

UNIT 14: OBTAINING BONDS

October 2003

Duty	Determine bonding requirements for the solicitation and contract.
Conditions	Given forecast requirements, written or unwritten acquisition plan, market research, Procurement Request, and other related documents.
Overall Standard	Obtain bonds for high-risk markets. Reject bonds that are not acceptable.

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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
9.405(c)		No debarred sureties.
28.101		Bid guarantees.
28.102		Performance and payment bonds and alternative payment protections for construction contracts.
28.103		Performance and payment bonds for other than construction contracts.
28.104		Annual performance bonds.
28.105		Other types of bonds.
28.106-1		Bonds and bond-related forms.
28.2		Sureties and other security for bonds.
32.202-4		Securities for Government financing (including bonds).
52.228-1		Bid guarantee.
52.228-2		Additional bond security.

Other KSAs

1. Knowledge of corporate financial instruments.
2. Knowledge of what constitutes a high-risk market.
3. Knowledge of typical agency bonding clauses and types of bonds.
4. Knowledge of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies.
5. Ability to use math reasoning in evaluating the need for and the proper amount of bond requirement.
6. Ability to apply sound business judgment and reasoning in bond-related decisions.
7. Ability to conscientiously examine the detailed information associated with bond-related decisions.
8. Ability to make decisions in the Government's best interest based on available information.
9. Ability to maintain the honesty and integrity of the acquisition process.

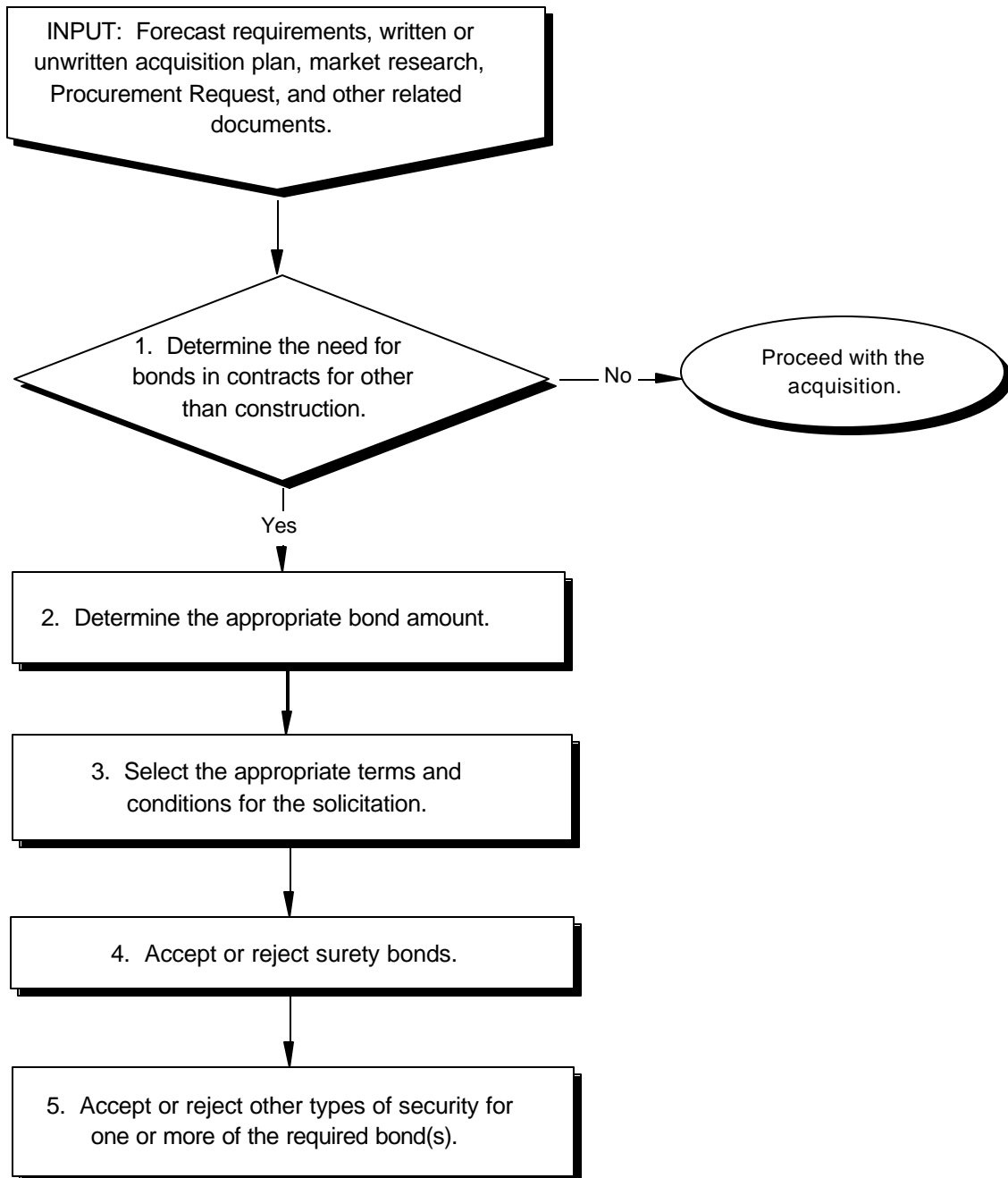
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Other Policies and References (Annotate As Necessary):

