

**PART 49—TERMINATION OF CONTRACTS**

5. Section 49.503 is amended by revising paragraph (a)(1) to read as follows:

**49.503 Termination for convenience of the Government and default.**

(a) *Cost-reimbursement contracts*—(1) *General use.* The contracting officer shall insert the clause at 52.249-6, Termination (Cost-Reimbursement), in solicitations and contracts when a cost-reimbursement contract is contemplated, except contracts for research and development with an educational or nonprofit institution on a no-fee basis.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

6. Section 52.236-25 is amended by revising the introductory text of the clause to read as follows:

**52.236-25 Requirements for Registration of Designers.**

As prescribed in 36.609-4, insert the following clause:

\* \* \* \* \*

[FR Doc. 98-34367 Filed 12-28-98; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 28 and 52**

[FAR Case 98-014]

RIN 9000-AI21

**Federal Acquisition Regulation; Increased Payment Protection**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to increase the required penal amount of payment bonds on construction contracts over \$6,250,000 and to allow the contracting officer to increase the amount of any payment bond or alternative payment protection to an

amount not to exceed the contract price, if the contracting officer decides that a greater amount is appropriate.

**DATES:** Comments should be submitted on or before March 1, 1999 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98-014@gsa.gov.

Please cite FAR case 98-014 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jack O'Neill, Procurement Analyst, at (202) 501-3856. Please cite FAR case 98-014.

**SUPPLEMENTARY INFORMATION:****A. Background**

This rule proposes to amend the Federal Acquisition Regulation (FAR) to increase the required penal amount of payment bonds from the current maximum of \$2.5 million for any contract that exceeds \$5 million, to 40 percent of the contract price, if that amount exceeds \$2.5 million. This occurs when the contract price exceeds \$6,250,000. The contracting officer may also increase the amount of any payment bond or alternative payment protection to an amount not to exceed the contract price, if the contracting officer decides that a greater amount is appropriate. The contracting officer may consider local payment bond practices under state "Little Miller Acts" or whether the nature, location, or unique quality of the work might increase the risks of payment defaults.

The proposed rule was initiated at the request of the Administrator of the Office of Federal Procurement Policy, in order to provide more adequate protection for subcontractors and suppliers under Federal construction contracts. Over time, the price of construction has continued to rise but the \$2.5 million statutory payment bond amount has remained the same (40 U.S.C. 270a(a)(2)). The proposed rule is based on the statutory authority at 40 U.S.C. 270a(c), which permits the contracting officer to require additional security.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866,

dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small business firms will in some cases be required to provide additional payment protection. On the other hand, many small businesses may be the beneficiaries of the increased payment protection. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

We estimate that approximately 4,300 small business firms per year will be required to provide increased payment protection. A majority of these firms use corporate bonds. We do not expect this change to affect these firms ability to do business because these firms already acquire corporate performance bonds at 100 percent of contract value, and the payment and performance bonds are normally priced off contract price. Furthermore, if there are any cost increases, these increases would be passed through to the Government. For that small group of small businesses that utilize alternate payment protections, the impact may be more significant. The beneficiaries of the increased payment protection should include both large and small businesses that are first- and second-tier suppliers and subcontractors to Government prime contractors.

A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 98-014), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 28 and 52**

Government procurement.

Dated: December 22, 1998.

**Victoria Moss,**

*Acting Director,*

*Federal Acquisition Policy Division.*

Therefore, it is proposed that 48 CFR Parts 28 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 28 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## **PART 28—BONDS AND INSURANCE**

2. Section 28.102-2 is amended by revising paragraph (b) to read as follows:

### **28.102-2 Amount required.**

\* \* \* \* \*

(b) *Payment bonds or alternative payment protection.* (1) The penal amount of payment bonds or the amount of alternative payment protection shall be—

(i) 50 percent of the contract price if the contract price is not more than \$1 million;

(ii) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;

(iii) \$2.5 million if the contract price is more than \$5 million but not more than \$6,250,000;

(iv) 40 percent of the contract price if the contract price is more than \$6,250,000; or

(v) An amount greater than the amounts in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, not to exceed the contract price, if the contracting officer decides that a greater amount is appropriate. The contracting officer may consider local payment bond practices under state "Little Miller Acts" or whether the nature, location, or unique quality of the work might increase the risks of payment defaults.

(2) The Government may require additional protection if the contract price is increased.

(i) The penal amount of the total protection as revised shall meet the requirement of paragraph (b)(1) of this subsection.

(ii) The Government shall secure the required additional protection by directing the contractor to increase the penal sum of the existing bond or to

obtain an additional bond, or to furnish additional alternative payment protection.

\* \* \* \* \*

3. Section 28.102-3 is amended by revising the section heading; in paragraph (a) by adding a new sentence after the second sentence; and in paragraph (b) by adding a new sentence after the first sentence to read as follows:

### **28.102-3 Contract clauses.**

(a) \* \* \* The contracting officer may insert a dollar amount or percentage of contract price in paragraph (b)(2)(E) of this clause in accordance with FAR 28.102-2(b)(1)(v). \* \* \*

(b) \* \* \* The contracting officer may increase the required percentage in paragraph (b) of this clause in accordance with 28.102-2(b)(1)(v). \* \* \*

## **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

### **52.228-14 [Amended]**

4. Section 52.228-14 is amended by revising the date of the clause; and in paragraphs (f) and (g) of the clause by removing "\_\_\_\_\_, 19\_\_\_\_" and adding "[DATE]\_\_\_\_\_" in each instance.

5. Section 52.228-15 is amended by revising the date of the clause and paragraph (b)(2) to read as follows:

### **52.228-15 Performance and Payment Bonds—Construction.**

\* \* \* \* \*

#### **Performance and Payment Bonds—Construction (Date)**

\* \* \* \* \*

(b) \* \* \*

(2) *Payment Bonds* (Standard Form 25-A): (i) The penal amount of payment bonds shall be—

(A) 50 percent of the contract price if the contract price is not more than \$1 million;

(B) 40 percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;

(C) \$2.5 million if the contract price is more than \$5 million but not more than \$6,250,000;

(D) 40 percent of the contract price if the contract price is more than \$6,250,000; or

(E) \$\_\_\_\_\_, or \_\_\_\_\_ percent of the contract price. (If this paragraph is filled in, paragraphs (b)(2)(i)(A) through (b)(2)(i)(D) of this clause do not apply.)

(ii) The Government may require additional protection if the contract price is increased.

\* \* \* \* \*

6. Section 52.228-16 is amended by revising the date of the clause, paragraph (d), and Alternate I to read as follows:

### **52.228-16 Performance and Payment Bonds Other Than Construction.**

\* \* \* \* \*

#### **Performance and Payment Bonds—Other Than Construction (Date)**

\* \* \* \* \*

(d) The Government may require additional performance and payment bond protection when the contract price is increased. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

\* \* \* \* \*

*Alternate I (Date).* As prescribed in 28.103-4, substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to \_\_\_\_\_ percent of the contract price.

(d) The Government may require additional performance bond protection when the contract price is increased. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

[FR Doc. 98-34366 Filed 12-28-98; 8:45 am]

BILLING CODE 6820-EP-PJ