



SESSION GUIDE
SEASON 2023, EPISODE SEVENTEEN
AUGUST 23, 2023
FAR PARTS 28 AND 29:
BONDS, INSURANCE, AND TAXES

I. Introduction

This chapter brings us to everyone's favorite subject: taxes! We know you've just been dying to discuss them. No matter how you feel about them, they are very important—as are bonds and insurance, which we will also talk about in this chapter. Taxes generate revenue for the Government. Bonds and insurance help protect the Government from financial harm.

Most of us are familiar with taxes and insurance because they are simply part of every-day adult life. Bonds, however, are unique to certain types of contracts. There are many types of bonds, but they are all fundamentally an agreement between a contractor, the U.S. Government and a third party (a.k.a. “surety”) that protects the Government from specific contractor failures.

Insurance functions much the same in the government contracting world as it does in the private sector; however, the issues for which contractors need insurance might be a little different from the issues for which private individuals or corporations need insurance. **Part 28** deals with both bonds and insurance.

Part 29 deals with taxes. Although we all pay state, local and federal taxes on a regular basis, the tax issues that come up in FAR-land are pretty different from the tax issues confronting regular citizens. Regular citizens don't usually get to assert immunity from taxes—not successfully, anyway! However, there are some issues in common, such as how to avoid paying any unnecessary taxes.

II. Bonds and Insurance

Broadly, **Part 28** details how the Government protects itself from financial losses when contracting with private companies. Of course, the Government can't protect itself from every possible financial loss, but it can put some safeguards in place in high-risk situations. Those safeguards typically come in the form of bonds or insurance. Bonds are only required in specific situations (most often in relation to construction), whereas insurance comes into play in nearly all types of contracts. First, we will explore the different types of bonds, where they are used, and how they are administered. Then we will explore broad concepts in insurance, as well as some specific requirements.

A. Bonds

There are six general types of bonds outlined in **28.001**. They are often used in conjunction with bid guarantees. So what's a bid guarantee? **28.001** defines a bid guarantee as a form of security which assures the Government that the bidder 1) will not withdraw a bid during the period specified for acceptance, and 2) will execute a written contract and furnish any required bonds within the time

specified in the bid. COs can only require bid guarantees when a performance bond or a performance and payment bond is also required; they can't just require bid guarantees on a whim. **28.101-1(a)**. This is because bid guarantees and the corresponding bonds are designed to protect the same governmental interests.

Bid guarantees keep contractors from backing out of their performance obligations after they have submitted their offer. The amount of the bond provided in the contractor's bid guarantee should always be sufficient to protect the Government from any potential failure to pay or perform. It is important to note, though, that the chief of an agency's contracting office is permitted to waive bid guarantee requirements—even when performance or performance and payments bonds apply—for specific procurements and classes of procurements, if such waiver is in the Government's best interest. **28.101-1(c)**.

Question 1 – What are the six general types of bonds?

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

So how do bid guarantees actually work? First, the CO has to insert a provision in the solicitation or contract requiring a bid guarantee. **28.101-2(a)**. COs can insert the clause set forth at **52.228-1**, or they can craft their own clause as long as it's substantially the same as **52.228-1**. Then an attorney-in-fact needs to sign the guarantee on behalf of the surety. This doesn't mean we necessarily need a lawyer; it simply means that whoever signs a bid guarantee on behalf of the surety must be able to provide evidence of his authority to bind the surety to the agreement. **28.101-3(a)**. Evidence of that authority can be a simple document showing power of attorney. **28.101-3(b)**.

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28.102-1(a). Sometimes the CO can waive this requirement, such as when the contractor will perform the contract outside the U.S. and it would thus be impracticable for the contractor to furnish a bond. Other waiver possibilities are set forth in the Bonds statute.

Question 3 – Where can we find the bonds statute that governs bonds for construction contracts over \$150,000? What was the name of the Bonds statute that preceded the Miller Act?

