

UNIT 60: ADMINISTERING SECURITIES

October 2003

Duty	Require the contractor to provide a bond or other securities to apply toward completing the contract in case the contract is terminated for cause or default.
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Conditions	Given contracts and related bonds.
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Overall Standard	Require the contractor to provide bonds or other securities when required by the contract. Utilize the value of those bonds or other securities to apply toward completion of the contract if the contract is terminated for default.
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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
9.405(c)		No debarred sureties.
28.1		Bonds and other financial protection.
28.2		Sureties and other security for bonds.
49.102(b)		Distribution of copies of a notice of termination.
49.402-3(e)(2)		Notification to surety of imminent termination for default.
49.402-3(e)(3)		Mailing checks in care of the surety when default is imminent.
49.402-3(h)		Copy of default termination notice to surety.
49.402-4(a)		Permitting performance by the surety in lieu of termination for default.
49.404		Surety-takeover agreements.
49.405		Completion by another contractor.
49.406		Liquidation of liability.
52.228-2		Additional bond security.
52.228-14		Irrevocable letter of credit.
52.228-16		Performance and payment bonds – other than construction.
SF 1414		Consent of surety.
SF 1415		Consent of surety and increase of penalty.
SF 1416		Payment bond for other than construction contracts.
SF 1418		Performance bond for other than construction contracts.

Other KSAs

1. Knowledge of commercial contract law and business finance.
2. Knowledge of typical agency bonding requirements for contracts other than construction, types of bonds, and bond forms.
3. Knowledge of the Treasury List of Approved Sureties.
4. Ability to conscientiously attend to the details involved in administering bonds, sureties, and other securities.
5. Ability to maintain effective working relationships with the various parties involved in protecting contract performance if termination for cause or default is necessary.
6. Ability to identify rules, data, and other information to determine the adequacy of bonds or other security for protecting contract performance.

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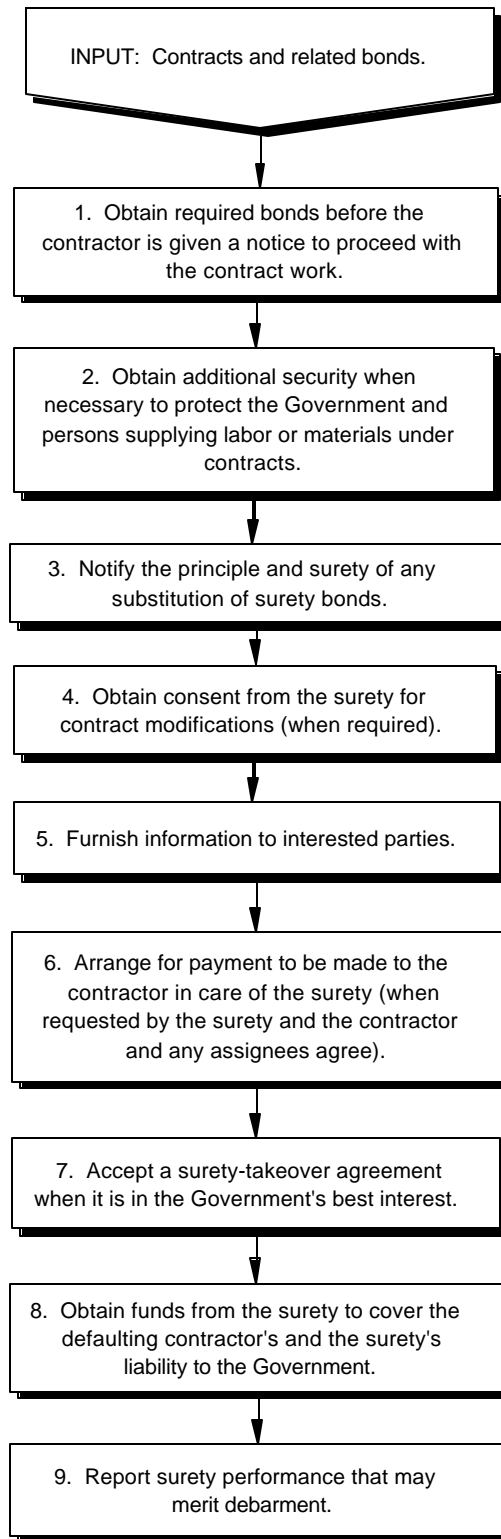
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7. Ability to resolve problems related to bonds and securities with attention to meeting the customer's needs.
8. Ability to make sound, well-informed, and objective decisions to protect contract performance if termination for cause or default is necessary.
9. Ability to maintain the honesty and integrity of the acquisition process.

