Bonds for Special Use Authorization

(Forest Service Handbook 6509.11K Chapter 80)

Performance or payment bonds may be required to secure the obligations imposed by the terms of special use authorization or any applicable law, regulation or order. Bonds are not used to enforce the general terms of the special use authorization.

The penal sum of the bond must equal the estimated financial loss to the government. An example would be the cost to remove improvements, cleanup, and return the site to an acceptable condition should the special use authorization holder fail to do so. Form SF 25 is used for a performance bond.

Bonds may be secured with corporate surety, deposited securities, cash, irrevocable letter of credit or assignment of savings account or certificate of deposit.

To ensure bond coverage, the bond and the special use authorization must be for the same company and in the same legal name.

Definitions:

Bond Approving Officer - The individual who 1) executes a contract, permit, license, special use authorization or comparable document on behalf of the United States, 2) obtains the bond or bonds in the required penal sum 3) approves and periodically reviews bonds for sufficiency of security, and 4) administers the terms of the bond.

Consent of Surety - An acknowledgement by a-surety that its bond given in connection with a contract or permit continues to apply to any modification of that contract or permit.

Par Value of Securities - The stated dollar or denominational amount appearing on the face of a security.

Penal Sum or Penalty Amount - The maximum financial liability for which a surety is obligated.

Performance Bond - A bond to secure fulfillment by the principal of the obligations of the permit. It may also be issued as a blanket bond securing the obligations of separate permits of the same principal.

Principal - The permit holder primarily liable to the Government for the obligations of the permit, as distinguished from the surety.

Surety - A corporate surety company or responsible person bound to the Government for a principal’s failure to fulfill the obligations covered by the bond.

Surety Bond - A written instrument which insures the fulfillment of the obligations of an outside party doing business with the Government. The bond provides protection from financial loss, up to the penal sum stated therein, due to the failure of the bonded party (principal) to fulfill the obligations covered by the bond. The bond is secured by cash, corporate surety, deposited securities, irrevocable letter of credit, assignment of savings account or individual sureties.

Obtaining and Administering Bond Security

The bond-approving or fiscal officer must be informed immediately of mailing address changes or a principal's death or declaration of bankruptcy. This would affect the Forest Service's ability to return cash bonds, draw on bonds or protect the government's interest by meeting required deadlines.

Assignment of Savings Accounts or Certificate of Deposit

An assignment is an irrevocable agreement between a principal and the Forest Service that assigns all rights, title, and interest in the principal's savings account or certificate of deposit to the Forest Service. The principal's financial institution is an indirect party to the agreement, and allows the Forest Service to exercise any rights to the principal's savings account or certificate of deposit. Assignment relationships differ legally from that of letters of credit or sureties.

The assignment agreement gives the Forest Service authority to present the assignment to the financial institution for payment in satisfaction for any damages, demands, or deficiencies arising from the principal's default.

An assignment of a savings account is similar to cash deposit in that the Forest Service may draw funds from the savings account up to the amount stated in the agreement.

A certificate of deposit is a formal instrument issued by a financial institution acknowledging a deposit of cash subject to withdrawal by the depositor or by some other person at the depositor's order under the specific terms of the instrument. Certificates of deposit may be payable on demand or at a fixed or determinable future date. Certificates of deposit are not uniform in their names or terms.

1) Eligible Financial Institutions. Only assignments from a principal whose savings account or certificate of deposit is federally insured by FDIC, FSLI, or NCUA will be accepted.

2) Assignment Agreement Contents. An assignment agreement must include:

    a) An agreement number.

    b) The name and address of the principal's (assignor) financial institution.

    c) The assigned savings account or certificate of deposit number.

    d) The amount assigned, which must equal or exceed the penal sum of the bond.

    e) The special use authorization number covered by the assignment.

    f) A statement that the assignment can be terminated and the account or certificate of deposit released only if the Forest Service terminates it.

g) A statement that the principal authorizes and directs the financial institution to make payment as directed by the Forest Service.

h) A statement that the financial institution is entitled and directed to rely only on the instructions of the Forest Service without any requirement that the financial institution determine whether the principal has received notice of the payment demand.

i) A reference to the specific purpose of the assignment and acceptance by the financial institution stating that requests to offset debts or liens of the principal against the assigned account would not be recognized.

j) The address of the financial institution where the passbook or certificate of deposit is held, if in hardcopy, and where the Forest Service may present sight drafts.

k) The following statement "The deposits of (Name of financial institution) are insured by the FDIC or FSLI or NCUA."

l) A statement that the financial institution and the principal agree that if the financial institution closes or is placed in receivership, Federal insurance proceeds received for the benefit of the principal on any account maintained with the financial institution must be applied to the Forest Service assignment first.

m) The agreement is signed by the principal, financial institution representative, and Forest Service bond-approving officer and fiscal officer.

