

# NASA FAR Sup 1828

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## **PART 1828**

### **BONDS AND INSURANCE**

#### **Subpart 1828.1--Bonds**

##### **1828.101 Bid guarantees.**

###### **1828.101-70 NASA solicitation provision.**

The contracting officer shall insert the provision at [1852.228-73](#), Bid Bond, in construction solicitations where offers are expected to exceed \$100,000 and a performance bond or a performance and payment bond is required (see [FAR 28.102](#) and [28.103](#)). The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed \$3 million.

##### **1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.**

###### **1828.103-70 Subcontractors performing construction work under nonconstruction contracts.**

(a) The contracting officer shall require prime contractors on nonconstruction contracts to obtain the following performance and/or payment protection from subcontractors performing construction work:

(1) Performance and payment bonds when the subcontract construction work is in excess of \$100,000 and is determined by NASA to be subject to the Miller Act.

(2) An appropriate payment protection determined according to FAR 28.102-1(b)(1) when the subcontract construction work is greater than \$30,000 but not greater than \$100,000.

(b) The contracting officer shall establish the penal amount in accordance with FAR 28.102-2 based on the subcontract value.

(c) The bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

###### **1828.103-71 Solicitation requirements and contract clauses.**

When performance and payment bonds or alternative payment protections are required from subcontractors performing construction work under nonconstruction prime contracts, the contracting officer shall follow the procedures in [FAR 28.102-3](#). When alternative payment protections are required, insert a clause substantially the same as [FAR 52.228-13](#), Alternative Payment Protections, appropriately modified.

##### **1828.106 Administration.**

**1828.106-6 Furnishing information.**

(c) The contracting officer is the agency head's designee.

**Subpart 1828.2--Sureties**

**1828.202 Acceptability of corporate sureties.**

(d) Contracting officers may obtain access to Department of Treasury Circular 570 through the internet at <http://www.fms.treas.gov/c570/index.html>.

**1828.203 Acceptability of individual sureties.**

(g) Notification of suspected criminal or fraudulent activities, with all supporting documentation, shall be submitted to the Headquarters Office of Procurement (Code HS).

**Subpart 1828.3--Insurance**

**1828.307 Insurance under cost-reimbursement contracts.**

**1828.307-1 Group insurance plans.**

(a) The procurement officer is the approval authority.

**1828.307-2 Liability.**

(b)(2)(A) The procurement officer may approve a requirement for property damage liability insurance when:

(a) A commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by the contractor in the course of its commercial operations; or

(b) The contractor is engaged in the handling of high explosives or in extra hazardous research and development activities undertaken in populated areas.

(B) In all other circumstances, the Assistant Administrator for Procurement (Code HS) is the approval authority.

**1828.307-70 Insurance of industrial facilities.**

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the contracting officer, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the manner and to the same extent as required in [FAR 28.307-2](#).

**1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.**

**1828.311-1 contract clause.**

The contracting officer must insert the clause at [FAR 52.228-7](#), Insurance-Liability to Third Persons, as prescribed in [FAR 28.311-1](#) unless --

(a) Waived by the procurement officer; or

(b) The successful offeror represents in its offer that it is totally immune from tort liability as a State agency or as a charitable institution.

**1828.311-2 Agency solicitation provisions and contract clauses.**

**1828.311-270 NASA solicitation provisions and contract clauses.**

(a) The contracting officer must insert the clause at [1852.228-71](#), Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of

aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

(b) The contracting officer must insert the provision at [1852.228-80](#), Insurance--Immunity from Tort Liability, in solicitations for research and development when a cost-reimbursement contract is contemplated.

(c) The contracting officer must insert FAR clause 52.228-7 and the associated clause at [1852.228-81](#), Insurance -- Partial Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is partially immune from tort liability as a State agency or as a charitable institution.

(d) The contracting officer must insert the clause at [1852.228-82](#), Insurance--Total Immunity From Tort Liability, when the successful offeror represents in its offer that the offeror is totally immune from tort liability as a State agency or as a charitable institution.

### **1828.370 Fixed-price contract clauses.**

(a) The contracting officer shall insert the clause at [1852.228-70](#), Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at 1852.228-70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than \$500. If it is determined not to assume this risk, the clause at 1852.228-70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at [1852.228-71](#), Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228-70 is used, the term "Contractor's premises" shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

### **1828.371 Clauses incorporating cross-waivers of liability for International Space Station activities and Science or Space Exploration activities unrelated to the International Space Station.**

(a) In contracts covering International Space Station activities, or Science or Space Exploration activities unrelated to the International Space Station that involve a launch, NASA shall require the contractor to agree to waive all claims against any entity or person defined in the clause based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waivers will require the contractor to extend the cross-waiver provisions to their subcontractors at any tier and related entities ensuring those subcontractors and related entities also waive all claims against any entity or person defined in the clause for damages arising out of Protected Space Operations. The purpose of the clauses prescribed in this section is to extend the cross-waivers under other agreements to NASA contractors that perform work in support of NASA's obligations under these agreements.

(b) The contracting officer shall insert the clause at 1852.228-78, Cross-Waiver of Liability for Science or Space Exploration Activities unrelated to the International Space Station, in solicitations

and contracts above the simplified acquisition threshold for the acquisition of launches for science or space exploration activities unrelated to the International Space Station or for acquisitions for science or space exploration activities that are not related to the International Space Station but involve a launch. If a science or space exploration activity is in support of the International Space Station, the contracting officer shall insert the clause prescribed by paragraph (c) of this section and designate its application to that particular launch.

(c) The contracting officer shall insert the clause at 1852.228-76, Cross-Waiver of Liability for International Space Station Activities, in solicitations and contracts above the simplified acquisition threshold when the work to be performed involves Protected Space Operations, as that term is defined in the clause, relating to the International Space Station.

(d) At the contracting officer's discretion, the clauses prescribed by paragraphs (b) and (c) of this section may be used in solicitations, contracts, new work modifications, or extensions to existing contracts under the simplified acquisition threshold involving science or space exploration activities unrelated to the International Space Station, or International Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the science or space exploration activities unrelated to the International Space Station, or International Space Station activities.

**1828.372 Clause for minimum insurance coverage.**

In accordance with [FAR 28.306\(b\)](#) and [28.307](#), the contracting officer may insert a clause substantially as stated at [1852.228-75](#), Minimum Insurance Coverage, in fixed-price solicitations and contracts requiring performance on a government installation and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular acquisition.