

**SUBPART 228.1—BONDS AND OTHER FINANCIAL PROTECTIONS**  
*(Revised October 29, 2021)*

**228.102 Performance and payment bonds and alternative payment protections for construction contracts.**

**228.102-1 General.**

The requirement for performance and payment bonds is waived for cost-reimbursement contracts. However, for cost-type contracts with fixed-price construction subcontracts over \$40,000, require the prime contractor to obtain from each of its construction subcontractors performance and payment protections in favor of the prime contractor as follows:

- (1) For fixed-price construction subcontracts over \$40,000, but not exceeding \$150,000, payment protection sufficient to pay labor and material costs, using any of the alternatives listed at FAR 28.102-1(b)(1).
- (2) For fixed-price construction subcontracts over \$150,000—
  - (i) A payment bond sufficient to pay labor and material costs; and
  - (ii) A performance bond in an equal amount if available at no additional cost.

**228.102-70 Defense Environmental Restoration Program construction contracts.**

For Defense Environmental Restoration Program construction contracts entered into pursuant to 10 U.S.C. 2701—

- (a) Any rights of action under the performance bond shall only accrue to, and be for the exclusive use of, the obligee named in the bond;
- (b) In the event of default, the surety's liability on the performance bond is limited to the cost of completion of the contract work, less the balance of unexpended funds. Under no circumstances shall the liability exceed the penal sum of the bond;
- (c) The surety shall not be liable for indemnification or compensation of the obligee for loss or liability arising from personal injury or property damage, even if the injury or damage was caused by a breach of the bonded contract; and
- (d) Once it has taken action to meet its obligations under the bond, the surety is entitled to any indemnification and identical standard of liability to which the contractor was entitled under the contract or applicable laws and regulations.

**228.105 Other types of bonds.**

Fidelity and forgery bonds generally are not required but are authorized for use when—

- (1) Necessary for the protection of the Government or the contractor; or
- (2) The investigative and claims services of a surety company are desired.

**228.106 Administration.**

## Defense Federal Acquisition Regulation Supplement

### Part 228—Bonds and Insurance

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#### **228.106-7 Withholding contract payments.**

(a) Withholding may be appropriate in other than construction contracts (see FAR 32.112-1(b)).