**Attachment A**

FAR Deviation Text

Baseline is FAC 2023-03, effective on May 26, 2023.

Deviations are shown by **[bracketed bold additions]** and ~~strikeouts~~.

FAR text unchanged shown as asterisks \*\*\* or \*\*\*\*\*

\* \* \* \* \*

Part 28 – Bonds and Insurance

\* \* \* \* \*

# [28.002 Policy.

**For purposes of this part, electronic, mechanically-applied and printed signatures, seals and dates may be used and shall be considered original signatures, seals and dates, without regard to the order in which they were affixed.]**

\* \* \* \* \*

Subpart 28.1 – Bonds and Other Financial Protections

\* \* \* \* \*

# 28.101-3 Authority of an attorney-in-fact for a bid bond.

\* \* \*

~~( c) For purposes of this section, electronic, mechanically-~~ ~~applied and printed signatures, seals~~ a~~nd dates on the power~~ ~~of~~ ~~attorney shall be considered original signatures, seals and~~ ~~dates, without regard to the order in which they were affixed.~~

|  |  |  |
| --- | --- | --- |
| **[(c)]** | ~~(d)~~ | \* \* \* |
| **[(d)]** | ~~(e)~~ | \* \* \* |
| **[(e)]** | ~~(f)~~ | \* \* \* |
| \* \* \* | \* \* |  |

28.106 Administration.

\* \* \* \* \*

# 28.106-1 Bonds and bond-related forms.

The following Standard Forms (SF’s) and Optional Forms (OF’s), shall be used, except in foreign countries, when a bid bond, performance or payment bond, or an individual surety is required. The bond forms shall be used as indicated in the instruction portion of each form **[, except that a seal is not required. For SF 28 also see 28.203(b)]**.

\* \* \* \* \*

# 28.106-8 Payment to subcontractors or suppliers.

The contracting officer will only authorize payment to subcontractors or suppliers from an ILC (or any other cash equivalent security) upon a judicial determination of the rights of the parties, a signed ~~notarized~~ statement by the contractor that the payment is due and owed, or a signed agreement between the parties as to amount due and owed.

\* \* \* \* \*

Subpart 28.2 – Sureties and Other Security for Bonds

\* \* \* \* \*

# 28.203-1 Acceptability of individual sureties.

\* \* \* (b)

1. An individual surety shall execute the bond (e.g.,

bid bond (SF 24), performance bond (SF 25), payment bond (SF 25A)).

1. The net adjusted value of unencumbered assets is their market value minus the margin. The margin tables are available at [*www.treasurydirect.gov*](http://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.
2. The individual surety shall execute the SF 28 Affidavit of Individual Surety, **[except that the words “being duly sworn, depose and say” on the Standard Form 28 are replaced with the word “affirm” and such Standard Form 28 is not required to be sworn and notarized]**, 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.
3. 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.

\* \* \* \* \*

# 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 sub[paragraphs (a)(1)](https://www.ecfr.gov/current/title-48/section-28.203-3#p-28.203-3(a)(1)) and [(2)](https://www.ecfr.gov/current/title-48/section-28.203-3#p-28.203-3(a)(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~~ **[written]** authorization of the release **[signed]** by the surety stating that it approves of such release.

\* \* \*

Part 32 – Contract Financing

\* \* \* \* \*

Subpart 32.8 – Assignment of Claims

\* \* \* \* \*

# 32.802 Conditions.

* \* \*(e) The assignee sends a written notice of assignment together with a ~~true~~ copy of the assignment instrument to the-
  1. Contracting officer or the agency head;
  2. Surety on any bond applicable to the contract;

and

* 1. Disbursing officer designated in the contract to make payment.

\* \* \* \* \*

32.805 Procedure.

1. Assignments.
   1. Assignments by corporations shall be-
      1. ~~Executed~~ **[Signed]** by an authorized representative;
      2. ~~Attested~~ **[Signed]** by the secretary or the assistant secretary of the corporation; and
      3. ~~Impressed with the corporate seal or accompanied~~ **[Accompanied]** by a ~~true~~ copy of the resolution of the corporation’s board of directors authorizing the signing representative to **[sign]**~~execute~~ the assignment.

