

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 3527—PATENTS, DATA AND COPYRIGHTS

AUTHORITY: 40 U.S.C. 486(c).

Subpart 3527.3—Patent Rights Under Government Contracts

3527.304-3 Contracts for construction work or architect-engineer services.

(b) The contracting officer shall insert the clause at 3552.227-70, Government Rights, in all solicitations and contracts for architect-engineer services or for construction involving architect-engineer services, except those that call for or can be expected to involve only “standard types of construction” to be built by previously developed equipment, methods, and processes. (See FAR 27.304-3(b) for the meaning of the term “standard types of construction”.)

[55 FR 7656, Mar. 2, 1990]

PART 3528—BONDS AND INSURANCE

Subpart 3528.1—Bonds

Sec.

- 3528.100 Scope of subpart.
- 3528.101 Bid or proposal guarantees.
- 3528.101-3 Contract clauses.
- 3528.102 Performance and payment bonds for construction contracts.
- 3528.102-1 General.
- 3528.102-3 Solicitation requirements.
- 3528.103 Performance and payment bonds for other than construction contracts.
- 3528.103-2 Performance bonds.
- 3528.103-3 Payment bonds.
- 3528.103-70 Contract clauses.

Subpart 3528.2—Sureties

- 3528.201 Requirements for sureties.
- 3528.202 Acceptability of corporate sureties.
- 3528.202-70 Corporate seals.

Subpart 3528.3—Insurance

- 3528.301 Policy.
- 3528.305 Overseas workers' compensation and war-hazard insurance.
- 3528.309 Contract clause for workers' compensation insurance.

3528.370 Contract clause for special Panama insurance.

AUTHORITY: 40 U.S.C. 486(c); Article XVIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7656, Mar. 2, 1990, unless otherwise noted.

Subpart 3528.1—Bonds

3528.100 Scope of subpart.

Bid or proposal guarantees, performance bonds, and payment bonds in Panama Canal Commission acquisitions may be required in contracts for construction as that term is defined at FAR 36.102, and in contracts for other than construction as explained at FAR 28.103.

3528.101 Bid or proposal guarantees.

3528.101-3 Contract clauses.

(a) When a guarantee is required, the contracting officer shall insert the clause at 3552.228-70, Bid Guarantee Amount, in sealed bid solicitations and contracts, or the clause at 3552.228-75, Proposal Guarantee, in negotiated solicitations and contracts, as applicable.

(b) If the contract is to be negotiated, the contracting officer shall insert the clause at 3552.228-75, Proposal Guarantee, in lieu of the bid guarantee clause at FAR 52.228-1.

3528.102 Performance and payment bonds for construction contracts.

3528.102-1 General.

(a) The Miller Act (40 U.S.C. 270a-270f) requires performance and payment bonds for any construction contract (including contracts for alteration, or repair of any public building or public work) exceeding \$25,000, except that this requirement may be waived by the contracting officer for work to be performed in a foreign country upon the finding contemplated in FAR 28.102-1(a)(1). It has been determined by the Panama Canal Commission General Counsel, however, that the contracting officer may also establish requirements for such bonds for lesser dollar value contracts when it

has been determined that the financial protection against damages is in the best interests of the Government. Accordingly, the provisions of 3528.102-3 regarding solicitation requirements must be followed.

3528.102-3 Solicitation requirements.

When performance or payment bonds are required, the contracting officer shall insert the clauses at 3552.228-71, Bonds and Insurance, and 3552.228-72, Bonds, in the solicitation and contract.

3528.103 Performance and payment bonds for other than construction contracts.

3528.103-2 Performance bonds.

(a) Contracts for high dollar acquisitions of vital supplies, such as cargo lot shipments of Bunker C fuel oil, is another situation that may warrant a performance bond.

3528.103-3 Payment bonds.

(a) A payment bond may be considered to be in the Government's interest when substantial progress payments are made before delivery of end items starts (for example, in the acquisition of tugboats and dredges).

3528.103-70 Contract clauses.

