

**SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS
PART M828—BONDS AND INSURANCE**

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ATTACHMENT:

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Subpart M828.1—Bonds and Other Financial Protections

M828.100 Scope of subpart.

This subpart prescribes guidance and procedures for the safekeeping of negotiable securities, furnishing information to contractors, and assisting Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Concerns in obtaining bonding.

M828.101 Bid guarantees.

M828.101-70 Safekeeping and return of bid guarantee.

(a) The contracting officer shall retain certified checks or other negotiable securities provided as bid security acceptable bids in a safe or a similarly secured location. After the contract and contract bonds have been signed and approved, the contracting officer shall return the certified checks or other negotiable securities to all bidders either:

- (1) In person to the bidder who provides a proper receipt; or
- (2) By any method that shall provide evidence that the bidder received the security.

(b) If any of the acceptable bidders request the return of a corporate or individual surety bid bond, the contracting officer shall not return those bid bonds until the contract and contract bonds have been executed by the successful bidder and approved by the contracting officer or all bids have been rejected.

M828.106 Administration.

M828.106-6 Furnishing information.

The contracting officer for the applicable contract shall furnish a certified copy of the payment bonds to the requestor and determine the preparation costs that the requestor must pay in accordance with [FAR 28.106-6\(d\)\(3\)](#).

M828.106-71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.

Contracting officers will encourage VA prime contractors to assist SDVOSB concerns and VOSB concerns in obtaining subcontractor performance and payment bonds. Mentors are especially encouraged to assist their protégés in obtaining bid, payment, and performance bonds as prime contractors and bonds as subcontractors when bonds are required.

M828.106-73 Performance and payment bonds for multiple award contracts.

Performance and payment bonds for multiple award contracts are only required at the time of issuance of a task/delivery order and shall not be required for the maximum value of the contract. The bonds will be based on the amount of the task order and any subsequent modifications.

Subpart M828.2—Sureties and Other Security for Bonds

M828.202 Acceptability of corporate sureties.

The contracting officer shall ensure that corporate sureties offered for a bond in connection with the procurement of supplies or services (including construction) appear on the list of approved corporate sureties contained in the Treasury Department Circular 570, and that the amount of bond is not in excess of the underwriting limits stated in that list. The current list of Treasury authorized companies is available through the Internet at [Department of the Treasury's Listing of Companies Holding Certificates of Authority](#). The contracting officer will further ensure that the surety remains on the Treasury Department circular approved list through the active life of the contract by reviewing all circular supplements. Interim changes are published in the Federal Register and on the internet as they occur. When an active surety is terminated and removed from the list, the contracting officer shall ensure that new bonding is secured by the contractor for the uncompleted work under the contract at no cost to the Government. For further procedures on handling bonds refer to M828.270 below.

M828.203 Acceptability of individual sureties.

M828.203-7 Exclusion of individual sureties.

(a) The authority to make determinations to exclude individuals from acting as surety on bonds referenced in [FAR 28.203-7\(a\)](#) is delegated to the DSPE.

(b) The authority to authorize acceptance of bonds of individual sureties whose names appear in the System for Award Management Exclusions pursuant to [FAR 28.203-7\(d\)](#) is delegated to the DSPE.

M828.204 Alternatives in lieu of corporate or individual sureties.

M828.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.

The contracting officer receiving a certified or cashier's check, bank draft, post office money order or currency in lieu of corporate or individual sureties will deposit them in accordance with [FAR 28.204-1\(a\) or \(b\)](#).

M828.270 General procedures and processes related to handling bonds.

(a) Bonds protect the Government, the prime contractor's employees, and the subcontractors and suppliers who provide goods or services to the prime contractor.

(1) The bid bond, [Standard Form \(SF\) 24](#) (on solicitations with cost estimates exceeding \$150,000), ensures that if awarded a contract, the bidder will furnish acceptable payment and performance bonds.

(2) The performance bond ([SF25](#)) protects the Government from loss in the event the contractor fails to complete the contract or fails to pay its taxes.

(3) The payment bond ([SF 25A](#)) protects the prime contractor's employees in the event the contractor fails to pay salaries and the subcontractors and suppliers in the event the contractor fails to pay its bills.

