

- b. In paragraph (b)(3)(i), removing “; or” and adding “;” in its place;
- c. In paragraph (b)(3)(ii), removing “supplier.” and adding “supplier; and”
- d. Adding paragraph (b)(3)(iii).
The addition reads as follows:

13.106-3 Award and documentation.

* * * * *

(b) * * *

(3) * * *

(iii) Except for DoD, when using lowest price technically acceptable source selection process, justifying the use of such process.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

- 5. Amend section 15.101-2 by adding paragraphs (c) and (d) to read as follows:

15.101-2 Lowest price technically acceptable source selection process.

* * * * *

(c) Except for DoD, in accordance with section 880 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232, 41 U.S.C. 3701 Note), the lowest price technically acceptable source selection process shall only be used when—

(1) The agency can comprehensively and clearly describe the minimum requirements in terms of performance objectives, measures, and standards that will be used to determine the acceptability of offers;

(2) The agency would realize no, or minimal, value from a proposal that exceeds the minimum technical or performance requirements;

(3) The agency believes the technical proposals will require no, or minimal, subjective judgment by the source selection authority as to the desirability of one offeror’s proposal versus a competing proposal;

(4) The agency has a high degree of confidence that reviewing the technical proposals of all offerors would not result in the identification of characteristics that could provide value or benefit to the agency;

(5) The agency determined that the lowest price reflects the total cost, including operation and support, of the product(s) or service(s) being acquired; and

(6) The contracting officer documents the contract file describing the circumstances that justify the use of the lowest price technically acceptable source selection process.

(d) Except for DoD, in accordance with section 880 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232, 41

U.S.C. 3701 Note), contracting officers shall avoid, to the maximum extent practicable, using the lowest price technically acceptable source selection process in the case of a procurement that is predominantly for the acquisition of—

(1) Information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, health care services and records, telecommunications devices and services, or other knowledge-based professional services;

(2) Personal protective equipment; or

(3) Knowledge-based training or logistics services in contingency operations or other operations outside the United States, including in Afghanistan or Iraq.

PART 16—TYPES OF CONTRACTS

- 6. Amend section 16.505 by—

■ a. Removing from the end of paragraph (b)(1)(ii) “must—” adding “shall—” in its place;

■ b. Removing from paragraph (b)(1)(ii)(D) “contract; and” and adding “contract;” in its place;

■ c. Removing from paragraph (b)(1)(ii)(E) “decision.” and adding “decision;” in its place;

■ d. Adding paragraphs (b)(1)(ii)(F) and (b)(1)(ii)(G); and

■ e. Adding paragraph (b)(7)(iii).

The additions read as follows:

16.505 Ordering.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(F) Except for DoD, ensure the criteria at 15.101-2(c)(1)–(5) are met when using the lowest price technically acceptable source selection process; and

(G) Except for DoD, avoid using the lowest price technically acceptable source selection process to acquire certain supplies and services in accordance with 15.101-2(d).

* * * * *

(7) * * *

(iii) Except for DoD, the contracting officer shall document in the contract file a justification for use of the lowest price technically acceptable source selection process, when applicable.

* * * * *

PART 37—SERVICE CONTRACTING

- 7. Amend section 37.102 by adding paragraph (j) to read as follows:

37.102 Policy.

* * * * *

(j) Except for DoD, see 15.101-2(d) for limitations on the use of the lowest price technically acceptable source selection process to acquire certain services.

[FR Doc. 2020-29087 Filed 1-13-21; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19, 28, 32, 52, and 53

[FAC 2021-03; FAR Case 2017-003; Item III; Docket FAR-2017-0003, Sequence No. 1]

RIN 9000-AN39

Federal Acquisition Regulation: Individual Sureties

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 to change the kinds of assets that individual sureties must pledge as security for their bonds.

