

## SECTION 103 – AWARD AND EXECUTION OF CONTRACT

**103.04 Contract Bonds.** The Engineer may make changes in the work or add extra work within the contract scope without notice to the sureties (bonding companies) ([ITD Standard Specifications For Highway Construction \(SSHC\) 104.02, Contract Revisions](#)). If the contract value increases through the issuance of change orders or quantity variances, the bond still covers the contract work performed. The fees paid by the Contractor for payment and performance bonds are based upon a percentage of the actual contract value. Some bonding companies adjust their fees when the project is completed. For example, if large value change orders occur, the Contractor may make a request for the Department to issue a change order to cover bond fee increases. This is acceptable, provided the Contractor supports the request with bonding company invoices ([SSHC 109.03.C.5.d](#)).

Following the decision to award the contract, performance and payment bond forms are included with other documents and forwarded to the successful bidder for execution by the Contractor, Surety Company, or government obligation representative. Contracting Services will verify that the bonds, along with other documents, are fully executed and incorporated in the contract before the contract is authorized and signed by the Department's authorized representative.

**Performance Bond (See Figures [103.04-1](#) and [2](#)).** A performance bond guarantees and ensures contract completion. [Idaho Code 54-1926](#) [insert Code Reference] requires a performance bond on all Department contracts, regardless of size. The bond amount is for 100% of the contract amount. A surety company authorized to conduct business in Idaho must execute each bond. Government obligations may be used and must be delivered to the Department for safe keeping before contract award.

Following the decision to award the contract, contract bond forms are included with other documents and forwarded to the successful bidder for execution by the Contractor, Surety Company, or government obligation representative. Contracting Services (CS) will assure that the bond, along with other documents, is fully executed and incorporated into the contract before the contract is signed by the Department's authorized representative. The Department's official copy of the contract bond is filed along with other original documents at the District office. Government obligations are filed with the State Treasurer or a bank acceptable to the State Treasurer, with a Safe Keeping Receipt (Figure 103.04.2) delivered to the Department.

**Payment Bond (See Figures [103.04-3](#) and [4](#)).** The payment bond ([Idaho Code 54-1926](#)) guarantees and ensures that the contractor will pay every claimant who has furnished labor, materials, and rental equipment, as well as pay all taxes when due (required by [Title 63, Chapter 15, Idaho Code](#), in the prosecution of the contract).

A payment bond is required on Department contracts regardless of size. The bond amount is 100% of the contract amount. A surety company authorized to conduct business in Idaho must execute each

bond. Government obligations are filed with the State Treasurer or a bank acceptable to the State Treasurer, with a safe keeping receipt (Figure 103.04.3) delivered to the Department.

Following the decision to award the contract, payment bond forms are included with other documents and forwarded to the successful bidder for execution by the Contractor, Surety Company, or government obligation representative. Contracting Services will assure that the bond, along with other documents, is fully executed and incorporated in the contract before the contract is authorized and signed by the Department's authorized representative.

[Idaho Code 54-1927](#) provides any supplier of material, labor, or equipment who has not been paid in full within 90 days after the last of these services were furnished the right to sue on the payment bond for the amount or balance unpaid. In cases of subcontracts, the statute indicates that if a material, labor, or equipment supplier furnished these services to a subcontractor where no contractor relationship is expressed or implied with the contractor, the claimant shall not have the right of action unless the claimant has given written notice to the prime Contractor within 90 days from the date the last labor, equipment, or supplies were furnished. The claimant must notify the prime Contractor by a registered or certified letter.

Idaho Code 54-1927 also addresses the statute of limitations that can vary with each instance. Department personnel must not interpret the law for outside individuals. Suppliers and other entities that request such information should be referred to the law for their own interpretation or that of their attorney. When inquiries about the interpretation or procedures to follow concerning a payment bond are made, they should be referred to the District Engineering Manager.