(a) *Performance bonds.* When a performance bond for other than construction contracts is required pursuant to FAR 28.103-2(a), but a payment bond is not required, the contracting officer shall insert the clause at 3552.228-76, Performance Bond, in all such solicitations and contracts. If a payment bond is also required (see FAR 28.103-3(a) and 3528.103-3(a)), the contracting officer shall insert the clause at 3552.228-77, Performance and Payment Bonds, in lieu of clause 3552.228-76.

(b) *Payment bonds.* When a payment bond for other than construction contracts is required pursuant to FAR 28.103-3(a) and 3528.103-3(a), the contracting officer shall insert the clause at 3552.228-77, Performance and Payment Bonds, in all such solicitations and contracts.

Subpart 3528.2—Sureties

3528.201 Requirements for sureties.

(a) In addition to those acceptable forms of security enumerated in FAR 28.201, contracting officers may accept such Panamanian sureties as may be approved in accordance with 3528.202(b).

(b) Contracting officers may not preclude the use by any offeror of any type of security or surety permitted by FAR subpart 28.2 or this subpart.

[55 FR 7656, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3528.202 Acceptability of corporate sureties.

(b) The authority delegated to contracting officers in FAR 28.202(b) to determine the acceptability of sureties not appearing on Treasury Department Circular 570 for contracts performed in a foreign country is vested in the Chief Financial Officer of the Panama Canal Commission. The procedure for approving such sureties is prescribed in the Commission's Financial Systems Manual 99.333.

[55 FR 7656, Mar. 2, 1990. Redesignated and amended at 55 FR 38331, Sept. 18, 1990]

3528.202-70 Corporate seals.

(a) In the event that a "Corporate Seal," as required in the instructions for preparation of any standard form or document, is not used due to the dictates of custom, practice, or law within Panama or other foreign countries, such bonds shall be accepted provided the contracting officer is satisfied, with the concurrence of legal counsel, that the person signing the bond is authorized to bind the surety (see FAR 4.102).

(b) In the case of acquisitions conducted using the sealed bid method described in FAR part 14, bids which do not include required bid bonds must be rejected as nonresponsive except as provided in FAR 28.101-4. See also FAR 14.405 regarding minor informalities or irregularities in bids.

Subpart 3528.3—Insurance**3528.301 Policy.**

(b) In addition to the requirements of FAR 28.301(b), designated contractors (see 3525.801-73(a)), as prescribed at paragraph 7 of Article XVIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977, shall, upon initiation of work or construction activities, obtain appropriate insurance to cover civil liabilities in the Republic of Panama that may arise as a result of acts or omissions done in the performance of official duty by their employees. The insurance coverage shall include coverage for the tortious conduct of their employees. Such insurance may be obtained from insurance companies licensed to engage in such business within the Republic of Panama.

3528.305 Overseas workers' compensation and war-hazard insurance.

(d) Pursuant to a waiver granted by the Secretary of Labor, effective January 22, 1980, the provisions of the Defense Base Act are not applicable to any public-work contract awarded by the Panama Canal Commission in the Panama Canal area with respect to non-U.S. citizen employees, i.e., any Panamanian or other foreign national, employed under such contracts. The waiver does not apply, however, to employees who are:

- (1) Hired in the United States by any contractor;
- (2) Residents of the United States; or
- (3) Citizens of the United States.

The waiver was granted with the proviso that the non-U.S. citizen employees thus exempted from the provisions of the Defense Base Act will be provided workers' compensation benefits prescribed in the Panamanian Social Security System.

3528.309 Contract clause for workers' compensation insurance.

(a) In addition to FAR clause 52.228-3, Workers' Compensation Insurance (Defense Base Act), prescribed at FAR 28.309(a)(1), the contracting officer shall insert the clause at 3552.228-73, Non-U.S. Workers' Compensation Insurance, in all public-work solicitations and contracts in which the em-

ployment of Panamanian or other foreign nationals is anticipated (see 3528.305(d)).

3528.370 Contract clause for special Panama insurance.

The contracting officer shall insert the clause at 3552.228-74, Special Panama Insurance, in all public-work solicitations and contracts:

- (a) Which are to be performed in whole or in part in the Republic of Panama, and
- (b) For which offers are anticipated from, or contracts are awarded to, U.S. contractors.

