

# OCD-DRU HMGP Procedure Notice

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This version supersedes all previous versions of this procedure.

**Approved:**



William Haygood, OCD-DRU  
Hazard Mitigation Manager

**Subject:** Elevation Contractor Bond Requirements  
**Effective:** 11/01/2011

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## **Procedure Summary**

The following information is to provide the required bonding provisions which homeowners shall have in the contracts with their elevation contractors in order to provide protection to the homeowner that the elevation project will be completed timely and funds paid to the contractor are used for the project.

Effective December 1, 2011, pre-construction meetings are required for all elevation projects regardless of whether a bond is obtained or not. The contractor, homeowner, and an OCD-DRU HMGP representative shall attend the meeting. The meeting will occur prior to an Advance Payment being made. This meeting shall be held at the house to be elevated. The contractor shall bring a copy of the contract and the Engineering Plans. The scope of work and contract will be discussed in detail at the meeting. The pre-construction meeting shall occur prior to the submission of an initial payment request.

Effective November 1, 2011, all elevation initial advance payment requests will follow one of the methods discussed within this procedure. (If the applicant is seeking reimbursement payments upon project completion, a bond is not required.)

## **Bonding**

A performance and a payment bond shall be provided for all contracts for which OCD-DRU HMGP has not issued a payment. A bond may be written to cover an individual project or to cover multiple projects. Bonds covering multiple properties must have an aggregate amount sufficient to cover the

contract amount for each individual contract. In order to be validated, the bond must identify the address of the property to be elevated.

If payment has been issued by OCD-DRU HMGP prior to November 1, 2011, this Procedure shall not apply. Prior to OCD-DRU HMGP submitting an application for payment, the contractor must submit a letter from the bonding company acknowledging the surety's commitment to issue a Performance and a Payment Bond as prescribed herein, with the only condition to the commitment being the receipt of the initial HMGP funding under the Alternative Payment Option procedure. Alternatively, if required by the surety, OCD-DRU HMGP will issue a commitment of funds contingent upon delivery of the bond. After initial payment has been issued by OCD-DRU HMGP, the contractor shall obtain and provide a performance bond and a payment bond as security for the faithful performance of the work and payment of all contractors' obligations under the contract. The bond shall be provided within 45 days of issuance of the funds.

The bonds should provide at a minimum the protection of the sample forms attached to this policy notice. If the Contractor furnishes a bond which combines the payment and performance features on one form, the stated penal limit shall be considered to apply separately and in the total stated amount to include both the payment features and the performance features of the bond thereby giving the Owner the same protection separate bonds in the full amount of the contract price would provide. Both the payment and performance features of the bond must be covered by a bond.

Contractors' submission of false or fraudulent documentation shall constitute a gross misrepresentation on the part of the contractor and shall result in the immediate imposition of sanctions upon said contractor up to and including disqualification from the program.

The surety issuing said performance bond shall be, as of the date of issuance of the bond, licensed to do business in the State of Louisiana and shall also:

1. Be a surety or insurance company on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide, to write individual bonds up to ten percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide, or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.
2. Not write a bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A- rating by A.M. Best up to a limit of ten percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a bond when the penalty exceeds fifteen percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its

liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

All bonds must pass the OCD-DRU HMGP bond review process. **Contractors shall not initiate construction until the bond has been reviewed and approved by OCD-DRU HMGP as demonstrated through a notice to proceed.**

The Contractor is responsible to properly and timely file a notice of the contract with the bond attached into the mortgage records of the clerk of court in the parish in which the property is located as required by La. R.S. 9:4811 and provide the evidence of recordation to the homeowner and OCD-DRU HMGP.

If the OCD-DRU-HMGP determines that a contractor is not properly bonded as described above, OCD-DRU-HMGP may require that the contractor remit all or any unearned funds, as determined by the State, previously paid to it from whatever source, back to said source; may not have additional contracts approved; and may be suspended from being approved for additional advance payments.

