

**PART 16  
BONDS AND INSURANCE**

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**16.1 BONDS.**

**16.1.1 Performance and Payment Bonds for Construction Contracts.**

**16.1.1.1 General.**

**POLICY:** BPA requires performance and payment bonds for construction contracts exceeding \$100,000. The requirement to furnish performance and payment bonds may be waived by the CO, if a risk assessment, conducted by the CO, justifies such waiver. Waiver of performance and payments bonds requires considerable thought on the part of the CO as the protective elements of the bonds are important to effective government contracting. If the CO determines that performance and payment bonds are required, the contractor shall furnish all bonds, including any necessary certificate of insurance agreements, before receiving a notice to proceed with the work or being allowed to start work. The CO's risk assessment outlining the basis for waiver of payment and/or performance bonds shall be inserted in the official contract file.

**16.1.1.2 Amount Required.**

**POLICY:**

(a) Performance bonds.

(1) The penal amount of performance bonds should generally be 100 percent of the original contract price.

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(2) BPA may require additional performance bond protection when the contract price is increased by a substantial amount. The increase in protection shall generally equal 100 percent of the increase in contract price. BPA may secure additional protection by directing the contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds.

(1) The penal amount of payment bonds should generally be related to the total estimated amounts of subcontractors' or suppliers' contracts, and the amounts of the bonds established as shown in clause 16-1, Performance and Payment Bonds. If the amount of the subcontracts and/or suppliers' contracts are not known, the percentages shown in clause 16-1 should be applied to the prime contract price.

(2) If the total subcontractor and supplier contracts (or the prime contract price) is \$5,000,000 or less, BPA may require additional protection if the price is increased. The penal amount of the total protection as revised shall meet the requirement of subparagraph (1) above.

(c) When determining the penal sum of bonds for indefinite quantity contracts, the CO shall consider the contract price to be the price payable for the specified minimum quantity. When the minimum quantity is exceeded, see subparagraphs (a)(2) and (b)(2) above.

### 16.1.1.3 Clause Usage Prescriptions.

**PROCEDURE:** The CO may include a clause similar to clause 16-1, Performance and Payment Bonds, in solicitations and contracts for construction which exceed \$100,000, and in contracts below that amount when the CO determines that bonds are required. The CO may vary the percentage in the clause as needed. (Also see 16.1.1.2(a)(3)).

### 16.1.2 Performance and Payment Bonds Other Than Construction Contracts.

#### 16.1.2.1 General.

**POLICY:** The CO may use, but not routinely require performance and/or payment bonds for other than construction contracts. A Performance bond may be required when it is necessary to provide assurance that the work will be completed. A payment bond in a penal amount sufficient to protect the interest of subcontractors or suppliers may be required by the CO (See 16.1.1.2). If so, the contractor must furnish any required bonds before receiving a notice to proceed with the work. When a contract price is increased, BPA may require additional bond protection in an amount adequate to protect subcontractors or suppliers.

#### 16.1.2.2 Clause Usage Prescriptions.

**PROCEDURE:** The CO may include a clause similar to clause 16-1, Performance and Payment Bonds, in non-construction solicitations and contracts when necessary to provide assurance that the work will be completed. The 100% in the clause may be reduced at the CO's discretion.

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### **16.1.3 Administration.**

#### **16.1.3.1 Processing Performance and Payment Bonds.**

***PROCEDURE:***

(a) The SF 25, Performance Bond, shall be used, when a performance bond is required. The SF 25A, Payment Bond, shall be used when a payment bond is required. Bond forms shall be used as indicated in the instruction portion of each form.

(b) The CO shall notify the contractor at the time of award of the obligation to furnish bonds within 10 days of the receipt of the bond forms. The CO shall prepare the bond forms (SF 25 and SF 25A) in quadruplicate, typing in the Contractor's name, type of organization, state of incorporation, the penal sum of the bond, contract date and contract number. The CO shall retain one copy in the contract file and send the original and two copies to the contractor. The contractor should be requested to sign and return the original and one copy. The documents require the signature of the surety and a power of attorney.

(c) On occasion, contractors may make a written request for the return of their performance bonds after contract completion. Bonds are normally not returned to the contractor, because they expire when the contract is completed. Contract completion, for purposes of the performance bond, includes the life of any guarantee required by the contract. However, where the bond is supported by a negotiable instrument rather than by surety, the supporting instrument shall be returned (or the amount reduced) upon completion of the contract. The CO may reduce or eliminate the amount of bond coverage required during warranty periods, or when contract performance is substantially complete, if it would not adversely impact the subcontractors, suppliers, or BPA.