DATES: *Effective:* February 16, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207 or zenaida.delgado@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov. Please cite FAC 2021-03, FAR Case 2017-003.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 85 FR 7910 on February 12, 2020, to implement section 874 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), codified at 31 U.S.C. 9310, Individual Sureties.

FAR subpart 28.2 requires agencies to obtain adequate security for bonds when bonds are used with a contract. A corporate or individual surety is an acceptable form of security for a bond. Corporate sureties are vetted by the Department of the Treasury to ensure

they are sufficiently capitalized and are listed on Department of the Treasury's Listing of Approved Sureties (Treasury Department Circular 570). Individual sureties are not listed on Treasury Department Circular 570; currently contracting officers determine if an individual surety is acceptable.

Under 31 U.S.C. 9310, when Federal law permits acceptance of a surety bond from a surety not subject to 31 U.S.C. 9305 and 9306 (*i.e.*, an individual surety that is not a corporate surety), the individual surety must pledge assets that are eligible obligations. Eligible obligations are public debt obligations of the United States Government whose principal and interest are unconditionally guaranteed by the United States Government. The requirements of 31 U.S.C. 9310 are intended to strengthen the assets pledged by individual sureties, thereby mitigating risk to the Government.

This rule requires individual sureties to support their bond obligations with stable U.S.-backed securities as specified in 31 CFR part 225 and requires the Department of the Treasury, Bureau of the Fiscal Service to review those assets to ensure they meet established eligibility requirements. This rule is expected to provide some benefit to subcontractors (adequate security in case of default), and contracting officers (easier to determine value of assets pledged), to the extent that individual surety bonds are used, but there was some concern as to whether small businesses would have a more difficult time obtaining surety bonds if fewer individual sureties were providing bonds. DoD, GSA, and NASA requested public input, specifically from subcontractors, prime contractors, and individual sureties to more fully understand the impact of this regulation on affected parties. Individual sureties and prime contractors (including small businesses) did not provide input and did not indicate any concerns with the rule. One respondent representing subcontractors and suppliers in the construction industry had positive comments about the rule (see section II.B.1. of this preamble), confirming the anticipated benefits. Several respondents expressed the view that the rule will not negatively impact the availability of bonding for small construction businesses, noting the bonding assistance of the Small Business Administration and that the standard surety market has significantly expanded in recent years, providing many and varied avenues for small businesses to obtain bonding.

Therefore, based on public comments received, DoD, GSA, and NASA have

concluded that the initial assessment is correct that there is very limited use of individual sureties on Federal construction contracts and the impact of this rule is not significant, and any impact is predominantly positive.

Six respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule.

A. Summary of Significant Changes From the Proposed Rule

There are no significant changes made to the rule as a result of the public comments. One website reference has been corrected.

B. Analysis of Public Comments

Of the six responses received, most strongly supported the rule, and none provided negative comments on the rule. One respondent noted a nonfunctioning link to a website, and one provided comments of a political nature that did not address the rule.

1. Strong support for the rule.

Comment: Many respondents strongly supported the proposed rule. These respondents noted positive factors regarding this rule as follows:

- Protects the Government from fraud.
- Eliminates the gamesmanship by unlicensed persons acting as sureties.
- Ensures a level playing field for small businesses.
- Ensures adequate and reliable security is in place to guarantee payment to subcontractors and suppliers on Federal construction projects and protect them against default.
- Eliminates the burden on contracting officers in determining the true value of proposed assets, streamlining the procurement process.

Several respondents noted that the rule will not negatively impact the availability of bonding for small construction businesses, noting the bonding assistance of the Small Business Administration and that the standard surety market has significantly expanded in recent years, providing many and varied avenues for small businesses to obtain bonding. The rule does not eliminate individual surety bonds as an option; it just ensures that the bonds will be backed by stable and secure assets in the control of the Federal Government.

Response: Noted.

2. Treasury website for list of acceptable assets.

Comment: One respondent stated that the link to the website provided at FAR 28.203–1(a) for the Treasury list of acceptable assets entitled “Acceptable Collateral for 31 CFR part 225” does not work.

