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# Design Professionals as Payment Bond Claimants?

Engineers and architects who work directly on a project are among those who might be eligible for claims under payment bonds.



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*Changes related to the COVID-19 crisis and the construction and surety industries are still occurring; some data in this article may have changed from the time of article submission and the publication date.*

**GENERAL CONTRACTORS RUN** into financial difficulties or outright fail for myriad reasons. Regardless of the explanation, a contractor that cannot complete a project invariably leaves a trail of dissatisfied entities in its wake, including not only subcontractors and suppliers that provided labor and materials, but also design and other professionals that provided specific skilled services. This article will discuss how, whether, and when design professionals may be proper claimants on a payment bond.

## The Basics

On a bonded construction project, the payment bond provided by the contractor (the principal) is a contractual guarantee to the owner (the obligee) that the surety will pay the project's labor and materials suppliers and subcontractors in the event that the contractor defaults on its primary obligation to pay. The class of claimants who may seek recovery from the surety under the payment bond is typically limited to those who have a direct contract with the prime contractor or with a subcontractor of the prime contractor. In the event that the prime contractor fails to pay these laborers and materialmen, the prime contractor's payment bond surety is obligated to step in and pay the entities the amounts owed to them, up to the penal sum of the payment bond.

Federal public construction projects are governed by the Miller Act, which requires that a payment bond be furnished for the construction, alteration, or repair of any public building or public work of the federal government, which exceeds \$100,000 (40 U.S.C. § 1331(b)(2)). This threshold has been increased by Federal Acquisition Regulation Part 28 to \$150,000. A Miller Act payment bond is for the "protection of all persons supplying labor and material in carrying out the work provided for in the contract for the use of each person" (40 U.S.C. § 1331(b)(2)). Most states have similar laws for state and municipal projects, which are generally modeled after the federal Miller Act; they are called "Little Miller Acts." The Miller Act and the Little Miller Acts are intended to provide subcontractors and suppliers with a legal remedy for obtaining payment for labor and materials furnished when they are unable to file a lien on public projects.

There are two main questions in determining who a proper claimant on a payment bond is: (1) whether the purported claimant supplied a type of labor or material that is covered by the bond; and (2) whether the purported claimant is too contractually remote from the bond principal (the prime contractor).

The first question that must be addressed is whether the claim is for labor and material *in the prosecution of the work*. Traditional subcontractors such as electricians, plumbers, painters, mechanics, etc. are covered. Their contributions are clearly encompassed in the prosecution of the contract work. On the contrary, while any contractor needs paper, pencils, and office staff to perform work, office staff and stationery stores cannot make payment bond claims because they have not supplied labor and materials in the prosecution of the contract work.

Secondly, in order to make a valid payment bond claim, the purported claimant must not be too contractually remote from the prime contractor. Federal courts decided long ago that the bond covers only first-tier or second-tier claimants. First-tier claimants have a direct contractual relationship with the prime contractor. Second-tier claimants supply labor or materials to a subcontractor of the prime contractor. Thus, proper payment bond claimants may only be so contractually remote from the prime contractor. First-tier and second-tier claimants are covered by the bond as long as they supplied labor or material used *in the prosecution of the work*.

Under the Little Miller Acts, the class of protected claimants is at least as broad as those covered by the federal Miller Act. In some states, which interpret Little Miller Acts to afford protection consistent with state mechanic's lien laws, no distinction is made between a subcontractor and a sub-subcontractor; and bond protection may be afforded to those who deal with "subcontractors" at any tier. No distinction is made between a first- or lower-tier subcontractor, so long as the subcontractor performs a significant part of the prime contract work. Because statutory terms, as a matter of law, are read into the statutory bonds as if fully set forth, and because a statutory bond is construed to provide the protection envisioned by the statute, bonds that purport to cover a smaller class of persons than those protected

by statute will be construed to provide the full protection required by the statute. In other words, the terms of the Little Miller Act bond may broaden the class of protected persons; but the bond may not define the class of protected persons more narrowly than as defined by the statute.