PART 3529—TAXES**Subpart 3529.4—Contract Clauses**

3529.402 Foreign contracts.

3529.402-1 Foreign fixed-price contracts.

AUTHORITY: 40 U.S.C. 486(e); Articles XI and XII of the Agreements in Implementation of Articles III and IV of the Panama Canal Treaty of 1977, respectively.

Subpart 3529.4—Contract Clauses**3529.402 Foreign contracts.****3529.402-1 Foreign fixed-price contracts.**

(a) *Procedures regarding FAR clause 52.229-6.* In recognition of the fundamental purpose of paragraph 2(e) of Articles XI and XII of the Agreements in Implementation of Articles III and IV of the Panama Canal Treaty of 1977, respectively, representatives of the Governments of the United States and Panama approved an Agreement on Taxation of Contractors on August 6, 1986. This taxation agreement impacts on U.S. contractors in certain circumstances. In order to alert prospective contractors to this possibility, the following procedures shall apply regarding FAR clause 52.229-6:

(1) The contracting officer shall supplement FAR clause 52.229-6, Taxes—Foreign Fixed-Price Contracts, by inserting the following note at the end of the clause in all solicitations and contracts, unless the acquisition is a small purchase under FAR part 13 that:

- (i) Will not require the contractor's presence in Panama, or
- (ii) Does not solicit U.S. offerors:

NOTE: If the Contractor is a U.S. contractor, such contractor is advised that, pursuant to a taxation agreement between the Governments of the United States and Panama, U.S. contractors and subcontractors, including their U.S. citizen or U.S. permanent resident employees, may be required to file tax returns with, as well as provide corresponding U.S. tax information to, the Government of Panama on income arising under or relating to Panama Canal Commission contracts. This requirement is applicable when the contractor, subcontractor, or individual employee is present in the Republic of Panama in connection with one or more Commission contracts for more than 90 calendar days during the relevant tax year. This description of the stated requirement is not intended, nor should it be construed, to be a legal analysis of the taxation agreement. The Commission assumes no responsibility or liability for a contractor's or individual's obligation under the taxation agreement, nor for the interpretation of such agreement. A copy of the taxation agreement will be provided to the contractor or prospective contractor upon request to the contracting officer.

(2) If clause 52.229-6 is incorporated by reference, rather than in full text, insert the note directly below the title of the clause.

(3) Include elsewhere in the body of the solicitation the following note to alert offerors that clause 52.229-6 has been supplemented. In supply and service solicitations, this note should normally be inserted in Section B following the blanks provided for offerors to insert line item prices. In construction solicitations, the note should normally be attached to Standard Form 1442 or inserted in the solicitation's Special Conditions. In small purchase acquisitions, the note is to be included in the document requesting prices or by separate attachment to the document. If a U.S. contractor wins the small purchase award, the note shall be incorporated either (i) in full text, or (ii) by reference, on the purchase order or other award document.

NOTE: Offerors' attention is directed to the note added at the end of clause 52.229-6, Taxes—Foreign Fixed-Price Contracts. The note is an advisory notice regarding possible tax obligations under certain circumstances of U.S. contractors, subcontractors, and their employees to the Government of Panama. If the circumstances appear to be applicable, offerors may obtain additional information by contacting the contracting office at the address or phone number provided elsewhere in this solicitation.

(4) If additional information regarding the taxation agreement is requested of Panama Canal Commission employees, either before or after award, the individual who receives the request shall promptly notify the contracting officer and the Office of General Counsel who shall determine, in conjunction with the Office of Executive Administration, the appropriate action to be taken.

(5) Contracting officers shall serve as the official liaison, for purposes of the taxation agreement, between offerors/contractors and the Commission. The taxation agreement provides for the classification of contractors into two categories, resident and non-resident, by representatives of the Governments of the United States and Panama according to criteria set forth in the agreement. The representative of the United States Government is the Assistant Director, Policy and Programs, Office of Executive Administration. Classifications, when confirmed by the two representatives, will be communicated to the respective contractors by the contracting officer.

[55 FR 7657, Mar. 2, 1990]

PART 3531—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 40 U.S.C. 486(c).