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Tasks

Related Standards

<p>1. Determine need for bonds in contracts for other than construction.</p>	<p>Correctly identify situations where a bond is required to protect the Government's interest. Consider the following guidelines:</p> <ul style="list-style-type: none">• Never require a bid guarantee unless a performance bond or a performance and payment bond is also required.• Require a bid guarantee whenever a performance bond or a performance and payment bond is required. However:<ul style="list-style-type: none">- The chief of the contracting office may waive the requirement if it is determined that a bid guarantee is not in the best interest of the Government for a specific acquisition (<i>e.g.</i>, overseas construction, emergency acquisitions, sole-source contracts); or- The agency head or designee may authorize a class waiver.• Generally, you must not use performance and payment bonds for other than construction contracts. However, a:<ul style="list-style-type: none">- Performance bond may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest.- Payment bond may be required when a performance bond is required and its use is in the Government's interest.• Annual bid bonds and annual performance bonds are acceptable for supply or service contracts but not construction.• The head of the contracting activity may approve requiring an advance payment bond when the contract provides for advance payment and no performance bond is required.• The head of the contracting activity may approve requiring a patent infringement bond when:<ul style="list-style-type: none">- A performance bond is not required; and- The financial responsibility of the contractor is unknown or doubtful.
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Related Standards

Tasks	Related Standards
2. Determine the appropriate bond amount.	<p>The actual amount required for a bond under a supply or service contract should be adequate to protect the Government interests. There are no set requirements for supply or service contracts, but requirements for construction contracts exceeding \$100,000 may provide a useful guide:</p> <ul style="list-style-type: none">• The bid guarantee amount should be at least 20 percent of the bid price up to, but not exceeding, \$3 million.• Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of a performance bond must equal:<ul style="list-style-type: none">- 100 percent of the original contract price; and- If the contract price increases, an additional amount equal to 100 percent of the increase.• Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must:<ul style="list-style-type: none">- Equal 100 percent of the original contract price, and if the contract price increases, an additional amount equal to 100 percent of the increase.- Be no less than the amount of the performance bond.
3. Select the appropriate terms and conditions for the solicitation.	Insert the clause at FAR 52.228-2, Additional Bond Security, in solicitations and contracts when bonds are required.

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Related Standards

Tasks	Related Standards
4. Accept or reject surety bonds.	<p>Check the bond to determine whether it conforms to the following requirements:</p> <ul style="list-style-type: none">• The Standard Forms (SFs) and Optional Forms (OFs) identified in FAR 28.106-1 must be used (except in foreign countries) when a bid bond, performance or payment bond, or an individual surety is required.• The bond forms must be used as indicated in the instruction portion of each form• Only accept surety bonds that are complete and include a signature and affidavit certifying power of attorney from an approved surety.• Only accept bonds from an individual surety if the surety:<ul style="list-style-type: none">- Meets the acceptability tests of FAR 28.203 (e.g., the unencumbered value of pledged assets must equal or exceed the amount of the bond.); and- Furnishes with the bond a security interest in assets acceptable under FAR 28.203-2.• Only accept corporate sureties that meet the tests of FAR 28.202, such as:<ul style="list-style-type: none">- The surety must be listed in the Department of Treasury Circular 570;- The penal bond must not exceed the surety's underwriting limit as stated by Treasury (in terms of dollar amount and localities for which the surety has been approved). However, the dollar amount that exceeds the specified limit can be coinsured or reinsured in amounts that do not exceed the underwriting limits of the coinsurers or reinsurers.• Reject any surety that has been debarred, suspended, or proposed for debarment.

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5. Accept or reject other types of security for one or more of the required bond(s).

Any of the following types of security may be accepted instead of a corporate or individual surety for the bond: (FAR 28.204)

- U.S. bonds or notes.
- Certified or cashiers checks, bank drafts, money orders, or currency.
- Irrevocable letter of credit.

Before accepting other types of security, assure that:

- The contractor has executed the bond forms as the principal.
- There is a statement incorporated in the bond form pledging the security in lieu of execution of the bond form by corporate or individual sureties.
- There are adequate safeguards to protect against loss of the security and assure return of the security or its equivalent to the contractor when the bond obligation has ceased.