## Design Professionals as Claimants

A common gray area exists in determining whether architects, engineers, estimators, surveyors, and other types of similar design professionals may seek recovery on payment bonds. Some jurisdictions define their respective classes of potential payment bond claimants to be the same persons or entities who would have been able to assert a mechanic's lien against the property. This is a logical approach because, as in the case of a public works contract, a valid lien cannot be asserted against public property. As such, the payment bond affords those persons or entities, which otherwise would have been able to assert a lien, with an avenue of recovery on public works projects. Other jurisdictions, however, do not directly equate the rights of potential payment bond claimants with those of potential mechanic's lienors. See, for example, the analyses of Florida and Maryland in the chart online at [www.suretybondquarterly.org](http://www.suretybondquarterly.org).

### See 50-State Chart

For a chart summarizing the rights of design professionals as potential payment bond claimants in each state, see this story in the Web exclusive content at [www.suretybondquarterly.org](http://www.suretybondquarterly.org).

Many commonly utilized payment bond forms expressly define the class of claimants that may seek recovery under the bond. If the bond itself expressly defines payment bond claimants to include architects, engineers, design, or other types of professionals, then those expressly defined in the bond will be able to assert a



## THERE ARE TWO MAIN QUESTIONS IN DETERMINING WHO A PROPER CLAIMANT ON A PAYMENT BOND IS: (1) WHETHER THE PURPORTED CLAIMANT SUPPLIED A TYPE OF LABOR OR MATERIAL THAT IS COVERED BY THE BOND; AND (2) WHETHER THE PURPORTED CLAIMANT IS TOO CONTRACTUALLY REMOTE FROM THE BOND PRINCIPAL (THE PRIME CONTRACTOR).

claim, pursuant to basic contract principles. For example, in AIA Form A312, the definition of “claimant” expressly includes those who are qualified to assert a mechanic’s lien against the property and those who provide architectural and engineering services, so long as their services were actually required to perform the work encompassed by the prime contract:

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. **The term Claimant also includes any individual or entity 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. **The intent of this Bond shall be to include,** without limitation, in the terms “labor, materials, or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, **architectural and engineering services required for performance of the work of the Contractor and the Contractor’s subcontractors**, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished. See AIA Document A312™–2010 Payment Bond, at § 16.2 (emphasis added).

The ConsensusDocs® payment bond form defines “claimant” as

“an individual or entity having a direct contract with Constructor or having a contract with a subcontractor having a direct contract with Constructor to furnish labor, materials, or equipment for use in the performance of the work.” See ConsensusDocs® 261–Payment Bond–© 2007, 2011, 2020, at ¶ 2. Here, the express language of the bond form and the absence of judicial interpretation of the language therein provide no guidance on whether design and other professionals could assert valid payment bond claims.

On federal projects, while courts construe the Miller Act liberally, they look at claims from design and other professionals more carefully, requiring that the professional work be directly involved with construction-related activity. For instance, an architect, engineer, or other professional may be required to demonstrate that its activities were performed on-site, for example, supervisory or inspection services, and must be related to original contract work, rather than for corrective work.

Similarly, for Little Miller Act payment bonds, these professionals will not have a valid claim unless they have a physical presence and duties on the jobsite. Other jurisdictions simply do not provide payment bond recovery for these types of entities at all. For those that do, if the services are required by the bonded contract—such as in a “design-build” project or services for the preparation of shop drawings, subcontractor submittals, or as-built drawings—they will likely

be covered as services necessary for the performance of the work, that is, used *in the prosecution of the work*. This makes sense for design-build projects because the prime contractor bears some design responsibility in those types of projects. Compare this with a “design-bid-build” project, where the prime contractor does *not* bear any design responsibility.

It is important to remember that, regardless of which different types of claimants are allowed to pursue payment bond recovery, it is paramount to strictly comply with any and all notice requirements contained in the Little Miller Act. The specific notice requirements vary among jurisdictions and are outside the purview of this article.