#### **Bonding Alternative (BA)**

Contractors who participate in the Bonding Alternative (BA) must follow the steps below in order to qualify for payment:

1. Contractors will be limited to four (4) projects under construction at one time. A contractor can obtain an additional APO when one of the original projects under construction passes the Final Inspection. When circumstances beyond the control of the contractor inhibit job completion, Contractors may submit a written request that the number of properties that it may have under construction at one time be increased. Exceptions will be considered by OCD-DRU on a case-by-case basis.
2. The contractor, homeowner, and an OCD-DRU HMGP representative shall attend the pre-construction meeting. The meeting will occur prior to an Advance Payment being made. This meeting shall be held at the house to be elevated. The contractor shall bring a copy of the contract and the Engineering Plans. The scope of work and contract will be discussed in detail at the meeting. The homeowner shall sign a form acknowledging that the bond requirement for their contractor has been waived by the homeowner, and that the homeowner understands the associated risk (Attachment A). (This is only if the homeowner voluntarily accepts the lack of bonding.)
3. Payments will be as follows:
  - a. 25% Advance Payment – All documents required for APO will be required with this request.
  - b. 25% Payment, when structure is elevated and on piers, documents required:

- i. OCD-DRU HMGP Request for Second Payment "Bonding Alternative" Form (Attachment B)
  - ii. Proof of recordation of contract
- c. 30% Payment, when physical work is complete, documents required:
  - i. OCD-DRU HMGP Request for Third Payment "Bonding Alternative" Form (Attachment C)
  - ii. Recordation of proof of termination of work (if the homeowner or contractor disagree that work is complete, OCD-DRU representative will mediate and be the final project arbitrator).
  - iii. Final Elevation Certificate
- d. 20% Payment, when
  - i. Certificate of Occupancy or Certificate of Completion is issued
  - ii. Proof of warranty protection provided
  - iii. All other documents required for final payment in the APO process are received and reviewed/approved.

**Note: Evidence of no lien must be provided within 90 days of homeowner receipt of final payment. The contractors must obtain from the clerk of court in the parish for which the property is located a mortgage certificate that indicates no liens have been placed against the homeowner as a result of the work performed under the contract.**

Once a milestone payment request is approved by the architect or engineer, the Mitigation Analyst will process the payment. The initial and final payments will follow the same review as those under the APO. The two interim payments will only require those documents listed above and be processed in an expedited manner.

**EXAMPLE A  
PAYMENT BOND**

\_\_\_\_\_ **[Enter Name of Contractor]**

as Principal, and

\_\_\_\_\_ **[Enter Name of Surety]**

a surety company or companies\* authorized to do business in Louisiana, as Surety, are bound, in solido, jointly unto

\_\_\_\_\_ **[Enter Name of HMGP Grant Applicant]**

as Homeowner, and to the State of Louisiana, Division of Administration Office of Community Development, Disaster Recovery Unit ("OCD/DRU") in the sum of

\_\_\_\_\_ (DOLLARS \$ \_\_\_\_\_),  
**[Enter Total Amount of Contract]**

payable in lawful money of the United States, and to this bond do obligate their heirs, successors and assigns.

\*In the case of cosureties, the cosureties assume an obligation in the sum of

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),

for \_\_\_\_\_

and \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),

for \_\_\_\_\_

This bond is issued in connection with a contract dated \_\_\_\_\_ between Principal and homeowner to perform hazard mitigation activities, which contract is attached hereto and made a part of this agreement. It is agreed by the parties that this bond is given in accordance requirements of policies of OCD-DRU grant program to which the homeowner has applied for advance funding under a grant which may fund the above described contract at least in part. To the extent that the procedure notices of that program require any contract terms to be expressly included in the contract attached hereto, the attached contract shall be deemed amended to include those required terms. By issuance of this bond, the surety acknowledges it is a company in compliance with the surety qualifications set forth in OCD-DRU HM Procedure Notice Number 28, "Elevation Contractor Bond Requirements".