Subpart 3531.2—Contracts with Commercial Organizations

3531.205-46 Travel costs.

(a) Fixed-price type contracts that provide for separate reimbursement of travel and per diem shall state that such reimbursement will not exceed rates established in applicable Federal Travel Regulations.

(b) The clause at 3552.231-70, Travel Costs, shall be included in contracts as described in paragraph (a) of this subsection.

[55 FR 7658, Mar 2, 1990]

PART 3532—CONTRACT FINANCING

Sec.
3532.000 Scope of part.

3532.000

Subpart 3532.1—General

3532.111 Contract clauses.

Subpart 3532.4—Advance Payments

3532.402 General.
3532.407 Interest.

Subpart 3532.6—Contract Debts

3532.600 Scope of subpart.
3532.601 Definition.
3532.602 General.
3532.603 Applicability.
3532.608 Negotiation of contract debts.
3532.608–70 Procedures.
3532.610 Demand for payment of contract debt.

Subpart 3532.7—Contract Funding

3532.705 Contract clauses.
3532.705–1 Clauses for contracting in advance of funds.

Subpart 3532.8—Assignment of Claims

3532.802 Conditions.
3532.806 Contract clause.

Subpart 3532.9—Prompt Payment

3532.901 Applicability.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7658, Mar. 2, 1990, unless otherwise noted.

3532.000 Scope of part.

This part implements and supplements FAR part 32 and provides Commission policies and procedures for contract financing and other payment matters, including—

- (a) Advance payments;
- (b) Contract debts;
- (c) Assignment of claims; and
- (d) Prompt payment implementation.

Subpart 3532.1—General

3532.111 Contract clauses.

(a)(7) The clause at 3552.232–70, Contract Payments, in solicitations and contracts for construction when the contracting officer determines that the value of materials delivered to the work site may be taken into account in preparing the progress payment estimate.

(8) The clause at 3552.232–73, Invoices, in all solicitations and contracts ex-

48 CFR Ch. 35 (10–1–01 Edition)

cept small purchases. The clause or a modified version of the clause may be used in small purchases.

Subpart 3532.4—Advance Payments

3532.402 General.

(e)(1) The Procurement Executive is responsible for approving findings and determinations supporting the use of advance payments and approving contract terms concerning advance payments. These approvals must have the concurrence of the General Counsel.

(2) The contracting officer shall coordinate proposed advance payment authorizations with the Accounting Division.

3532.407 Interest.

(d) The Procurement Executive is authorized to approve advance payments without interest.

Subpart 3532.6—Contract Debts

3532.600 Scope of subpart.

This subpart assigns responsibilities and provides procedures for the collection of contract debts, including collection of debts under contracts for the transportation of household goods.

3532.601 Definition.

Responsible official, as used in this subpart, means the contracting officer.

3532.602 General.

In addition to the examples cited in FAR 32.602, contract debts may include those arising from claims under contracts for the transportation of household goods.

3532.603 Applicability.

When the Commission withholds payments due a contractor to satisfy a contractor's debt to the Government, the Debt Collection Act of 1982 and FAR subpart 32.6 apply. As a claim arising under a Government contract, any offset is governed by the Contract Disputes Act of 1979.

Panama Canal Commission

3532.901

3532.608 Negotiation of contract debts.

3532.608-70 Procedures.

The Commission shall adhere to the following procedures prior to withholding a payment due a contractor to satisfy a debt owed by the contractor.

(a) The Commission shall use all proper means available for collecting a contract debt as rapidly as possible. This includes direct communication to obtain full payment or to negotiate an appropriate settlement.

(b) If the contractor fails to respond expeditiously and in good faith to contacts from the contracting officer, and if justifiable under the contract, the contracting officer shall promptly make a unilateral determination of the amount the contractor owes the Commission. The unilateral debt determination is made when neither payment nor a settlement has been reached. The unilateral debt determination is issued to the contractor by the contracting officer as a final decision under the Contract Disputes Act.

(c) A demand for payment of the contract debt shall be made contemporaneously with the contracting officer's issuance of the unilateral debt determination to the contractor.