See the chart at <https://www.suretybondquarterly.org/2021/07/06/design-professionals-as-payment-bond-claimants/>, which provides a brief overview of each state’s treatment of design professionals as payment bond claimants (or not), including instances where the terms of a private project payment bond provided for recovery by design and other professionals. ●

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# State-By-State Treatment of Design Professionals as Payment Bond Claimants

State	Design Professionals as Claimants?	Authority
Alabama	Yes, depending on the nature of services rendered	Ala. Code §39-1-1(b) states that “any person that has furnished labor, materials, or supplies for or in the prosecution of a public work and payment has not been made may institute a civil action upon the payment bond and have their rights and claims adjudicated in a civil action and judgment entered thereon.” <i>Hughes v. Torgerson</i> , 11 So. 209, 209 (Ala. 1892) (“An architect who prepares the drawings, plans, and specifications for a building and superintends the erection thereof may as truly be said to perform labor thereon as anyone who takes part in the work of construction.”); but see <i>Wilkinson v. Rowe</i> , 98 So. 2d 435 (Ala. 1957) (holding that a surveyor was not entitled to assert a mechanic’s lien and explaining that the right to a lien depends not on the title or classification of the person who furnishes the labor but, instead, on the nature of the services rendered).
Alaska	Unclear	Alaska Stat. §36.25.010(a)(2) states that the contractor must furnish the payment bond “for the protection of all persons who supply labor and material in the prosecution of the work provided for in the contract.”
Arizona	Unlikely	Ariz. Rev. Stat. § 34-222(a)(2) requires payment bonds “for the protection of claimants supplying labor or materials to the contractor or his subcontractors in the prosecution of the work provided for in such contract.” (Emphasis added.)
Arkansas	Unclear	Ark. Code Ann. § 18-44-506 states that the bond covers “all indebtedness for labor and materials furnished or performed in the repair, alteration, or erection.”
California	Yes, as long as the claim is based on work encompassed within the public works contract	Cal. Pub. Contract Code § 10223 provides payment bond protection to “laborers, mechanics, or materialmen employed on the work under the contract.” Cal. Civ. Code § 9566(a) states that a “claimant does not have a right to recover on a payment bond unless the claimant provided work to the direct contractor either directly or through one or more subcontractors pursuant to a public works contract.” Cal. Civ. Code § 8046 defines “subcontractor” as a “contractor that does not have a direct contractual relationship with an owner.” “Subcontractor” includes “a contractor that has a contractual relationship with a direct contractor or with another subcontractor.” <i>Id.</i> See <i>Union Asphalt, Inc. v. Planet Ins. Co.</i> , 27 Cal.Rptr.2d 371, 374 (Cal. Ct. App. 1994) (explaining that architects, engineers, and land surveyors may assert payment bond claims but only to the extent that their work performed is within the scope of the construction contract).

Colorado	Unlikely	Colo. Rev. Stat. Ann. § 24-105-202(1)(b) states that the payment bond is for the protection of “all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.” (Emphasis added.)
Connecticut	Yes, depending on the terms of the bond	Conn. Gen. Stat. Ann. § 49-41(a) states the payment bond is “for the protection of persons supplying labor or materials in the prosecution of the work provided for in the contract.” The Connecticut Supreme Court has allowed an architect to recover under a payment bond when the payment bond’s terms specifically provided protection for the services rendered by the architect. See <i>Herbert S. Newman &amp; Partners, P.C. v. CFC Constr. Ltd. P’ship</i> , 674 A.2d 1313, 1318-19 (Conn. 1996) (concluding that the bond’s explicit language permitted the architect to recover for its architectural services because the specific terms provided protection for “any party, whether a subcontractor or otherwise, who furnishes materials or supplies or performs labor or services in the prosecution of the work under said contract”) (emphasis in original). The court explained that the architect was protected because the bond’s terms included services and placed no limitations on how services were to be rendered. <i>Id.</i> at 1319.
Delaware	Unclear	Del. Code Ann. § 6962(d)(9)(b) provides bond protection to “every firm furnishing material or performing labor in the performance of the contract.”
District of Columbia	Unclear	D.C. Code § 2-201.01(a)(2) provides payment bond protection for “all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person.”
Florida	Possibly, if the design professional provides labor, services, or materials for work encompassed in the public works contract. However, it is unclear whether a direct contract with the prime contractor is a prerequisite to design professionals’ ability to assert payment bond claims, as a direct contract is required in order for a design professional to assert a valid lien.	Fla. Stat. Ann. § 255.05(1)(c) provides payment bond protection to “all persons defined in § 713.01 who furnish labor, services, or materials for the prosecution of the work provided for in the contract.” Included in the definitions in § 713.01 are: Architect, Contractor, Engineer, Laborer, Lender, Lienor, Materialman, Owner, Subcontractor, and Sub-subcontractor. The definition of Lienor, found in § 713.01(18)(f), is “a professional lienor under § 713.03.” A “professional lienor” under § 713.03(2) is “any architect, landscape architect, interior designer, engineer, or surveyor and mapper who has a direct contract and ... shall perform services ... in connection with a specific parcel of real property... shall have a lien upon such real property for the money owing to him or her for his or her professional services, regardless of whether such real property is actually improved.” See <i>Cincinnati Ins. Co. v. Putnam</i> , 335 So. 2d 855, 856 (Fla. Dist. Ct. App. 1976) (per curiam) (if architect’s agreement to furnish architectural services was with the owner of the project, then the surety for the contractor would not be liable to the architect; but if the architect’s agreement was with the contractor, then the architect’s direct action against the surety to enforce its claim of lien would be proper).
Georgia	Unclear	Ga. Code Ann. § 13-10-60 provides payment bond protection for “all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of work provided in the contract.”
Hawaii	Possibly, based on plain language of statute	Haw. Rev. Stat. § 103D-324(a)(2) provides payment bond protection for “all persons supplying labor and material to the contractor for the performance of the work provided for in the contract.” Per Haw. Rev. Stat. § 507.41, “‘Labor’ includes professional services rendered in furnishing the plans for or in the supervision of the improvement.”