(4) Subcontractors, suppliers, and the prime contractor's employees are precluded from filing liens against Federal Government property.

(b) The contracting officer is responsible for ensuring the bond documents they accept and approve are valid.

(c) To be acceptable, the corporate surety bond must contain the name of a corporation in the "SURETY(IES)" block of the form and the named corporation must be listed in the Department of the Treasury's Listing of Approved Sureties ([Department of Treasury's Listing of Approved Sureties](#)).

(1) If the named surety (other than an individual named person) is not listed in Department of the Treasury Circular 570, the bond must be rejected in accordance with [FAR 28.202](#). This does not apply if an individual is shown on the bond as the surety in the "SURETY(IES)" block.

(2) If that block contains anything other than the name of a Department of the Treasury Circular 570-listed corporate surety or an individual person's name, the bond should be rejected.

(d) The contracting officer must check and verify that the "PENAL SUM OF BOND" amount shown on the bond complies with the requirements of [FAR 28.101-2\(b\)](#) or [28.102-2](#).

(e) If the amount on a bid bond is not sufficient, the contracting officer must comply with and follow the guidance at [FAR 28.101-4](#).

(f) The correct "INVITATION NO." or "CONTRACT NO." must be shown in the applicable block on the bond.

(1) An incorrect invitation number on a bid bond make the bid bond invalid and the bid should be rejected.

(2) The contracting officer must reject payment or performance bonds that have an incorrect contract number and return the bonds to the contractor for correction.

(g) The name “PRINCIPAL” on the bond (the bidder or contractor) must be the same name as the named bidder or contractor as shown on the [SF 1442](#) and the type of organization shown on the bond must match the type of organization shown in the solicitation offer representations and certifications or on-line at System for Award Management (SAM) Registration and Representations and Certifications database [SAM database](#).

(h) The bond forms may not be modified from the standard form formats (see [FAR 28.106-1](#)), except as provided in [FAR 28.204\(a\)](#). Only standard, non-modified United States Government forms should be accepted. Bond forms from other organizations such as the American Institute of Architects (AIA) may not be accepted.

(1) In addition, an addendum adding a rider on terrorism coverage is acceptable.

(2) Any addendum or rider other than a terrorism rider must be approved by the Office of the General Counsel (OGC).

(i) Bonds must be original documents, contain original signatures, must not contain any “white-out” corrections, and must be signed by both *an authorized representative of the Principal* (the bidder or contractor) and by *an individual who has been delegated by the surety corporation* with the power and authority to sign bonds on behalf of the corporation (the “attorney-in-fact”).

(1) Under certain circumstances the lack of signature of the Principal may be waived as a minor informality and the defect may be corrected after receipt of the bond, but the lack of signature of the attorney-in-fact on a corporate surety bond may not be waived and renders the bond unacceptable.

(i) A corporate seal of the surety is not sufficient evidence that the attorney-in-fact is authorized to sign the bond. They must also be accompanied by a valid power of attorney from the surety corporation granting the attorney-in-fact authority to sign.

(j) The “STATE OF INC.” and the “LIABILITY LIMIT” blocks should be filled in, but failure of the bond to reflect the surety’s liability limit in the “LIABILITY LIMIT” block may be waived as a minor informality.

(1) A liability limit stated in the “LIABILITY LIMIT” block that is less than the amount required by [FAR 28.101-2\(b\)](#) or [28.102-2](#) shall render the bond unacceptable. If there is a liability limit set against the bond the contracting officer shall consult with OGC.

(2) The liability limit figure shown for the surety corporation in Department of the Treasury Circular 570 represents the dollar value of each surety bond that the corporation is authorized to issue. If the liability limit is listed as \$3,000,000 the corporation is authorized to issue bonds valued at up to \$3,000,000 for each bond.

(3) Bonds that exceed the liability limit value should be rejected unless the penal sum (face amount) of bonds which surety companies may provide is protected by co-

insurance, reinsurance, or other methods in accordance with Department of the Treasury Circular 31 CFR [Section 223.10](#), [Section 223.11](#).

(k) Surety corporations can only sell bonds in States in which they are licensed to do so.

