

PART 828—BONDS AND INSURANCE

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PART 828 - BONDS AND INSURANCE

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.

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.

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.

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828.106-70 Bond premium adjustment.

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

SUBPART 828.2 – SURETIES AND OTHER SECURITY FOR BONDS

::828.202 Acceptable sureties.::

::828.202-1 Corporate sureties.

The contracting officer will ensure that corporate sureties offered for a bond in connection with the procurement of supplies or services (including construction) appear on the list of approved corporate sureties contained in the Treasury Department Circular 570, and that the amount of bond is not in excess of the underwriting limits stated in that list. The contracting officer will further ensure that the surety remains on the Treasury Department circular approved list through the active life of the contract by reviewing all circular supplements published in the *Federal Register* and elsewhere. When an active surety is terminated and removed from the list, the contracting officer will ensure that new bonding is secured by the contractor for the uncompleted work under the contract at no cost to the Government.:::

::828.203 Options in lieu of sureties.::

::828.203-1 United States bonds or notes.

Contracting officers, with the exception of those located in the District of Columbia, receiving U.S. bonds or notes in lieu of corporate or individual sureties will forward such bonds and notes to the agent cashier for safekeeping. Contracting officers in the District of Columbia will deposit such bonds and notes with the Treasurer of the United States.:::

::828.203-2 Certified or cashier's checks, bank drafts, money orders, or currency.

Contracting officers receiving a certified or cashier's check, bank draft, post office money order or currency in lieu of corporate or individual sureties will deposit them with the agent cashier.:::

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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.

**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 contractor containing an indemnification provision pursuant to 38 U.S.C. 7317.

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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.

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
 - (2) Control of or assistance in the defense by the Government, at its election, of such suit or claim for which indemnification is provided in the contract.

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828.7103 Financial protection.

(a) The amount of financial protection that the contractor is required to have and maintain to cover liability to third persons and loss of or damage to the contractor's property shall be the maximum amount of insurance available from private sources; however, the Secretary may establish a lesser amount after taking into consideration the cost and terms of private insurance.

(b) The financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such forms to provide the maximum amount required. When the contractor elects to utilize self-insurance, proof of such financial responsibility up to the maximum amount required will be furnished the contracting officer prior to award.

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