Idaho	Unlikely	Idaho Code § 54-1926(2) requires payment bonds be furnished “solely for the protection of persons supplying labor or materials or renting, leasing, or otherwise supplying equipment to the contractor or his sub-contractors in the prosecution of the work provided for in such contract.” (Emphasis added.)
Illinois	Unclear	30 Ill. Comp. Stat. Ann. § 550/2 provides payment bond protection to “every person furnishing material, apparatus, fixtures, machinery, or performing labor, either as an individual or as a sub-contractor, hereinafter referred to as Claimant, for any contractor, with the State, or a political subdivision thereof.”
Indiana	Possibly	Ind. Code Ann. § 5-16-5-2(a) states that the payment bond “shall be conditioned to directly inure to the benefit of subcontractors, laborers, suppliers of materials, and those performing service who have furnished or supplied labor, material, or service for the public work.”
Iowa	Unlikely	Iowa Code Ann. § 573.6(1) provides payment bond protection to “all persons, firms, or corporations having contracts directly with the principal or with subcontractors” for amounts due to them “for labor performed or materials furnished, in the performance of the contract on account of which this bond is given.” (Emphasis added.)
Kansas	Likely, if the design professional has a direct contract with the owner, prime contractor, or a subcontractor and would have otherwise been able to assert a mechanic’s lien	Kan. Stat. Ann. § 60-1111(a) provides protection for “labor furnished, materials, equipment, or supplies used or consumed in connection with or in or about the construction of such public building or in making such public improvements.” In Kansas, payment bond protection is afforded to those who would have otherwise been able to assert mechanic’s liens, specifically meaning those who are in privity of contract with the owner, prime contractor, or subcontractor. See Wichita Sheet Metal Supply, Inc. v. Dahlstrom & Ferrell Constr. Co., Inc., 792 P.2d 1043, 1048 (Kan. 1990). Because design professionals would have a direct contract with either the owner or prime contractor, it seems likely they would be afforded payment bond protection.
Kentucky	Possibly, as long as the services are performed in and for the public works project and as long as the design professional renders services to the prime contractor or its subcontractors	Ky. Rev. Stat. Ann. § 45A.190(2)(b) provides payment bond protection to “all persons supplying labor and material to the contractor or his subcontractors, for the performance of the work provided for in the contract.” See Central Trust Co. v. Richmond, N. I. & B. R. Co., 54 F. 723, 728 (D. Ky. 1892) (“In many of the lien laws there is a clear intent to confine the lien to, and be for the benefit of, materialmen and mechanics and laborers only, but when the act declares that the labor performed and the labor furnished for the construction of railroads, etc., without limiting words, it must, by its terms, include all labor which is necessary for the construction and which was actually performed or furnished for that purpose, whether that be skilled or unskilled labor.”).