So, we know certain contracts require bonds. But what should the amount of each bond be? For construction contracts exceeding \$150,000, the amount of the performance and payment bonds must be equal to 100% of the original contract price. If that price increases, so must the amount of any associated bonds, so the Government remains protected for the full price of the contract. **28.102-2(b)**. Sometimes the CO will determine that a performance bond in a lesser amount is adequate. The FAR allows for this determination and does not require it to be in writing. **28.102-2(b)(1)**. For payment bonds, however, the CO must make a written determination that the amount of the payment bond would be impractical and support it with specific findings. **28.102-2(b)(2)**. These requirements are substantially similar for contracts that fall between \$35,000 and \$150,000, although the CO does not have to make any written determinations for these contracts. **28.102-2(c)**. The clause at **52.228-15** governs construction contracts over \$150,000, and the clause at **52.228-13** governs those between \$35,000 and \$150,000.

Some agencies may use performance and payment bonds for non-construction contracts, though generally this is not a preferred practice. **28.103-1(a)**. **28.103-2** and **28.103-3** tell us when performance and payment bonds, respectively, may be appropriate in non-construction situations. As in construction contracts, the contractor must furnish all bonds before it can receive a notice to proceed with work. **28.103-1(b)**. The clause at **52.228-16** governs these situations.

Question 4 –For non-construction contracts, must the CO determine a contractor’s responsibility even though the solicitation requires a performance bond? Why or why not?

We’ve talked about performance and payment bonds, but there are other types of bonds too! These other bond types are only used for non-construction contracts, and include annual performance bonds (**28.104**), advance payment bonds (**28.105-1**), and patent infringement bonds (**28.105-2**). Annual performance bonds can cover multiple contracts. They allow for a gross penal sum which applies to all covered contracts, and is equal to the amount of all those contracts. **28.104(a)**. This lets contractors use a single performance bond for all bond-requiring contracts, instead of multiple smaller bonds. (Annual bid bonds work in much the same way, but are regular bid bonds, not performance bonds.)

Advance payment bonds protect the Government in contracts containing advance payment provisions, when a contractor has not furnished a performance bond. After all, the Government does not want to be in a situation where it has pre-paid for performance that doesn’t happen, but can’t get its payment back from the contractor! They can only be used in those situations, and may be for less than the amount of the entire contract, as long as the amount required still protects the Government adequately.

Patent infringement bonds are a highly specific type of bond. They may only be used in contracts that provide that the contractor will indemnify the government if the contractor has infringed a patent and

the patent holder has sued the Government for royalties. (Remember, as we learned in the last chapter if a contractor is infringing the patent with the Government’s “authorization and consent,” the patent holder’s only remedy is a suit against the Government for royalties.) This type of bond may be used only when a performance bond is not furnished *and* the CO does not know or is doubtful of the contractor’s financial responsibility. The CO determines the penal sum for this bond type.

We keep saying “penal sum.” To a lot of us, that probably sounds like it belongs in a criminal statute, doesn’t it? For bonds in government contracting, though, this is not a criminal-related issue. Instead, it is meant to provide some negative reinforcement to contractors. It’s the “stick” that keeps contractors from reneging on (or simply failing to perform) parts of the contract or from withdrawing bids, depending on the type of bond. The amount of the penal sum will vary based on the type of bond. Some bonds allow for a penal sum beyond the price of the contract, but most often, the penal sum is implicit in the bond.

Now we know about the different types of bonds, but what about the mechanics of creating and administering them? Because this is government contracting, we have a plethora of forms to choose from when dealing with bonds of any kind. We can find a list of Standard Forms (SFs) and Optional Forms (OFs) for all bond-related issues in **28.106-1**.

*Question 5 – When should COs NOT use the SFs and OFs identified in **28.106-1**?*

Bonds require a surety, which means that there are three parties who take on obligations when a bond is executed: (i) the surety, (ii) the principal, and the (iii) obligee. **FAR Part 2** defines a surety as “an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation.” Therefore, in the context of a federal government contract, the contractor is the principal, and the Government is the obligee, whose financial interests the surety is obligated to protect.

Surety bonds may be substituted (**28.106-2**) and bonds may be increased, though such changes require the consent of the surety (**28.106-3**). The surety is required to take on the obligations of the principal should it decide to abandon the job or goes bankrupt. As a result of this obligation, the surety must be notified and consent to any contract modifications if the contract modifications would carry the scope of work beyond the original contract, or if the modification would change the contract price (but not the scope) by more than 25% of the full contract price or by more than \$50,000. **28.106-5(a)**.

