

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

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AUTHORITY: 38 U.S.C. 501, 8127, 8128 and 8151-8153; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

Subpart 828.1—Bonds and Other Financial Protections

828.101 Bid guarantees.

828.101-2 Solicitation provision or contract clause.

When a bid bond is required for supplies or services, the phrase “any cost of acquiring the work” in paragraph (e) of the Bid Guarantee clause in FAR 52.228-1 may be modified to refer to the cost of “supplies,” “services,” etc.

828.101-70 Safekeeping and return of bid guarantee.

(a) The contracting officer must retain, in a safe, certified checks or other negotiable security provided as bid security for the three lowest acceptable bids. After the contract and contract bonds have been signed and approved, the contracting officer must return the certified checks or other negotiable securities either:

(1) In person to the bidder who provides a proper receipt; or

(2) By any method that will provide evidence that the bidder received the security.

(b) The contracting officer should promptly return certified checks or other negotiable security furnished in support of bids, other than those determined to be the three lowest acceptable bids, to the respective bidders either:

(1) In person to the bidder who provides a proper receipt; or

(2) By any method that will provide evidence that the bidder received the security.

(c) The contracting officer will not return commercial bid bonds unless specifically requested to do so by the bidders. If any of the three low bidders request the return of a commercial bid bond, the contracting officer will not return those bid bonds until the contract and contract bonds have been executed by the successful bidder and approved by the contracting officer or all bids have been rejected.

828.106 Administration.

828.106-6 Furnishing information.

The contracting officer for the applicable contract will furnish copies of payment bonds to a requestor under the provisions of FAR 28.106-6(c).

828.106-70 Bond premium adjustment.

When performance and payment bonds or payment protection are required, the contract must contain the clause in 852.228-70, Bond premium adjustment.

828.106-71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.

VA prime contractors are encouraged to assist SDVOSB concerns and VOSB concerns in obtaining subcontractor performance and payment bonds. Mentors are especially encouraged to assist their protégés in obtaining bid, payment, and performance bonds as prime contractors and bonds as subcontractors when bonds are required.

[74 FR 64636, Dec. 8, 2009]

828.106-72 Contract provision.

Insert 852.228-72, Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds, in solicitations that include FAR clause 52.228-1, Bid Guarantee.

[74 FR 64636, Dec. 8, 2009]

Subpart 828.2—Sureties and Other Security for Bonds

828.203 Acceptability of individual sureties.

828.203-7 Exclusion of individual sureties.

The DSPE may make the determinations referenced in FAR 28.203-7:

- (a) To exclude individuals from acting as surety on bonds; and
- (b) To accept bonds from individuals named on the Excluded Parties List System.

Subpart 828.3—Insurance

828.306 Insurance under fixed-price contracts.

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, must contain the provision in 852.228-71, Indemnification and insurance.

(b) Paragraph (a) of this section does not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, Part II, Chapter 3, or other emergency or sporadic vehicle or aircraft services if both of the following conditions exist:

- (1) The service is not used solely for the purpose of avoiding entering into a continuing contract.

- (2) The services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

Subpart 828.71—Indemnification of Contractors, Medical Research or Development Contracts

828.7100 Scope of subpart.

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

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

(c) 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. (38 U.S.C. 7317)

828.7101 Approval for indemnification.

(a) The Secretary of Veterans Affairs will make the approval determinations for the indemnification of contractors.

(b) Contracting officers must submit requests for approval, together with all available information, to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. (38 U.S.C. 7317)

828.7102 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 828.7103.

(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)

828.7103 Financial protection.

(a) A contractor must 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.

(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)

PART 829—TAXES

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829.000 Scope of part.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.

829.202-70 Tax exemptions for alcohol products.

Subpart 829.3—State and Local Taxes

829.302 Application of State and local taxes to the Government.

829.302-70 Purchases made from patients' funds.

AUTHORITY: 40 U.S.C. 121(c) and 48 CFR 1.301-1.304.

SOURCE: 73 FR 2717, Jan. 15, 2008, unless otherwise noted.

829.000 Scope of part.

This part states the policies and procedures for the following:

(a) Exemptions of alcohol products purchased for use by the VA medical care program from Federal excise taxes.

(b) Specified refund procedures for State and local taxes.

Subpart 829.2—Federal Excise Taxes

829.202 General exemptions.

829.202-70 Tax exemptions for alcohol products.

(a) *General.* (1) VA is permitted to procure spirits to be used for non-beverage purposes free of tax under the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations (see 27 CFR 19.538 and 19.539, 20.241 through 20.246, 22.161 and 22.162, 22.171 through 22.176, 24.293, and 25.181 through 25.185). The use of tax-free alcohol, whiskey, beer, wine, and denatured spirits for non-beverage purposes shall include, but is not limited to, medicinal and scientific purposes.

(2) The Executive Director and Chief Operating Officer, National Acquisition Center, and the Head of the Contracting Activity may sign application permits on Department of Treasury-TTB Form 5150.33, Spirits for Use of The United States. This authority may not be delegated.

(b) *Whiskey, alcohol, and denatured alcohol.* (1) The contracting officer may obtain application forms for tax-free purchases from the TTB Distribution Center, P.O. Box 5950, Springfield, VA