

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 828—BONDS AND INSURANCE

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AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 49 FR 12612, Mar. 29, 1984, unless otherwise noted.

Subpart 828.1—Bonds and Other Financial Protections

828.101 Bid guarantees.

828.101-2 Contract clause.

Where a bid bond is required for supplies or services, the phrase “any cost of acquiring the work” in paragraph (e) of the BID GUARANTEE clause in FAR 52.228-1 may be modified to refer to the cost of “supplies,” “services,” etc.

[49 FR 12612, Mar. 29, 1984. Redesignated at 64 FR 40519, July 27, 1999.]

828.101-70 Safekeeping and return of bid guarantee.

(a) Certified checks or other negotiable security furnished as bid security with the three lowest acceptable

bids will be retained in a safe. These will be returned by any method that will provide evidence of receipt, or in person upon presentation of proper receipt, after the contract and contract bonds have been signed and approved.

(b) Certified checks or other negotiable security furnished in support of other than the three lowest acceptable bids should be returned promptly to the respective bidders by any method that will provide evidence of receipt or in person upon presentation of proper receipt.

(c) Commercial bid bonds are not returned unless specifically requested by the bidders, and, even if requested by any of the three low bidders, are not returned until the contract and contract bonds have been executed by the successful bidder, or all bids have been rejected.

[49 FR 12612, Mar. 29, 1984, as amended at 64 FR 40519, July 27, 1999]

828.106 Administration.

828.106-6 Furnishing information.

For all contracts except contracts awarded by the Office of Facilities Management, the head of the contracting activity, as defined in 802.100, shall be the Department designee referenced in FAR 28.106-6(c) to furnish copies of payment bonds to requestors. For contracts awarded by the Office of Facilities Management, the Office of Facilities Management contracting officer shall be the Department designee.

[64 FR 40519, July 27, 1999]

828.106-70 Bond premium adjustment.

When performance and payment bonds are required, the contract will contain the clause prescribed in 852.228-70.

[49 FR 12612, Mar. 29, 1984. Redesignated at 64 FR 40519, July 27, 1999]

Subpart 828.2—Sureties and Other Security for Bonds

SOURCE: 64 FR 40519, July 27, 1999, unless otherwise noted.

828.203-7 Exclusion of individual sureties.

The Deputy Assistant Secretary for Acquisition and Materiel Management is delegated authority to make the determinations referenced in FAR 28.203-7 to exclude individuals from acting as surety on bonds and to accept bonds from individuals named on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Subpart 828.3—Insurance**828.306 Insurance under fixed-price contracts.**

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, will contain the provision in 852.237-71.

(b) *Exceptions.* The provisions of paragraph (a) of this section do not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, part II, chapter 3; or other emergency or sporadic vehicle or aircraft services. *Provided,* That such service is not used solely for the purpose of avoiding entering into a continuing contract. *Provided further,* That such services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

[49 FR 12612, Mar. 29, 1984, as amended at 64 FR 40519, July 27, 1999]

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts**828.7100 Scope of subpart.**

(a) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts covering medical research or development which involve risks of an unusually hazardous nature, as authorized by 38 U.S.C. 7317.

(b) The authority to indemnify the contractor under this subpart does not create any rights to third parties which would not otherwise exist by law.

(c) As used in this subpart the term "contractor" includes subcontractors of any tier under a contract containing

an indemnification provision pursuant to 38 U.S.C. 7317.

[49 FR 12612, Mar. 29, 1984, as amended at 63 FR 69221, Dec. 16, 1998; 64 FR 40519, July 27, 1999]

828.7101 General.

(a) The approval for the indemnification of contractors will be made by the Secretary of Veterans Affairs.

(b) Contracting Officers shall submit requests for approval, together with all available information, to the Deputy Assistant Secretary for Acquisition and Materiel Management (95) for transmittal to the Secretary.

[49 FR 12612, Mar. 29, 1984, as amended at 54 FR 24173, June 6, 1989; 54 FR 30044, July 18, 1989; 63 FR 69221, Dec. 16, 1998]

828.7102 Extent of indemnification.

(a) Any contract for medical research or development authorized by 38 U.S.C. 7303, the performance of which involves a risk of an unusually hazardous nature, may provide that the Government will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not covered by the financial protection required under 828.7103.

(1) Liability (including reasonable expenses of litigation or settlement) to third persons, except liability under State or Federal worker's injury compensation laws to employees of the contractor employed at the site of and in connection with the contract for which indemnification is granted, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract that provides for indemnification in accordance with this subpart must also provide for:

(1) Notice to the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and