

**CRITERIA FOR CHOOSING  
BETWEEN CONSENSUS DOCS  
AND AIA BOND FORMS**

**Or**

**I don't want no ConsensusDOCS bond form –  
or do I???**

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## COMPARISON OF CONSENSUSDOCS AND AIA BOND FORMS

Since first being introduced in 2007, ConsensusDOCS forms have become increasingly popular and along with the AIA forms are becoming industry standard. The organizations that endorsed the ConsensusDOCS devoted untold hours to developing the new forms, an effort that can only be presumed to reflect a wish for an improvement on the *status quo ante*. In 2009, the AIA began the process of revising its 1984-era bond forms and solicited the support and feedback of members of the construction and surety industries. After completion of this collaborative process, AIA finalized and released its 2010 bond forms. The 2010 AIA bond forms retained much of the language that had already been interpreted by various courts and which had become familiar to users of the forms over the years. However, AIA made some changes to clarify language, to eliminate confusion and to address concerns raised by various stakeholders as examined below.

Likewise, in 2011, ConsensusDOCS published a comprehensive update of its forms but made no significant or material changes to the ConsensusDOCS bond forms. In April 2012, ConsensusDOCS eliminated a major obstacle to the widespread adoption of its software with the launch of a new technology platform that permits editing of its standard forms using Microsoft Word software. Undoubtedly, this change will lead to an increased use of the ConsensusDOCS forms.

With accelerating adoption of ConsensusDOCS, it is increasingly important that people who select forms for use on actual projects learn and understand the differences between – and thereby the advantages and disadvantages of – the various forms available. This paper outlines the salient differences between the various bond forms currently published by ConsensusDOCS and AIA. Copies of the forms are attached for reference.

The following matrix shows the bond forms considered here, and whether both publishers offer an analogous form.

List of Bond Forms Analyzed and Attached

Type of Bond	ConsensusDOCS Form Number	AIA Form Number
Performance Bond	260	A312 - 2010
Payment Bond	261	A312 - 2010
Design-Build Performance Bond (Where the Surety is Liable for the Design Costs of the Work)	470	n/a
Design-Build Performance Bond (Where the Surety is NOT Liable for Design Services)	471	n/a
Design-Build Payment Bond (Where the Surety is Liable for the Design Costs of the Work)	472	n/a
Design-Build Payment Bond (Where the Surety is NOT Liable for Design Services)	473	n/a
Bid Bond	262	A310 - 2010
Warranty Bond	263	n/a
Subcontract Performance Bond	706	n/a
Subcontract Payment Bond	707	n/a
Subcontract Bid Bond	760	n/a

The pages that follow contain additional matrices for the bond forms, showing the features of each bond form that the authors consider most likely to influence the form selection process. Where the author's commentary is more extensive than can fit into the matrix, annotations follow the matrix.

**A. Performance Bond – ConsensusDOCS Form 260 vs. AIA Form A312-2010**

Feature	AIA Form A312-2010	ConsensusDOCS Form 260	Party likely to prefer ConsensusDOCS for this feature
Trigger of Surety's Obligation	<p>Surety's obligation arises:</p> <p>"if there is no Owner Default." ¶3</p> <p>The Owner must have provided notice to the Contractor and Surety that it is considering declaring a Contractor Default. ¶3.1</p> <p>The Owner or Surety each must have had an opportunity to request a conference. ¶3.1</p> <p>The Owner must have declared a default, terminated the Construction Contract and notified the Surety. ¶3.2</p> <p>The Owner must have agreed to pay the Balance of the Contract Price to the Surety or to a contractor selected to perform the Construction Contract. ¶3.3</p>	<p>Conditions <u>owner's right</u> to invoke the bond – not the <u>surety's obligation</u> to respond – upon owner's performance of its contract obligation – instead of upon the absence of an owner's default; owner's right to invoke the bond is conditioned on the owners' performance of its obligations under the contract. Contractor must be in default and owner must declare default. ¶1</p> <p>Owner must make the Contract Balance available to the surety. ¶1</p>	Surety
Procedural requirements to invoking bond	<p>No conference is required; however, either the Owner or Surety <i>may</i> to request a conference. If Surety timely requests a conference, the Owner must attend. ¶3.1</p> <p>Failure to comply with the notice requirements of Section 3.1 will not be deemed a failure to comply with a condition precedent so as to release the Surety from its obligation, <i>unless</i> the Surety demonstrates actual prejudice. ¶4</p>	No meeting required.	Owner
Surety's Options: Completion by the Contractor	Surety may arrange for the Contractor to complete with Owner's consent. ¶5.1	Surety may only elect this option with Owner's consent. ¶2.b	Same for both

