

## 227.7206

to perform or display any portion of that work, and to permit others to do so for government purposes. Grant permission only when the Government's requirements cannot be satisfied unless the third party work is included in the deliverable work.

(d) Examples of other works which may be procured under the clause at 252.227-7020 include, but are not limited to, audiovisual works, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.

### **227.7206 Contracts for architect-engineer services.**

Follow 227.7107 when contracting for architect-engineer services.

### **227.7207 Contractor data repositories.**

Follow 227.7108 when it is in the Government's interests to have a data repository include computer software or to have a separate computer software repository. Contractual instruments 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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## **48 CFR Ch. 2 (10-1-02 Edition)**

228.307 Insurance under cost-reimbursement contracts.

228.307-1 Group insurance plans.

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

228.311-1 Contract clause.

228.370 Additional clauses.

AUTHORITY: 41 U.S.C. 421 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.**

For Defense Environmental Restoration Program construction contracts entered into pursuant to 10 U.S.C. 2701 and executed between December 5, 1991, and December 31, 1999—

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(a) The requirement for performance and payment bonds is waived for cost-reimbursement contracts. However, for cost type contracts with fixed-price construction subcontracts over \$25,000, require the prime contractor to obtain from each of its construction subcontractors—

(i) A payment bond in favor of the prime contractor sufficient to pay labor and material costs; and

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

[56 FR 36404, July 31, 1991, as amended at 57 FR 42631, Sept. 15, 1992; 58 FR 28469, May 13, 1993; 60 FR 29499, June 5, 1995]

**228.105 Other types of bonds.**

Fidelity and forgery bonds generally are not required but may be used 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.

**228.106 Administration.**

**228.106-7 Withholding contract payments.**

(a) Withholding may be appropriate in other than construction contracts (see 232.970-1(b)).

[57 FR 42707, Sept. 16, 1992]

**228.170 Solicitation provision.**

When a requirement for a performance bond or other security is included in a solicitation for dismantling, demolition, or removal of improvements (see FAR 37.300), use the provision at 252.228-7004, Bonds or Other Security. Set a period of time (normally ten days) for return of executed bonds.

**Subpart 228.3—Insurance**

**228.304 Risk-pooling arrangements.**

The 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 following guidelines when it provides the necessary coverage more advantageously than commercially available coverage.

(1) The plan—

(i) Is implemented by attaching an endorsement to standard insurance policy forms for workers' compensation, employer's liability, comprehensive general, and automobile liability. The endorsement states that the instant

policy is subject to the National Defense Projects Rating Plan.

(ii) Applies to eligible Defense projects of one or more departments/agencies. For purposes of this section, a Defense project is any eligible contract or group of contracts with the same contractor.

(A) A Defense project is eligible when—

- (1) Eligible contracts represent, at the inception of the plan, at least 90 percent of the payroll for the total operations at project locations; and
- (2) The annual insurance premium is estimated to be at least \$10,000.

(B) A contract is eligible when it is—

- (1) Either domestic or foreign;
- (2) Cost-reimbursement type; or
- (3) Fixed price with redetermination provisions.

(2) Under construction contracts, include construction subcontractors in the prime contractor's plan only when subcontractor operations are at the project site, and the subcontract provides that the prime contractor will furnish insurance.

(3) Use the agreement in Table 28-1, Insurance Rating Plan Agreement, when the Government assumes contractor premium payments upon contract termination or completion.

(4) The Federal Tort Claims Act provides protection for Government employees while driving Government-owned vehicles in the performance of their assigned duties. Include the endorsement in Table 28-2, Automobile Insurance Policy Endorsement, in automobile liability insurance policies provided under the National Defense Projects Rating Plan.

*Table 28-1.—Insurance Rating Plan Rating Agreement*

Special Casualty Insurance Rating Plan Assignment-Assumption of Premium Obligations

It is agreed that 100 percent\* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy \_\_\_\_\_

\*In the event the Government has less than a 100 percent interest in premium funds

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