

## Contract Administration

# Activity 40: Administering Securities

*Procedures for the use of securities to protect the Government from financial losses.*

**Related Flow Charts:** [Flow Chart 42](#)

Tasks	FAR Reference(s)	Additional Information
<p>1. Obtain required bonds before the contractor is given a notice to proceed with the contract work.</p>	<p>FAR 9.405(c) Effect of listing [debarment, suspension, and ineligibility].</p> <p>FAR 28.103 Performance and payment bonds for other than construction contracts [sureties and other security for bonds].</p> <p>FAR 28.201 Requirements for security [sureties and other security for bonds].</p> <p>FAR 28.204 Alternatives in lieu of corporate or individual sureties [sureties and other security for bonds].</p>	<p>Obtain the bonds required by the contract. The bond must be in the form of a firm commitment, supported by:</p> <ul style="list-style-type: none"> <li>• Corporate sureties;</li> <li>• Individual sureties (Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties); or</li> <li>• Other acceptable security such as:               <ul style="list-style-type: none"> <li>○ United States bonds or notes,</li> <li>○ Certified check,</li> <li>○ Cashier's check,</li> <li>○ Bank draft,</li> <li>○ Post Office money order,</li> <li>○ Currency, or</li> <li>○ Irrevocable letter of credit.</li> </ul> </li> </ul> <p>Never require a bond after the contract has been awarded if it was not specifically required in the contract, except as may be determined necessary for a contract modification.</p>
<p>2. Obtain additional security when necessary to protect the Government and persons supplying labor or materials under contracts.</p>	<p>FAR 28.106-3 Additional bond and security [administration].</p> <p>FAR 52.228-2 Additional bond security.</p>	<p>Reasons for obtaining additional security include:</p> <ul style="list-style-type: none"> <li>• A surety for a bond or issuing financial institution for other security furnished with the contract becomes unacceptable to the Government (e.g., upon notification of termination of a company's authority to qualify as a</li> </ul>

Tasks	FAR Reference(s)	Additional Information
		<p>surety on Federal bonds);</p> <ul style="list-style-type: none"> <li>• A surety fails to furnish reports on its financial condition as required by the Government;</li> <li>• The contract price is increased so that the penal sum of a bond becomes inadequate; or</li> <li>• An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security.</li> </ul> <p>When additional security is required, it can be obtained:</p> <ul style="list-style-type: none"> <li>• In whole or part from the original sureties through an increase in penalty; or</li> <li>• In whole or part from a new surety or one of the alternatives described in FAR 28.204.</li> </ul>
<p>3. Notify the principal and surety of any substitution of surety bonds.</p>	<p>FAR 28.106-2 Substitution of surety bonds [administration].</p>	<p>A new surety bond covering all or part of the obligation on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity or as otherwise specified in agency regulation.</p> <p>When a new surety bond is approved, notify the principal and surety of the original bond(s) of effective date of the new bond(s).</p>
<p>4. Obtain consent from the surety for contract modifications (when required).</p>	<p>FAR 28.106-5 Consent of surety [administration].</p>	<p>Obtain the consent of the surety when the contract is modified, if:</p> <ul style="list-style-type: none"> <li>• An additional bond is obtained from other than the original surety; or</li> <li>• No additional bond is required and the modification; <ul style="list-style-type: none"> <li>○ Is for new work beyond the scope of the original contract; or</li> <li>○ Does not change the scope, but changes the contract price by more than 25 percent or \$50,000.00 (upward or downward).</li> </ul> </li> <li>• Entering into a novation agreement.</li> </ul> <p>No consent is required for surety alternatives described in FAR 28.204.</p>