Other Policies and References (Annotate As Necessary):

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Tasks	Related Standards
<p>1. Obtain required bonds before the contractor is given a notice to proceed with the contract work.</p>	<p>Obtain the bonds required by the contract. The bond must be in the form of a firm commitment, supported by:</p> <ul style="list-style-type: none"> • Corporate sureties whose names appear on the list contained in Treasury Department Circular 570; • Individual sureties; or • Other acceptable security such as: <ul style="list-style-type: none"> – Postal money order; – Certified check; – Cashier's check; – Irrevocable letter of credit; or – In accordance with Treasury Department regulations, certain bonds or notes of the United States. <p>Never require a bond after the contract has been awarded if it was not specifically required in the contract, except as may be determined necessary for a contract modification.</p>
<p>2. Obtain additional security when necessary to protect the Government and persons supplying labor or materials under contracts.</p>	<p>Reasons for obtaining additional security include:</p> <ul style="list-style-type: none"> • A surety for a bond or issuing financial institution for other security furnished with the contract becomes unacceptable to the Government (e.g., upon notification of termination of a company's authority to qualify as a surety on Federal bonds); • A surety fails to furnish reports on its financial condition as required by the Government; • The contract price is increased so that the penal sum of a bond becomes inadequate; or • An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. <p>When additional security is required, it can be obtained:</p> <ul style="list-style-type: none"> • In whole or part from the original sureties through an increase in penalty; or • In whole or part from a new surety or one of the alternatives described in FAR 28.204.

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Tasks	Related Standards
3. Notify the principle and surety of any substitution of surety bonds.	<p>A new surety bond covering all or part of the obligation on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity or as otherwise specified in agency regulation.</p> <p>When a new surety bond is approved, notify the principle and surety of the original bond(s) of effective date of the new bond(s).</p>
4. Obtain consent from the surety for contract modifications (when required).	<p>Obtain the consent of the surety when the contract is modified, if:</p> <ul style="list-style-type: none">• An additional bond is obtained from other than the original surety; or• No additional bond is required and the modification;<ul style="list-style-type: none">– Is for new work beyond the scope of the original contract; or– Does not change the scope, but changes the contract price by more than 25 percent or \$50,000.00 (upward or downward). <p>No consent is required for the reasons above when performance or payment is secured by any of the following types of security:</p> <ul style="list-style-type: none">• United States bonds or notes;• Certified of cashier's checks, bank drafts, money orders, or currency; or• Irrevocable letter of credit.

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Related Standards

<p>5. Furnish information to interested parties.</p>	<p>A contract bond surety may be provided the following information on the contract when the surety requests it in writing:</p> <ul style="list-style-type: none"> • The progress of work, • Payments, and • The estimated percentage of completion. <p>When the contractor has provided a payment bond, contracting:</p> <ul style="list-style-type: none"> • Must provide the name and address of the surety or sureties to any subcontractor or supplier that has furnished or been requested to furnish labor or material for the contract. • May furnish general information concerning the work progress, payments, and the estimated percentage of completion to persons who have provided labor or materials and have not been paid. • Must furnish a certified copy of the bond and the contract for which it was given to any person who: <ul style="list-style-type: none"> – Requests a copy; – Furnishes an affidavit that the requestor: <ul style="list-style-type: none"> ? Has supplied labor or materials for such work and payment has not been made; or ? Is being sued on such bond; and – Pays such costs of preparation as determined by the head of the agency or designee to be reasonable and appropriate.
<p>6. Arrange for payment to be made to the contractor in care of the surety (when requested by the surety and the contractor and any assignees agree).</p>	<p>The contractor must forward a written request to the designated disbursing officer specifically directing a change in address for mailing checks.</p>

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Related Standards

<p>7. Accept a surety-takeover agreement when it is in the Government's best interest.</p>	<p>While a surety takeover of contract performance occurs most often in construction, a takeover agreement may be offered for a supply or service contract.</p> <p>Consider carefully any surety offer for completing the contract.</p> <ul style="list-style-type: none">• Take action on the basis of the Government's interest, including the possible effect upon the Government's rights against the surety.• Reject surety takeover if the:<ul style="list-style-type: none">– The persons or firm(s) proposed by the surety are not competent and qualified; or– The proposal is not otherwise in the best interest of the Government.• Insist on a tripartite agreement among the Government, the surety, and the defaulting contractor when necessary to resolve the defaulting contractor's residual rights, including assertions to unpaid prior earnings.• Insist that any takeover agreement require the surety to complete the contract and the Government to pay the surety's costs and expenses up to the balance of the contract price unpaid at the time of default, subject to the conditions in FAR 49.404(e).
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Tasks	Related Standards
<p>8. Obtain funds from the surety to cover the defaulting contractor's and the surety's liability to the Government.</p>	<p>If the surety does not arrange for completion of the contract, normally arrange for completion of the work by awarding a new contract based on the same plans and specifications.</p> <ul style="list-style-type: none"> • The new contract may be the result of sealed bidding or any other appropriate contracting method or procedure. • Exercise reasonable diligence to obtain the lowest price available for completion. <p>The contractor and the surety are liable to the Government for resultant damages.</p> <ul style="list-style-type: none"> • To liquidate the contractor's and the surety's liability to the Government, use: <ul style="list-style-type: none"> – All retained percentages of progress payments previously made to the contractor; and – Any progress payments due for work completed before the termination. • If the retained and unpaid amounts are insufficient, take steps to recover the additional sum from the contractor and the surety.
<p>9. Report surety performance that may merit debarment.</p>	<p>For example, report information related to willful:</p> <ul style="list-style-type: none"> • Failure to fulfill obligations under the bond. • Failure to disclose all bond obligations. • Misrepresentation of the value of available assets. • False or misleading statement, signature, or representation on a bond or affidavit of individual surety.