[Title 63, Chapter 15, Idaho Code](#) states in part that "the Contractor will pay promptly, when due, all taxes (other than on real property), excises, and license fees due to the State, its subdivisions, and municipal and quasi-municipal corporations therein accrued or accruing during the term of the contract". The payment bond also ensures payment of these taxes.

The Department will provide a copy of the bond and the contract to anyone or their representative making an allegation with an affidavit that labor, material or both has been supplied and that payment has not been made. Standard copying charges may be assessed in accordance with the [Financial Services Manual](#). If a certified copy of the bond is requested, the Engineer can make the certification. The certification statement may be written on the back of the document as follows:

"I (Engineer's name) certify this document is a true copy from contract (insert number).

Signed (Engineer's signature)"

**SURETY****PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That we «CONTRACTOR», (Change "Corporation" to "Partnership" or "Sole Proprietor" if necessary)A CORPORATION, as Principal, and \_\_\_\_\_

as Surety are held and firmly bound unto the State of Idaho in the penal sum of

«WORDED CONTRACT AMOUNT»

(\$«NUMERICAL CONTRACT AMOUNT») lawful money of the United States, which sum is agreed to be the maximum liability hereunder, well and truly to be paid, and for the payment of which we and each one of us bind ourselves, our heir, executors, administrators and assigns, jointly and severally, firmly by these presents.

The condition of the instrument is such, that whereas the Principal has entered into a certain agreement, hereto attached, with the State of Idaho, dated \_\_\_\_\_, 20\_\_\_\_\_, for the work of

«JOB\_DESCRIPTION»; «LOCATION»; known as (Type either "Idaho" or "Idaho Federal Aid") Project No.

«PROJECT\_NO», Contract No. «CONTRACT\_NO», in «COUNTY» County, Key No. «KEY\_NO».

NOW, THEREFORE, If the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract and any extensions thereof that may be granted by the State, with or without notice to the Surety and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation to be null and void, otherwise to remain in full force and effect.

PROVIDED, However, that this bond is executed pursuant to the provisions of the Public Contracts Bond Act, and all liabilities on this bond shall be determined in accordance with said provisions to the same extent as if set forth in full herein.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument to become effective on the date of the contract agreement as set forth above.

CONTRACTOR (Sole Proprietors or Partnerships):

_____	_____
(Address)	(Contractor Name)
_____	_____
(City, State, Zip)	(Address)
By: _____	By: _____
(Signature)	(Signature)
_____	_____
(Print Name)	(Print Name)
_____	_____
Title (Partner)	Title (Sole Proprietor/Partner)
_____	_____
Dated	Dated

CONTRACTOR (Corporation):

Attest: _____	_____	
	(Principal)	
By: _____	_____	(AFFIX
(Signature)	(Address)	CORPORATE
_____	_____	SEAL)
(Print Name)	(City, State, Zip)	
	By: _____	
	(Signature)	
	_____	
	(Print Name)	
DATED: _____	_____	
	(Title)	

CORPORATE SURETY:

	_____	
	(Surety)	
	_____	(AFFIX
	(Address)	CORPORATE
	_____	SEAL)
	(City, State, Zip)	
	By: _____	
	(Signature)	
	_____	
	(Print Name)	
	_____	
	(Title)	
DATED: _____		

**ATTACH POWER OF ATTORNEY**

RESIDENT AGENT:

By: _____	DATED: _____
(Signature)	
_____	
(Print Name)	
_____	
(Address)	
_____	
(City, State, Zip)	

**Figure 103.04.1: Surety Performance Bond**

## GOVERNMENT OBLIGATION

### PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we «CONTRACTOR», (Change "Corporation" to "Partnership" or "Individual" if necessary) A CORPORATION, as Principal, and \_\_\_\_\_

as Pledgor of government obligations and the government obligations described herein, are held and firmly bound unto the State of Idaho in the penal sum of

«WORDED CONTRACT AMOUNT»

(\$«NUMERICAL CONTRACT AMOUNT») lawful money of the United States, which sum is agreed to be the maximum liability hereunder, well and truly to be paid, and for the payment of which we and each one of us bind ourselves, our heirs, executors, administrators and assign, jointly and severally, firmly by these presents.

