



The State University
of New York

Office for Capital Facilities Guidance Document

CLC-1

Revised May 2023

Issued January 2012

Construction Bonds

A guide and checklist for the evaluation and
verification of performance bonds for
construction contracts

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Bond Facts & Descriptions

Bid Bonds

A bid bond or other security is required from all contractors submitting bids for construction contracts of \$20,000 or more. Other forms of bid security are a bank draft or certified check made out to SUNY. The purpose of a bid bond is to act as a security for the campus to ensure that the successful bidder will enter into a contract with SUNY for the amount of its bid and will provide performance bonds as required. If the successful bidder should refuse or be unable to enter into a contract for the amount of its bid or provide the performance bond as required, the contractor will forfeit the entire bid bond or other bid security to SUNY. When a successful bidder is selected and appropriately notified, SUNY will retain the bid bond or bid security until a contract is signed and satisfactory performance bonds are provided by the Contractor. SUNY will return the bid bond or security to unsuccessful bidders shortly after opening of proposals. SUNY may elect to defer the return the bid bond security of the next lowest bidder until after contract signing.

Performance Bonds

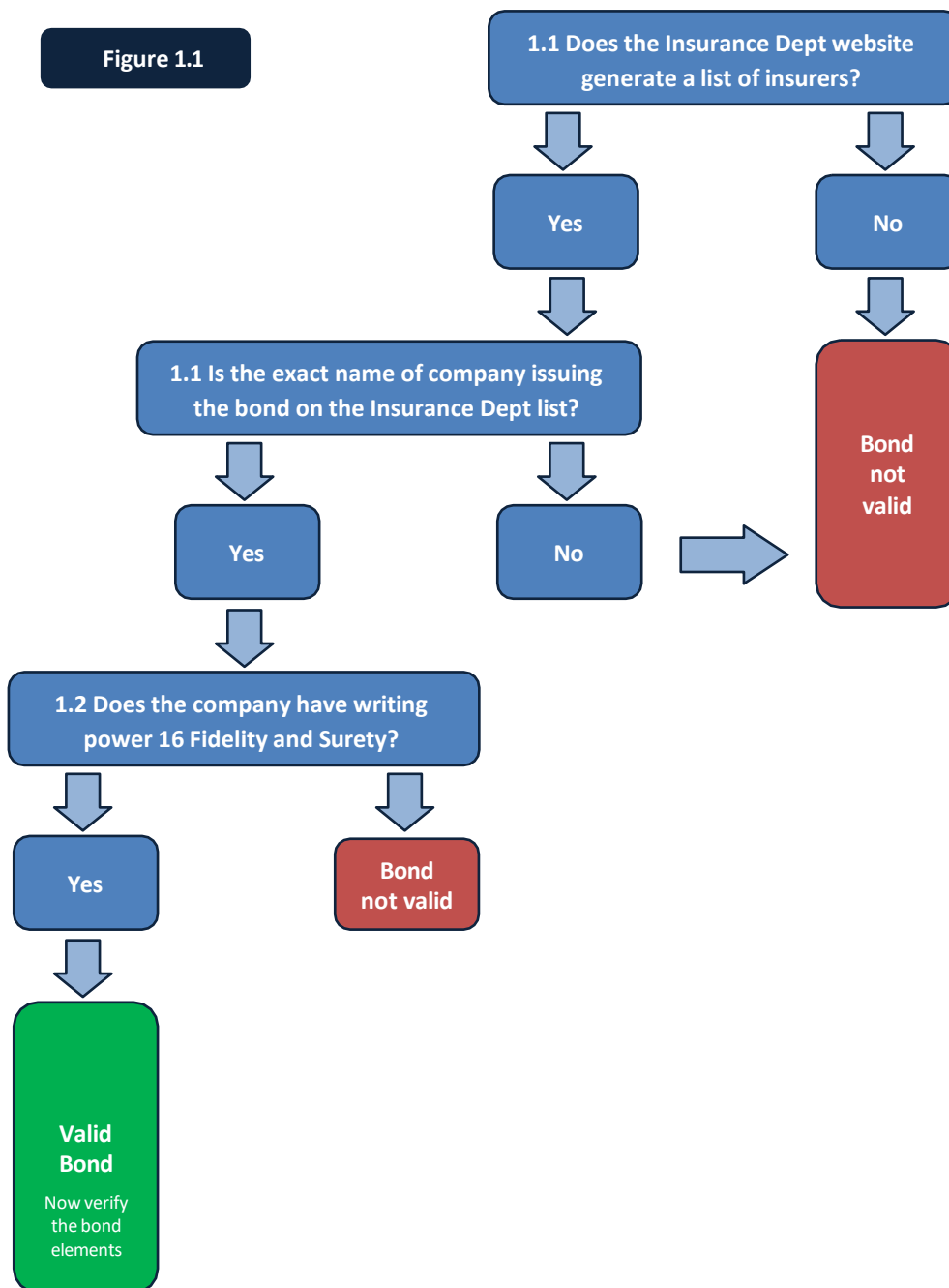
Also called “contract bonds,” these bonds do what their name implies – guarantee the contractor’s performance. Performance bonds guarantee that the contractor will perform according to the specifications of the construction contract. If the contractor fails to perform or otherwise defaults on under the contract, the bond issuer (surety) is responsible for completing the project. The bond issuer will then hire a contractor to complete the project. The campus has no contractual relationship with that contractor. The campus is responsible for paying the bond issuer for the completion of the project, but not more than the remaining contract balance. Any further amount needed to complete the project, up to the amount bonded, will come from the bond issuer. The bond issuer’s total liability is equal to the amount listed on the face of the bond. Although it does not occur often, the bond issuer can choose not to complete the project and instead pay the campus the face value of the bond.