Feature	AIA Form A312-2010	ConsensusDOCS Form 260	Party likely to prefer ConsensusDOCS for this feature
Surety's Options: Completion by the Surety	Surety may complete, including through agents. No Owner consent needed. ¶ 5.2	Surety may only elect this option with Owner's consent. ¶2.a	Owner
Surety's Options: Tender	Surety may tender. Contractor tendered must be acceptable to Owner and furnish new bonds equivalent to old. ¶ 5.3	No substantial difference. ¶2.b	Same for both
Surety's Options: Payment of money damages	Surety may elect not to complete (¶5.4) but measure of surety's liability is much broader, including other categories of damages specified in AIA form ¶7.	Surety may elect not to complete and amount surety must pay is limited to "the amount of [the owner's] reasonable costs, not to exceed the Bond Sum, to complete the Work less the Contract Balance." ¶2.c	Surety
Cap on Surety's liability	Notwithstanding the phrase "liability is limited to the amount of this Bond" in ¶8, the Surety is at risk of liability in excess of the amount of the bond when it elects to complete under ¶5.1 or ¶5.2.	Unnumbered paragraph before ¶1 states explicitly and simply that the Bond Sum is the "maximum amount" of the Surety's obligation, and reinforces the applicability of this cap to the situation where the Surety waives the right to complete the work.	Surety
What starts limitation of action period	2 years from Contractor default, Contractor ceasing work or Surety's refusal or failure to perform its obligations under the Bond, whichever occurs first. ¶11	2 years from the earlier of default or substantial completion. ¶3	Same for both

### 1. Surety's Options

Both bond forms list specific options from which the surety selects its course of action in response to a proper demand by the owner. However, there are subtle differences in the categorization of the options and the extent to which the owner has a veto over the surety's selection. Specifically,

although both bond forms permit the surety to complete the work, the surety's right under the AIA form to utilize the original contractor to complete the contract without the owner's consent has occasionally been a bone of contention.<sup>1</sup> The ConsensusDOCS form (§ 2.a) requires the owner's consent to surety completion, effectively giving the owner the power to preclude surety completion unless the surety agrees not to utilize the original contractor to do so. It remains to be seen whether courts will apply traditional principles of suretyship to declare that if the owner withholds consent unless the surety agrees not to utilize the original contractor discharges the surety.

## 2. *Damages for which Surety is liable*

Typically, the surety's liability is limited to the amount of the bond, and the owner must use the balance of the contract price to mitigate costs and damages.<sup>2</sup> However, where a surety elects to complete under the AIA A312 paragraph 5.2, at least one case holds that the surety's liability is not limited to the penal sum.<sup>3</sup> The surety's liability under the A312 Bond may include correction of defective work, completion of the contract, additional legal, design professional, and delay costs resulting from the contractor's default, liquidated or actual damages caused by delayed performance or nonperformance, and any costs resulting from "the actions or failure to act of the surety under paragraph 4."<sup>4</sup>

The completion options under the ConsensusDocs are not substantially different from those under the AIA A312. While the ConsensusDocs specifically limits the liability of the surety to the penal sum of the bond, ("...Surety [is] bound to the Owner as Obligee, in the *maximum* amount..." (emphasis added), there is no guarantee that a court will agree with that interpretation. The AIA also purports to limit the surety's obligation to the penal amount stated on the bond ("to the limit of the amount of this Bond"), yet

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<sup>1</sup> See, e.g., *St. Paul Fire & Marine Ins. Co. v. City of Green River, Wyo.* 93 F. Supp. 2d 1170 (D. Wyo. 2000).

