Subpart 828.70—Indemnification of Contractors for Medical Research or Development Contracts

Source: 83 FR 7404, Feb. 21, 2018, unless otherwise noted.

Parent topic: PART 828—BONDS AND INSURANCE

828.7000 Scope of subpart.

(a) As used in this subpart, the term “contractor” includes subcontractors of any tier under a contract containing an indemnification provision under 38 U.S.C. 7317.

(b) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts involving medical research or research and development that involve risks of an unusually hazardous nature, as authorized by 38 U.S.C. 7317.

(c) The authority to indemnify the contractor under this subpart does not create any rights to third parties that do not exist by law.

828.7001 Extent of indemnification.

(a) A contract for medical research or development authorized by 38 U.S.C. 7303, may provide that the Government will indemnify the contractor against losses or liability specified in paragraphs (b) and (c) of this section if all of the following apply:

(1) The contract work involves a risk of an unusually hazardous nature.

(2) The losses or liability arise out of the direct performance of the contract.

(3) The losses or liability are not covered by the financial protection required under 828.7002.

(b) The Government may indemnify a contractor for liability (including reasonable expenses of litigation or settlement) to third persons for death, bodily injury, or loss of or damage to property from a risk that the contract defines as unusually hazardous. The indemnification will not cover liability under State or Federal worker's injury compensation laws to employees of the contractor who are both:

(1) Employed at the site of the contract work; and

(2) Working on the contract for which indemnification is granted.

(c) The Government may indemnify the contractor for loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(d) A contract that provides for indemnification in accordance with this subpart must also require

that:

(1) The contractor must notify the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) The Government may choose to control or assist in the defense of any suit or claim for which indemnification is provided in the contract. (38 U.S.C. 7317)

828.7002 Financial protection.

(a) A contractor shall have and maintain an amount of financial protection to cover liability to third persons and loss of or damage to the contractor's property that meets one of the following:

(1) The maximum amount of insurance available from private sources; or

(2) A lesser amount that the Secretary establishes after taking into consideration the cost and terms of private insurance.

(b) Financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination that provides the maximum amount required. If a contractor elects to self-insure, the contractor must provide the contracting officer, before award, proof of financial responsibility up to the maximum amount required. (38 U.S.C. 7317)

828.7003 Indemnification clause.

The contracting officer shall include the clause, 852.228-72, “Indemnification of Contractor—Hazardous Research Projects” in contracts and solicitations that indemnify a contractor for liability (including reasonable expenses of litigation or settlement) to third person for death, bodily injury, or loss of or damage to property from a risk that the contract defines in the performance work statement, the statement of work, or the statement of objectives as unusually hazardous.