Louisiana	Yes, as long as there is a direct contract with either the owner, prime contractor, or a subcontractor	La. Rev. Stat. Ann. § 38:2242(A) specifically defines “claimant” for purposes of the Louisiana Little Miller Act as “any person to whom money is due pursuant to a contract with the owner or a contractor or subcontractor for doing work, performing labor, or furnishing materials or supplies for the construction, alteration, or repair of any public works or for transporting and delivering such materials or supplies to the site ... or for furnishing oil, gas, electricity, or other materials or supplies for use in machines used in the construction, alteration, or repair including persons to whom money is due for . . . lease or rental of movable property ... and including registered or certified surveyors or engineers or consulting engineers, or licensed architects, or their professional subconsultants employed by the owner or by the contractor or subcontractor in connection with the building of any public work.” (Emphasis added.) See <i>Pyburn v. Popich Marine Constr., Inc.</i> , 186 So. 2d 674, 678 (La. Ct. App. 1966) (contract to perform engineering service required in connection with sinking mat in the construction of a bridge was a contract to do work within the purview of the public contracts statute).
Maine	Unlikely	Me. Rev. Stat. Ann. § 871(3)(B) states the payment bond is “solely for the protection of claimants supplying labor or materials to the contractor or the contractor’s subcontractor in the prosecution of the work provided for in the contract.” (Emphasis added.)
Maryland	Possibly, as long as the services are rendered after the payment bond is executed and the claimant performs the services at the jobsite	Md. State Fin. & Proc. Code § 17-101(b) provides payment bond protection for “labor and materials, including leased equipment, under a contract for construction.” Per Md. Real Prop. Code § 9-201(b)(1), which is also known as the Maryland Construction Trust Statute, the money paid for work done or materials furnished is considered to be held in trust. The Construction Trust Statute requires that the underlying contracts be subject to either the Maryland Little Miller Act contained in Md. State Fin. & Proc. Code § 17-101 et seq. or the Maryland Mechanic’s Lien Statute contained in Md. Real Prop. Code § 9-201 et seq. See Md. Real Prop. Code § 9-204(a). As the state analog to the federal Miller Act, the Maryland Little Miller Act protects suppliers who furnish material and labor on public construction projects who, but for sovereign immunity, could secure payment using a mechanic’s lien. <i>Pritchett Control, Inc. v. Hartford Accident &amp; Indemnity Co.</i> , 361 F. Supp. 3d 530, 535 (D. Md. 2019). See <i>Peerless Ins. Co. v. Bd. Of County Commissioners for Prince George’s County To and For Use of Ben Dyer Assocs., Inc.</i> , 237 A.2d 15, 17 (Md. 1968) (holding that an engineer whose services, consisting of surveying, staking, inspecting, and laying out of the construction project, were performed on the job site after the payment bond had been executed, comes within the plain meaning and obvious purpose of the statute). “[T]he mere fact that engineers are not specifically mentioned in the statutory language does not exclude them from the operation of the statute * * *.” <i>Id.</i> See also <i>Caton Ridge, Inc. v. Bonnett</i> , 225 A.2d 853, 856 (Md. 1967) (holding that, where a contract between an architect and a party provides for the preparation of plans and the supervision of the erection of the building for which the plans have been prepared, the architect, having performed his contract, is entitled to a mechanic’s lien). However, lien rights do not necessarily directly equate with the right to assert a payment bond claim. See <i>Peerless Ins.</i> , 237 A.2d at 18.