Sureties can also request information, in writing, on the progress of work, payments, and estimated percentage of completion on the contract. **28.106-6(a)**.

When the surety is guaranteeing a payment bond, subcontractors may request the name of the surety, and the CO must provide that information. **28.106-6(b)**. COs must also furnish a certified copy of the payment bond to anybody who requests it *and* has given the CO an affidavit stating that the requester did work on the contract (e.g., provided labor or materials) and was not paid. **28.106-6(c)**.

Question 6 – What information regarding sureties can the CO provide to subcontractors, and in what situations? [Hint: check out **28.106-6(d)**]

What if a contractor doesn't pay its subcontractors or suppliers in a contract covered by a bond? Can the Government withhold payment from the contractor until it pays? The answer depends on where we are in the contracting process. During contract performance, the Government **may not** withhold payment just because subcontractors or suppliers haven't been paid. **28.106-7(a)**. However, if the contractor completes work on the contract and still has not paid its subcontractors or suppliers, the CO *shall* withhold final payment, provided he has received written notice from the surety that the contractor has failed to make good on its obligations. **28.106-7(b)**. The surety must agree to hold the Government harmless in case of any liability arising from that withholding of payment, though. Once the surety and contractor reach an agreement, or once a judge determines the rights of the parties, the CO can authorize final payment. In case of labor issues, the CO should look to **Part 22** for rules regarding withholding payment.

Sureties usually come in two flavors: corporate and individual. As you might expect, corporate sureties are corporations, and individual sureties are individual people. (Who knew?) Both are acceptable in government contracting. **28.201(a)**. However, each type of surety has different criteria for acceptability. The criteria for corporate sureties are in **28.202**, and the criteria for individual sureties are stated in **28.203**. The criteria for individual sureties are understandably beefier than those for corporate sureties. For example, the Government will only accept specific types of assets from an individual surety, such as cash or Government securities (**28.203-1(a)** – these asset types are listed outside the FAR, and vary by agency), but will accept a much wider range of assets from a corporate surety. This is because the Department of Treasury keeps a list of approved U.S.-based corporate sureties, so individual agencies don't usually need to be as cautious with respect to corporate sureties. **28.202(a)(1)**.

Corporate and individual sureties are not the only type of security used to back up a bond, though. Contractors are also permitted to use U.S. Bonds or Notes (**28.204-1**), certified or cashier's checks (**28.204-2**), or an irrevocable letter of credit (**28.204-3**), among other things. All these alternatives have specific requirements in each of their respective subsections.

Question 7 – What are the five reasons for which an individual might be categorically excluded from acting as a surety for a Government contract? [Hint: check out **28.203-7**]

B. Insurance

Subpart 28.3 details how insurance works in federal government contracting. There are a lot of different types of insurance discussed in this Subpart; we will touch on each of them briefly. Most contractors will be required to carry at least one type of insurance, just like most adult individuals. For example, if you have a car, you are required to carry car insurance. Similarly, if a contractor has employees, it is required to carry workers compensation insurance. In fact, any contractor that is subject to the **Cost Accounting Standard (CAS) 416** must obtain insurance unless the Government specifically waives that requirement. **28.301(a)**. Well, who's subject to **CAS 416**? Any contractor who has a CAS-covered contract, or has had a CAS-covered contract in the past, is subject to **CAS 416. 48 CFR 9904.416-63**. We will dive into CAS during our discussion of **Part 30**.

CAS-covered contracts are not the only contracts for which the Government might require insurance. As we noted above, workers' compensation insurance applies in a multitude of situations. Insurance is also mandatory in certain other situations, which we find set forth in **28.301(b) and (c)**. Furthermore, the Government has final say over whether a contractor's insurance coverage is adequate and in the Government's best interest. **28.301(a)(2)**. Contractors can certainly opt to obtain insurance that goes beyond the Government's requirements, but in a cost-reimbursement contract they may not be reimbursed for the full cost of that insurance. **28.301(a)(3)**. We will talk more about "allowability" of costs during our discussion of **Part 31**.

