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**COMMERCE ACQUISITION MANUAL  
1328.102**

DEPARTMENT OF COMMERCE  
SHIP CONSTRUCTION, ALTERATION, AND REPAIR BOND WAIVERS

# COMMERCE ACQUISITION MANUAL 1328.102

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# SHIP CONSTRUCTION, ALTERATION, AND REPAIR BOND WAIVERS

## SECTION 1 – OVERVIEW

### 1.1 Background

40 U.S.C. § 3131 et seq., as implemented at Federal Acquisition Regulation (FAR) 28.102-1, requires prime contractors to furnish performance and payment bonds for contracts in excess of \$150,000, for the construction, alteration, or repair of any public building or public work of the Federal government, including ship construction, alterations, and repairs. The National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) operates a fleet of hydrographic survey, oceanographic research and fisheries survey vessels, consistent with its mission to perform offshore and deep-sea survey operations, coastal mapping, oceanographic research, and other functions that ensure public safety and the preservation of the Nation's property and natural resources.

NOAA ships enter either a dry docking or dockside repair period typically in the first or second quarter of every fiscal year. In addition, it is often necessary for emergency repairs to be made to NOAA's vessels without delay for safety purposes and to ensure that the ships can carry on their responsibilities involving the collection of mission sensitive data, as well as immediate response capabilities for extreme weather-related events involving hurricanes. Prime contractors performing the maintenance activities on NOAA's vessels have been required to provide performance and payment bonds for that work. The bonding requirement has hindered competition, and limited NOAA's ability to meet mission objectives, obtain the most advantageous price competition and meet its socio-economic goals.

Pursuant to 40 U.S.C. § 3134, the Secretary of Commerce has been granted the authority to waive the performance and payment bond requirement under 40 U.S.C. § 3131 et seq., for the construction, alteration, or repair of ships in NOAA's fleet of vessels. The waiver authority aligns the Department of Commerce's authorities with those of other Federal agencies, including the U.S. Department of the Navy and the U.S. Coast Guard, and is expected to address significant difficulties NOAA has experienced in obtaining competitive bids for ship repairs.

### 1.2 Purpose

This Commerce Acquisition Manual (CAM) chapter provides policy and procedures relevant to waiving the requirement in 40 U.S.C. § 3131 et seq. to impose payment and performance bonds on ship construction, alteration, and repair contracts.

### 1.3 Applicability

The requirements of this chapter are applicable to all NOAA ship construction, alteration, and repair acquisitions subject to 40 U.S.C. § 3131 et seq. and Federal

Acquisition Regulation (FAR) Subpart 28.1, performance and payment bonds and alternative payment protections, having a value greater than \$150,000.

#### **1.4 Effective Date**

Waiver authority and the procedures outlined in this CAM chapter are effective upon issuance and until rescinded.

**END OF SECTION 1**

## **SECTION 2 – ROLES AND RESPONSIBILITIES**

### **2.1 Secretary of Commerce**

The Secretary of Commerce is responsible for ensuring proper use of bond waiver authority pursuant to 40 U.S.C. § 3134.

### **2.2 Senior Procurement Executive**

The Senior Procurement Executive is responsible for:

- a. Developing and implementing regulations, policies, and guidance to implement the bond waiver authority for ship construction, alteration, and repair; and
- b. Conducting oversight on implementation of the bond waiver authority.

### **2.3 NOAA Senior Bureau Procurement Official (BPO)**

The Senior Bureau Procurement Official is responsible for:

- a. Approving class waivers for ship repairs pursuant to its delegated authority<sup>1</sup>;
- b. Approving all individual waivers of bond requirements for ship construction or alterations pursuant to its delegated authority,
- c. Establishing bureau-level policies and guidance, as necessary; and
- d. Providing the Office of Acquisition Management (OAM) with copies of all approved class and individual waivers.

### **2.4 Head of the Contracting Office (HCO)**

The Head of the Contracting Office is responsible for:

- a. Submitting class ship repair waiver requests to the BPO for approval; and
- b. Submitting any individual requests for waivers associated with the construction or alteration of NOAA's fleet of vessels to the BPO for approval.