Massachusetts	Unlikely	Mass. Gen. Laws Ann. Ch. 149 § 29 provides payment bond protection to “any claimant having a contractual relationship with the contractor principal furnishing the bond” and to “any claimant having a contractual relationship with a subcontractor performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor” for “labor, materials, equipment, appliances, or transportation.” (Emphasis added.)
Michigan	Unclear	Mich. Comp. Laws Ann. § 129.206 defines “claimant” as “a person having furnished labor, material, or both, used or reasonably required for use in the performance of the contract.” It further defines “labor and material” as including “that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the contract.”
Minnesota	Unclear	Minn. Stat. Ann. § 574.26 Subd. 2(2) states the payment bond is for the use and benefit of “all persons furnishing labor and materials engaged under, or to perform the contract, conditioned for the payment, as they become due, of all just claims for the labor and materials.”
Mississippi	Possibly, depending on the particular services provided	Miss. Code Ann. § 31-5-51(1)(b) provides payment bond protection for “all persons supplying labor or material used in the prosecution of the work under said contract.” The Mississippi Supreme Court has allowed an engineer to recover damages from a prime contractor and its surety, but the engineer was a subcontractor of the prime contractor and had been engaged also to actually construct portions of the project. See <i>Tupelo Redevelopment Agency v. Gray Corp., Inc.</i> , 972 So. 2d 495, 500 (Miss. 2007) (affirming jury verdict in favor of engineering subcontractor).
Missouri	Unclear	Mo. Rev. Stat. § 107.170(2)(2) requires payment bonds “for the payment of any and all materials, incorporated, consumed, or used in connection with the construction of such work ... for all labor performed in such work whether by a subcontractor, a supplier at any tier, or otherwise.”
Montana	Unclear	Mont. Code Ann. § 18-2-201(1)(a)(ii)-(iii) states that the bond covers “all laborers, mechanics, subcontractors, and material suppliers” and “all persons who supply the person, corporation, or subcontractors with provisions, provender, material, or supplies for performing the work.”
Nebraska	Unclear	Neb. Rev. Stat. § 52-118.01 provides payment bond protection to “every person who has furnished labor or material in the prosecution of the work provided for in the contract.”
Nevada	Unlikely	Nev. Rev. Stat. § 339.025(1)(b) states the payment bond is “solely for the protection of claimants supplying labor or materials to the contractor to whom the contract was awarded or to any of his or her subcontractors in the prosecution of the work provided for in such contract.” (Emphasis added.)



New Hampshire	Unclear	N.H. Rev. Stat. § 447:16 states that payment bonds are required “for all labor performed or furnished, for all equipment hired, including trucks, for all material used, and for fuels, lubricants, power, tools, hardware, and supplies purchased by said principal and used in carrying out said contract and for labor and parts furnished upon the order of said contractor for the repair of equipment used in carrying out said contract.” In addition to providing for payment bond recovery, New Hampshire also allows for a mechanic’s lien to attach to any money due or to become due by virtue of the public work contract. See <i>General Insulation Co. v. Eckman Constr.</i> , 992 A.2d 613, 618 (N.H. 2010) (explaining that “[t]he purpose of this lien provision is to put those who supply materials [and labor] for the erection of state property on a parity, in respect to their liens, with those who perform a like service for private owners.”) (internal quotations omitted). N.H. Rev. Stat. § 447:15 states that the mechanic’s lien is available to those who “participated by performing labor, providing professional design services, or furnishing materials or supplies.” (Emphasis added.) While it is the mechanic’s lien statute, not the payment bond statute, that specifically includes those who provide professional design services, one could argue that both statutes intend to protect the same class of claimants. On the other hand, the fact that professional design services are absent from the payment bond statute may also be a compelling argument that the payment bond is not intended to cover those services.
New Jersey	Unlikely	N.J. Stat. Ann. § 2A:44-143a.(1) specifically defines payment bond beneficiaries as “subcontractors or material suppliers in contract with the contractor” and “subcontractors or material suppliers in contract with a subcontractor to the contractor.” (Emphasis added.) See <i>Furlong v. Housing Auth. of City of Newark</i> , 28 A.2d 424, 425 (N.J. Ch. 1942) (finding that architect had no lien for its services because the architect’s employment was not a contract for a public improvement; instead, a contract for a public improvement was for the actual construction of the work). The public works statutes “do not govern contracts of employment which involve peculiar professional education and experience, such as the employment of accountants to audit the city’s books or engineers to design an electric power plant.” <i>Id.</i>
New Mexico	Unlikely	N.M. Stat. Ann. § 13-4-18(A)(2) provides payment bond protection for “all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.” (Emphasis added.)
New York	Possibly, depending on the nature of the relationship with the prime contractor	N.Y. State Fin. Law § 137(1) provides payment bond protection to “all persons furnishing labor or materials to the contractor or any subcontractors in the prosecution of the work provided for in such contract.” (Emphasis added.) A design professional could potentially fall within this definition depending on the nature of its relationship with the prime contractor. See <i>Toporoff Engineers, P.C. v. Fireman’s Fund Ins. Co.</i> , 371 F.3d 105, 109 (2d Cir. 2004) (applying New York law) (reversing district court’s decision to set aside jury verdict, reasoning that, based on the evidence presented, the jury was entitled to conclude that the engineering firm in question was an independent subcontractor of the prime contractor and therefore a proper payment bond claimant).