#### **16.1.3.2 Additional Bond Coverage.**

***PROCEDURE:*** When additional bond coverage is required and is furnished in whole or in part by the original surety or sureties, BPA shall use an amendment to the SF-25, Performance Bond, or SF-25A, Payment Bond. When additional coverage is furnished in whole or in part by a new surety, BPA shall use a new SF 25, Performance Bond or SF 25A, Payment Bond.

#### **16.1.3.3 Notification to Surety of Contract Modifications.**

***PROCEDURE:*** The surety shall be provided a copy of all contract modifications outside the scope of the contract to advise them of the total scope and size of the contract as work progresses.

#### **16.1.3.4 Withholding Contract Payments.**

***PROCEDURE:***

(a) During contract performance, BPA shall not withhold payments due contractors or assignees because subcontractors or suppliers have not been paid, except for claims by sureties.

(b) If, after completion of the contract work, BPA receives written notice from the surety regarding the contractor's failure to meet its obligation to its subcontractors or suppliers, the CO shall withhold final payment. However, the surety must agree to hold BPA harmless from any liability

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resulting from withholding the final payment. The CO shall authorize final payment upon agreement between the contractor and surety, or upon a judicial determination of the rights of the parties.

(c) For any withholding incident to the labor standards provisions of the contract, see Part 10.

### 16.2 SURETIES.

#### 16.2.1 Requirements for Sureties.

**POLICY:** BPA shall obtain adequate security for bonds (including coinsurance and reinsurance agreements).

#### 16.2.2 Acceptability of Corporate Sureties.

**INFORMATION:**

(a)(1) Corporate sureties offered for bonds furnished with contracts performed in the United States, its possessions, or Puerto Rico must appear on the list contained in the Department of the Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies."

(2) The penal amount of the bond should not exceed the surety's underwriting limit stated in the Department of the Treasury circular. If the penal amount exceeds the underwriting limit, the bond will be acceptable only if --

(A) The amount exceeding the specified limit is coinsured or reinsured, and

(B) The amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.

(3) Coinsurance or reinsurance agreements shall conform to the Department of the Treasury regulation in 31 CFR 223.10 and 223.11. When reinsurance is contemplated, the CO generally shall require reinsurance agreements to be executed and submitted with the bonds before making a final determination on the bonds.

(4) The CO may accept a bond from the direct writing company in satisfaction of the total bond requirement of the contract. This is permissible until necessary reinsurance agreements are executed, even though the total bond requirement may exceed the insurer's underwriting limitation. The contractor shall execute and submit necessary reinsurance agreements to the CO within the time specified by the CO, which may not exceed 45 calendar days after the execution of the bond.

(b) The Department of the Treasury issues supplements to Treasury Circular 570, notifying all Federal agencies of:

(1) New approved corporate surety companies, and;

(2) The termination of the authority of any specific corporate surety to qualify as a surety on Federal bonds. Upon receipt of notification of termination of a company's authority to qualify as a surety on Federal bonds, the CO shall review outstanding contracts and take action necessary to protect BPA, e.g., obtaining new bonds.

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(c) The Department of the Treasury Circular 570 may be obtained from the U.S. Treasury Department, Financial Management Service, Surety Bond Branch, 401 14th Street, SW, 2nd Floor, West Wing, Washington, DC 20227. Treasury Circular 570 is also available at the U.S. Treasury Department website Internet address: <http://www.fms.treas.gov/c570.html>.

### 16.2.3 Acceptability of Individual Sureties.

**POLICY:** Individual sureties are normally not desirable. In the event that the contractor wishes to utilize an individual surety, contact the HCA for advice and information concerning requirements.

### 16.2.4 Options in Lieu of Sureties.

**INFORMATION:** The contractor may deposit any of the types of security listed in this section in lieu of furnishing corporate or individual sureties on performance and payment bonds. When any of those types of security are deposited, a statement shall be incorporated in the bond form pledging the security. The contractor shall execute the bond forms as the principal. The CO shall safeguard against loss of the security and shall return the security or its equivalent to the contractor when the bond obligation has ceased.