\* \* \* (3) Assignments by an individual shall be signed by that individual**[.]**~~and the signature acknowledged before a notary~~ ~~public or other person authorized to administer oaths.~~

1. *Filing.* The assignee shall forward **[by email or other electronic means the notice of assignment and a copy of the instrument of assignment]** to each party specified in 32.802(e)**[.]** ~~an original and three copies of the notice of~~ ~~assignment, together with one true copy of the instrument of~~ ~~assignment. The true copy shall be a certified duplicate or~~ ~~photostat copy of the original assignment.~~
2. *Format for notice of assignment.* The following is a suggested format for use by an assignee in providing the notice of assignment required by 32.802(e).

Notice of Assignment

# To: [[Name, address and email address for]

*~~Address to~~ one of the parties specified in 32.802(e)*].

This has reference to Contract No. dated

, entered into between [*Contractor’s name and address*] and [*Government agency, name of office, and address*], for [*Describe nature of the contract*].

Monies due or to become due under the contract described above have been assigned to the undersigned under the provisions of the Assignment of Claims Act of1940, as amended, (31 U.S.C.3727, 41 U.S.C.6305).

A ~~true~~ copy of the instrument of assignment executed by the Contractor on [*Date*], is attached to ~~the~~ ~~original~~ **[this]** notice.

Payments due or to become due under this contract should be made to the undersigned assignee.

Please ~~return to the undersigned the three enclosed copies~~ ~~of~~ ~~this notice with appropriate notations showing the date and~~ ~~hour~~ ~~of receipt, and signed by the person acknowledging~~ **[acknowledge]** receipt on behalf of the addressee **[by return email or other electronic means to the undersigned]**.

Very truly yours,

[*Name of Assignee*]

By [*Signature of Signing Officer*]

[*Title of Signing Officer*]

[*Address of Assignee*]

**[ [*Email Address of Assignee*]]**

~~Acknowledgement~~

~~Receipt is acknowledged of the above notice and of a copy~~ ~~of the instrument of assignment. They were received~~  ~~(a.m.)~~ ~~(p.m.) on~~  ~~, 20~~ ~~.~~

~~[~~*~~Signature~~*~~]~~

[*Title*]

On ~~behalf of~~

[*Name ~~of Addressee of this Notice~~*~~]~~

\* \* \*

1. Release of assignment.

* \* \* (2) The assignee, under a further assignment or reassignment, in order to establish a right to receive payment from the Government, must ~~file with~~ **[send to]** the addressees listed in 32.802(e) a-
  1. Written notice of release of the contractor by the assigning financing institution;
  2. Copy of the release instrument;
  3. Written notice of the further assignment or reassignment; and
  4. Copy of the further assignment or reassignment

instrument.

(3) If the assignee releases the contractor from an assignment of claims under a contract, the contractor, in order to establish a right to receive payment of the balance due under the contract, must **[send]** ~~file~~ a written notice of release together with a ~~true~~ copy of the release of assignment instrument ~~with~~ **[to]** the addressees noted in 32.802(e).

\* \* \* \* \*

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

\* \* \* \* \*

Subpart 42.12—Novation and Change-of-Name Agreements

\* \* \* \* \*

# 42.1204 Applicability of novation agreements.

\* \* \* \* \*

1. Except as provided in paragraph (g) of this section, the contractor shall submit to the responsible contracting officer one copy of each of the following documents, as applicable, as the documents become available:
   1. A~~n authenticated~~ copy of the instrument effecting the transfer of assets; *e.g.,* bill of sale, certificate of merger, contract, deed, agreement, or court decree.
   2. A ~~certified~~ copy of each resolution of the corporate parties’ boards of directors authorizing the transfer of assets.
   3. A ~~certified~~ copy of the minutes of each corporate party’s stockholder meeting necessary to approve the transfer of assets.
   4. A~~n authenticated~~ copy of the transferee’s certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

\* \* \*

(i)

\* \* \*

NOVATION AGREEMENT

\* \* \*

1. \* \* \*

\* \* \*

(9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

United States of America,

*By*

*Title*

ABC Corporation,

*By*

*Title*

~~[~~*~~Corporate Seal~~*~~]~~

XYZ Corporation,

*By*

*Title*

~~[~~*~~Corporate Seal~~*~~]~~

Certificate

I, , certify that I am the Secretary of ABC Corporation, that , who signed this Agreement for this corporation, was then of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand ~~and the seal of this corporation~~ this day of

20 .