North Carolina	Unclear	N.C. Gen. Stat. Ann. § 44A-26(a)(2) states that the payment bond is “solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor, or construction manager at risk is liable.” N.C. Gen. Stat. Ann. § 44A-25(5) defines “labor or materials” as including “all materials furnished or labor performed in the prosecution of the work called for by the construction contract regardless of whether or not the labor or materials enter into or become a component part of the public improvement” and also includes “gas, power, light, heat, oil, gasoline, telephone services, and rental of equipment or the reasonable value of the use of equipment directly utilized in the performance of the work called for in the construction contract.” N.C. Gen. Stat. Ann. § 44A-25(6) also defines “subcontractor” as “any person who has contracted to furnish labor or materials to, or who has performed labor for, a contractor or another subcontractor in connection with a construction contract.”
North Dakota	Unclear	N.D. Cent. Code Ann. § 48-01.2-10(1) states that the bond covers “claims on account of labor performed and any supplies and materials furnished and used in the performance of the contract, including all demands of subcontractors.”
Ohio	Yes, as long as the design professional’s services are considered essential to the construction project	Ohio Rev. Code Ann. § 153.54(A)(2) provides payment bond protection to “subcontractors, material suppliers, and laborers for labor performed or material furnished in carrying forward, performing, or completing the contract.” See <i>Kline v. Federal Ins. Co.</i> , 152 N.E.2d 911, 914 (Ohio C.P. 1958) (holding that surveying services constituted “labor” within purview of the public works bond statute because the surveyor’s services were essential to the construction of the improvement; thus, the surveyor could recover under the payment bond). “The court’s examination of the Ohio cases reveals no basis for excluding a laborer from the benefits of either the mechanic’s lien or contractor’s bond statutes merely because he is a skilled worker or renders professional services, such as an architect or engineer.” <i>Id.</i> at 913 (emphasis added).
Oklahoma	Unclear	61 Okla. Stat. Ann. § 1(B) provides payment bond protection to the prime contractor’s “subcontractors and all suppliers of labor, material, rental of machinery or equipment, and repair of and parts for equipment the contract requires the contractor to furnish.”
Oregon	Unclear	Or. Rev. Stat. § 279C.600(1) provides payment bond protection to “[a] person claiming to have supplied labor or materials for the performance of the work provided for in the contract, including any person having a direct contractual relationship with the contractor furnishing the payment bond or a direct contractual relationship with any subcontractor, or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund Corporation, the Unemployment Compensation Trust Fund, or the Department of Revenue in connection with the performance of the contract.”

Pennsylvania	Unlikely	8 Pa. Stat. § 194(a) authorizes “any claimant who has performed labor or furnished material in the prosecution of the work provided for” in any bonded contract. However, a 2017 ruling suggests that design professionals cannot recover under the payment bond. See <i>Widmer Eng’g, Inc. v. Five-R Excavating, Inc.</i> , No. 257 C.D. 2016, 2017 WL 959485, at *10 (Pa. Commw. Ct. March 13, 2017) (mem. op.) (affirming lower court’s ruling that engineering firm could not recover under the payment bond, on the basis that there was no authority to broaden the definition of “labor” to include professional services).
Rhode Island	Possibly, based on the broad language in the Rhode Island Little Miller Act	R.I. Gen. Laws § 37-12-2 provides payment bond protection to “[e]very person who shall have performed labor and every person who shall have furnished or supplied labor, material, or equipment in the prosecution of the work provided for in the contract.” Section 37-12-1 clarifies that payment bond protection exists “whether or not the labor is directly performed for or furnished to the contractor or is even directly performed upon the work covered by the contract, and whether or not the materials are furnished to the contractor or become component parts of the work, and whether or not the equipment is furnished to the contractor or even directly used upon the work.”
South Carolina	Possibly, based upon the statutory definition of “improve”	S.C. Code Ann. § 11-35-3030(2)(a)(ii) provides payment bond protection to “all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract.” “Improve,” per § 29-6-10(2), “also means and includes any design or other professional or skilled services furnished by architects, engineers, land surveyors, and landscape architects.”
South Dakota	Unclear	S.D. Codified Laws § 5-21-5 confers rights upon “any person who has furnished labor or material used in the construction of any such public improvement.”
Tennessee	Unclear	Tenn. Code Ann. § 12-4-204 provides payment bond protection for “[a]ny laborer or furnisher of labor or material to the contractor or to any immediate or remote subcontractor under the contractor.”
Texas	Unlikely	Tex. Govt. Code § 2253.021(c)(1) states the payment bond is “solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material.”
Utah	Unclear	Utah Code Ann. § 63G-6a-1103(1)(b) states the payment bond is “for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.”