<sup>2</sup> 4A Bruner & O'Connor Construction Law § 12:16

<sup>3</sup> See, e.g., *Employers Mut. Cas. Co. v. United Fire & Cas. Co.*, 682 N.W.2d 452 (Iowa Ct. App. 2004);

<sup>4</sup> 4A Bruner & O'Connor Construction Law § 12:16

when the surety completes through an agent, at least one case holds that the bond limit has not acted as a cap of the surety's obligations.<sup>5</sup>

### 3. *Limitation of action*

Both bond forms contain a two-year contractual limitation of action provision, which may be unenforceable in certain states, by statute. However, the event which starts the statute running, if it occurs before a default, differs under the two forms.<sup>6</sup> Under the AIA form it is either the contractor ceasing work or the surety refusing or failing to perform its obligations under the Bond, whichever of these occurs first, while under the ConsensusDOCS form it is substantial completion. Substantial completion is usually an event that is documented by the issuance of a certification of substantial completion, whereas the cessation of work by a contractor is not. For that reason, the time when the contractual limitation of action period begins to run may be more readily ascertainable under the ConsensusDOCS form than under the AIA form. Such certainty is likely to be preferred by both owners and sureties.

As a general rule, contractors will likely prefer certain features of the ConsensusDOCS for the same reasons as the surety. Where the surety's financial obligations to the owner are more limited, the contractor is likely to benefit. Overall, with the exception of what appears to be more control by the owner over the surety's completion options, the ConsensusDOCS form 260 seems to achieve that objective. In cases where contractors have the interest, leverage or opportunity to influence the selection of the bond form, their interests are generally better served by the ConsensusDOCS form 260.

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<sup>5</sup> *Employers Mut. Cas. Co. v. United Fire & Cas. Co., supra.*

<sup>6</sup> Despite the actual language of the payment bond, it is hard to imagine a situation where the surety's failure to perform would occur before a Contractor default.

**B. Payment Bond – ConsensusDOCS Form 261 vs. AIA Form A312-2010**

Feature	AIA Form A312-2010	ConsensusDOCS Form 261	Party likely to prefer ConsensusDOCS for this feature
Definition of Claimant	One having a direct contract with the Contractor or a contract with a subcontractor of the Contractor, or one that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. Also lists various services intended to be included, notably energy, utilities, and design professional services, and "all other items for which a mechanic's lien may be asserted in the jurisdiction" ¶16.2	One having a direct contract with the Contractor or a contract with a subcontractor of the Contractor but also requires that the subcontractor with which a claimant has its contract is one whose contract with the contractor is "direct." Does not give examples of services covered.	Surety
Condition of Surety's obligation	Contractor's failure to make prompt payment "of all sums due." ¶2 Payment is subject to the terms of the bond. ¶1	Same	Same for both
Owner has claim on bond and right of defense for liens	Yes, contingent on no Owner default, Owner promptly notifying the Contractor and Surety of the claim, and the tender of the claim to Contractor and Surety. ¶¶3, 16.4	No.	Surety
Second Tier Claimants - Ripeness	No ripeness requirement. Ripeness requirement under A312-1984 ¶ 4.2 was eliminated. Compare A312-2010 ¶5.1.1.	Right of action not ripe until claim is aged 90 days. ¶2.	Surety
Notice requirements	For direct subcontractors, written notice to the Surety stating the amount of the claim with substantial accuracy. ¶ 5.2  For second tier subcontractors (or subcontractors to direct subcontractors), written notice to the Contractor within 90 days after claimant's last labor or materials and claim must be submitted to the Surety. ¶ 5.1.1; ¶	No notice requirement for first tier sub or supplier.  Lower tier claimants notify Contractor, Owner and Surety within 90 days after claimant's last labor or materials.	Claimant



Feature	AIA Form A312-2010	ConsensusDOCS Form 261	Party likely to prefer ConsensusDOCS for this feature
	16.1		
Time limit for surety's response to claim	<p>Surety must respond to a claim within 60 days, copy the Owner, state amounts undisputed and basis for challenging disputed amounts. ¶ 7.1</p> <p>Failure to respond does not constitute a waiver of the Surety's or Contractor's defenses except as to undisputed amounts. ¶ 7.3 (added to counter prior adverse case law)</p> <p>Surety must indemnify Claimant for reasonable attorneys' fees and costs incurred to recover sums found to be "due and owing" to Claimant. ¶ 7.3</p>	No such requirement.	Surety
Manner of giving notice specified	Mail, no third party verification required. ¶13	Any means providing third party verification or by service of legal process. ¶3.a	Surety, Owner
Time and place to file suit	<p>1 year from notice to Surety or <u>anyone's</u> last labor, service, materials or equipment, whichever occurs first. ¶12</p> <p>Suit must be filed in the state where the project is located. ¶12</p>	<p>1 year from <u>Claimant's</u> last labor or materials. ¶3.b</p> <p>Suit must be filed in the state where the project is located. ¶3.c</p>	Surety