Question 8 – What must insurers and contractors do if they wish to change the insurance coverage for a Government contract? [Hint: check out **28.302**]

Specific situations may require specific types of insurance. These specific types of insurance include insurance against loss of or damage to Government property (**28.303**), overseas workers' compensation and war hazard insurance (**28.305**), insurance for fixed-price contracts (**28.306**), and insurance for cost-reimbursement contracts (**28.307**). The contract clauses for all different insurance situations are

identified in **28.309** through **28.313**. These subsections tell us where to go in **Part 52** to find the relevant clauses.

Sometimes different types of insurance may be appropriate. **Subpart 28.3** outlines two alternative types of insurance: risk-pooling arrangements (**28.304**) and self-insurance (**28.308**). Agencies (not contractors) may establish risk-pooling arrangements. These arrangements are designed to minimize cost to the Government by using the services of the insurance industry to assist in safety engineering and claims handling. Any agencies that create risk-pooling agreements must appoint a single manager or point of contact to oversee each risk-pooling agreement, to maximize Government savings and minimize confusion.

If you have never worked for a large company, you might have scratched your head a bit at self-insurance. It sounds like a bit of a contradiction of terms, but for corporations, it is not. Self-insurance is what happens when a company decides to take on full financial responsibility for any claims or issues that might otherwise be covered by third-party insurance. For example, if we are talking about health insurance the company would collect premiums from employees, set aside that money in a special account, and then pay the employees' covered medical claims from that account, thus eliminating (or at least reducing) third-party involvement and the resulting transaction costs. The Government allows contractors to use self-insurance. If 50% or more of the self-insurance costs of a segment of a contractor's business is going to be allocable to negotiated Government contracts, the contractor must submit copious information, in writing, on the mechanics of its self-insurance systems. **28.308(a)**. Note that this information submission requirement only applies when the total self-insurance costs for a contractor's fiscal year are expected be \$200,000 or more *for that specific segment which is performing work on a Government contract*. Each segment which performs work on Government contracts must be evaluated separately.

Interestingly, the Government sometimes chooses to self-insure as well. We will discuss one example when we talk about Government property in our discussion of **Part 45**.

Question 9 – What are five of the ten pieces of information a self-insured contractor must submit to the Government?

After the contractor has submitted all the required information, the Government will decide whether to approve or disapprove the self-insurance plan. The Government will generally approve a self-insurance plan if use of that plan is in the Government interest. **28.308(b)**. Note that it is the ACO, not the CO, who approves self-insurance programs. **28.308(c)**. Not every contractor will qualify for a self-insurance program in a Government contract. In addition to the mechanical requirements we noted above, contractors must also demonstrate that they are capable of sustaining the potential losses involved in carrying self-insurance. **28.308(d)** includes factors to be used in assessment of that capability. Finally, agencies are not permitted to approve any program of self-insurance for catastrophic risks, such as nuclear risks (**28.308(e)**), or self-insurance programs to protect against the cost of correcting its own defects in materials or workmanship (**28.308(f)**). (We will discuss how nuclear risks are addressed when we get to Part 50 (“Extraordinary Contractual Actions”).

III. Taxes

And now the moment we’ve all been waiting for: taxes! We know most of you have probably wrapped up your taxes fairly recently, so we will try to keep this as painless as possible. However, taxes are an extremely important issue in government contracting—and, indeed, in general—so we cannot stress enough how vital it is to obtain a basic understanding of how they work. **FAR Part 29** prescribes the policies and procedures for taxes in government contracting. Specifically, it outlines the use of tax clauses in all contracts, assertion of immunity or exemption from taxes, and how to obtain tax refunds. **FAR 29.000**. The two major areas of discussion are federal taxes (**29.2**) and state and local taxes (**29.3**).

Before we move on to our discussion of the two major tax areas, we should note that tax problems are often intensely fact-specific. While everyone should have a baseline knowledge of general tax issues, it is unrealistic to expect people who are not tax lawyers to have a grasp of every little intricacy of tax law. Thus, **29.101(a)** specifically advises COs to request assistance from agency-designated legal counsel when tax problems arise in contracts. To ensure that the treatment of taxes is consistent across each agency, COs should also consult with that agency-designated counsel before hammering out any agreements with a taxing authority, be it the IRS, a state tax authority, or another country’s tax authority. **29.101(b)**. COs should also consult with the agency-designated counsel on other issues, such as constitutional tax immunity (**29.101(c)**) or purchasing goods or services from a foreign source (**29.101(d)**).

