PART 1228—BONDS AND INSURANCE

Authority: 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Source: 87 FR 61159, Oct. 7, 2022, unless otherwise noted.

Subpart 1228.1—Bonds and Other Financial Protections

1228.106 Administration.

1228.106-470 Contract clause-notification of payment bond protection.

1228.106-6 Furnishing information.

1228.106-70 Execution and administration of bonds.

1228.106-71 Performance and payment bonds for certain contracts.

1228.106-7100 Waiver.

1228.106-7101 Exception.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306-70 Contracts for lease of aircraft.

1228.307-1 Group insurance plans.

1228.311-1 Contract clause.

Parent topic: SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Subpart 1228.1—Bonds and Other Financial Protections

1228.106 Administration.

1228.106-470 Contract clause-notification of payment bond protection.

The contracting officer must insert the clause at 1252.228–74, Notification of Payment Bond Protection, in solicitations and contracts when payment bonds are required.

1228.106-6 Furnishing information.

(c) When furnishing a copy of a payment bond and contract in accordance with FAR 28.106–6(b), the requirement for a copy of the contract may be satisfied by furnishing a pdf of the contract's first pages which show the contract number and date, the contractor's name and signature, the

contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement “Certified to be a true and correct copy” followed by his/her signature, title and name of the Operating Administration using an authenticated electronic signature. The fee for furnishing the requested certified copies shall be determined in accordance with the DOT Freedom of Information Act regulation, 49 CFR part 7, and 1224.203.

1228.106-70 Execution and administration of bonds.

(a) The contracting officer shall notify the surety within 30 days of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase “a partnership composed of.” If a principal is a corporation, the state of incorporation must also appear on the bond.

(c) Performance or payment bond(s), other than an annual bond, shall not predate the contract to which it pertains.

(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

1228.106-71 Performance and payment bonds for certain contracts.

1228.106-7100 Waiver.

Pursuant to the authority vested in the Secretary of Transportation by the Bond statute at 40 U.S.C. chapter 31, subchapter III, Bonds (historically known as the Miller Act), the requirements of 40 U.S.C. 3131 *et seq.* are waived, to the extent authorized in accordance with 40 U.S.C. 3134(b).

1228.106-7101 Exception.

A performance and payment bond for the contracts described under 1228.106–7100 may be advantageous in view of unusual circumstances arising in connection with such contracts. Requests for the authority to include the requirement for either a performance or payment bond, or both in the contracts described under 1228.106–7100 shall be submitted by the contracting officer to the HCA, before a solicitation is issued.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306-70 Contracts for lease of aircraft.

(a) The contracting officer shall insert the clauses at 1252.228–70, Loss of or Damage to Leased Aircraft; 1252.228–71, Fair Market Value of Aircraft; and 1252.228–72, Risk and Indemnities, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training), except in the following circumstances—

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500;

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(b) As codified, 49 U.S.C. 44112, as amended, provides that an aircraft lessor under a lease of 30 days or more is not liable for injury or death of persons, or damage or loss of property, unless the aircraft is in the actual possession or control of the lessor and the damage occurs because of—

(1) The aircraft, engine, or propeller; or

(2) The flight of, or an object falling from, the aircraft, engine, or propeller.

(c) On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. To take advantage of this coverage, the Risks and Indemnities clause at 1252.228–72, prescribed in paragraph (d) of this section, shall be used.

(d) The contracting officer shall insert the clause at 1252.228–72, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(e) During the performance of a contract for out-service flight training for DOT, whether the instruction to DOT personnel is in leased, contractor-provided, or Government-provided aircraft, contractor personnel shall always, during the entirety of the course of training and operation of the aircraft, remain in command of the aircraft. At no time shall Government personnel or other personnel be permitted to take command of the aircraft. The contracting officer shall insert the clause at 1252.228–73, Command of Aircraft, in any solicitation and contract for out-service flight training, whether performed utilizing DOT-leased aircraft, contractor-provided aircraft, or Government-provided aircraft.

1228.307-1 Group insurance plans.

(a) *Prior approval requirements.* Contractors shall provide plans required by FAR 28.307–1(a) to the contracting officer for approval.

1228.311-1 Contract clause.

The contracting officer shall insert the clause at FAR 52.228–7, Insurance Liability to Third Persons, as prescribed in FAR 28.311–1 unless it is waived by an official one level above the contracting officer.