3) Release. After the principal's obligations are completed and the assignment is no longer needed, the bond-approving officer completes the release.

Corporate Surety

A Corporate Surety Bond is a bond executed by a surety corporation that has been approved by the Department of Treasury as an acceptable surety for federal bonds.

Any corporate surety offered for a bond furnished to the Government must appear in the Department of the Treasury Circular 570, which is revised annually as of July 1. Copies of this circular and interim supplements may be obtained from the Internet at www.fms.treas.gov/c570. Interim supplements are published in the Federal Register and on the Internet as they occur.

Before accepting a corporate surety as bond security, the bond-approving officer must take all of the following actions:

1) Verify from Treasury Circular 570 that:

a) The surety is licensed to transact a fidelity and surety business in the State or area (District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands), where it or it's agent executes the bond.

   b) The surety has sufficient underwriting limitation to cover the penal sum of the bond or has obtained coinsurance or reinsurance from a Treasury certified reinsurer. A list of certified reinsurers is found in Treasury Circular 570.

2) Verify that the agent executing the bond on behalf of the surety is authorized to do so by the surety. A certified copy of the authorizing document, such as a power of attorney, is sufficient.

3) Authenticate the bond with the surety office shown in the Treasury Circular 570.

4) Verify that the principal and surety have executed the bond on the correct form.

U.S. Treasury Bills, Notes, Bonds

The Department of the Treasury's regulations (31 CFR 225) details the requirements for accepting and depositing securities in lieu of sureties.

1) Acceptable Securities. Negotiable United States Treasury bills, notes, bonds, and other public debt obligations whose principal and interest is unconditionally guaranteed by the United States Government are acceptable as security for bonds (31 CFR 380). To avoid the frequent substitution of securities, securities that mature within 30 days of deposit are not accepted. Securities that mature or are redeemable within 1 year of the deposit date may be rejected.

2) Amount of Securities Required. The securities at their par value must equal the penal sum of the bond.

3) Power of Attorney. For all bonds secured by deposited securities, the principal must provide the bond-approving officer with an irrevocable Power of Attorney and Agreement that authorizes the Regional Forester to collect, sell, assign, or transfer deposited securities and any interest retained in satisfaction for any damages, demands, or deficiencies arising from the principal's default.

4) Ownership and Registration. The principal who deposits the securities must be the owner of the securities which must be registered in principal’s name. The securities may not be assigned to the bond-approving officer.

5) Direct Deposit of Securities by Principal. Securities must be deposited with a Federal Reserve Bank or other depository designated by the Secretary of the Treasury. Once deposited, securities may be withdrawn only by written order of the fiscal officer.

6) Payment of Accrued Interest on Deposited Securities. In the absence of any default, the principal is entitled to receive the accrued interest on deposited securities. The Federal Reserve Bank or depository having custody of the deposited securities must pay the interest to the registered owner.

In the event of default, the fiscal officer must direct the depository to retain accrued interest. Unless prohibited by law, accrued interest is available to satisfy costs related to the default.

7) Substitutions or Partial Withdrawal of Securities.

   a) Substitution. Before substitution may be made, the principal must contact the fiscal officer to get instructions. The principal must return the original receipt and a Request for Substitution of Securities to the fiscal officer.

   b) Partial Release. As the principal's liability under the bond is reduced, partial release of deposited securities is allowable. The principal must make written application to the fiscal officer for the release of securities.

8) Return of Securities to Principal Upon Completion of Bond Obligation. Securities that have not matured should be returned to the principal by the depository upon a written order by the fiscal officer in accordance with written instructions from the principal. Securities of the same par value, interest rate and maturity date as those originally deposited are transferred to the principal's designated depository and account. If the securities have matured, they may be returned as cash.

   The principal must execute a receipt upon the complete or partial return of securities. Upon the return of all the securities to the principal, the principal must return the original receipt to the fiscal officer.

Cash Deposits

Any principal required to furnish a bond has the option of furnishing a certified, official, or cashier's check, bank draft, U.S. Postal Service money order, or currency in an amount equal to the penal sum of the bond.

