

confirming financial institution (if any).

(d) If the contractor does not furnish an acceptable replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the contracting officer shall immediately draw on the ILC.

(e) If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, the contracting officer shall draw on the ILC prior to the expiration date of the ILC to cover these claims.

(f) The period for which financial security is required shall be as follows:

(1) If used as a bid guarantee, the ILC should expire no earlier than 60 days after the close of the bid acceptance period.

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the contracting officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(g) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(1) The offeror/contractor shall provide the contracting officer a credit rating from a recognized commercial rating service as specified in Office of Federal Procurement Policy Pamphlet No. 7 (see 28.204-3(h)) that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(2) If the contracting officer learns that a financial institution's rating has dropped below the required level, the contracting officer shall give the contractor 30 days to substitute an acceptable ILC or shall draw on the ILC using the sight draft in paragraph (g) of the clause at 52.228-14.

(h)(1) Additional information on credit rating services and investment grade ratings is contained within Office of Federal Procurement Policy Pamphlet No. 7, Use of Irrevocable Letters of Credit. This pamphlet may be obtained by calling the Office of Management and Budget's publications office at (202) 395-7332.

(2) A copy of the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, is available from: ICC Publishing, Inc., 156 Fifth Avenue, New York NY, 10010, Telephone: (212) 206-1150, Telefax: (212) 633-6025, E-mail: iccpub@interport.net

[61 FR 31653, June 20, 1996, as amended at 62 FR 44807, Aug. 22, 1997]

#### **28.204-4 Contract clause.**

Insert the clause at 52.228-14, Irrevocable Letter of Credit, in solicitations and contracts for services, supplies, or construction, when a bid guarantee, or

## Federal Acquisition Regulation

## 28.305

performance bonds, or performance and payment bonds are required.

[61 FR 31653, June 20, 1996]

### Subpart 28.3—Insurance

#### 28.301 Policy.

Contractors shall be required to carry insurance under the following circumstances:

(a)(1) The Government requires any contractor subject to Cost Accounting Standard (CAS) 416 (48 CFR 9004.416 (appendix B, FAR loose-leaf edition)) to obtain insurance, by purchase or self-coverage, for the perils to which the contractor is exposed, except when (i) the Government, by providing in the contract in accordance with law, agrees to indemnify the contractor under specified circumstances or (ii) the contract specifically relieves the contractor of liability for loss of or damage to Government property.

(2) The Government reserves the right to disapprove the purchase of any insurance coverage not in the Government's interest.

(3) Allowability of the insurance program's cost shall be determined in accordance with the criteria in 31.205-19.

(b) Contractors, whether or not their contracts are subject to CAS 416, are required by law and this regulation to provide insurance for certain types of perils (e.g., workers' compensation). Insurance is mandatory also when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government. The minimum amounts of insurance required by this regulation (see 28.307-2) may be reduced when a contract is to be performed outside the United States, its possessions, and Puerto Rico. When more than one agency is involved, the agency responsible for review and approval of a contractor's insurance program shall coordinate with other interested agencies before acting on significant insurance matters.

(c) Contractors awarded nonpersonal services contracts for health care services are required to maintain medical liability insurance and indemnify the Government for liability producing

acts or omissions by the contractor, its employees and agents (see 37.400).

[48 FR 42286, Sept. 19, 1983, as amended at 54 FR 5056, Jan. 31, 1989; 59 FR 67043, Dec. 28, 1994]

#### 28.302 Notice of cancellation or change.

When the Government requires the contractor to provide insurance coverage, the policies shall contain an endorsement that any cancellation or material change in the coverage adversely affecting the Government's interest shall not be effective unless the insurer or the contractor gives written notice of cancellation or change as required by the contracting officer. When the coverage is provided by self-insurance, the contractor shall not change or decrease the coverage without the administrative contracting officer's prior approval (see 28.308(c)).

#### 28.303 Insurance against loss of or damage to Government property.

When the Government requires or approves insurance to cover loss of or damage to Government property (see 45.103, Responsibility and liability for Government property), it may be provided by specific insurance policies or by inclusion of the risks in the contractor's existing policies. The policies shall disclose the Government's interest in the property.

#### 28.304 Risk-pooling arrangements.

Agencies may establish risk-pooling arrangements. These arrangements are designed to use the services of the insurance industry for safety engineering and the handling of claims at minimum cost to the Government. The agency responsible shall appoint a single manager or point of contact for each arrangement.

#### 28.305 Overseas workers' compensation and war-hazard insurance.

(a) *Public-work contract*, as used in this subpart, means any contract for a fixed improvement or for any other project, fixed or not, for the public use of the United States or its allies, involving construction, alteration, removal, or repair, including projects or operations under service contracts and