(a) United States bonds or notes. Any person required to furnish a bond to BPA has the option, instead of furnishing a surety or sureties on the bond, of depositing certain United States bonds or notes in an amount equal at their par value to the penal sum of the bond (the Act of February 24, 1919 (31 U.S.C. 9303) and Treasury Department Circular No. 154 dated July 1, 1978 (31 CFR Part 225)). In addition, a duly executed power of attorney and agreement authorizing the collection or sale of such United States bonds or notes shall accompany the deposited bonds or notes. The CO may --

(1) Turn securities over to the finance or other authorized BPA official, or;

(2) Deposit them with the Treasurer of the United States, a Federal Reserve Bank (or branch with requisite facilities), or other depository designated for that purpose by the Secretary of the Treasury, under procedures prescribed by the agency concerned and Treasury Department Circular No. 154.

(b) Certified or cashier's checks, bank drafts, money orders, or currency. Any person required to furnish a bond has an option to furnish a certified or cashier's check, bank draft, Post Office money order, or currency, in an amount equal to the penal sum of the bond, instead of furnishing surety or sureties on the bonds. Those furnishing checks, drafts, or money orders shall be drawn to the order of the Bonneville Power Administration.

### 16.2.5 Furnishing Information to Sureties.

**INFORMATION:**

(a) When a contractor is performing a contract in a manner that may lead to default, or when claims are being made against payment bonds, the CO shall promptly notify the surety by sending the surety a copy of the CO's letter to the contractor advising of the possibility of default termination. That copy may be transmitted with a brief letter referencing the attached copy and requesting any assistance in securing performance which the surety may be in a position to render.

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(b) The surety on the bond may be furnished information on the progress of the work, payments, and the estimated percentage of completion, concerning the contract for which the bond was furnished. Requests from sureties are responded to by the CO.

(c) When a payment bond has been provided for a contract, the CO shall, upon request, furnish a copy of the bond and the contract for which it was given to any person who makes a request therefor.

### 16.2.6 Claims by Sureties.

**PROCEDURE:** Where a surety submits a claim for money due its principal under the terms of the contract, the claim shall be immediately forwarded to the CO, who will consult with the General Counsel to determine who has the right to payment.

### 16.3 INSURANCE.

(a) **POLICY:** Contractors are required to provide insurance for certain types of perils. At a minimum, the insurance specific in 16.3.1 (a) through (h) is required for all service contracts and construction contracts over \$100,000, and for all service contracts and construction contracts under \$100,000 which involve the activities listed in 16.3.1(c) through (h).

(b) **POLICY:** A contractor may be required to provide insurance for furnish/install supply contracts where the estimated cost of installation is less than \$100,000 if the CO determines that it is necessary to protect BPA's interests.

(c) **POLICY:** A contractor may be required to provide insurance for IGCs when the governmental entity is not adequately self-insured to protect BPA's interests. (BPI 16.2 and 25)

(d) **POLICY:** The minimum amounts of insurance required by BPA may be increased when activities to be performed create a potential for loss exceeding the minimum amounts stated.

(e) **PROCEDURE:** Unless otherwise granted an extension of time for submission by the CO, the Contractor must provide the CO with certificates of insurance before the start of work. The CO shall ensure that the certificates:

- (1) Are issued by the insurance company or an authorized insurance agent;
- (2) State that the required insurance is currently in force;
- (3) Contain a statement that the insurers will endeavor to provide 30 days advance notice of cancellation to the CO.
- (4) Do not contain exclusions which, in effect, exempt the insurance company from meeting the required insurance.

(c) **PROCEDURE:**

#### 16.3.1 Required Insurance.

**POLICY:** The following types of liability insurance may be required, as appropriate. Except for the increase of policy amounts as described in (d) above, waivers of, or deviations from, these requirements must be submitted to the HCA. If the HCA concurs with the request, the request will be forwarded to the Risk Management staff.

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(a) **Workers' compensation and employer's liability.** Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. Employer's liability coverage shall be required. Contractors who are individuals (whether incorporated or not) may not be required by statute to carry worker's compensation or employer's liability insurance, but COs may require these Contractor individuals to carry worker's compensation insurance to protect agency interests.

(b) **General liability.** The CO shall require general liability insurance.

(c) **Automobile liability.** The CO shall require automobile liability insurance for operation of all automobiles or other vehicles used in performing the contract. This includes professional and other service contracts that permit contractor access to government licensed vehicles. e4are performed on-site

(d) **Aircraft liability.** When contract performance involves use of aircraft, the CO shall require aircraft liability insurance.