Response: The directions for accessing the website have been amended as follows: “A list of acceptable assets entitled “Acceptable Collateral for 31 CFR part 225” may be accessed by going to <https://www.treasurydirect.gov/instit/statreg/collateral/collateral.htm> and clicking on “Acceptable Collateral for 31 CFR part 225”.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

Although applicability of this rule to acquisitions below the SAT will be rare, DoD, GSA, and NASA do intend to apply the requirements of this rule to solicitations for contracts valued at or below the SAT. FAR 28.102–1(b) gives an example of when a bond could be required for an acquisition under the SAT. As noted in FAR 28.102–1(b), 40 U.S.C. 3132 requires the contracting officer to select two or more payment protections for construction contracts greater than \$35,000, but not greater than \$150,000, one of the possible protections being a payment bond. Individual sureties may provide security for a payment bond in this situation. The FAR Council has determined that it is not in the best interest of the Government to waive the applicability of section 874 below the SAT, because the new requirement will create greater certainty of payment for subcontractors. Applying the rule below the SAT will continue the FAR uniformity in the type of assets allowed to be pledged, whether the acquisition is above or below the SAT.

Although applicability of this rule to acquisitions of commercial items will be rare, DoD, GSA, and NASA do intend to apply the requirements of this rule to solicitations for the acquisition of commercial items. FAR 28.103–1(a) states that “Generally, agencies shall not require performance and payment bonds for other than construction contracts.” However, performance and payment bonds may be used for other than construction contracts as permitted in FAR 28.103–2 and 28.103–3.

The FAR Council has determined that it is not in the best interest of the Government to waive the applicability of section 874 to acquisitions of commercial items because the new requirement will create greater certainty

of payment for subcontractors. Applying the rule to the acquisition of commercial items will continue the FAR uniformity in the type of assets allowed to be pledged, whether the acquisition is for the acquisition of commercial or other than commercial items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action and therefore, this rule was not subject to the review of the Office of Information and Regulatory Affairs under section 6(b) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This FAR rule changes the kinds of assets that individual sureties must pledge as security for their individual surety bonds. The objective of the FAR rule is to implement section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year 2016 (FY 2016) (Pub. L. 114–92), which adds 31 U.S.C. 9310, Individual sureties, and limits the security for an individual surety bond to eligible obligations, *i.e.*, cash and/or Government obligations. This section was intended to strengthen coverage for individual sureties, thereby mitigating risk to the Government.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The final rule applies to all offerors and contractors who wish to use an individual surety as security for bonds required under a solicitation or contract for supplies or services (including construction). The number of solicitations and contracts requiring the submission of bid guarantees, performance bonds, or payment bonds, correlates roughly to the number of contract awards containing FAR clause 52.228–11,

Pledge of Assets. Based on FY 2017 data contained in the Electronic Document Access system (DoD official contract file system), 8,603 DoD contract awards, containing FAR clause 52.228–11 with an obligated amount of over \$35,000, were made to 1,990 unique vendors; of these 1,672 were small business entities. These contractors could be using corporate sureties under 28.202, individual sureties under 28.203, or pledging the contractor's own assets under 28.204; this FAR case only covers individual sureties under 28.203. Therefore, based on contracting officers' experience in the field DoD, GSA, and NASA estimate that less than 0.1 percent of contractors are using individual sureties to meet the required bonding under contracts.

This final rule does not include additional reporting or recordkeeping requirements. Although the rule creates a new provision to distinguish instructions to offerors from instructions to a contractor by relocating the "offeror" language from the existing FAR clause at 52.228–11, Pledge of Assets, the net effect of projected reporting and recordkeeping is unchanged. The use of Standard Form (SF) 28, Affidavit of Individual Surety, an existing reporting requirement under 52.228–11, is covered under the Office of Management and Budget (OMB) Control No. 9000–0001. The SF 28 is revised as a result of this rule. However, this will have a negligible impact on offerors, contractors, and respondents.