The condition of this bond is such, that if the Principal shall pay all persons who have and fulfill obligations to perform labor and/or furnished materials in the prosecution of work provided in the contract made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to conduct repairs, hazard mitigation, or reconstruction of the homeowner's residence, according to the stipulations in said contract attached hereto and made a part hereof and in compliance with the grant program under which funds are awarded for the funding of the construction activities, shall pay all sums due on materials and supplies used and for wages earned by workmen employed on the work; this obligation shall be void; otherwise to remain in effect.

The laws of the State of Louisiana shall govern this contract.

In faith whereof we have subscribed this obligation on the dates and at the places noted below.

Witnesses to Principal's Signature:

Principal:

Company Name of Principal:

\_\_\_\_\_  
Signature of Witness 1

\_\_\_\_\_

Printed  
Name: \_\_\_\_\_

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness 2

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witnesses to Surety's Signature:

Surety:

Company Name of Surety:

\_\_\_\_\_  
Signature of Witness 1

\_\_\_\_\_

Printed  
Name: \_\_\_\_\_

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness 2

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

I certify that I am as of the date of this bond a licensed Resident Agent of Louisiana in good standing with the Louisiana Insurance Commission and authorized to countersign this bond on behalf of the Surety or Sureties.

First Surety  
BY \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Name of Agency

**EXAMPLE 2  
PERFORMANCE BOND**

\_\_\_\_\_  
[Enter Name of Contractor]

as Principal, and

\_\_\_\_\_  
[Enter Name of Surety]

a surety company or companies\* authorized to do business in Louisiana, as Surety, are bound, in solido, jointly unto

\_\_\_\_\_  
[Enter Name of HMGP Grant Applicant]

as Homeowner, and to the State of Louisiana, Division of Administration Office of Community Development, Disaster Recovery Unit ("OCD/DRU") in the sum of

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),  
[Enter Total Amount of Contract]

payable in lawful money of the United States, and to this bond do obligate their heirs, successors and assigns.

\*In the case of cosureties, the cosureties assume an obligation in the sum of

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),  
for \_\_\_\_\_

and

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),  
for \_\_\_\_\_

This bond is issued in connection with a contract dated \_\_\_\_\_ between Principal and homeowner to perform hazard mitigation activities, which contract is attached hereto and made a part of this agreement. It is agreed by the parties that this bond is given in accordance requirements of policies of OCD-DRU grant program to which the homeowner has applied for advance funding under a grant which may fund the above described contract at least in part. To the extent that the procedure notices of that program require any contract terms to be expressly included in the contract attached hereto, the attached contract shall be deemed amended to include those required terms. By issuance of this bond, the surety acknowledges it is a company in compliance with the surety qualifications set forth in OCD-DRU HM Procedure Notice Number 28, "Elevation Contractor Bond Requirements".

The condition of this performance bond shall be that should the Principal herein not perform the contract in accordance with the terms and conditions hereof, or should said Principal not fully indemnify and save harmless the Homeowner, from all cost and damages which he may suffer by said Principal's non-performance then said Surety agrees and is bound to so perform the contract.

Provided, that any alterations which may be made in the terms of the contract or in the work to be done under it, or the giving by the Homeowner of any extension of time for the performance of the contract, or any forbearance in the part of either the Homeowner or the Contractor to the other shall not in any way release the Contractor or the Surety from their liability hereunder, notice to the Surety of any such alterations, extensions or other forbearance being hereby waived.

The obligation to perform the contract shall include the obligation to fulfill warranty obligations in the contract, but only for defects for which such warranty applies and which occur or become apparent within the two years of the completion of the contract. If the Principal provides insurance which applies

and to the extent that such insurer promptly protects the homeowner against the defect, Surety's obligation to fulfill warranty obligations shall not apply.

The laws of the State of Louisiana shall govern this contract.

In faith whereof we have subscribed this obligation on the dates noted below.