Performance bonds must be submitted by the lowest responsible bidder prior to the execution of a contract. SUNY’s Construction Contracting Procedure permits performance bonds to be waived for construction contracts that (a) have a value of \$50,000 or less; **OR** (b) when there is to be only one payment to the contractor after the completion and acceptance of the work. See Construction Contracting [Procedure Item 7554](#) for details.

Labor and Materials Bonds

Also known as a “payment bond,” these bonds guarantee that the contractor will pay all amounts owed for the labor and materials necessary for the project. If a contractor does not pay for labor and materials, the subcontractors and workers may file liens against the completed project. Labor and material bonds ensure the liens are paid by the bond issuer (surety), instead of by the campus. SUNY’s Construction Contracting Procedure does not permit waiver of labor and materials bonds.

Labor and material bonds must be submitted by the lowest responsible bidder prior to the execution of a contract.



Bond Verification Process

1. Determine if bond issuer is licensed to write surety bonds in New York
 (See Figure 1.1 for illustration and Attachment 2 for an example)

Go to the NYS Department of Finance Services website: <https://myportal.dfs.ny.gov/web/guest-applications/ins.-company-search>

1.1. Enter the name of the bond issuer: *Ex: Travelers*

- Did Insurance Dept website generate a list of insurers?
- Does the exact name of the company issuing a bond appear on the Insurance Dept. list?

- 1.2. Select the EXACT NAME of the bond issuer from the list: *Ex: Travelers Casualty and Surety Company of America.*
- Make sure the company's Domicile is New York
 - A page with Company details will show the insurers "current writing powers" by numerical code. Fidelity and Surety bond power is number 16.
 - Does the company have writing power 16 Fidelity and Surety?
 - If no, the Insurance Dept. website's "Company Detail" page provides a telephone number for the insurer. If the Insurance Dept. website does not indicate that the company has writing power for Fidelity & Surety (No. 16), contact the Department of Financial Services at https://www.dfs.ny.gov/contact_us/main

2. Verify Bond Elements

After confirming that the bond issuer is authorized to write the bond it must be reviewed for compliance with various requirements, each of which is explained below.

2.1. Amount of Bond

The amount must be the EXACT amount of the contract.

2.2. Date of Bonds

Bonds should be dated either the same date that the Contract is signed, or shortly thereafter. Bonds secure contract performance – if there is no contract in effect when the bond was issued, the validity of the bond is subject to question.

2.3. Execution (signature)

2.3.1. Signature of principal (the contractor) is required.

2.3.2. Signature of Surety (insurer) by the Attorney-in-Fact is required. The Attorney-in-Fact is assigned by insurer, and is usually a Vice President of the insurance company.