The condition of this instrument is such, that whereas the Principal has entered into a certain agreement, hereto attached, with the State of Idaho, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, for the work of

«JOB\_DESCRIPTION»; «LOCATION»; known as (Type either "Idaho" or "Idaho Federal Aid") Project No.

«PROJECT\_NO», Contract No. «CONTRACT\_NO», in «COUNTY» County, Key No. «KEY\_NO».

NOW, THEREFORE, If the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract and any extensions thereof that may be granted by the State, with or without notice to the Pledgor and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Pledgor being hereby waived, then this obligation to be null and void, otherwise to remain in full force and effect.

PROVIDED, However, that this bond is executed pursuant to the provisions of the Public Contracts Bond Act, and all liabilities on this bond shall be determined in accordance with said provisions to the same extent as if set forth in full herein.

PLEDGE

To secure payment and performance of all obligations contained herein, \_\_\_\_\_ (Pledgor), does hereby grant unto the State of Idaho a security interest in and assigns, transfers, pledges and delivers to the State of Idaho government obligations as described in the following paragraph and furthermore that said government obligations meet the criteria set forth in Idaho Code, Section 54-1901, are in an amount equal at fair market value to the total amount of this bond and are not currently pledged or otherwise encumbered or obligated. Pledgor further authorizes the State of Idaho to collect or sell the described government obligations if Principal defaults in any of the obligations contained herein.

Government obligations pledged are described as follows: (see note below)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the Principal and Pledgor have executed this instrument to become effective on the date of the contract agreement as set forth above.

CONTRACTOR (Individual or Partnership):

(SEAL)

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
Dated

\_\_\_\_\_

\_\_\_\_\_

CONTRACTOR (Corporation):

Attest:

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_

\_\_\_\_\_  
(City)

(AFFIX  
CORPORATE  
SEAL)

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Note: Description must include the obligation type, CUSIP No., par value, fair market value, and maturity date.

PLEDGOR:

Attest:

\_\_\_\_\_  
(Pledgor)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_

\_\_\_\_\_  
(City)

(AFFIX  
CORPORATE  
SEAL)

\_\_\_\_\_  
(Address)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Figure 103.04.2: Government Obligation Performance Bond

**SURETY****PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, That we «CONTRACTOR», (Change "Corporation" to "Partnership" or "Sole Proprietor" if necessary)A CORPORATION, as Principal, and \_\_\_\_\_

as Surety are held and firmly bound unto the State of Idaho in the penal sum of

«WORDED CONTRACT AMOUNT»

(\$«NUMERICAL CONTRACT AMOUNT») lawful money of the United States, which sum is agreed to be the maximum liability hereunder, well and truly to be paid, and for the payment of which we and each one of us bind ourselves, our heir, executors, administrators and assigns, jointly and severally, firmly by these presents.

The condition of the instrument is such, that whereas the Principal has entered into a certain agreement, hereto attached, with the State of Idaho, dated \_\_\_\_\_, 20\_\_\_\_\_, for the work of

«JOB\_DESCRIPTION»; «LOCATION»; known as (Type either "Idaho" or "Idaho Federal Aid") Project No.

«PROJECT\_NO», Contract No. «CONTRACT\_NO», in «COUNTY» County, Key No. «KEY\_NO».

NOW, THEREFORE, If the said Principal shall pay all claimants supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, and any and all authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived and shall pay all taxes when due, as required by Title 63, Chapter 15, Idaho Code, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, However, that this bond is executed pursuant to the provisions of the Public Contracts Bond Act, and all liabilities on this bond shall be determined in accordance with said provisions to the same extent as if set forth in full herein.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument to become effective on the date of the contract agreement as set forth above.