Witnesses to Principal's Signature:

\_\_\_\_\_  
Signature of Witness 1

Printed  
Name: \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness 2

Printed Name: \_\_\_\_\_

Principal:

Company Name of Principal:  
\_\_\_\_\_

By:  
\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

Witnesses to Surety's Signature:

\_\_\_\_\_  
Signature of Witness 1

Printed  
Name: \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness 2

Printed Name: \_\_\_\_\_

Surety:

Company Name of Surety:  
\_\_\_\_\_

By:  
\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

I certify that I am as of the date of this bond a licensed Resident Agent of Louisiana in good standing with the Louisiana Insurance Commission and authorized to countersign this bond on behalf of the Surety or Sureties.

First Surety  
BY \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Name of Agent



**EXAMPLE 3  
COMBINED PERFORMANCE AND PAYMENT BOND**

\_\_\_\_\_  
[Enter Name of Contractor]

as Principal, and

\_\_\_\_\_  
[Enter Name of Surety]

a surety company or companies\* authorized to do business in Louisiana, as Surety, are bound, in solido, jointly unto

\_\_\_\_\_  
[Enter Name of HMGP Grant Applicant]

as Homeowner, and to the State of Louisiana, Division of Administration Office of Community Development, Disaster Recovery Unit ("OCD/DRU") in the sum of

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),  
[Enter Total Amount of Contract]

payable in lawful money of the United States, and to this bond do obligate their heirs, successors and assigns.

\*In the case of cosureties, the cosureties assume an obligation in the sum of

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),  
for \_\_\_\_\_

and

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),  
for \_\_\_\_\_

This bond is issued in connection with a contract dated \_\_\_\_\_ between Principal and homeowner to perform hazard mitigation activities, which contract is attached hereto and made a part of this agreement. It is agreed by the parties that this bond is given in accordance requirements of policies of OCD-DRU grant program to which the homeowner has applied for advance funding under a grant which may fund the above described contract at least in part. To the extent that the procedure notices of that program require any contract terms to be expressly included in the contract attached hereto, the attached contract shall be deemed amended to include those required terms. By issuance of this bond, the surety acknowledges it is a company in compliance with the surety qualifications set forth in OCD-DRU HM Procedure Notice Number 28, "Elevation Contractor Bond Requirements".

The condition of this performance bond shall be that should the Principal herein not perform the contract in accordance with the terms and conditions hereof, or should said Principal not fully indemnify and save harmless the Homeowner, from all cost and damages which he may suffer by said Principal's non-performance then said Surety agrees and is bound to so perform the contract.

Provided, that any alterations which may be made in the terms of the contract or in the work to be done under it, or the giving by the Homeowner of any extension of time for the performance of the contract, or any forbearance in the part of either the Homeowner or the Contractor to the other shall not in any way release the Contractor or the Surety from their liability hereunder, notice to the Surety of any such alterations, extensions or other forbearance being hereby waived.

The obligation to perform the contract shall include the obligation to fulfill warranty obligations in the contract, but only for defects for which such warranty applies and which occur or become apparent within the two years of the completion of the contract. If the Principal provides insurance which applies

HMGP Performance Bond Homeowner Name: \_\_\_\_\_

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and to the extent that such insurer promptly protects the homeowner against the defect, Surety's obligation to fulfill warranty obligations shall not apply.

If the above Principal shall truly and faithfully perform said contract according to its terms, covenants and conditions, and if the Principal and all subcontractors of the Principal shall pay for all work done, labor performed, or material or supplies furnished for use in machines used in the performance of said contract, then this obligation to be null and void, otherwise to remain in full force and effect.

The laws of the State of Louisiana shall govern this contract.

In faith whereof we have subscribed this obligation on the dates noted below.

Witnesses to Principal's Signature:

Principal:  
Company Name of Principal:

\_\_\_\_\_  
Signature of Witness 1

\_\_\_\_\_  
By:

Printed  
Name: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness 2

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Witnesses to Surety's Signature:

Surety:  
Company Name of Surety:

\_\_\_\_\_  
Signature of Witness 1

\_\_\_\_\_  
By:

Printed  
Name: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness 2

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

I certify that I am as of the date of this bond a licensed Resident Agent of Louisiana in good standing with the Louisiana Insurance Commission and authorized to countersign this bond on behalf of the Surety or Sureties.