By

~~[~~*~~Corporate Seal~~*~~]~~

Certificate

I, , certify that I am the Secretary of XYZ Corporation, that , who signed this Agreement for this corporation, was then of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand ~~and the seal of this corporation~~ this day of

20 .

By

~~[~~*~~Corporate Seal~~*~~]~~

\* \* \*

# 42.1205 Agreement to recognize contractor’s change of name.

\* \* \*

1. \* \* \*

CHANGE-OF-NAME AGREEMENT

\* \* \*

1. In consideration of these facts, the parties agree that-
   1. The contracts covered by this Agreement are amended by substituting the name “ABC Corporation” for the name “XYZ Corporation” wherever it appears in the contracts; and
   2. Each party has executed this Agreement as of the day and year first above written.

United States of America,

*By*

*Title*

ABC Corporation,

*By*

*Title*

~~[~~*~~Corporate Seal~~*~~]~~

Certificate

I, , certify that I am the Secretary of ABC Corporation; that , who signed this Agreement for this corporation, was then of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand ~~and the seal~~ ~~of this corporation~~ this day of 20 .

By

~~[~~*~~Corporate Seal~~*~~]~~

\* \* \* \* \*

Part 52 – Solicitation Provisions and Contract Clauses

\* \* \* \* \*

52.228 [Reserved].

\* \* \* \* \*

# 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)**[(DEVIATION MAY 2023)]**

1. 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

# Standard Form 28, Affidavit of Individual Surety[, except that the words “being duly sworn, depose and say” on the Standard Form 28 are replaced with the word “affirm” and the Standard Form 28 is not required to be sworn and notarized in block 12].

1. 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—\* \* \*

\* \* \* \* \*

# 52.228-15 Performance and Payment Bonds-Construction.

As prescribed in [28.102-3](https://www.acquisition.gov/content/part-28-bonds-and-insurance#i1088607)(a), insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS-CONSTRUCTION (JUN 2020) **[(DEVIATION MAY 2023)]**

\* \* \* \* \*

1. *Amount of required bonds*. Unless the resulting contract price is valued at or below the threshold specified in Federal Acquisition Regulation 28.102–1(a) on the date of award of this contract, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:
   1. *Performance bonds* ([Standard Form 25](https://www.gsa.gov/forms-library/performance-bond)**[, except that a seal is not required]**). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.
   2. *Payment bonds* ([Standard Form 25-A](https://www.gsa.gov/forms-library/payment-bond)**[, except that a seal is not required]**). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.
   3. *Additional bond protection*.
      1. The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.
      2. The Government may secure the additional

protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

**\* \* \* \* \***

**52.228-16 Performance and Payment Bonds-Other Than Construction.** As prescribed in [28.103-4](https://www.acquisition.gov/content/part-28-bonds-and-insurance#i1088657) , insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS-OTHER THAN CONSTRUCTION (NOV 2006)

# [(DEVIATION MAY 2023)]

\* \* \* \* \*

(b) The Contractor shall furnish a performance bond (Standard Form 1418 **[, except that a seal is not required]**) for the protection of the Government in an amount equal to percent of the original contract price and a payment bond Standard Form **1416 [, except that a seal is not required])** in an amount equal to \_\_\_\_\_ percent of the original contract price.

\* \* \* \* \*

Alternate I (JUL 2000) **[(DEVIATION MAY 2023)].** As prescribed in 28.103-4, substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor shall furnish a performance bond

(Standard Form 1418 **[, except that a seal is not required]**) for the protection of the Government in an amount equal to \_\_\_\_\_ percent of the original contract price.

\* \* \* \* \*