The effect on small business is that individual sureties will no longer be able to pledge real property, corporate stocks, corporate bonds, or irrevocable letters of credit. DoD, GSA, and NASA anticipate that some individual sureties may not want to transform their assets into the kind that qualify under the new legislation, and so there will be fewer individual sureties available to meet the needs of small business offerors and contractors. This may mean that some small businesses that have been using individual sureties will have their costs change, as they go to a different individual surety, or to a corporate surety.

There are no available alternatives to the rule to accomplish the desired objective of the statute.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities because this only applies to (1) offerors and contractors who are using an individual surety as security for bonds required under a solicitation or contract for supplies or services (including construction), and (2) individual sureties, a small number of whom may not want to transform their assets into the kind that qualify under the new legislation.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) does apply; however, the changes to the FAR do not impose additional information collection requirements. This rule modifies the SF 28, which is used by all executive agencies to obtain information from individuals wishing to serve as sureties to Government bonds. However, the modification merely updates the language in the form to be consistent with the changes to the FAR text; it will have no impact on offerors or contractors.

The modification of the SF 28 does not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0001, Standard Form 28, Affidavit of Individual Surety.

List of Subjects in 48 CFR Parts 19, 28, 32, 52, and 53

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 19, 28, 32, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 19, 28, 32, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 19—SMALL BUSINESS PROGRAMS

19.602–1 [Amended]

■ 2. Amend section 19.602–1 by removing from paragraph (a) "and 28.203(c)" and adding "and 28.203–1(e)" in its place.

PART 28—BONDS AND INSURANCE

28.102–2 [Amended]

■ 3. Amend section 28.102–2 by removing from paragraph (e) "of 28.203–3(c)" in its place.

■ 4. Amend section 28.106–1 by removing paragraph (o); redesignating paragraph (p) as paragraph (o); and revising the new redesignated paragraph (o) to read as follows.

28.106–1 Bonds and bond related forms.

* * * * *

(o) OF 91, Release of Personal Property from Escrow (see 28.203–3).

■ 5. Amend section 28.202 by—
■ a. Revising paragraph (a)(1);

- b. Revising the first sentence of paragraph (a)(2);
- c. Removing from paragraph (a)(3) “Department of the Treasury regulations” and adding “Department of the Treasury (Treasury) regulations” in its place;
- d. Removing from paragraph (a)(4) “Standard Form 273”, “Standard Form 274” and “Standard Form 275” and adding “Standard Form (SF) 273”, “SF 274”, and “SF 275” in their places, respectively;
- e. Revising the first sentence of paragraph (c); and
- f. Revising paragraph (d).

The revisions read as follows:

28.202 Acceptability of corporate sureties.

(a)(1) Corporate sureties offered for bonds furnished with contracts performed in the United States or its outlying areas must appear on the list contained in the Department of the Treasury’s Listing of Approved Sureties (Treasury Department Circular 570), “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.”

(2) The penal amount of the bond should not exceed the surety’s underwriting limit stated in the Treasury Department Circular 570.

* * *

* * * * *

(c) Treasury issues supplements to Treasury Department Circular 570, notifying all Federal agencies of new approved corporate surety companies and the termination of the authority of any specific corporate surety to qualify as a surety on Federal bonds. * * *

(d) Treasury Department Circular 570 may be obtained from the U.S. Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Branch, 3201 Pennsy Drive, Building E, Landover, MD 20785 or at <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>.

- 6. Revise section 28.203 to read as follows:

28.203 Individual sureties.

28.203–1 Acceptability of individual sureties.