2.3.3. Acknowledgement of signatures required

- Each signature must be acknowledged
- If there is more than one bond, signature acknowledgements are required for each bond, unless the acknowledgements for each signature indicate there is more than one bond, by referring to the documents in the plural.
 - For example: "*Person X appeared before me and executed the foregoing instruments*"
- On the sample bond provided, the acknowledgements cover only one "instrument," the "*foregoing instrument.*"

¹ Insurance companies may participate in an unincorporated association known as a *reciprocal exchange*, with each insured insuring the other insureds within the association. (Thus, each participant in this pool is both an insurer and an insured.) An attorney-in-fact administers the exchange. Duties of the attorney-in fact include paying losses experienced by the exchange, investing premium inflow into the exchange, recruiting new members, underwriting the inflow of new and renewal business, receiving premiums, and exchanging reinsurance contracts. Members share profits and losses in the same proportion as the amount of insurance purchased from the exchange by that member.

2.4. Power of Attorney

The Attorney-in-Fact must be authorized to sign the bond on behalf of the insurer. If the Attorney-in-Fact does not have the power to sign, the bond is not valid. Therefore, a POA is attached to every bond, indicating who the insurance company has appointed as its Attorney-in-Fact to sign surety bonds. The sample bond provides a POA which shows that *Richard A. Lyons* was appointed by the company as Attorney-in-Fact.

Review the POA to determine if it has an expiration date. (For example, does it state, “This instrument shall remain in effect for two years from the date hereof.”) Confirm that the POA was still in effect when the Attorney-in-Fact signed the bond.

2.5. Dates of Power of Attorney and Signature of Attorney-in-Fact

The Attorney-in-Fact must be appointed by the Power of Attorney **before or on the same day** that they sign the bond.

2.6. Financial Statements

2.6.1. Date of Financial Statement: The insurance company that issues the bond must also attach a financial statement to show that it has sufficient assets to pay the bond if necessary. Financial statements are generally dated “as of” December, but may not actually be issued until several months later. If the financial statement is not from the insurance company’s immediately preceding fiscal year, it should be rejected as it was on the sample bond (bond was written in May 2023, financial statement was dated December 2021).

2.6.2. Surplus shown on Financial Statement: Identify the amount of “Surplus” shown on the insurer’s financial statement. Identify the amount of the total construction project. The amount of the project cannot exceed 10% of the insurer’s surplus. If the surplus is insufficient, contractor must purchase reinsurance to cover the deficiency.²

Example 1: \$1,000,000 surplus can support a \$100,000 project

Example 2: using sample bond

- “Total Surplus to Policyholders” is \$1,826,348,881
- 10% of surplus is \$18,263,488
- Project amount (from face of bond) is \$1,156,400; surplus is sufficient

A checklist (Attachment 1) is provided to assist you in verification of bonds. It is recommended that this checklist be included in the procurement record. If you have questions regarding the validity of a bond, contact your campus counsel.

² Reinsurance is a form of insurance that insurance companies buy for their own protection, “a sharing of insurance.” An insurer (*the reinsured*) reduces its possible maximum loss on either a individual risk (facultative reinsurance) or a large number of risks (automatic reinsurance) by giving (*ceding*) a portion of its liability to another insurance company (*the reinsurer*). The Attorney General’s office notes that you may see multiple insurers issuing bonds because of this risk-spreading.

General Information

Project Name: _____ Date: _____

Project Number: _____ Reviewer: _____

1. Is bond issuer licensed to write surety bonds in New York?

- 1.1. Exact name of the company issuing a bond appeared on the Insurance Dept. list
- 1.2. Company has writing power 16 - Fidelity and Surety.

2. Bond Elements

- 2.1. Amount of Bond is the EXACT amount of the project.
- 2.2. Date of Bond is date of contract signature or after
- 2.3. Signatures are present
 - 2.3.1. Signature of principal (the contractor)
 - 2.3.2. Signature of Surety (insurer) by the Attorney-in-Fact
 - 2.3.3. Acknowledgement of signatures – one for each individual signer, or acknowledgement language is plural and applies to all signers
- 2.4. Power of Attorney with valid expiration date attached
- 2.5. Signature of Attorney-in-Fact was made when Power of Attorney was in effect.
- 2.6. Financial Statements are attached and with adequate surplus (the project cannot exceed 10% of the insurer's surplus – see example in Guidance Document.)

