

establishing the repository requirements must appropriately reflect the repository manager's software responsibilities.

## PART 228—BONDS AND INSURANCE

### Subpart 228.1—Bonds

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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36404, July 31, 1991, unless otherwise noted.

### Subpart 228.1—Bonds

#### 228.102 Performance and payment bonds for construction contracts.

##### 228.102-1 General.

The requirement for performance and payment bonds is waived for cost-reimbursement contracts. However, for cost-type contracts with fixed-price construction subcontracts over \$40,000, require the prime contractor to obtain from each of its construction subcontractors performance and payment protections in favor of the prime contractor as follows:

(1) For fixed-price construction subcontracts over \$40,000, but not exceeding \$150,000, payment protection sufficient to pay labor and material costs, using any of the alternatives listed at FAR 28.102-1(b)(1).

(2) For fixed-price construction subcontracts over \$150,000—

(i) A payment bond sufficient to pay labor and material costs; and

(ii) A performance bond in an equal amount if available at no additional cost.

[68 FR 36945, June 20, 2003, as amended at 71 FR 75892, Dec. 19, 2006; 75 FR 45074, Aug. 2, 2010; 80 FR 36904, June 26, 2015; 85 FR 61504, Sept. 29, 2020]

#### 228.102-70 Defense Environmental Restoration Program construction contracts.

For Defense Environmental Restoration Program construction contracts entered into pursuant to 10 U.S.C. 2701—

(a) Any rights of action under the performance bond shall only accrue to, and be for the exclusive use of, the obligee named in the bond;

(b) In the event of default, the surety's liability on the performance bond is limited to the cost of completion of the contract work, less the balance of unexpended funds. Under no circumstances shall the liability exceed the penal sum of the bond;

(c) The surety shall not be liable for indemnification or compensation of the obligee for loss or liability arising from personal injury or property damage, even if the injury or damage was caused by a breach of the bonded contract; and

(d) Once it has taken action to meet its obligations under the bond, the surety is entitled to any indemnification and identical standard of liability to which the contractor was entitled under the contract or applicable laws and regulations.

[68 FR 36945, June 20, 2003]

#### 228.105 Other types of bonds.

Fidelity and forgery bonds generally are not required but are authorized for use when—

(1) Necessary for the protection of the Government or the contractor; or

(2) The investigative and claims services of a surety company are desired.

[70 FR 8538, Feb. 22, 2005]

**228.106 Administration.**

**228.106-7 Withholding contract payments.**

(a) Withholding may be appropriate in other than construction contracts (see FAR 32.112-1(b)).

[57 FR 42707, Sept. 16, 1992, as amended at 70 FR 8538, Feb. 22, 2005]

**Subpart 228.3—Insurance**

**228.304 Risk-pooling arrangements.**

DoD has established the National Defense Projects Rating Plan, also known as the Special Casualty Insurance Rating Plan, as a risk-pooling arrangement to minimize the cost to the Government of purchasing the liability insurance listed in FAR 28.307-2. Use the plan in accordance with the procedures at PGI 228.304 when it provides the necessary coverage more advantageously than commercially available coverage.

[69 FR 65091, Nov. 10, 2004]

**228.305 Overseas workers' compensation and war-hazard insurance.**

(d) When submitting requests for waiver, follow the procedures at PGI 228.305(d).

[69 FR 65091, Nov. 10, 2004]

**228.307 Insurance under cost-reimbursement contracts.**

**228.307-1 Group insurance plans.**

The Defense Department Group Term Insurance Plan is available for contractor use under cost-reimbursement type contracts when approved as provided in department or agency regulations. A contractor is eligible if—

(a) The number of covered employees is 500 or more; and

(b) The contractor has all cost-reimbursement contracts; or

(c) At least 90 percent of the payroll for contractor operations to be covered by the Plan is under cost-reimbursement contracts.

**228.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.**

**228.311-1 Contract clause.**

Use the clause at FAR 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

[56 FR 36404, July 31, 1991. Redesignated at 61 FR 50454, Sept. 26, 1996]

**228.370 Additional clauses.**

(a) Use the clause at 252.228-7000, Reimbursement for War-Hazard Losses, when—

(1) The clause at FAR 52.228-4, Worker's Compensation and War-Hazard Insurance Overseas, is used; and

(2) The head of the contracting activity decides not to allow the contractor to buy insurance for war-hazard losses.

(b)(1) Use the clause at 252.228-7001, Ground and Flight Risk, in all solicitations and contracts for the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft, except those solicitations and contracts—

(i) That are strictly for activities incidental to the normal operations of the aircraft (*e.g.*, refueling operations, minor non-structural actions not requiring towing such as replacing aircraft tires due to wear and tear);

(ii) That are awarded under FAR Part 12 procedures and are for the development, production, modification, maintenance, repair, flight, or overhaul of aircraft; or otherwise involving the furnishing of aircraft;

(iii) For which a non-DoD customer (including a foreign military sales customer) has not agreed to assume the risk for loss or destruction of, or damages to, the aircraft; or

(iv) For commercial derivative aircraft that are to be maintained to Federal Aviation Administration (FAA) airworthiness when the work will be performed at a licensed FAA repair station.

(2) The clause at 252.228–7001 may be modified only as follows:

(i) Include a modified definition of “aircraft” if the contract covers other than conventional types of winged aircraft, *i.e.*, helicopters, vertical take-off or landing aircraft, lighter-than-air airships, unmanned aerial vehicles, or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify “in the open” to include “hush houses,” test hangars and comparable structures, and other designated areas.

(iii) Expressly define the “contractor’s premises” where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned or leased by the contractor or subcontractor, or premises where the contractor or subcontractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (e)(3) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(3) Follow the procedures at PGI 228.370(b) when using the clause at 252.228–7001.

(c) The clause at 252.228–7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*).

(d) Use the clause at 252.228–7005, Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, in solicitations and contracts that involve the manufacture, modification, overhaul, or repair of aircraft, missiles, and space launch vehicles.

(e) Use the clause at 252.228–7006, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be per-

formed in Spain, unless the contractor is a Spanish concern.

[56 FR 36404, July 31, 1991, as amended at 57 FR 42631, Sept. 15, 1992; 62 FR 34125, June 24, 1997; 63 FR 69006, Dec. 15, 1998; 75 FR 32644, June 8, 2010; 84 FR 65312, Nov. 27, 2019]

## PART 229—TAXES

### Subpart 229.1—General

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229.101 Resolving tax problems.

229.170 Reporting of foreign taxation on U.S. assistance programs.

229.170–1 Definition.

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229.170–4 Contract clause.

### Subpart 229.4—Contract Clauses

229.402 Foreign contracts.

229.402–70 Additional provisions and clauses.

### Subpart 229.70—Special Procedures for Overseas Contracts

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36405, July 31, 1991, unless otherwise noted.

### Subpart 229.1—General

#### 229.101 Resolving tax problems.

(a) Within DoD, the agency-designated legal counsels are the defense agency General Counsels, the General Counsels of the Navy and Air Force, and for the Army, the Chief, Contract Law Division, Office of the Judge Advocate General. For additional information on the designated legal counsels, see PGI 229.101(a).

(b) For information on fuel excise taxes, see PGI 229.101(b).

(c) For guidance on directing a contractor to litigate the applicability of a particular tax, see PGI 229.101(c).

(d) For information on tax relief agreements between the United States and European foreign governments, see PGI 229.101(d).

[70 FR 8538, Feb. 22, 2005, as amended at 71 FR 14100, Mar. 21, 2006]