(a) An individual surety is acceptable for all types of bonds except position schedule bonds. Assets pledged by an individual surety shall meet the eligibility requirements of Treasury’s Bureau of the Fiscal Service. Per 31 U.S.C. 9310, individual sureties must pledge eligible obligations, which Treasury refers to as acceptable collateral or eligible collateral. A list of acceptable assets, entitled “Acceptable

Collateral for 31 CFR part 225,” may be accessed by going to <https://www.treasurydirect.gov/instit/statreg/collateral/collateral.htm> and clicking on “Acceptable Collateral for 31 CFR part 225”.

(b)(1) An individual surety shall execute the bond (e.g., bid bond (SF 24), performance bond (SF 25), payment bond (SF 25A)).

(2) The net adjusted value of unencumbered assets is their market value minus the margin. The margin tables are available at www.treasurydirect.gov. The net adjusted value of unencumbered assets pledged by the individual surety must equal or exceed the penal amount (i.e., face value) of each bond.

(3) The individual surety shall execute the SF 28, Affidavit of Individual Surety, and provide a security interest. One individual surety is adequate support for a bond, provided the net adjusted value of unencumbered assets pledged by that individual surety equals or exceeds the amount of the bond.

(4) An offeror or contractor may submit up to three individual sureties for each bond, in which case the net adjusted value of the pledged unencumbered assets, when combined, must equal or exceed the penal amount of the bond. Each individual surety is jointly and severally liable to the extent of the penal amount of the bond.

(c) Using the information from the SF 28 submitted by the offeror or contractor, the contracting officer shall notify the Treasury’s collateral operations support team by email at BMT@fiscal.treasury.gov or by phone at 888–568–7343, of the individual surety, the assets to be pledged, and the amount necessary to cover the individual surety bond, i.e., the required amount to be collateralized. Treasury will advise the contracting officer whether the assets are eligible to be pledged, consistent with 28.203–1(a), and of the valuation of the assets offered to be pledged, consistent with the valuation standards in 28.203–1(b)(2). If after 3 business days the contracting officer has not received a response from Treasury, the contracting officer may seek assistance from the Director, Bank Policy and Oversight, at 202–504–3502. The contracting officer shall determine whether the individual surety bond is acceptable as to the amount necessary to cover the individual surety bond based on the asset eligibility and valuation assessment from Treasury. The contracting officer shall notify both the offeror or contractor and the individual surety of this determination.

(d) If the contracting officer determines the individual surety is acceptable, the contracting officer shall request the Treasury’s collateral operations support team set up the necessary individual surety pledged asset collateral account.

(e) If the contracting officer determines that no individual surety in support of a bid guarantee is acceptable, the offeror utilizing the individual surety shall be rejected as nonresponsible, except as provided in 28.101–4. A finding of nonresponsibility based on unacceptability of an individual surety, need not be referred to the Small Business Administration for a Certificate of Competency. (See 19.602–1(a) and 61 Comp. Gen. 456 (1982).)

(f) If a contractor submits an unacceptable individual surety, or one that Treasury could not assess the asset eligibility and valuation within a reasonable time, then the contracting officer may permit the contractor to substitute an acceptable surety within a reasonable time.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the appropriate agency official in accordance with agency procedures.

28.203–2 Substitution of assets.

An individual surety may request the Government to accept a substitute asset for that currently pledged by submitting a written request, including a revised SF 28, to the responsible contracting officer. Following the requirements set forth in 28.203–1, the contracting officer may agree to the substitution of assets upon determining that the substitute assets to be pledged are adequate to protect the outstanding bond or guarantee obligations.

28.203–3 Release of security interest.

(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety’s assets using the Optional Form 91, Release of Personal Property from Escrow, or a similar release as soon as possible consistent with the conditions in subparagraphs (a)(1) and (2) of this section. A surety’s assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release.

(1) *Contracts subject to the Bonds statute.* See section 1.110 and section

28.102–1, paragraph (a). The security interest shall be maintained for the later of—

- (i) 1 year following final payment;
- (ii) Until completion of any warranty period (applicable only to performance bonds); or
- (iii) Pending resolution of all claims filed against the payment bond during the 1 year period following final payment.

