

153:1-4-01**Definitions.**

- (A) For the purpose of these rules, the following terms shall have the meanings given them in section 9.33 of the Revised Code: “construction manager,” “construction manager at risk,” and “construction management services.”
- (B) For the purpose of these rules, the following terms shall have the meanings given them in section 153.65 of the Revised Code: “public authority,” “design-build contract,” “design-build firm,” “architect or engineer of record” and “design-build services.”
- (C) “Performance bond” means a written guaranty from a surety to a public authority providing financial assurance that the principal will perform the work in accordance with the contract documents.
- (D) “Payment bond” means a written guaranty from a surety to a public authority providing financial assurance that the principal will make the required payments to subcontractors and material suppliers for all labor, materials, and other services related to the project.
- (E) “Work” means the labor, materials, equipment, and services, individually or collectively, which are required by the contract documents to be performed or provided by the construction manager at risk or design-build firm for the project.
- (F) “Contract sum” means the amount stipulated in the contract that is the total amount payable to the construction manager at risk or design-build firm for performance of the contract, including adjustments authorized by executed change orders. For purposes of these rules, contract sum does not include any compensation for architect or engineer of record services under a design-build contract.

153:1-4-02**Type and Amount of Surety Bonds.**

(A) Prior to the execution of the contract, the construction manager at risk or design-build firm shall provide the public authority with separate performance and payment bonds. The penal sum of each bond shall equal one hundred per cent of the contract sum.

(B) If the contract sum increases at any time after the construction manager at risk or design-build firm provides surety bonds in accordance with paragraph (A) of this rule, the construction manager at risk or design-build firm shall cause the penal sum of each surety bond to be increased as necessary to maintain compliance with paragraph (A) of this rule. The delivery of written consent from the affected surety or sureties to the public authority by the construction manager at risk or design-build firm confirming the increased penal sums is a condition precedent to the public authority's obligation to pay the construction manager at risk or design-build firm for any portion of the work associated with the increase in the contract sum.

(C) If at any time prior to final payment to the construction manager at risk or the design-build firm, any surety providing a surety bond for the project (1) is adjudged bankrupt or has made a general assignment for the benefit of its creditors; (2) has liquidated all assets or has made a general assignment for the benefit of its creditors; (3) is placed in receivership; (4) otherwise petitions a state or federal court for protection from its creditors; or (5) allows its license to do business in Ohio to lapse or to be revoked, then the construction manager at risk or the design-build firm shall, within twenty-one days of any such action listed above, provide the public authority with new surety bonds in the form and amount described in the applicable subdivision of these rules. The delivery to the public authority by the construction manager at risk or design-build firm of replacement surety bonds is a condition precedent to the public authority's obligation to make any payment to the construction manager at risk or design-build firm.

(D) The public authority shall require the construction manager at risk or the design-build firm to submit a separate performance bond and a separate payment bond using the 2012 edition of "Document 00 61 13.13 – Performance Bond Form" and "Document 00 61 13.16 – Payment Bond Form". These forms may be found on the website of the office of the state architect in the department of administrative services under standard requirements for public facility construction: <http://das.ohio.gov/Divisions/GeneralServices/StateArchitectsOffice/ListofStandardRequirements>. Any bond submitted under this rule shall name as obligee the public authority or the state, as applicable.