(e) **Watercraft liability.** When contract performance involves the use of watercraft, the CO shall require watercraft liability insurance.

(f) **Environmental impairment liability.** When contract performance involves transportation and/or handling and/or disposal of hazardous wastes as defined in 40 CFR 261.3, the CO shall require environmental impairment liability insurance.

(g) **Professional liability.** The CO shall require professional liability insurance when the contract exceeds \$50,000, and involves rendering a professional opinion upon which BPA and/or third parties will rely. Examples of contracts when professional liability insurance is required are: opinions by external auditors, special legal counsel, bond counsel, services performed by architects or engineers when their licensure stamp on work products is not counter-signed by licensed BPA engineers or architects, medical professionals (doctors and nurses).

(h) **Medical malpractice liability insurance.** The CO shall require medical malpractice liability insurance on health care services contracts.

### 16.3.2 Insurance Coverage Which Should Be Considered.

When contract performance involves the use or transportation of hazardous substances as defined in 40 CFR 116.4 in the quantities defined in 40 CFR 117.3, the CO should consider requiring environmental impairment liability insurance of at least \$5,000,000 for bodily injury and property damage per occurrence.

### 16.3.3 Clause Usage Prescriptions.

#### **PROCEDURE:**

(a) Fixed-price and time-and-materials contracts.

(1) The CO shall include clause 16-2, Insurance, in all fixed-price or time-and-materials service and construction solicitations and contracts over \$100,000, and fixed-price or time-and-materials service and construction solicitations and contracts under \$100,000 which involve the activities listed in 16.3.1(c) through (h), unless the requirement for insurance has been waived (BPI 16.2).

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(2) The CO may include this clause in furnish/install supply contracts where the estimated cost of installation is less than \$100,000 if the CO determines that it is necessary to protect BPA's interests.

(3) The CO may insert the clause in IGCs if the CO determines that the governmental entity is not adequately self-insured, or as the COs deems necessary to protect BPA's interests (BPI 25).

(4) The CO should modify the contents of this clause to reflect only those types of insurance which are required for a specific transaction, and shall redesignate the paragraphs accordingly. The CO may increase the dollar amounts of coverage if necessary to protect BPA's interests. If additional types of insurance are required, additional paragraphs shall be added to describe that insurance.

(b) Cost reimbursement contracts. The CO shall include clause 16-2, Insurance, with its Alternate I, in all cost-reimbursement service and construction solicitations and contracts over \$100,000, and cost-reimbursement service and construction solicitations and contracts under \$100,000 which involve the activities listed in 16.3.1 (c) through (h), unless the requirement for insurance has been waived (BPI 16.2 and 25). This requirement may not apply to IGCs if the governmental entity is adequately self insured (BPI 16.2 and 25). This CO may include this clause in supply/install contracts where the estimated cost of installation is less than \$100,000 if the CO determines that it is necessary to protect BPA's interests.. When Alternate I is used, add paragraphs (d) through (f) to the basic clause. The CO should modify the contents of this clause to reflect only those types of insurance which are required for a specific transaction, and shall redesignate the paragraphs accordingly. If additional types of insurance are required, additional paragraphs shall be added to describe that insurance.

### 16.50 TEXT OF CLAUSES.

The following clauses are referred to in BPI Part 16:

- 16-1 Performance And Payment Bonds
- 16-2 Insurance

#### **Clause 16-1 PERFORMANCE AND PAYMENT BONDS. (Sep 98)(BPI 16.1.1.3; 16.1.2.2)**

(a) The contractor shall furnish all bonds, including any necessary reinsurance agreements, before receiving a notice to proceed with the work or being allowed to start work.

(1) Performance Bond shall be furnished on Standard Form 25 in the amount of 100 percent of the original contract price.

(2) Payment Bond shall be furnished on Standard Form 25-A in the amount of 100 percent of the original contract price.

(b) If the performance and payment bonds are in the form of a corporate surety bond signed by an agent or attorney in-fact, a copy of the power of attorney authorizing action on behalf of the surety shall be attached to the bond.

(c) If the contract price is substantially increased during the course of the contract, and the Contracting Officer determines that an increase in bond amount is required, the increased bond amount shall be evidenced by submitting SF-25 or SF-25A as described in paragraph (a) of this clause.

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(d) The cost of the performance and/or payment bond premiums is to be included in the contract price. No additional payment will be made for bond premiums.