Checks should be drawn as payable to "USDA Forest Service". They should be forwarded with the bill for collection in accordance with directions on the bill unless directed otherwise.

Deposited cash is returned to the principal when the bond obligation is completed unless such cash is applied as follows:

1) To perform work required of the principal when:

   a) The work is authorized by one of the cooperative work acts.

   b) The principal requests the Forest Service to do the work.

2) The principal authorizes transfer of the cash to the cooperative work fund.

   a) The Internal Revenue Service (IRS) makes a levy against the principal for delinquent Federal taxes. Federal agencies holding cash securing a bond obligation that belongs to the principal may be served with the levy. The levy amount is withheld from bond refunds due and payable to the principal if there has not been a default. If the principal has defaulted, the amount paid to IRS from the cash deposit must be reduced by any damages incurred by the Forest Service.

b) To offset against any other debt owed to the Government by the principal, if the cash was advanced on the contract price.

Irrevocable Letter of Credit

A letter of credit is a contract between the Forest Service and an issuing bank or other financial institution based on a third party agreement between the principal and the institution. The Forest Service is not a party to this third party agreement. Letters of credit are similar to cash deposits in that the Forest Service may draw cash from the issuing institution up to the amount stated in the letter of credit.

1) Eligible Issuing Institutions. Only a letter of credit that is issued by a federally insured financial institution such as a Production Credit Association or insured by the Federal Deposit Insurance Corporation (FDIC), Federal Savings and Loan Insurance Corporation (FSLI) or National Credit Union Association (NCUA) will be accepted.

2) Letter of Credit Contents. A letter of credit must include all of the following:

   a) Letter of credit number (assigned by the issuer).

   b) A statement that the letter of credit is irrevocable.

   c) Name and address of issuing institution unless included in the letterhead.

   d) The legal name of the principal which must be identical to the name on the special use authorization or collection agreement.

   e) The maximum credit limit, which must equal or exceed the penal sum of the bond.

   f) A statement that the letter of credit secures the performance or payment on a special use authorization or collection agreement with the number and name of the same.

   g) An authorization to draw sight drafts on the issuing institution in favor of the USDA Forest Service.

      It may be possible to receive monies through wire transfer in lieu of a physical demand. If so, this must be stated in the letter of credit.

   h) Location(s) where the Forest Service may present sight drafts and a statement that the letter of credit number appearing on the sight draft is sufficient identification to honor the letter of credit.

   i) An unqualified expiration date for presentation of sight drafts for payment that is equal to the term of the bonded activity plus sufficient time to meet the specific performance required and to determine any damages and receipt of any funds due the Government.

j) A corporate seal.

k) The following statement: "The deposits of <u>(Name of financial institution)</u> are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or National Credit Union Association."

l) Signature line for person authorized to sign on behalf of the issuing institution and that person's title.

Advantages/Disadvantages of Bond Instruments

Assignment of Savings Accounts & Certificates of Deposit

Advantages: 1) Accepted business practice with most financial institutions. 2) Permittee does not have problem qualifying. 3) Permittee earns interest on deposit. 4) Cash readily available to FS if need arises.

Disadvantages: 1) Cash is tied up and not available for operating capital. 2) May become unavailable to FS if permittee files petition for bankruptcy.

Corporate Surety Bonds

Advantages: 1) Does not tie up large amounts of permittee's cash.

Disadvantages: 1) Small operators may not be able to obtain a corporate bond. 2) Premium charged permittee for coverage. 3) Not all sureties are acceptable - must be approved in Circular 570.

U.S. Treasury Bills, Notes, Bonds

Advantages: 1) Interest paying securities - permittee collects interest. 2) Easily converted to cash if need arises.

Disadvantages: 1) May be difficult to obtain in remote areas. 2) Cash is tied up and not available for operating capital. 3) Involves more paperwork and time to administer than other instruments.

Cash Deposits

Advantages: 1) Not necessary to deal with third parties such as banks and bonding companies. 2) Cash readily available to FS if need arises.

Disadvantages: 1) Deposit does not earn interest. 2) Cash tied up and not available for operating capital. 3) If cash borrowed, permittee pays interest on loan.

Irrevocable Letter of Credit

Advantages: 1) Does not tie up permittee's capital. 2) Accepted business practice and available through most financial institutions. 3) Financial institutions will accept other forms of collateral that FS cannot, e.g. equipment. 4) Easily converted to cash if need arises.

Disadvantages: 1) Some permittees may not be able to qualify. 2) Small financial institutions may not be familiar with the process.