A. Federal Taxes

As you know, **Subpart 29.2** deals with federal tax issues. Specifically, it addresses federal excise taxes. These taxes are applicable to a number of goods and services in the U.S., and even the Government may have to pay them sometimes. Other times, the law will exempt the Government from excise taxes. COs should make sure they know when the Government is exempt, and solicit prices accordingly. **29.201(b)**.

Conveniently, **29.202** contains a list of general exemptions from federal excise taxes. These general exemptions include emergency vehicles and fuel for use on vessels of war, among other things. Additionally, **29.203** cites statutory exemptions; in particular, the exemptions in **26 U.S.C. 4293** and **26 U.S.C. 4483(b)**. These two statutes exempt the Government from the communications excise tax and

the federal highway vehicle users tax, respectively. These exemptions make sense, since it would be counterproductive to tax the Government for performing governmental functions!

Question 10 – What exactly are federal excise taxes? Identify a type of good or service that such taxes are imposed upon in Federal Government contracting. [Hint: check out **29.201(a)**]

B. State and Local Taxes

In general, the Federal Government's purchases and leases are immune from any state and local taxes. Specific purchases and leases may be up for debate, though, which is a legal question and thus best left to agency-designated legal counsel. **29.302(a)**. On the flip side, prime contractors and subcontractors are usually still subject to state and local taxes. **29.303(b)**. In most situations, tax exemption boils down to who has made the purchase or signed the lease. If the Government has made the purchase itself, then the purchase is likely tax-exempt. If the contractor has made the purchase, then the purchase is likely *not* tax-exempt. However, things can get a little tricky when contractors are using Government-owned property. Such property might fall under the Government's immunity from state and local taxation and be exempt from state and local taxes, but states and localities may still assert a right to tax that property. In cases like this, COs should seek advice from agency-designated counsel. **29.303(c)**. (It probably would not hurt for contractors to seek advice from their own lawyers or legal departments too.)

Other special tax-related circumstances requiring input from agency-designated counsel also frequently arise, which we find in **29.304**. For example, whether state and local taxes apply to the federal Government may sometimes depend on the place and terms of delivery. **29.304(b)**. Sales tax is a good example of this issue. In fact, **29.304(d)** is entirely devoted to issues surrounding state and local sales and use taxes in North Carolina! The Government may decide to change the place and terms of delivery for large contracts to avoid paying significant local taxes.

Question 11 – What are the two special tax-related requirements that **29.304(a)** calls out as requiring coordination with agency-designated counsel?

How does the Government establish tax exemption? It can't just swoop in and shoo state and local tax authorities away. Instead, whichever party is claiming the exemption (either the contractor or the Government) must provide specific evidence of any exemptions it claims. **29.305(a)**. If there is a

reasonable basis to sustain these claimed exemptions, the seller of the exempt good or service will be furnished evidence of that exemption. The type of evidence furnished depends on the type of contract. **29.305(b)**.

Subpart 29.4 lays out where to find all the contract clauses applicable to the entirety of **Part 29**. We find the clauses for domestic contracts referenced in **29.401** and the clauses for foreign contracts in **29.402**. Each subsection is broken down further by type of contract.

Question 12 – What Standard Form is useful as evidence to establish a state or local tax exemption?
[Hint: check out **29.305(a)**]

Discussion Questions

1. What is the difference between a bond and a bid guarantee? [Hint: check out **28.102**]

2. What is an Irrevocable Letter of Credit (ILC)? When can it be used in government contracting? [Hint: check out **FAR 2.201** for the definition and **FAR 28.204** for its usage]

3. Under what circumstances may a contracting officer require that a contractor obtain insurance during the performance of a fixed price contract? [Hint: check out **FAR 28.306**]

4. The GAO regularly reports to Congress and the various committees on questions and concerns surrounding government procurement regulation and more. In January 2015, the GAO evaluated the State Department's open market system for insurance in light of the DBA. What were the three resulting GAO recommendations? [Hint: see **Resources**]

5. From whom within the procuring agency should the contracting officer seek guidance on issues involving the applicability of taxes to government contracts and possible immunity of purchases from state and local taxes? Cite to the subpart of **FAR 28** that supports your answer.