(2) *Contracts subject to alternative payment protection.* See section 28.102–1, paragraph (b)(1). The security interest shall be maintained for the full contract performance period plus 1 year.

(3) *Other contracts not subject to the Bonds statute.* The security interest shall be maintained for 90 days following final payment or until completion of any warranty period (applicable only to performance bonds), whichever is later.

(b) Upon written request by the individual surety, the contracting officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(c) Upon written request by the individual surety, the contracting officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the contractor's obligations under its performance bond. Release of the security interest in support of a payment bond must comply with the subparagraphs (a)(1) through (3) of this section. In making this determination, the contracting officer will give consideration as to whether the unreleased portion of the security is sufficient to cover the remaining contract obligations, including payments to subcontractors and other potential liabilities. The individual surety shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such assets does not relieve the individual surety of its obligations under the bond(s).

28.203–4 Solicitation provision and contract clause.

(a) Insert the provision at 52.228–17, Individual Surety—Pledge of Assets (Bid Guarantee), in solicitations that require the submission of a bid guarantee.

(b) Insert the clause at 52.228–11, Individual Surety—Pledge of Assets, in solicitations and contracts that require the submission of performance or payment bonds.

28.203–5 Exclusion of individual sureties.

(a) An individual may be excluded from acting as a surety on bonds submitted by offerors on procurement by the executive branch of the Federal Government, by the acquiring agency's head or designee utilizing the procedures in subpart 9.4. The exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(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 or affidavit of individual suretyship.

(5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual surety excluded pursuant to this section shall be entered as an exclusion in the System for Award Management (see 9.404).

(d) Contracting officers shall not accept the bonds of individual sureties whose names appear in an active exclusion record in the System for Award Management (see 9.404) unless the acquiring agency's head or a designee states in writing the compelling reasons justifying acceptance.

(e) An exclusion of an individual surety under this section will also preclude such party from acting as a contractor in accordance with subpart 9.4.

28.204 [Amended]

■ 7. Amend section 28.404 by removing from paragraph (b) “lien in 28.203–5(c)” and adding “security in 28.203–3(c)” in its place.

28.204–1 [Amended]

■ 8. Amend section 28.204–1 by removing from the first sentence of the text “dated July 1, 1978”.

PART 32—CONTRACT FINANCING

32.202–4 [Amended]

■ 9. Amend section 32.202–4 by removing from paragraph (c) “28.203–2, 28.203–3, and” and adding “28.203 and” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Revise section 52.228–11 to read as follows:

52.228–11 Individual Surety—Pledge of Assets.

As prescribed in 28.203–4(b), insert the following clause:

Individual Surety—Pledge of Assets (Feb 2021)

(a) The Contractor shall obtain from each person acting as an individual surety on a performance bond or a payment bond—

(1) A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) 28.203–1; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) The Contracting Officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the Contractor's obligations under its performance bond. The security interest in support of a performance bond shall be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding \$150,000 (40 U.S.C. 3131).* Until completion of any warranty period, or for 1 year following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR 28.102–1(b)(1)).* For the full contract performance period plus 1 year.

(3) *Other contracts not subject to the requirements of paragraph (b)(1) of this clause.* Until completion of any warranty period, or for 90 days following final payment, whichever is later.

(c) A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release. The security interest on the individual surety's assets in support of a payment bond shall be maintained—

(1) *Contracts for the construction, alteration, or repair of any public building or public work of the Federal Government exceeding \$150,000 which require performance and payment bonds (40 U.S.C. 3131).* For 1 year following final payment, or until resolution of all pending claims filed against the payment bond during the 1-year period following final payment, whichever is later.

(2) *Contracts subject to alternative payment protection (see FAR 28.102–1(b)(1)).* For the full contract performance period plus 1 year.

(3) *Other contracts not subject to the requirements of paragraph (c)(1) of this clause.* For 90 days following final payment.