(e) The Contractor shall promptly furnish additional security required to protect BPA and persons supplying labor or materials under this contract if--

(1) Any surety upon any bond furnished with this contract becomes unacceptable to BPA; or

(2) Any surety fails to furnish reports on its financial condition as required by BPA.

(End of clause)

### CLAUSE 16-2 INSURANCE (Sep 09)(BPI 16.3.3)

(a) Before commencing work under this contract, the Contractor shall provide to the Contracting Officer certificates of insurance from the insurance company, or an authorized insurance agent, stating the required insurance has been obtained and is in force. The certificate(s) shall identify the Contractor and name BPA as the certificate holder as follows:

Bonneville Power Administration

Attention: Contracting Officer - \_\_\_\_\_ (fill in name of CO)

The certificate shall also identify the contract number(s) for which coverage is provided, and shall contain a statement that the insurer will endeavor to give notice of cancellation or any material change to the certificate holder at least 30 days before the effective date.

(b) Throughout the period of the contract the Contractor shall deliver a new certificate of insurance to the Contracting Officer within 10 business days of existing policy expiration, changes, and/or changes in insurance providers. If the Contractor's insurance does not cover the subcontractors involved in the work, the Contractor shall provide the Contracting Officer with certificates of insurance stating that the required insurance has been obtained by the subcontractors.

(c) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(d) The following minimum kinds and amounts of insurance are applicable in the performance of the work under this contract. All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(1) **Workers' compensation and employer's liability.** Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. Employer's liability coverage of at least \$1,000,000 shall be required. BPA may require Contractors who are individuals (whether incorporated or not) to carry workers' compensation to protect agency interests. The Contracting Officer shall advise the Contractor regarding specific requirements.

(2) **Commercial General liability.** The contractor shall provide commercial general liability insurance of at least \$1,000,000 per occurrence. Any policy aggregate limits which apply shall be modified to apply to each location and project. The policy shall name BPA, its officials, officers, employees and agents, as additional insureds with respect to the

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contractor's performance of services under the contract. The contractor's policy shall be primary and shall not seek any contribution from any insurance or self-insurance programs of BPA.

(3) **Automobile liability.** The contractor shall provide automobile liability insurance covering the operation of all automobiles used in performing the contract. Policies shall provide limits of at least \$1,000,000 per accident and include coverage for all owned, non-owned and hired automobiles.

(4) **Aircraft liability.** The contractor shall provide aircraft liability insurance. Limits shall be at least \$10,000,000 per occurrence, other than for voluntary settlement. Limits for passenger liability shall be at least \$200,000 multiplied by the number of seats. The insurance policy shall include coverage for owned, non-owned and hired aircraft and name BPA, its officials, officers, employees and agents as additional insureds. The contractor's policy shall be primary and shall not seek any contribution from any insurance or self-insurance programs of BPA.

(5) **Watercraft liability.** The contractor shall provide watercraft liability insurance. Limits shall be at least \$1,000,000 per occurrence. The insurance policy shall include coverage for owned, non-owned and hired watercraft and name BPA, its officials, officers, employees and agents as additional insureds. The contractor's policy shall be primary and shall not seek any contribution from any insurance or self-insurance programs of BPA.

(6) **Environmental impairment liability.** The contractor shall provide environmental impairment liability insurance of at least \$5,000,000 per occurrence. Such insurance will include coverage for the clean up, removal, storage, disposal, transportation and/or use of pollutants. The insurance policy shall name BPA, its officials, officers, employees and agents as additional insureds. The contractor's policy shall be primary and shall not seek any contribution from any insurance or self-insurance programs of BPA.

(7) **Professional liability.** The contractor shall provide professional liability insurance. Coverage shall be at least \$1,000,000 per occurrence for claims arising out of negligent acts, errors or omissions.

(8) **Medical malpractice liability insurance.** The contractor shall maintain medical malpractice liability insurance of at least \$500,000 per occurrence.

(End of clause)

### Alternate I (Feb 94)

(d) The Contractor shall be reimbursed--

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the Contract Ceiling clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by BPA. These liabilities are for--

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(A) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(B) Death or bodily injury.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)--

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's director, officers, managers, superintendents, or other representatives who have supervision or direction of--

(A) All or substantially all of the Contractor's business;

(B) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(C) A separate and complete major industrial operation in connection with the performance of this contract.

(f) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall--

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize BPA representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize BPA representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by BPA, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with BPA representatives in any such claim or litigation.

(End of Alternate I)