6. Are contractors exempt from federal excise taxes? Explain your answer [Hint: Check out **FAR 29.202**]

Answer Key

Answer 1 –

1. Advance payment bonds
2. Annual bid bonds
3. Annual performance bonds
4. Patent infringement bonds
5. Payment bonds
6. Performance bonds

Answer 2 – Bid requirements shall be waived (unless the CO determines in writing that acceptance of the bid would be detrimental to the Government) in the following eight situations: 1) only one offer is received (in which case, the contracting officer may require the furnishing of the bid guarantee before award); 2) the amount of the bid guarantee submitted is less than required, but is equal to or greater than the difference between the offer price and the next higher acceptable offer; 3) the amount of the bid guarantee submitted, although less than that required by the solicitation for the maximum quantity offered, is sufficient for a quantity for which the offeror is otherwise eligible for award (though any award to the offeror shall not exceed the quantity covered by the bid guarantee); 4) the bid guarantee is received late, and late receipt is waived under **14.304**; 5) a bid guarantee becomes inadequate as a result of the correction of a mistake under **14.407** (but only if the bidder will increase the bid guarantee to the level required for the corrected bid); 6) an otherwise acceptable bid bond was submitted with a signed offer, but the bid bond was not signed by the offeror; 7) an otherwise acceptable bid bond is erroneously dated or bears no date at all; or (8) a bid bond does not list the United States as obligee, but correctly identifies the offeror, the solicitation number, and the name and location of the project involved, so long as it is acceptable in all other respects.

Answer 3 – **40 U.S.C. 31, subchapter III, Bonds.** The Miller Act's predecessor was the Heard Act.

Answer 4 – Yes. The CO must always determine a contractor's responsibility, per **FAR 9.1**. A bond is not a stand-in for a responsibility determination, since it is merely an extra protection for the Government in case the contractor is not financially responsible. It does not bear on other aspects of responsibility.

Answer 5 – COs should not use any of the forms in **FAR 28.106-1** for contracts in foreign countries.

Answer 6 – COs must provide information to subcontractors for payment bonds under contracts that are for anything other than a commercial item. Subcontractors can request information about the surety either orally or in writing. The CO can provide the name and address of the surety/sureties, the penal amount of the payment bond, and a copy of the payment bond.

Answer 7 – These reasons, direct from the FAR, are 1) failure to fulfill the obligations under any bond; 2) failure to disclose all bond obligations; 3) misrepresentation of the value of available assets

or outstanding liabilities; 4) any false or misleading statement, signature, or representation on a bond of affidavit of individual suretyship; and 5) any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

Answer 8 – If the insurance is provided by an outside insurer, the insurer or contractor must notify the CO, in writing, of any cancellation or change to the insurance coverage which adversely affects the Government’s interest (The policy for such insurance must also contain an endorsement to this effect). If the contractor is self-insured, the contractor may not change or decrease the coverage at all unless the ACO give prior approval.

Answer 9 – Any five of the following: 1) a complete description of the program, including any resolution of the board of directors authorizing and adopting coverage, including types of risks, limits of coverage, assignments of safety and loss control, and legal service responsibilities; 2) if available, the corporate insurance manual and organization charge detailing fiscal responsibilities for insurance; 3) the terms regarding insurance coverage for any Government property; 4) the contractor’s latest financial statements; 5) any self-insurance feasibility studies or insurance market surveys reporting comparative alternatives; 6) loss history, premiums history, and industry ratios; 7) a formula for establishing reserves, including percentage variations between losses paid and losses reserved; 8) claims administration policy, practices, and procedures; 9) the method of calculating the projected average loss; and 10) a disclosure of all captive insurance company and reinsurance agreements, including methods of computing cost.

Answer 10 – Federal excise taxes are taxes levied on the sale or use of particular supplies or services.

29.2(a) notes that the most common excise taxes are manufacturers’ excise taxes imposed on things like gasoline and firearms, and special-fuels taxes imposed on diesel and other special motor fuels (like the red diesel in your grandpa’s old farm truck).

Answer 11 – With coordination of the agency-designated counsel, a contract may 1) state that the contract price includes or excludes a specified tax and 2) require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax.