Vermont	Possibly, but the statute only covers state highway projects	Vt. Stat. Ann. Tit. 1 § 10(1) covers the “construction, repair, or maintenance of transportation related facilities; for the use of any machinery or equipment * * *; for the operation, repair, maintenance, or storage of any State-owned machinery or equipment; for professional engineering services, inspection of work or materials, diving services, mapping services, photographic services, including aerial photography or surveys, and any other services, with or without equipment, in connection with the planning, construction, and maintenance of transportation facilities.” (Emphasis added.) Vt. Stat. Ann. Tit. 1 § 10(9) states that the bond is “for the benefit of labor, materialmen, and others * * * for material, merchandise, labor, rent, hire of vehicles, power shovels, rollers, concrete mixers, tools, and other appliances, professional services, premiums, and other services used or employed in carrying out the terms of the contract between the contractor and the State of Vermont.” (Emphasis added.)
Virginia	Unclear	Va. Code Ann. § 2.2-4337(A)(2) provides payment bond protection for “claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract.”
Washington	Unlikely, because design professionals are not included in the Washington Little Miller Act or in the public works retainage statute	Wash. Rev. Code Ann. § 39.08.010(1)(a)(ii) provides payment bond protection to “all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such persons or persons, or subcontractors, with provisions and supplies for the carrying on of such work.” The public works retainage statute, per § 60.28.011(b)(2), states, “Every person performing labor or furnishing supplies toward the completion of a public improvement contract has a lien upon moneys reserved by a public body under the provisions of a public improvement contract.” See <i>Better Financial Solutions, Inc. v. Transtech Electric, Inc.</i> , 51 P.3d 108, 114-15 (Wash. Ct. App. 2002) (comparing the public works retainage statute to the California statute and explaining that the California statute, which specifically includes architects, registered engineers, and licensed land surveyors within the category of entities entitled to pursue liens, is much more expansive than the Washington statute).
West Virginia	Possibly, depending on the nature of the services provided	W. Va. Code § 38-2-39 covers “the reasonable cost of materials, machinery, equipment, and labor required for the completion of such [public works] contract” for the benefit of any “materialman, furnisher of machinery or equipment, and furnisher or performer of such labor, or their assigns.” See <i>Wetzel &amp; T. Ry. Co. v. Tennis Bros Co.</i> , 145 F. 458, 463 (4th Cir. 1906) (applying West Virginia law) (“Architects, engineers, and others who superintend the erection and construction of buildings have frequently been held entitled to the benefit of the mechanic’s lien law; and we think it quite clear that a person doing similar work of a personal character on the construction of a railroad is entitled to a like lien.”).
Wisconsin	Possibly, based on the language of the Wisconsin Little Miller Act statute	Wis. Stat. Ann. § 779.14(1)(1m)(e)(b) states the payment bond covers “every person, including every subcontractor, supplier, or service provider” who is entitled to payment for “labor, services, materials, plans, or specifications performed, furnished, or procured for the purpose of making the public improvement or performing the public work as provided in the contract.” (Emphasis added.)



Wyoming	Unclear	Wyo. Stat. § 16-6-112(a)(ii) states that payment bonds are “for the use and benefit of any person performing any work or labor or furnishing any material or goods of any kind which were used in the execution of the contract.”
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## Find Out More

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