First Surety

BY \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Name of Agent

**Attachment A**

**Homeowner Bond Waiver Acknowledgement**

I acknowledge and understand that my contractor is not going to obtain a bond for my elevation project. I understand the protection that a bond would provide: assurance through the bonding company that the contractor will pay the sub-contractors that work on the project and assurance that the contractor will complete the work to the scope outlined in the contract within the timeframe allotted in the contract.

I understand I will not have the protection provided by a payment bond which includes protection from liens against my property. I understand that I will not be afforded the protection under LA R.S. 9:4812 which states that the owner is relieved of the claims against him and the privileges securing them when the claims arise from the performance of a contract by a general contractor for whom a bond is given and maintained as required by R.S. 9:4812 and when notice of the contract with the bond attached is properly and timely filed as required by R.S. 9:4811.

Also, if the contractor fails to perform under the contract, I will not have protection afforded by a performance bond which would assure the completion of the project. Also, I will not be able to obtain additional funding from the HMGP program, which exceeds the initially calculated award amount, if the contractor fails to complete the project and I need additional funds to complete the project. The performance bond would afford me the protection of a stated dollar amount to be paid by the bonding company to complete the project.

\_\_\_\_\_  
Applicant RH No.

\_\_\_\_\_  
Applicant Name

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
OCD Representative Name  
Name

\_\_\_\_\_  
OCD Representative Signature

\_\_\_\_\_  
Date

Note: This document is to be completed during the pre-construction meeting only or it must be notarized.

**ATTACHMENT B - REQUEST FOR 2ND PAYMENT (BONDING ALTERNATIVE)**

To:	<u>OCD-DRU HMGP</u> <u>P.O. Box 5098</u> <u>Baton Rouge, LA 70809</u> Fax: (225) 330-0846	APPLICANT RH NO.:	_____	DISTRIBUTION TO:	<input type="checkbox"/> HOMEOWNER
Name:	<u>ARCHITECT/ENGINEER</u>	APPLICANT NAME.:	_____	<input type="checkbox"/> ARCHITECT/ENGINEER	
Address:	_____	APPLICANT DAMAGED ADDRESS:	_____	<input type="checkbox"/> CONTRACTOR	
			_____	<input type="checkbox"/> OCD-DRU HMGP	
	<u>CONTRACTOR</u>		_____		
Name:	_____				
Address:	_____				
	_____				

The structure has been elevated and placed on piers according to the engineer plans.

Contractor Company Name: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Engineer/Architect Name: \_\_\_\_\_

Engineer/Architect Signature: \_\_\_\_\_ Date: \_\_\_\_\_

	ARCHITECT/ENGINEER SEAL
In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and Contractor is entitled to payment of the AMOUNT CERTIFIED.	

Attachment 1 - Photographs of Elevated Structure (Front Right and Rear Right)  
Place Architect/Engineer Seal in space provided

**ATTACHMENT C - REQUEST FOR 3RD PAYMENT (BONDING ALTERNATIVE)**

	OCD-DRU HMGP	APPLICANT RH NO.:	
To:	P.O. Box 5098		DISTRIBUTION TO:
	Baton Rouge, LA 70809		<input type="checkbox"/> HOMEOWNER
	Fax: (225) 330-0846		<input type="checkbox"/> ARCHITECT/ENGINEER
	ARCHITECT/ENGINEER	APPLICANT NAME.:	<input type="checkbox"/> CONTRACTOR
Name:			<input type="checkbox"/> OCD-DRU HMGP
Address:		APPLICANT DAMAGED ADDRESS:	
	CONTRACTOR		
Name:			
Address:			

All work has been completed and a final elevation certificate has been received.

Contractor Company Name: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Engineer/Architect Name: \_\_\_\_\_

Engineer/Architect Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant Name: \_\_\_\_\_

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

	ARCHITECT/ENGINEER SEAL
In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and Contractor is entitled to payment of the AMOUNT CERTIFIED.	

Attachment 1 - Photographs of Elevated Structure (Front Right and Rear Right)  
 Place Architect/Engineer Seal in space provided.