1. *Conditions of the Surety's Obligation.*

On the face of both payment bond forms, it is a potential defense to the claim of a lower tier claimant that the contractor has paid its first tier subcontractors; however, the defense is not available in

most states.<sup>7</sup> Under the AIA form, this defense is embodied in the bond condition that “If the Contractor promptly makes payment of all sums due to Claimants . . . , then the Surety and the Contractor shall have no obligation under this Bond.” (A312-2010 ¶2, emphasis added). The ConsensusDOCS form provision is similar. (¶ 1). These provisions reflect the notion that the contractor, while responsible for paying its own bills, is not responsible for seeing to its subcontractors’ bills. Even though lower tier subcontractors and suppliers may be within the definition of “Claimant,” generally the bond principal does not owe “sums due” to them.

However, the AIA form does not stop there. Paragraph 2 of the AIA payment bond recognizes that the surety and contractor are not excused from liability under the bond if they have not defended, indemnified and held harmless the owner from claims, demands, liens and suits by Claimants, even if the contractor has paid its own debts. Paragraph 3 goes on to delineate the rights of an owner under the payment bond, and imposes liability on the surety and contractor if the contractor does not pay all claimants, even if the contractor had no other contractual obligation to do so. This additional obligation affords protection to an owner against liens asserted by claimants whose own bond claims might be barred by certain defenses of the contractor and surety. While defenses may exist under applicable state law to the claim of lien, this bond provision puts the burden on the contractor and its surety to defend the owner’s property against the lien. This obligation, however, is contingent on there being no owner default (a defined term in ¶16.4). The ConsensusDOCS payment bond form does not address the owner’s rights separately from those of claimants and does not require defense of liens.

Under the ConsensusDOCS bond, the surety need not pay a claimant whose unpaid balance has not aged to at least 90 days after the claimant’s last furnishing of labor or materials (¶2). The AIA form contains no such aging threshold.

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<sup>7</sup> See, e.g., THE LAW OF PAYMENT BONDS 256 n. 67, 68 (2d ed. 1998)

## 2. *Notice Requirements.*

Claimants under the AIA payment bond form must notify the owner and the surety of their claims in writing (§§ 5.1.1, 5.2). The AIA notice requirements were revised in 2010 to eliminate a 30 day waiting period for the Contractor to reject the claim or answer in an effort to streamline the notice process.

Even so, the notice requirements in the ConsensusDOCS form are simpler. A first tier subcontractor or supplier faces no notice requirement. Lower tier claimants must notify the contractor, owner and surety within 90 days after the claimant's last furnishing of labor or materials.

Notice under the ConsensusDOCS bond must be delivered by a means that provides third party verification or in the manner of service of legal process, thereby avoiding disputes as to when or whether notice was given (§3.a). The AIA form merely requires mailing, without specifying verification by a third party (§13).

These differences are likely to make the ConsensusDOCS the preferable form to sureties, except for the lack of a notice requirement for first tier subcontractors.<sup>8</sup> The aging requirement means that fewer claims are likely to be asserted, as some will be resolved during the 90-day aging period. The requirement of third party verification of delivery will decrease disputes over when or whether notice was given timely.

## 3. *Time Limit for Surety's Response to Notice of Claim*

The AIA payment bond form lays out, in paragraph 7, specific actions the payment bond surety must take upon receipt of a claim that conforms to the bond requirements. The 2020 AIA payment bond extended the time for the surety to respond to a claim from 45 to 60 days. The surety now has 60 days to respond to a claim and to send a copy of the response to the owner. The response must state "the amounts

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<sup>8</sup> In its comments to the ConsensusDOCS Guidebook (November 13, 2007 edition), the Surety and Fidelity Association of America stated, "Notably absent form[sic] the Payment Bond are any terms to micro manage the process of making or responding to a claim ... thereby avoiding the opportunity for erroneous court decisions ...."

that are undisputed and the basis for challenging any amounts that are disputed." The ConsensusDOCS bond does not specify either the steps a surety must take or a deadline to take them.