Tasks	FAR Reference(s)	Additional Information
<p>5. Furnish information to interested parties.</p>	<p>FAR 28.106-6 Furnishing information [administration].</p>	<p>A contract bond surety may be provided the following information on the contract when the surety requests it in writing:</p> <ul style="list-style-type: none"> <li>• The progress of work,</li> <li>• Payments, and</li> <li>• The estimated percentage of completion.</li> </ul> <p>When the contractor has provided a payment bond, the contracting officer:</p> <ul style="list-style-type: none"> <li>• Must provide the name and address of the surety or sureties to any subcontractor or supplier that has furnished or been requested to furnish labor or material for the contract.</li> <li>• May furnish general information concerning the work progress, payments, and the estimated percentage of completion to persons who have provided labor or materials and have not been paid.</li> <li>• Must furnish a certified copy of the bond and the contract for which it was given to any person who: <ul style="list-style-type: none"> <li>○ Requests a copy;</li> <li>○ Furnishes an affidavit that the requestor: <ul style="list-style-type: none"> <li>▪ Has supplied labor or materials for such work and payment has not been made; or</li> <li>▪ Is being sued on such bond; and</li> <li>▪ Pays such costs of preparation as determined by the head of the agency or designee to be reasonable and appropriate.</li> </ul> </li> </ul> </li> </ul>
<p>6. Arrange for payment to be made to the contractor in care of the surety (when requested by the surety and the contractor and any assignees agree).</p>	<p>FAR 49.402-3 Procedure for default [termination of fixed-price contracts for default].</p>	<p>The contractor must forward a written request to the designated disbursing officer specifically directing a change in address for mailing checks.</p>

Tasks	FAR Reference(s)	Additional Information
<p>7. Accept a surety-takeover agreement when it is in the Government's best interest.</p>	<p>FAR 49.402-4 Procedure in lieu of termination for default [termination of fixed-price contracts for default].</p> <p>FAR 49.404 Surety-takeover agreements [termination for default].</p>	<p>While a surety takeover of contract performance occurs most often in construction, a takeover agreement may be offered for a supply or service contract.</p> <p>Consider carefully any surety offer for completing the contract.</p> <ul style="list-style-type: none"> <li>• Take action on the basis of the Government's interest, including the possible effect upon the Government's rights against the surety.</li> <li>• Reject surety takeover if the: <ul style="list-style-type: none"> <li>○ The persons or firm(s) proposed by the surety are not competent and qualified; or</li> <li>○ The proposal is not in the best interest of the Government.</li> </ul> </li> <li>• Consider using a tripartite agreement among the Government, the surety, and the defaulting contractor when necessary to resolve the defaulting contractor's residual rights, including assertions to unpaid prior earnings.</li> <li>• Require the surety to complete the contract and the Government to pay the surety's costs and expenses up to the balance of the contract price unpaid at the time of default, subject to the conditions in FAR 49.404(e).</li> </ul>
<p>8. Obtain funds from the surety to cover the defaulting contractor's and the surety's liability to the Government.</p>	<p>FAR 49.405 Completion by another contractor [termination for default].</p> <p>FAR 49.406 Liquidation of liability [termination for default].</p>	<p>If the surety does not arrange for completion of the contract, arrange for completion of the work by awarding a new contract based on the same plans and specifications.</p> <ul style="list-style-type: none"> <li>• The new contract may be the result of sealed bidding or any other appropriate contracting method or procedure.</li> <li>• Exercise reasonable diligence to obtain the lowest price available for completion.</li> </ul> <p>The contractor and the surety are liable to the Government for resultant damages.</p> <ul style="list-style-type: none"> <li>• To liquidate the contractor's and the surety's liability to the Government, use:</li> </ul>

Tasks	FAR Reference(s)	Additional Information
		<ul style="list-style-type: none"> <li>○ All retained percentages of progress payments previously made to the contractor; and</li> <li>○ Any progress payments due for work completed before the termination.</li> <li>● If the retained and unpaid amounts are insufficient, take steps to recover the additional sum from the contractor and the surety.</li> </ul>
<p>9. Report surety performance that may merit debarment.</p>	<p>FAR 28.203-7 Exclusion of individual sureties.</p>	<p>For example, report information related to willful:</p> <ul style="list-style-type: none"> <li>● Failure to fulfill obligations under any bond.</li> <li>● Failure to disclose all bond obligations.</li> <li>● Misrepresentation of the value of available assets or outstanding liabilities.</li> <li>● False or misleading statement, signature, or representation on a bond or affidavit of individual suretyship.</li> <li>● Any other information related to responsibility as a surety that is serious and compelling in nature as may be determined to warrant exclusion.</li> </ul>