1.) To determine whether an insurance company is licensed to issue Surety bonds, visit the “Insurance Company Search” page New York State Department of Financial Services website

<https://myportal.dfs.ny.gov/web/guest-applications/ins.-company-search>

a. Prior to executing search, either select New York as the Domicile:

Ins. Company Search

Basic Search

To select a company, use one of the following options:

Company Name Starting with: Search

Company Name Containing: Search

Company Name from the List: Search

NAIC Number: Search

Enhanced Search

Use one of the following criteria to generate a list of desired companies:

Org Type: "I want to see all companies." Search

[List All Org Types with Descriptions](#)

Blank Type: (All) and Domicile: (All) Search

Lines of Business: (All) [Writing Power Description](#)

and Domicile: **New York** and OrgType: (All) Search

[List All Companies with Website Addresses](#)

[List All Companies with Special Risk](#)

DMV Code (1-699): Search

[List All Companies with DMV Code](#)

Group Code OR the Starting Letter(s) of Group Name: Search

[List All Companies with Groups](#)

Ins. Company Search

Search Results
[Company Search](#) [Print or Save results / SaveWithAddress](#)
 Total: 617, lob., any, NY

NAIC#	Company Name	Org	Domicile	Group# /Group Name	FID	LOB
32220	21st Century North America Insurance Company	PC	New York	69/FARMERS INSURANCE GROUP	133333609	3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,19,20,21.
11105	A Central Insurance Company	PC	New York	6518/NYCM Ins Group	161598412	4,5,6,7,8,9,10,11,12,13,14,15,16,19,20.
15282	AAA Life Insurance Company of New York	LF	New York	85/Automobile Club MI Group	456668011	1,2,3.
42544	Academic Health Professionals Insurance Association - A Reciprocal Insurer	REC	New York		061313252	13,14.
50028	ACE Capital Title Reinsurance Company	TU	New York	62/AACE Ltd. Group	061434264	18.
N6444	Actors Fund of America	CHA	New York		null	NA.
16084	Adecco Indemnity Company of NY, Inc.	CP	New York		null	Pure.
12583	Adirondack Insurance Exchange	REC	New York	8/A/STATE INS. GROUP	571162209	4,5,6,7,8,11,12,13,14,17,19,20,21,22,26(A)(B)(C)(D).
14408	Aetna Better Health	MLT	New York		null	N/A.
95234	Aetna Health Inc	MO	New York	1/A/E/NA Group	222663623	NA.
84450	Aetna Health Insurance Company of New York	HA	New York	1/A/E/NA Group	570805126	3.
15017	Affinity Health Plan	HIS	New York		null	N.A.
10413	Affirmative Direct Insurance Company	PC	New York		133571448	4,5,6,7,8,9,12,13,14,19,20,21.
N0065	Africa Inland Mission International, Inc.	CHA	New York		null	NA.
15588	AgeWell New York, LLC	MLT	New York		null	N/A.
12478	AGP Services Corp.	CP	New York		null	Pure.
19399	AIU Insurance Company	PC	New York	12/A/AMERICAN INTERNATIONAL GROUP	135303710	3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,19,20,21,22,24,26(A)(B)(C)(D),27,28,29,1&R.
N5936	Albany Medical Center Foundation, Inc.	CHA	New York		null	NA.
24899	Alaa North America Insurance Company	PC	New York	473/Apollo Global Management Group	061022232	3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,19,20,21.
N4206	Alfred University	HA	New York		null	NA.
30970	Allegany Co-op Insurance Company	PC	New York	478/Allegany Coop & Conemaugh Valley Group	160328320	4,5,6,7,8,9,10,11,12,13,14,19,20.
N5589	Allegany-Cattaraugus Schools Medical Health Plan	CH	New York		null	NA.
64190	Allianz Life Insurance Company of New York	LF	New York	76/ALLIANZ INS. GROUP	133191369	1,2,3.
60216	Amalgamated Life Insurance Company	L	New York		135501223	1,3(i).
N8010	American Baptist Foreign Mission Society	CHA	New York		null	NA.
N8030	American Bible Society	CHA	New York		null	NA.
N9284	American Cancer Society, Inc.	CHA	New York		null	NA.
N3111	American Civil Liberties Union Foundation	CHA	New York		null	NA.
N9069	American Committee for Shaare Zedek Hospital in Jerusalem, Inc.	CHA	New York		null	NA.

