed to cover the entire cost of the project which is the subject of said contract.**



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PERFORMANCE/PAYMENT BONDS

CONTRACT DATE: _____

BOND DATE: _____

CONTRACT PRICE: _____

PERFORMANCE: _____ % PAYMENT: _____ %

***IF OWNER/OBLIGEE IS PRIVATE, THE FOLLOWING IS MANDATORY PRIOR TO BOND APPROVAL:**

- 1) Copy of the Contract
- 2) Evidence of Owner-Financing

- Proper Dates are important
 - Bond cannot predate contract
 - Contract dated long before bond date
- % of bond becoming more prevelant
 - Both low % and more than 100%
 - Can change premium charge
- Financing important, just like with bid bond
- Copy of Contact when not public works is critical
 - Bond Guarantees Contract...Not Project!!
 - Sample Contract Lanaguage



Unacceptable Default Language

ARTICLE 26, DEFAULT

Should Subcontractor at any time:

- (a) fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of required quality to perform the Work with the skill, conformity, promptness and diligence required hereunder;
- (b) cause interference, stoppage, or delay to the Project or any activity necessary to complete the Project;
- (c) become insolvent;
- (d) fails to properly and promptly make payment for all materials and services provided in the performance of the Work; or

(e) fail in the Contractor's opinion in the performance or observance of any of the covenants, conditions, or other terms of this Subcontract, then in any such event, each of which shall constitute a default hereunder by Subcontractor, Contractor shall, after giving Subcontractor written notice of default and forty-eight (48) hours within which to cure said default, have the right to exercise any one or more of the following remedies:

- (i) require that Subcontractor utilize, at its own expense, overtime labor (including Saturday and Sunday Work) and additional shifts as necessary to overcome the consequences of any delay attributable to Subcontractor's default;
- (ii) attempt to remedy the default by whatever means Contractor may deem necessary or appropriate, including, but not limited to, correcting, furnishing, performing, or otherwise completing the Work, or any part thereof, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Subcontractor) and deducting the cost thereof (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) from any monies due or to become due to Subcontractor hereunder;
- (iii) after giving Subcontractor an additional forty-eight (48) hours written notice (at any time following the

expiration of the initial forty-eight (48) hours notice and curative period), terminate this Subcontract, without thereby waiving or releasing any rights or remedies against Subcontractor or its sureties, and by itself or through others take possession of the Work, and all materials, equipment, facilities, plants, tools, scaffolds and appliances of Subcontractor relating to the Work, for the purposes of completing the Work and securing to Contractor the payment of its costs (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) and other damages under the Subcontract and for the breach thereof, it being intended that Contractor shall, for the stated purposes, be the assignee of and have a security interest in the property described above to the extent located on the Project site (and Contractor may at any time file this Subcontract as a financing statement under applicable law); or

(iv) recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential (including without limitation any increase in Contractor's cost of insurance resulting from Subcontractor's failure to maintain insurance coverages required hereunder), and all reasonable attorneys' fees suffered or incurred by Contractor by reason of or as a result of Subcontractor's default.

After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work by Architect and full payment therefor by Owner, Contractor shall promptly pay Subcontractor the undisbursed balance of the Price, if any. If the cost of completion of the Work, plus the allowance for administrative burden, together with any other damages or losses sustained or incurred by Contractor, shall exceed the undisbursed balance of the Price, Subcontractor and its guarantors, surety, or sureties shall pay the difference within fifteen (15) days of written demand from Contractor.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or under the Contract Documents, or now or hereafter existing at law or in equity. Subcontractor's guarantors, surety, or sureties agree to be bound to Contractor with respect to such remedies notwithstanding any provision of the bonds provided pursuant to Article 10 hereof.