An important change was made in the 2010 AIA payment bond relative to the consequences resulting from a surety's failure to respond within bond specified time. Some recent court decisions had held that a surety's failure to strictly comply with its reply obligations resulted in a waiver of the contractor's and surety's defenses under the bond. Sureties viewed this interpretation of the AIA form to be a perversion of the intent of the document and either refused to issue payment bonds on the AIA form or manually revised its language to negate the perceived misinterpretation. Section 7.3 was added in the 2010 revision to negate the effect of those decisions and eliminate concerns over waiver, expressly stating that a failure of the surety to act under the bond is not a waiver of the surety's or contractor's defenses except for amounts upon which the surety and claimant have reached agreement as being undisputed. Importantly, however, a surety that fails to fulfill its obligations under Section 7 of the bond will have to indemnify the claimant for reasonable attorney's fees the claimant incurs to recover amounts owed.

The response period (now 60 days) has been held to start upon receipt of the first notice of claim, even if the surety believes the information received with the notice is insufficient to evaluate the claim.<sup>9</sup>

#### *4. Time to File Suit*

Both bond forms impose a one-year period for suit but start the year running upon different events. Under the ConsensusDOCS form, the year begins upon the claimant's last furnishing labor, materials or equipment on the project (§3b). The AIA form starts the year on the earlier of the claimant's notice to the surety and owner or the last furnishing of labor, materials or equipment under the contract by anyone, not just the claimant (§12). Thus, the AIA form facially cuts off litigation rights at a later date than the ConsensusDOCS form does and is likely to be preferred by claimants.

Both bonds defer to state law restrictions on limitation of action provisions.

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<sup>9</sup> *J.C. Gibson Plastering Co., Inc. v. XL Specialty Ins. Co.*, 521 F. Supp. 2d 1325, 1333 (M.D. Fla. 2007).

Clearly, the ConsensusDOCS payment bond form differs from the AIA form in ways that benefit sureties and contractors. Most notably, this document eliminates the obligation to defend the owner's property from subcontractor's liens where payment has already been made by the contractor. That fact may cause owners to resist ConsensusDOCS Form 261. The remaining differences between these forms, however, seem to benefit sureties and contractors to the detriment of claimants, without immediately affecting the owner, which is something that should assist during negotiation.

### **C. Design-Build Bonds – No AIA Analogues**

The ConsensusDOCS series includes distinct forms of performance and payment bonds adapted for use when the bonded contract is a design-build contract. The bond principal in these forms is referred to as the "Design-Builder" rather than as the "Contractor," as in Forms 260 and 261.

For design-build contracts, there are two ConsensusDOCS performance bonds (numbers 470 and 471) and two ConsensusDOCS payment bonds (numbers 472 and 473). Forms 470 and 472 are the performance and payment bond forms, respectively, to be used "Where the Surety is Liable For the Design Costs of the Work," a phrase that appears in the title of the document. The Form 470 performance bond is identical to the Form 260 performance bond, except for the nomenclature for the bond principal, as noted above, and a Limitation of Liability provision (§3). The Limitation of Liability provision states:

This Bond shall cover the costs to complete the Work, but shall not cover any damages of the type specified to be covered by the Design-Builder's Liability Insurance or by the Professional Liability Insurance required pursuant to the Contract, whether or not such insurance is provided or in an amount sufficient to cover such damages.

Thus, the factor that circumscribes the limitation is not the nature of the services to be rendered by the design-builder. Rather, this limitation excludes only certain categories of damages that might result from a breach of duty under its contract – a limitation that seemingly applies to both construction and design services. For example, if the design-builder fails to provide either design or construction services contracted for, the performance bond will cover the cost of substitute performance. However, if

damages result from poor performance, errors or omissions – of either design or construction services – and are of a type that would typically be insured, the bond will not cover.<sup>10</sup>

The Form 472 design-builder’s payment bond is identical to the ConsensusDOCS form 261 payment bond.

Forms 471 and 473 are the performance and payment bond forms, respectively, to be used “Where the Surety is NOT Liable For Design Services,” a phrase that appears in the title of the document. The Form 471 performance bond varies in several respects from the Form 470 performance bond. The Form 470 performance bond is conditioned, in paragraph 1, on the Design-Builder performing “its Contract obligations (the ‘Work’),” making no distinction between that part of the Contract obligations consisting of construction services versus design services. In the Form 471 performance bond, on the other hand, the bond is conditioned on the Design-Builder performing “the construction work called for pursuant to the Contract.” The phrase “construction work” is not a defined term. Instead, throughout the bond where the Form 470 performance bond referred to the “Work,” the Form 471 performance bond refers to the “construction work.” Form 471 also differs from Form 470 in its exclusionary language.