3532.610 Demand for payment of contract debt.

(b) Demands for payment shall include, in addition to those items listed in FAR 32.610(b), the following:

(1) The offer of an opportunity to inspect and copy the records of the Commission related to the debt, 31 U.S.C. 3716(a)(2).

(2) The offer of an opportunity of a review of the Commission's decision relating to the debt, 31 U.S.C. 3716(3).

(3) The offer of an opportunity to enter into an agreement with the Commission to repay the amount of the debt.

(c) With respect to contracts for the transportation of household goods, claims by employees and, in turn, by the Commission, must be processed in a timely manner. The usual commercial terms for bills of lading require that any claim be filed against the contractor within nine months of shipment delivery. Government bills of lading are subject to these same rules and

conditions. FAR clause 52.247-23, which is included in contracts for the transportation of household goods, specifies that the contractors will be notified of any damages within a maximum of 45 days from date of delivery.

Subpart 3532.7—Contract Funding

3532.705 Contract clauses.

3532.705-1 Clauses for contracting in advance of funds.

In lieu of either of the clauses prescribed at FAR 32.705-1(a) and (b), the contracting officer may insert the clause at 3552.232-71, Availability of Funds, in solicitations and contracts—

(a) That are to be awarded in one fiscal year with performance to begin in the following fiscal year, or

(b) That are to extend into the following fiscal year, or

(c) In situations when the circumstances in paragraphs (a) and (b) of this subsection both apply.

Subpart 3532.8—Assignment of Claims

3532.802 Conditions.

(b) Panamanian firms may assign contracts to a local bank in accordance with recognized local banking practice.

3532.806 Contract clause.

(a) In addition to the clauses prescribed in FAR 32.806, the contracting officer may insert the clause at 3552.232-72, Presentation of Statement of Release from Claims, in solicitations and contracts when appropriate, unless the contract will prohibit the assignment of claims.

Subpart 3532.9—Prompt Payment

3532.901 Applicability.

In consonance with subpart 3570.1, Panamanian Preference, the Administrator has determined, pursuant to FAR 32.904, to extend coverage of the interest penalty provisions of FAR subpart 32.9 to contracts awarded to Commission vendors located in the Republic of Panama.

**PART 3533—PROTESTS, DISPUTES,
AND APPEALS**

Sec.

3533.000 Scope of part.

Subpart 3533.1—Protests

3533.103 Protests to the agency.

3533.104 Protests to GAO.

Subpart 3533.2—Disputes and Appeals

3533.203 Applicability.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7659, Mar. 2, 1990, unless otherwise noted.

3533.000 Scope of part.

This part prescribes Commission policies and procedures for filing protests and for processing contract disputes and appeals.

Subpart 3533.1—Protests

3533.103 Protests to the agency.

(a) The cognizant Head of the Contracting Activity is the official designated to make the determination(s) required by FAR 33.103(a)(1), (2), or (3) whenever an award is contemplated notwithstanding the protest to the agency.

(c)(1) Protests to the Commission based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed with the contracting officer prior to bid opening or the closing date for receipt of initial proposals, or any extended bid opening or closing date for receipt of proposals.

(2) All other protests to the Commission shall be filed with the contracting officer not later than 10 working days after the basis of the protest is known or should have been known.

(d) The General Counsel shall review protests to the Commission as a matter of first priority, and advise the contracting officer expeditiously.

(e) The contracting officer shall decide protests to the Commission within 10 working days from receipt of a protest and promptly inform the protestor and other interested parties of that decision.

3533.104 Protests to GAO.

(a) *General.* Protests to the General Accounting Office (GAO) concerning Commission acquisitions shall be processed in accordance with FAR 33.104. The General Counsel shall prepare the report to GAO required at FAR 33.104(a)(5) and shall serve as the designated contact office for GAO. The contracting officer shall review protests to GAO as a matter of first priority, and shall advise, support, and furnish information to the General Counsel expeditiously.

Subpart 3533.2—Disputes and Appeals

3533.203 Applicability.

Pursuant to an interagency agreement between the Panama Canal Commission and the Corps of Engineers Board of Contract Appeals (ENGBCA), the ENGBCA will hear appeals from final decisions of Commission contracting officers issued pursuant to the Contract Disputes Act.