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Possible Solution

The Subcontractor will furnish all supervision, labor, materials, tools, equipment, appliances, and accessories, including all necessary scaffolding, and prosecute said work with due diligence without delay, and will not in any manner, by delay or otherwise, interfere with the work of the Contractor or other subcontractors. Should the Contractor conclude that the Subcontractor is delaying said work by failure to prosecute the work with diligence; should the Subcontractor allow judgments to be obtained and stand against it; should Subcontractor become insolvent; should Subcontractor have a committee of creditors appointed for it; should Subcontractor go into receivership or bankruptcy; should Subcontractor fail to pay any person or firm that furnished material or supplied or performed labor in the prosecution of the work; or should Subcontractor fail to perform its work with due diligence; then, if said Subcontractor fails to remedy the situation in a period of three (3) calendar days after written notice is given to it and its surety by the Contractor, addressed to its last known address or posted on the project, the Contractor may declare the Subcontractor to be in default. Whenever the Subcontractor shall be, and is declared by the Contractor to be in default under the Subcontract, with the Contractor having performed its obligations in the Subcontract, the Surety may promptly remedy the default in accordance with its options in the provided Subcontract Bond. Should Surety not remedy the default within 30 days of Contractor's notice to Surety of Subcontractor Default, Contractor may seize and make use of the Subcontractors' tools and equipment, and take over in whole or in part and complete the work with Contractor's own staff, another subcontractor, or both, charging the reasonable cost of the same to the Subcontractor's account. If, after the completion and acceptance of all work on the project, there is anything left in the Subcontractor's account, that balance will be paid to the Subcontractor. If, on the other hand, the expense of the Contractor completing the work is more than the balance due, the Subcontractor shall pay said amount to the Contractor. In the event it becomes necessary for the Contractor to collect any deficiency from the Subcontractor by legal action, the Subcontractor agrees to defray all Contractor's reasonable attorney's fees and other court expenses in connection with such action.



Onerous Indemnity Provisions

The contractor shall hold harmless and indemnify the Owner and its officers, representatives, and employees, from all claims, loss, damage, actions, causes of action, expense and/or liability resulting from, brought for, or on account of, any loss, personal injury, death, or property damage received or sustained by any person or persons, including but not limited to the Contractor, the Owner, or third parties, and any of their employees, agents, officers, or representatives, in any manner caused by, growing out of, resulting from, incident to, or connected with, the performance of this Contract, regardless of whether such claims, loss damage, actions, cause of actions, expense, and/or liability may be attributable, in whole or in part, to the fault, failure, or negligence to the Contractor or third parties or any of their employees, agents, officers, or representatives.

To the fullest extent permitted by Laws and regulations **CONTRACTOR** shall indemnify and hold harmless **OWNER** and **ENGINEER** and their consultants, agents and employees from and against all claims, damages, losses, and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of this work, provided that any such claim, damage, loss or expense (a) is attributable in bodily injury... or to destruction of tangible property... including the loss of use therefrom and (b) is caused in whole or in part by any negligent act or omission of **CONTRACTOR**, any subcontractor... regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.



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COMPLETION TIME: _____
LIQUIDATED DAMAGES: _____
RETAINAGE: _____ % _____
SUBCONTRACTED: _____ % _____
Attach complete subcontractor breakdown showing trade name and approximate subcontract value.

- Completion Time
 - What is stipulated in Contract
 - If subcontract, what is your work completion, not total project
- LD's
 - Steep LD's effect surety collateral
 - Consequential or Actual Damages
- Retainage
 - Does subcontract match prime contract?
- Sub Breakdown
 - Defines subcontract risk
 - How is that risk mitigated?
 - Can create subcontractor bonding requirement



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<u>BID RESULTS:</u>	
1 ST BIDDER: _____	\$ _____
2 ND BIDDER: _____	\$ _____
3 RD BIDDER: _____	\$ _____

- Important if available
 - Required for public bid project
 - Some will ask GC for information if Subcontract
- Bid Spreads generate questions
 - 10% rule
- Bond request for 2nd or 3rd bidder
 - What happened?



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WORK ON HAND:

- More important than most think
- Calculation of Aggregate Surety Program
 - CTC plus O/S Bids plus new work plus this bond
- Run-off from last WIP could be a big factor
- Unbonded work must be included



Questions?

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