

**Amendment dated May 21, 2008,
to A312™–1984 Payment Bond**

Recent state and federal court decisions have interpreted Section 6 of the AIA's A312™–1984 Payment Bond form. Those decisions have held that sureties that do not send an answer to the claimant within 45 days have waived the right to subsequently dispute claims. As a result, several national surety companies have refused to issue payment bonds without significant modifications to the language of A312–1984. Those modifications are not consistent nationwide and may alter the rights and obligations of the claimant and surety.

As a stopgap measure to address the immediate concerns of the sureties, and until such time as the AIA can consider a comprehensive revision of A312–1984, the AIA has authorized the following amendment to A312–1984. The AIA believes that this amendment addresses the sureties' concerns over waiver of defenses, and balances those concerns against the interests of the claimants.

The AIA recommends amending Section 6 of A312–1984 as follows:

§ 6 When the Claimant has satisfied the conditions of Section 4, the Surety shall promptly and at the Surety's expense take the following actions:

§ 6.1 Send an answer to the Claimant, with a copy to the Owner, within ~~45~~60 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

§ 6.2 Pay or arrange for payment of any undisputed amounts.

§ 6.3 The Surety's failure to discharge its obligations under this Section 6 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a claim. However, if the Surety fails to discharge its obligations under this Section 6, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs to recover any sums found to be due and owing to the Claimant.