

## Section Cover Page

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2005-02-01

**Section 00616**  
**Security for Payment of Claims**

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Use this Section to specify security for payment of claims. Normally specify security for payment of claims when estimated contract cost is \$100,000.00 or greater.

This Master Specification Section contains:

- .1 This Cover Sheet
- .2 Specification Section Text:
  - .1 Security for Payment of Claims
- .3 Labour and Material Payment Bond form (Document 00616A)

Editing: Use this Section as is, do not modify in any way.

Always include Document 00616A as an appendix to this Section.

**1. SECURITY FOR PAYMENT OF CLAIMS**

- .1 Contractor shall provide security for payment to claimants for labour and material used or reasonably required for use in the performance of the Contract. Such security shall be in the form of a Labour and Material Payment Bond for 50% of the Contract Price.
- .2 Bond shall be the Alberta Government standard form of Labour and Material Payment Bond, Document 00616A, latest edition, a copy of which is appended hereto. An electronically fillable version can be downloaded from:  
[http://www.infras.gov.ab.ca/Content/doctype486/production/00616b\\_a\\_eForm.pdf](http://www.infras.gov.ab.ca/Content/doctype486/production/00616b_a_eForm.pdf)
- .3 Bond shall be issued by a duly incorporated surety company authorized to transact business of suretyship in the Province of Alberta.
- .4 Submit bond to Minister within 15 days after date of issuance of Letter of Acceptance of bid.
- .5 Post a copy of the Labour and Material Payment Bond at the Place of the Work, as specified in Section 00639.

**END OF SECTION**

Bond No: ..... Amount ..... Contract No. ....  
(50% of Contract Price)

Project: .....

KNOW ALL PERSONS BY THESE PRESENTS THAT

.....  
(Principal)

of the ..... of ..... in the Province of Alberta, as Principal (hereinafter called "the Principal"),  
-and -

.....  
(Surety)

of the ..... of ..... in the Province of .....  
(hereinafter called "the Surety"), a surety authorized to transact business in the Province of Alberta, are held and firmly bound unto:

HER MAJESTY THE QUEEN In Right of Alberta, as represented by the Minister of Alberta Infrastructure and Transportation, as Trustee, (hereinafter called "the Minister") for the use and benefit of claimants as herein below defined, in the sum

of .....

..... dollars

(\$ .....), to be paid to the Minister or his successors in office, or to whom the said Minister or his successors may direct, and the said Principal and Surety bind themselves and each of them and their respective successors, heirs, executors, administrators and assigns jointly and severally, to pay the said sum under the terms of these presents:

WHEREAS the Principal has entered into a written Contract (hereinafter called "the Contract") with the Minister, dated the ..... day of ..... A.D. 20 ....., being Contract No. ...., and which Contract is by reference made a part hereof;

AND WHEREAS it is a term of the Contract that a Labour and Material Payment Bond be provided in favour of the Minister, as contained herein;

NOW THEREFORE the conditions of this obligation are such that if the Principal shall make payment to all claimants for all labour and material used or reasonably required for use in the performance of the Contract and should such payment be properly made, then this obligation shall be null and void; otherwise, this obligation and these conditions will remain in full force and effect, subject to the following conditions:

1. For the purpose of this bond:
  - (a) "claimant" means a person, including a body corporate, or a partnership, and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law, who has provided labour and material and who has not been paid for the same by the Principal or a subcontractor, in accordance with the Principal's or subcontractor's obligation to do so, provided that a person who rents equipment to the Principal or a subcontractor to be used in performance of the Contract under a contract which provides that all or a part of the rent is to be applied towards the purchase price thereof, shall only be a claimant to the extent of the prevailing Alberta Roadbuilders and Heavy Construction Association rental rates for the period during which the equipment was used in the performance of the Contract.
  - (b) "labour and material" means labour, equipment, materials or services used or reasonably required for use in the performance of the Contract.
  - (c) "services" means water, gas, electrical power, light, heat, oil, gasoline, steam, telephone, architectural, engineering and technical services, construction camp rental and catering, and other similar services, consumed or incurred, by the Principal or a subcontractor, at the Place of the Work and in the performance of the Work of the Contract.
  - (d) "subcontractor" means
    - (i) a person not contracting directly with the Minister, but contracting with a contractor who holds a contract with the Minister, for the provision of labour and material, and
    - (ii) a person contracting with the person first mentioned in subclause (i) for the provision of labour and material.
2. The Surety acknowledges and agrees that Surety means a person who guarantees to the Crown the payment of creditors.
3. The Principal and the Surety hereby jointly and severally agree with the Minister, as Trustee, that every claimant who has not been paid as provided for under the terms of his contract with the Principal or subcontractor before the expiration of a period of 90 days after the date on which the last of such claimant's work or labour was done or performed or materials were furnished by such claimant, may, as beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such claimant under the terms of his contract with the Principal or subcontractor, and have execution thereon; provided that the Minister is not obliged to do or take any act, action or proceeding against the Surety on behalf of any claimant to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Minister or by joining the Minister as a party to such proceeding, then such act, action or proceeding shall be taken on the understanding and basis that the claimant who takes such act, action or proceeding shall indemnify and save harmless the Minister against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Minister by reason thereof; provided still further that, subject to the foregoing terms and conditions, a claimant may use the name of the Minister to sue on and enforce the provisions of this Bond.

4. No suit or action shall be commenced pursuant to clause 3. hereof by any claimant unless such claimant shall give notice within the time limits hereinafter set forth, to each of the Principal, Surety and Minister, stating the amount that is claimed. Such notice shall be served by mailing the same to the Principal, Surety and Minister at the addresses shown in this bond, or served in any manner in which legal process may be served in the Province of Alberta. Such notice shall be given:
- (a) in respect of any claim for the amount or any portion thereof required to be held back from the claimant by the Principal or subcontractor under the terms of the claimant's contract with the Principal or subcontractor, within 120 days after such claimant should have been paid in full under the claimant's contract with the Principal or subcontractor,
  - (b) in respect of any claim other than for the holdback or portion thereof, referred to above, within 120 days after the date upon which such claimant did or performed the last of the work or furnished the last materials for which such claim was made under the claimant's contract.
5. Any suit by a claimant under this Bond shall be instituted before the expiration of 1 year from the date on which the Principal ceased work on the Contract, including work under the guarantees and warranties provided in the Contract, and shall be instituted in a court of competent jurisdiction in the Province of Alberta.
6. Upon receipt, at the address shown in this bond, by the Surety, of a notice of claim from a claimant, the Surety shall:
- (a) immediately commence its investigation of the claim, and
  - (b) within 15 days, send, in writing, to the claimant and the Minister, an acknowledgement of the notice of claim and a statement of the procedures to be followed by the claimant in order to attempt to settle the claim.
7. Pursuant to clause 6. hereof and following compliance with the procedures referred to in clause 6. and;
- (a) providing the claim is not being disputed, the Surety or the Principal, or both, shall make payment to the claimant within 30 days after the date of agreement on the quantum of the claim; or
  - (b) in the event the claim is being disputed, the Surety or the Principal, or both, shall, within 30 days, notify, in writing, the claimant and the Minister of the dispute, setting out the grounds of dispute.
8. Any material change in the Contract between the Principal and the Minister shall not prejudice the rights or interests of any claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
9. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith, and in accordance with the provisions hereof, by the Surety.
10. Where the aggregate of claims appears to the Minister to exceed the sum of the bond amount and money due and payable to the Principal, the Minister and the Surety may agree to suspend payment until all claimants have substantiated their claims.
11. The Surety shall not be liable for a greater sum than the maximum amount specified in this Bond.

ADDRESSES FOR NOTICES shall be:

MINISTER at Alberta Infrastructure and Transportation, Tender Administration, Main Floor, 6950 - 113 Street, Edmonton, Alberta. T6H 5V7

PRINCIPAL at

.....

SURETY at .....

.....

IN WITNESS WHEREOF the Principal and the Surety have signed and sealed this Bond, this ..... day

of ....., 20.....

SIGNED, SEALED and DELIVERED by  
the Principal in the Presence of

.....  
Witness To Principal

.....  
Principal

SIGNED, SEALED and DELIVERED by  
the Surety in the Presence of

.....  
Witness To Surety

.....  
Surety