CONTRACTOR (Sole Proprietors or Partnerships):

_____	_____
(Address)	(Contractor Name)
_____	_____
(City, State, Zip)	(Address)
By: _____	By: _____
(Signature)	(Signature)
_____	_____
(Print Name)	(Print Name)
_____	_____
Title (Partner)	Title (Sole Proprietor/Partner)
_____	_____
Dated	Dated

CONTRACTOR (Corporation):

Attest: _____	_____	
	(Principal)	
By: _____	_____	(AFFIX CORPORATE SEAL)
(Signature)	(Address)	
_____	_____	
(Print Name)	(City, State, Zip)	
	By: _____	
	(Signature)	
	_____	
	(Print Name)	
DATED: _____	_____	
	(Title)	

CORPORATE SURETY:

	_____	
	(Surety)	
	_____	(AFFIX CORPORATE SEAL)
	(Address)	
	_____	
	(City, State, Zip)	
	By: _____	
	(Signature)	
	_____	
	(Print Name)	
	_____	
	(Title)	
DATED: _____		

**ATTACH POWER OF ATTORNEY**

RESIDENT AGENT:

By: _____	DATED: _____
(Signature)	
_____	
(Print Name)	
_____	
(Address)	
_____	
(City, State, Zip)	

**Figure 103.04.3: Surety Payment Bond**

**GOVERNMENT OBLIGATION****PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, That we «CONTRACTOR», (Change "Corporation" to "Partnership" or "Individual" if necessary) A CORPORATION, as Principal, and \_\_\_\_\_

as Pledgor of government obligations and the government obligations described herein, are held and firmly bound unto the State of Idaho in the penal sum of

«WORDED CONTRACT AMOUNT»

(\$«NUMERICAL CONTRACT AMOUNT») lawful money of the United States, which sum is agreed to be the maximum liability hereunder, well and truly to be paid, and for the payment of which we and each one of us bind ourselves, our heirs, executors, administrators and assign, jointly and severally, firmly by these presents.

The condition of this instrument is such, that whereas the Principal has entered into a certain agreement, hereto attached, with the State of Idaho, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, for the work of «JOB\_DESCRIPTION»; «LOCATION»; known as (Type either "Idaho" or "Idaho Federal Aid") Project No. «PROJECT\_NO», Contract No. «CONTRACT\_NO», in «COUNTY» County, Key No. «KEY\_NO».

NOW, THEREFORE, If the said Principal shall pay all claimants supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said contract, and any and all authorized modifications of said contract that may hereafter be made, notice of which modifications to the Pledgor being hereby waived and shall pay all taxes when due, as required by Title 63, Chapter 15, Idaho Code, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, However, that this bond is executed pursuant to the provisions of the Public Contracts Bond Act, and all liabilities on this bond shall be determined in accordance with said provisions to the same extent as if set forth in full herein.

PLEDGE

To secure payment and performance of all obligations contained herein, \_\_\_\_\_ (Pledgor), does hereby grant unto the State of Idaho a security interest in and assigns, transfers, pledges and delivers to the State of Idaho government obligations as described in the following paragraph and furthermore that said government obligations meet the criteria set forth in Idaho Code, Section 54-1901, are in an amount equal at fair market value to the total amount of this bond and are not currently pledged or otherwise encumbered or obligated. Pledgor further authorizes the State of Idaho to collect or sell the described government obligations if Principal defaults in any of the obligations contained herein.

Government obligations pledged are described as follows: (see note below)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the Principal and Pledgor have executed this instrument to become effective on the date of the contract agreement as set forth above.

CONTRACTOR (Individual or Partnership):

(SEAL)

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
Dated

\_\_\_\_\_

\_\_\_\_\_

CONTRACTOR (Corporation):

Attest:

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_

\_\_\_\_\_  
(City)

(AFFIX  
CORPORATE  
SEAL)

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Note: Description must include the obligation type, CUSIP No., par value, fair market value, and maturity date.

PLEDGOR:

Attest:

\_\_\_\_\_  
(Pledgor)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_

\_\_\_\_\_  
(City)

(AFFIX  
CORPORATE  
SEAL)

\_\_\_\_\_  
(Address)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Figure 103.04.4: Government Obligation Payment Bond