### **2.5 Contracting Officer**

The contracting officer, with assistance from NOAA's Office of Marine and Aviation Operations (OMAO), is responsible for the following:

- a. Preparing and submitting class ship repair waiver requests to the HCO for review;
- b. Preparing and submitting individual ship construction or alteration waiver requests to the HCO for review;
- c. Including Commerce Acquisition Regulation (CAR) Clause 1352.228-77, Contractor Assurance of Subcontractor Payments-Certification in all solicitations and contracts where a waiver from payment and performance bonds is granted;
- d. Documenting the contract file when the waiver authority is used;
- e. Notifying the contractor of non-compliance with CAR Clause 1352.228-77 and pursuing available remedies; and
- f. Documenting non-compliance with CAR Clause 1352.228-77 in the Contractor Performance Assessment Reports System (CPARS) as appropriate.

## **END OF SECTION 2**

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<sup>1</sup> Delegation memoranda are provided in Appendix A.

## **SECTION 3 – Waiver Authority, Policy, & Procedure**

### **3.1 Waiver Authority**

With respect to the construction, alteration, and repair of NOAA's vessels, the requirements of 40 U.S.C. § 3131 et seq. and FAR Subpart 28.1 for contract surety bonds on Federal construction projects are generally not necessary to protect the public, including the Government, material, individuals, and laborers working as subcontractors on these projects.

The requirement for prime contractors to furnish performance and payment bonds for contracts in excess of \$150,000 for NOAA ship construction, alteration, and repair contracts may be waived on a class basis for planned ship repair projects and on an as needed individual basis for ship construction and alteration.

### **3.2 Class Ship Waiver – Ship Repair**

A request for a Class Ship Waiver of performance and payment bonds for ship repair contracts shall be made in writing and include a justification demonstrating that requirements for bonds are not in the best interest of the Government. The request for a class waiver shall also include a request to make emergency repairs to NOAA's vessels in situations where the repairs need to be made without delay to ensure the safety of the ship's crew and to minimize the impact on the ship's schedule. The justification should demonstrate why bonds may not be advantageous in cases of emergency.

The contracting officer shall prepare the waiver request with the assistance of OMAO and submit it to the HCO for review. The HCO shall then submit the waiver request to the BPO for final review and approval.

### **3.3 Individual Waivers – Ship Construction and Alteration**

A request for a waiver of performance and payment bonds for individual ship construction or alteration of a NOAA vessel shall be made in writing and include a description of the project as well as a justification demonstrating that bonding requirements are not in the best interest of the Government. The request shall be submitted well in advance of the planned solicitation issue date to allow sufficient time for all required reviews and approvals.

The contracting officer shall prepare the waiver request with the assistance of OMAO and submit it to the HCO for review. The HCO shall then submit the waiver request to the BPO for final review and approval.

**END OF SECTION 3**

## **SECTION 4 – Use of Bond Waiver Authority**

### **4.1 Best Interest Determination - Waiver of Bonds**

With respect to the repair of NOAA's vessels, the requirement for contract bonds is generally not necessary to protect the public, including the Government, material, individuals and laborers working as subcontractors on these projects.

Notwithstanding any approved waiver, contracting officers shall consider any unusual circumstances that may arise in which either payment or performance bonds, or both, will be advantageous to the Government in connection with ship repair contracts prior to issuing solicitations.

In making this assessment, the Contracting Officer shall consider all the circumstances of the procurement including, but not limited to, the complexity of the work, the level of competition in the region where the work will be performed, the interests of subcontractors and the need to protect the Government from loss. If the Contracting Officer determines that bonds are not appropriate, this determination should be documented in the contract file in the form of the approved bond waiver (class or individual).

### **4.2 Issuance of Solicitation**

Contracting officers shall not issue a solicitation waiving the requirements for bonds until a class or individual waiver request is approved by the BPO.

### **4.3 Contract Clause**

The contracting officer shall insert the clause at 1352.228-77, "CONTRACTOR ASSURANCE OF SUBCONTRACTOR PAYMENTS" in solicitations and contracts when bonds are waived.

**END OF SECTION 4**

## **SECTION 5 – Reporting Requirements**

### **5.1 Reporting to Office of Acquisition Management**

Copies of waivers shall be submitted electronically within 10 days of approval to the OAM mailbox at [OAM\\_Mailbox@doc.gov](mailto:OAM_Mailbox@doc.gov).

**END OF SECTION 5**

**END OF CAM 1328.102**



## APPENDICES

## APPENDIX A – DELEGATION MEMORANDA