(1) The power of attorney usually states where the attorney-in-fact is located or the address of the attorney-in-fact may be shown in the "NAME AND ADDRESS" block under "CORPORATE SURETY(IES)" at the bottom of the bond.

(2) The contracting officer must match the State where the attorney-in-fact is located with the list of States shown for that particular surety corporation in Department of the Treasury Circular 570.

(3) The States listed in the Circular are the States in which the surety is licensed to sell bonds, but the list may not be current

(4) If the attorney-in-fact is located in a State that is not shown in Department of the Treasury Circular 570 for that surety, the contracting officer should verify with the surety corporation (not with the attorney-in-fact) whether or not the surety corporation is licensed to issue surety bonds in the State in which the attorney-in-fact is located.

(5) The contracting officer can also verify with the State insurance commissioner (information of such offices can usually be located on the Web or can be found at the end of Department of Treasury Circular 570 that the surety corporation is licensed to conduct surety business in that State.

(6) If the surety corporation is not licensed to issue bonds in the State in which the attorney-in-fact is located, the bonds shall be rejected.

(7) The location of the construction project or the location of the bidder/contractor has no impact on the States in which the surety is licensed; the State relates only to the location of the attorney-in-fact who signed the bonds (see Notes (c) and (f) in Circular 570).

(l) A valid power of attorney is critical to the validity of the corporate surety bond.

(1) The contracting officer must read the power of attorney and assess its validity. A sample power of attorney can be found on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) website. ([Sample power of attorney](#))

(2) If the document says that it is only valid if it contains a corporate water mark or a particular color, it must contain the required water mark or color. If it doesn't the bond should be rejected.

(3) The power of attorney must state that the person who signed the bond is authorized to do so and the name on the power of attorney must match the name shown on the bond.

(4) If the power of attorney places any limits on the dollar value or on the type of bonds that the named attorney-in-fact can execute, the bonds signed by that attorney-in-fact must be within those limits.

(5) If the power of attorney contains any signatures that are printed copies of signature rather than original signature, the document must contain a statement that printed copies of signatures is authorized.

(6) The document must contain a statement with a current date attesting that the power of attorney is still valid. If there is any question as to the validity of the power of attorney, the validity of the bond should be verified with the corporate surety office.

(7) The contracting officer should consult with OGC for guidance in determining the adequacy and acceptability of powers of attorney.

(8) If a contracting officer has any concerns as to the validity of a corporate surety they should go to the [Department of Treasury Circular 570 website](#).

(9) For corporate sureties that do not participate in the Bond Authenticity program, the contracting officer should contact such sureties via the telephone number listed in Circular 570 to verify that the bonds are valid.

(m) For contracts between \$35,000 and \$150,000, a bid bond is not required, but the contractor must be required to provide payment protection after contract award. The solicitation should authorize the contractor to select from at least two of the types of payment protection authorized by [FAR 28.102-1\(b\)](#).

(1) More than two options can be provided to the bidder/contractors, but it is preferable that bidder/contractors be given at least the option of providing either a payment bond or an irrevocable letter of credit (ILC).

(2) If the contractor elects to furnish anything other than corporate surety bonds, i.e., individual surety bonds or alternative payment protections the contracting officer shall consult with the OGC to determine the validity and acceptability of the payment protection provided.

(n) For contracts estimated to exceed \$150,000 a bidder or contractor may furnish alternatives in lieu of corporate or individual surety in support of a bond ([see FAR 28.204](#)).

(1) In such instances, the bidder or contractor must submit a completed bond form or forms containing a statement pledging security as provided in [FAR 28.204-1 through 28.204-3](#) in lieu of execution of the bond form by a corporate or individual surety.

(2) If an ILC is offered as an alternative security, the contracting officer must consult with the OGC for guidance in determining the adequacy and acceptability of the ILC. Note that the ILC must comply with the requirements of [FAR 28.204-4](#).

(o) If a bidder or contactor provides an individual surety bond, the contracting officer shall obtain the opinion of the OGC as to the adequacy of the documents pledging the assets of the individual surety prior to accepting the bond ([FAR 28.203\(f\)](#)).

(1) The types of assets of an individual surety that are acceptable are listed in [FAR 28.203-2\(a\)](#) and [28.203-2\(b\)](#) and the contracting officer must ensure that only those types of assets are accepted.

