

Federal Acquisition Regulation

28.106-1

28.103-2 Performance bonds.

(a) Performance bonds may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. The following situations may warrant a performance bond:

(1) Government property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

(2) A contractor sells assets to or merges with another concern, and the Government, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

(3) Substantial progress payments are made before delivery of end items starts.

(4) Contracts are for dismantling, demolition, or removal of improvements.

(b) The Government may require additional performance bond protection when a contract price is increased.

(c) The contracting officer must determine the contractor's responsibility (see subpart 9.1) even though a bond has been or can be obtained.

[48 FR 42286, Sept. 19, 1983, as amended at 60 FR 34759, July 3, 1995; 61 FR 39213, July 26, 1996]

28.103-3 Payment bonds.

(a) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Government's interest.

(b) When a contract price is increased, the Government may require additional bond protection in an amount adequate to protect suppliers of labor and material.

[48 FR 42286, Sept. 19, 1983, as amended at 61 FR 39213, July 26, 1996]

28.103-4 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.228-16, Performance and Payment Bonds—Other than Construction, in solicitations and contracts that contain a requirement for both payment and performance bonds. The contracting officer shall determine the amount of each bond for insertion in

the clause. The amount shall be adequate to protect the interest of the Government. The contracting officer shall also set a period of time (normally 10 days) for return of executed bonds. *Alternate I* shall be used when only performance bonds are required.

[61 FR 39213, July 26, 1996]

28.104 Annual performance bonds.

(a) Annual performance bonds only apply to non-construction contracts. They shall provide a gross penal sum applicable to the total amount of all covered contracts.

(b) When the penal sums obligated by contracts are approximately equal to or exceed the penal sum of the annual performance bond, an additional bond will be required to cover additional contracts.

28.105 Other types of bonds.

The head of the contracting activity may approve using other types of bonds in connection with acquiring particular supplies or services. These types include advance payment bonds and patent infringement bonds.

28.105-1 Advance payment bonds.

Advance payment bonds may be required only when the contract contains an advance payment provision and a performance bond is not furnished. The contracting officer shall determine the amount of the advance payment bond necessary to protect the Government.

28.105-2 Patent infringement bonds.

(a) Contracts providing for patent indemnity may require these bonds only if—

(1) A performance bond is not furnished; and

(2) The financial responsibility of the contractor is unknown or doubtful.

(b) The contracting officer shall determine the penal sum.

28.106 Administration.

28.106-1 Bonds and bond related forms.

The following Standard Forms (SF's) and Optional Forms (OF's) shown in 53.301 and 53.302 shall be used, except in

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foreign countries, when a bid bond, performance or payment bond, or an individual surety is required. The bond forms shall be used as indicated in the instruction portion of each form.

- (a) SF 24, Bid Bond (see 28.101).
- (b) SF 25, Performance Bond (see 28.102-1 and 28.106-3(b)).
- (c) SF 25-A, Payment Bond (see 28.102-1 and 28.106-3(b)).
- (d) SF 25-B, Continuation Sheet (for SF's 24, 25, and 25-A).
- (e) SF 28, Affidavit of Individual Surety (see 28.203).
- (f) SF 34, Annual Bid Bond (see 28.001).
- (g) SF 35, Annual Performance Bond (see 28.104).
- (h) SF 273, Reinsurance Agreement for a Miller Act Performance Bond (see 28.202(a)(4)).
- (i) SF 274, Reinsurance Agreement for a Miller Act Payment Bond (see 28.202(a)(4)).
- (j) SF 275, Reinsurance Agreement in Favor of the United States (see 28.202(a)(4)).
- (k) SF 1414, Consent of Surety (see 28.106-5).
- (l) SF 1415, Consent of Surety and Increase of Penalty (see 28.106-3).
- (m) SF 1416, Payment Bond for Other Than Construction Contracts (see 28.103-3 and 28.106-3(b)).
- (n) SF 1418, Performance Bond for Other Than Construction Contracts (see 28.103-2 and 28.106-3(b)).
- (o) OF 90, Release of Lien on Real Property (see 28.203-5).
- (p) OF 91, Release of Personal Property from Escrow (see 28.203-5).

[48 FR 42286, Sept. 19, 1983, as amended at 54 FR 48986, Nov. 28, 1989; 61 FR 39213, July 26, 1996]

28.106-2 Substitution of surety bonds.

- (a) A new surety bond covering all or part of the obligations on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity, or as otherwise specified in agency regulation.
- (b) When a new surety bond is approved, the contracting officer shall notify the principal and surety of the

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original bond of the effective date of the new bond.

[48 FR 42286, Sept. 19, 1983, as amended at 61 FR 39213, July 26, 1996]

28.106-3 Additional bond and security.

(a) When additional bond coverage is required and is secured in whole or in part by the original surety or sureties, agencies shall use Standard Form 1415, Consent of Surety and Increase of Penalty. Standard Form 1415 is authorized for local reproduction, and a copy of the form is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(b) When additional bond coverage is required and is secured in whole or in part by a new surety or by one of the alternatives described in 28.204 in lieu of corporate or individual surety, agencies shall use Standard Form 25, Performance Bond; Standard Form 1418, Performance Bond for Other Than Construction Contracts; Standard Form 25-A, Payment Bond; or Standard Form 1416, Payment Bond for Other Than Construction Contracts.

[63 FR 44806, Aug. 22, 1997]

28.106-4 Contract clause.

(a) The contracting officer shall insert the clause at 52.228-2, Additional Bond Security, in solicitations and contracts when bonds are required.

(b) In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, the contracting officer shall insert the clause at 52.228-12, Prospective Subcontractor Requests for Bonds, in solicitations and contracts with respect to which a payment bond will be furnished pursuant to the Miller Act (see 28.102-1), except for contracts for the acquisition of commercial items as defined in Subpart 2.1.

[48 FR 42286, Sept. 19, 1983, as amended at 60 FR 48273, Sept. 18, 1995]

28.106-5 Consent of surety.

(a) When any contract is modified, the contracting officer shall obtain the consent of surety if—

- (1) An additional bond is obtained from other than the original surety;
- (2) No additional bond is required and—