- b. OR, search for the insurance company by name, but make sure the Domicile listed for the exact company is New York:

Ins. Company Search
Search Results
[Company Search](#) [Print or Save results /SaveWithAddress](#)
Total: 17 travelers

NAIC#	Company Name	Org	Domicile	Group# /Group Name	Fid	Website
81466	<u>Commercial Travelers Life Insurance Company</u>	LF	New York		150274810	WWW.COMMERCIALTRAVELERS.COM
56383	<u>Order of United Commercial Travelers of America</u>	FRA	Ohio		314273120	www.uct.org
19038	<u>Travelers Casualty and Surety Company</u>	PC	Connecticut	3548/Travelers Group	066033504	www.travelers.com
31194	<u>Travelers Casualty and Surety Company of America</u>	PC	Connecticut	3548/Travelers Group	060907370	www.travelers.com
41769	<u>Travelers Casualty Company</u>	PC	Connecticut	3548/Travelers Group	411435765	www.travelers.com
36170	<u>Travelers Casualty Company of Connecticut</u>	PC	Connecticut	3548/Travelers Group	061286266	www.travelers.com
19046	<u>Travelers Casualty Insurance Company of America</u>	PC	Connecticut	3548/Travelers Group	060876835	STPAULTRAVELERS.COM
40282	<u>Travelers Commercial Casualty Company</u>	PC	Connecticut	3548/Travelers Group	953634110	www.travelers.com
36137	<u>Travelers Commercial Insurance Company</u>	PC	Connecticut	3548/Travelers Group	061286268	www.travelers.com
27998	<u>Travelers Home and Marine Insurance Company</u>	PC	Connecticut	3548/Travelers Group	351838079	www.travelers.com
25658	<u>Travelers Indemnity Company</u>	PC	Connecticut	3548/Travelers Group	060566050	www.travelers.com
25666	<u>Travelers Indemnity Company of America</u>	PC	Connecticut	3548/Travelers Group	586020487	www.travelers.com
25682	<u>Travelers Indemnity Company of Connecticut</u>	PC	Connecticut	3548/Travelers Group	060336212	www.travelers.com
38130	<u>Travelers Personal Insurance Company</u>	PC	Connecticut	3548/Travelers Group	363703200	www.travelers.com
36145	<u>Travelers Personal Security Insurance Company</u>	PC	Connecticut	3548/Travelers Group	061286264	www.travelers.com
25674	<u>Travelers Property Casualty Company of America</u>	PC	Connecticut	3548/Travelers Group	362719165	STPAULTRAVELERS.COM
36161	<u>Travelers Property Casualty Insurance Company</u>	PC	Connecticut	3548/Travelers Group	061286274	www.travelers.com

- 2.) Each insurance company will list their Current Writing Powers (Writing Power 16 – Fidelity and Security *must* be listed here for the company to be deemed eligible:

Ins. Company Search
Company Detail
[Company Search](#) [Print or Save details](#)

NAIC#: 32220	DOM: New York	Group: FARMERS INSURANCE GROUP	Phone: 302-252-2000
CPAF: 852	ORG: PC	Group#: 69	Spl Risk:
DMV#: 56	Website: www.21st.com	Licensed Dt: 09/30/1985	Fid: 133333609

21st Century North America Insurance Company
21st Century Plaza
3 Beaver Valley Road
Wilmington, DE 19803-1115

Company Name History:
(No Data Available)

Current Writing Powers:

NYS Insurance Law Section	Line of Business Code	Description
1113(a)	3	Accident And Health
1113(a)	4	Fire
1113(a)	5	Miscellaneous Property
1113(a)	6	Water Damage
1113(a)	7	Burglary And Theft
1113(a)	8	Glass
1113(a)	9	Boiler And Machinery
1113(a)	10	Elevator
1113(a)	11	Animal
1113(a)	12	Collision
1113(a)	13	Personal Injury Liability
1113(a)	14	Property Damage Liability
1113(a)	15	Workers' Compensation And Employers' Liability
1113(a)	16	Fidelity And Surety
1113(a)	17	Credit
1113(a)	19	Motor Vehicle And Aircraft Physical Damage
1113(a)	20	Marine And Inland Marine
1113(a)	21	Marine Protection And Indemnity