Paragraph 3 of Form 471 reads:

Pursuant to Article 2 of the Bond, the Surety shall be liable for all construction costs of the Work, up to the Bond Sum, but shall not be liable for any costs or damages arising from any design services provided pursuant to the Contract.

This provision carries forward, in the simplest possible manner, the intended scope of the bond.

The Form 473 design-builder’s payment bond is identical to the ConsensusDOCS Form 261 payment bond as well as the Form 472 design-builder’s payment bond.

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<sup>10</sup> The notion that a performance bond covers different sorts of damages than an insurance policy is not new. Sureties have long contended that such damages are not covered. One wonders why, if the drafters were willing to state this principle explicitly in ConsensusDOCS Form 470, they did not include the same limitation of liability in the other ConsensusDOCS performance bond forms, albeit without the need to refer to professional liability coverage in contexts where the bonded contract does not include professional services.

There are no AIA counterparts to these ConsensusDOCS bond forms for design-build contracts. It remains to be seen whether the inclusion of the design-build forms gives the ConsensusDOCS an advantage in securing the business of a segment of the construction forms market not served by the AIA forms.

**D. Subcontract Bonds – ConsensusDOCS Forms 706 and 707 – No AIA Analogue**

ConsensusDOCS Forms 706 and 707 are a performance bond and a payment bond, respectively, to be used in connection with a subcontract. Predictably, they parallel ConsensusDOCS Forms 260 and 261, substituting the words “Subcontract” and “Subcontractor” for “Contract” and “Contractor,” and substituting the words “Contractor” for “Owner.” There are other differences.

Instead of conditioning the performance bond on the subcontractor “perform[ing] its subcontract obligations” and defining that as the “Work,” as in Form 260, the subcontractor’s performance bond Form 706 is conditioned on the subcontractor “provid[ing] all labor, materials, equipment and services necessary or incidental to complete the Subcontract Work in accordance with that which is indicated in the Subcontract” (§ 1). The term “Subcontract Work” is defined in an earlier paragraph. It is difficult to discern a reason for the difference between the wording of Form 706 and Form 260, but, conceivably, there could be a subcontract obligation that is not encompassed by “labor, materials, equipment and services” that would lead to a gap in the subcontract bond’s coverage. Conveyance or licensing of intellectual property comes to mind.

The subcontractor’s payment bond (Form 707) differs from the contractor’s payment bond (Form 261) in requiring that a lower tier claimant give its notice of claim not only to the bond principal (the subcontractor), but also to the contractor and surety.

**E. Bid Bonds – ConsensusDOCS Forms 262 and 760 vs. AIA Form A310-2010**

The differences between the AIA and ConsensusDOCS bid bond forms are very minor. ConsensusDOCS Form 262 lacks a specific requirement, present in AIA Form A310, that the performance and payment bonds furnished by the principal to discharge its obligation on the bid be “with good and sufficient surety.” However, since under both forms the bonds must be furnished “as . . .

specified in the [bidding or] Contract Documents,” the requirement of good and sufficient surety on the performance and payment bonds is most likely stated there.

The ConsensusDOCS bid bond, like the other forms in that series, emphasizes that the Bond Sum is a cap on the bond liability (§ 3). Curing a scrivener's error in the 2007 version, "Bond Sum" is now a defined term. The term “Work” is used without definition in ConsensusDOCS Form 262.

ConsensusDOCS Form 760 is a subcontractor’s bid bond form that tracks the contractor’s form (262). AIA has no bid bond form specific to subcontractors, but Form A310 is adaptable by changing or defining the nomenclature.

#### **F. Warranty Bond – ConsensusDOCS Form 263 – No AIA Analogue**

ConsensusDOCS Form 263 is a warranty bond designed to guaranty the contractor’s fulfillment of its obligations under the “Correction of Work” provisions of the corresponding ConsensusDOCS contract form. This form could be used with respect to the warranty obligations of a non-ConsensusDOCS document by substituting the title or section number of the contract setting forth the warranty obligations.

Like the other ConsensusDOCS bond forms, Form 263 emphasizes that the bond sum is a cap on liability and limits the damages to the cost of performing the work; in this instance, the cost of correcting the defect discovered during the warranty period.

The inclusion of a warranty bond among the ConsensusDOCS forms provides an interesting alternative for contractors. While the prospect of an additional warranty obligation may not seem like a good idea initially, it may ultimately prove advantageous. In theory, a warranty bond may terminate performance bond obligations at substantial completion, in exchange for a bond that ties up less overall bonding capacity for the contractor.