Answer 12 – SF 1094, U.S. Tax Exemption Form

Discussion Questions Answer Key

1. A bond is a written instrument that ensures that if the contractor is unable to complete performance of a contract a second party surety will assure fulfillment of the contractor's obligations under the contract. By comparison a bid guarantee is an assurance that only extends to the contractor's bid, not necessarily the contractor's performance of the work. A bid guarantee is meant to ensure that contractor will not withdraw its bid and will execute the contract vehicle and furnish all required bonds once award is made. In essence a bid guarantee offers the government assurance that a bid once received will remain available for acceptance by the government throughout the evaluation period.
2. **FAR Part 2** says an ILC is "a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon the Government's (the beneficiary) presentation of a written demand for payment. Neither the financial institution nor the offeror/contractor can revoke or condition the letter of credit." ILCs may be used in place of a surety to secure a bond. ILCs are also one of the acceptable asset forms that may be used by individual sureties to satisfy their bond obligations.
3. The FAR states that agencies may specify insurance requirements in special circumstances. Enumerated examples include: The contractor is, or has a separate operation, engaged principally in Government work; Government property is involved; the work is to be performed on a Government installation, and the Government elects to assume risks for which the contractor ordinarily obtains commercial insurance.
4. State Department should (1) determine whether an open market system best suits its needs; (2) incorporate leading practices into any future single insurer solicitation; and (3) assess the effects of its transition on small businesses. See GAO Report Defense Base Act Insurance: Open Market System.
5. Agency designated legal counsel will be involved in tax issues concerning government contracts. 29.101(a) specifically states that contracting officers should request assistance from legal counsel when tax questions arise. Part 29 goes on to further reiterate that attorneys should be consulted. 29.3 also specifically states that legal counsel should be consulted to assist in determining the applicability or possible immunity of purchases from state and local taxes.
6. Sometimes. If, for example, the contractor is procuring goods for the exclusive use of a state or other locality (including the District of Columbia), that purchase will be exempt from federal excise taxes. However, the exemption applies only to purchases, not to the entirety of a contractor's functions.

APPENDIX

All of the following materials are linked and can be found via the Links Document or online.

[Defense Base Act Insurance Guide](#)

A report to Congress by the Department of Defense was in response to Section 843 of the National Defense Authorization Act for Fiscal Year 2009 titled Acquisition Strategy for Defense Base Act Insurance. The purpose of the report is to find whether there are possible alternatives means to acquiring Defense Base Act (DBA) insurance in response to claims of premium rates.

[GAO Hostetter Bid Bonds & Guarantees Case](#)

The GAO decision concerning the matter of Hostetter, Keach & Cassada Construction LLC (B-403329) from October 2010. The protests brought by Hostetter were sustained. The construction company's bid was initially found unresponsive for a discrepancy in the names of the bidding entity and of the principal on the required bid bond.

[GAO Report - Construction Subcontractor Bid Shopping \(2015\)](#)

This is a report to the Ranking Member, permanent subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs of the U.S. Senate titled "Insight into Subcontractor Selection is Limited but Agencies Use Oversight Tools to Monitor Performance" from January 2015. GAO was asked to review the government's insight into subcontractor selection and oversight of subcontractor performance on federal construction contracts.

[GAO Report - Defense Base Act Insurance: Open Market System](#)

The report to Congress is regarding the Defense Base Act (DBA) and titled "State Department Should Evaluate Its Open Market System and Incorporate Leading Practices into Any Future Single Insurer Solicitation" from January 2015. The report states that the Department of State did not follow leading acquisition practices in transitioning from a single insurer DBA program to an open market system.

[SBA Form 990 Example](#)

U.S. Small Business Administration sample document of a Surety Bond Guarantee Agreement including the terms and conditions.

[SF 1094 US Tax Exemptions Certificates](#)

FAR 53.301-1094, U.S. Tax Exemption Certificates – This form is used to establish the Government's exemption or immunity from State or Local taxes whenever no other evidence is available.

FUN WITH THE FAR
Episode 17
FAR Part 28 & 29
Summary Outline

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A. General Observations

B. Bonds and Financial Protections

C. Sureties and Bond Securities

D. Insurance

III. FAR PART 29

A. General Observations

B. Federal Taxes

C. State and Local Taxes

IV. Closing Remarks