(p) While it is not mandatory for the contacting officer to require bid bonds from a bidder on 8(a) sole source negotiated construction contracts valued in excess of \$150,000, it is recommended that bid bonds be required in such circumstances.

(1) This requirement will help avoid the necessity of terminating an awarded contract if the contractor is unable to provide acceptable payment and performance bonds.

(2) If the bidder can provide an acceptable bid bond and is subsequently awarded a contract, VA will include the cost of the bid bond in the negotiated award price.

(3) A contractor should not be placed into a situation where the contractor is subject to termination of the contract for failure to provide acceptable payment and performance bonds if that situation could have been avoided through the rejection of a defective bid bond.

Subpart M828.70—Indemnification of Contractors for Medical Research or Development Contracts

M828.7004 Approval for indemnification.

(a) The Secretary of Veterans Affairs will make the approval determinations for the indemnification of contractors.

(b) The contracting officer must submit requests for approval, together with all available information, to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. ([38 U.S.C. 7317](#))

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DEPARTMENT OF VETERAN AFFAIRS ACQUISITION MANUAL

M828 Attachment A

CONTRACT BONDS CHECKLIST FOR CONTRACT NO. _____

INSTRUCTIONS: Review each item with the corresponding part of the Bid, Performance, and/or Payment Bond Forms and indicate either by an "X or "N/A" (*not applicable*) for each item. File this completed checklist in the appropriate part of the contract file.

ITEM (BID BOND SF 24, PERFORMANCE BOND SF 25, AND PAYMENT BOND SF 25-A)	SF 24	SF 25	SF 25A
1. Bond must be executed on correct form (SF 24, SF 25, SF 25-A)			
2. Date of execution entered on Bid Bond (SF 24)			
A. Ensure that date of the Bid Bond is not later than the bid opening date			
B. Payment Bond (SF 25-A) date not prior to date of contract (SF 1442)			
C. Performance Bond (SF 25) date not prior to date of contract (SF 1442)			
3. Name of Principal must be entered			
4. Name of Principal identical with name on bid and/or contract must be entered			
5. Type of organization space completed - If corporation, state of incorporation must be entered			
6. Corporate Surety			
A. Name of Surety and state in which Surety was incorporated			
B. Surety listed on current list of the Treasury's Listing of approved Sureties for the appropriate amount (<i>FAR 28.202</i>) (NOTE: Attach applicable excerpt from Treasury Listing.)			
7. Individual Sureties (<i>2 or more</i>)			
A. Contractor complies with FAR 28.203			
B. SF 28, Affidavit Of Individual Surety, Executed correctly by each Surety and submitted with Bonds			
8. Penal Sum or Percentage must be entered Bid Bond SF 24 (20%), Performance Bond SF 25 (100%), Payment Bond SF 25A (100%)			
9. Penal Sum is in sufficient amount (<i>Penal Sum is in agreement with Bond Requirements</i>) SF 24, SF 25, SF 25A			
10. Date of bid or contract must be entered			
11. Bid or contract number must be entered (Entry identical with number on bid or contract)			
12. Principal Signatures			
A. Individual - Signature identical to that on bid			
B. Partnership - Signature of Partner			
C. Corporation - Signature of Officer or Agent			
D. Corporation - The Seal or Scroll, stamped must be impressed or affixed			
13. Name and address of Surety must be entered in the appropriate space			

DEPARTMENT OF VETERAN AFFAIRS ACQUISITION MANUAL

14. Surety Signatures			
A. Bond signed for Surety Company			
B. Power of Attorney by Surety giving authority to the Agent to execute Bonds in the appropriate dollar amount			
15. Impression (Raised) or Stamped of the Corporate Seal of the Surety must be affixed to the Bond			
16. Rate and amount of the Premium entered (<i>Entry NOT required on Payment Bond - SF 25-A</i>)			
17. Erasures, corrections, or other material alterations, if any, must be initialed by each person signing the Bond			
18. Bond Disposition - File original in the contract file (bid bond in preaward file; performance and payment bonds in post-award file).			

Acceptability of bond verified.

Contracting Officer

Date