(d) The Contracting Officer may allow the Contractor to substitute an individual surety, for a performance or payment bond, after contract award. The Contractor shall comply with the requirements of paragraph (a) of this clause within the timeframe established by the Contracting Officer.

(End of clause)

■ 11. Add section 52.228–17 to read as follows:

52.228–17 Individual Surety—Pledge of Assets (Bid Guarantee).

As prescribed in 28.203–4(a), insert the following provision:

Individual Surety—Pledge of Assets (Bid Guarantee) (Feb 2021)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee—

(1) A pledge of assets that meets the eligibility, valuation, and security requirements described in the Federal Acquisition Regulation (FAR) 28.203–1; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) The Offeror shall include with its offer the information required at paragraph (a) of this provision within the timeframe specified in the provision at FAR 52.228–1, Bid Guarantee, or as otherwise established by the Contracting Officer.

(c) The Contracting Officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(End of provision)

PART 53—FORMS

53.228 [Amended]

- 12. Amend section 53.228 by—
- a. Removing from paragraph (e) “(Rev. 6/2003)” and “28.203(b).” and adding ““(Rev. Feb 2021)” and “28.203–1(b)(3).” in their places, respectively;
- b. Removing paragraph (o);
- c. Redesignating paragraph (p) as paragraph (o); and
- d. Removing from the newly redesignated paragraph (o) “(See 28.106–1(p) and 28.203–5(a).)” and adding “(See 28.106–1(o) and 28.203–3(a).)” in its place.

53.300 [Amended]

■ 13. Amend section 53.300 by removing from the table 53–1 in paragraph (a) “OF 90 Release of Lien on Real Property.”

[FR Doc. 2020–29088 Filed 1–13–21; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 15, 17, 37 and 52

[FAC 2021–03; Item IV; Docket No. FAR–2020–0052; Sequence No. 4]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make needed editorial changes.

DATES: *Effective:* February 16, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), at 202–501–4755 or *GSARegSec@gsa.gov*. Please cite FAC 2021–03, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 2, 15, 17, 37, and 52 this document makes editorial changes to the FAR.

List of Subjects in 48 CFR Parts 2, 15, 17, 37 and 52

Government procurement.

William F. Clark,
Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 15, 17, 37, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 15, 17, 37, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101, in paragraph (b), in the definition “*Ineligible*” by removing from paragraph (4) “\$15,000” and adding “\$10,000” in its place.

PART 15—CONTRACTING BY NEGOTIATION

■ 3. Amend section 15.209 by adding paragraph (e) to read as follows:

15.209 Solicitation provisions and contract clauses.

* * * * *

(e) The contracting officer shall insert the provision at 52.215–5, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.203(d)).

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

17.502 1 [Amended]

- 4. Amend section 17.502–1 by—
- a. Removing from the sixth sentence of paragraph (a)(1)(i) “Policy” and “_acq/iac_” adding “Policy (OFPP)” and “_acq/iac_” in their place; respectively; and
- b. Removing from paragraph (b) introductory text “Office of Federal Procurement Policy (OFPP)” and adding “OFPP” in its place.

PART 37—SERVICE CONTRACTING

37.103 [Amended]

■ 5. Amend section 37.103 in paragraph (d) by removing “42 U.S.C. 13041, as amended,” and adding “34 U.S.C. 20351” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 6. Amend section 52.212–3 by—
- a. Revising the date of the provision; and
- b. Revising paragraph (f)(2);
- c. Revising the table in paragraph (g)(1)(ii), and the undesignated tables in (g)(1)(iii), (g)(2), and (g)(3);
- d. Revising the tables in (g)(4) and (g)(5)(ii); and
- e. Revising the paragraph (i)(1).
The revisions read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Feb 2021)

* * * * *

(f) * * *
(2) Foreign End Products:

Line item No.	Country of origin

[List as necessary]

* * * * *

(g)(1) * * *
(ii) * * *