

# Subpart 28.3 - Insurance

Parent topic: [Part 28 - Bonds and Insurance](#)

## 28.301 Policy.

Contractors *shall* carry *insurance* under the following circumstances:

- (a)
  - (1) The Government requires any contractor subject to Cost Accounting Standard (CAS) 416 (48 CFR 9004.416) to obtain *insurance*, by purchase or self-coverage, for the perils to which the contractor is exposed, except when-
    - (i) The Government, by providing in the contract in accordance with law, agrees to indemnify the contractor under specified circumstances; or
    - (ii) The contract specifically relieves the contractor of liability for loss of or damage to Government property.
  - (2) The Government reserves the right to disapprove the purchase of any *insurance* coverage not in the Government's interest.
  - (3) Allowability of the *insurance* program's cost *shall* be determined in accordance with the criteria in [31.205-19](#).
- (b) Contractors, whether or not their contracts are subject to CAS 416, are required by law and this regulation to provide *insurance* for certain types of perils (*e.g.*, workers' compensation). *Insurance* is mandatory also when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government. The minimum amounts of *insurance* required by this regulation (see [28.307-2](#)) *may* be reduced when a contract is to be performed outside the *United States* and its *outlying areas*. When more than one agency is involved, the agency responsible for review and approval of a contractor's *insurance* program *shall* coordinate with other interested agencies before acting on significant *insurance* matters.
- (c) Contractors awarded nonpersonal services contracts for health care services are required to maintain medical liability *insurance* and indemnify the Government for liability producing acts or omissions by the contractor, its employees and agents (see [37.400](#)).

## 28.302 Notice of cancellation or change.

When the Government requires the contractor to provide *insurance* coverage, the policies *shall* contain an endorsement that any cancellation or material change in the coverage adversely affecting the Government's interest *shall* not be effective unless the insurer or the contractor gives written notice of cancellation or change as required by the *contracting officer*. When the coverage is provided by *self-insurance*, the contractor *shall* not change or decrease the coverage without the administrative *contracting officer's* prior approval (see [28.308\(c\)](#)).

## **28.303 Insurance against loss of or damage to Government property.**

When the Government requires or approves *insurance* to cover loss of or damage to Government property (see [45.104](#), Responsibility and liability for Government property), it *may* be provided by specific *insurance* policies or by inclusion of the risks in the contractor's existing policies. The policies *shall* disclose the Government's interest in the property.

## **28.304 Risk-pooling arrangements.**

Agencies *may* establish risk-pooling arrangements. These arrangements are designed to use the services of the *insurance* industry for safety engineering and the handling of *claims* at minimum cost to the Government. The agency responsible *shall* appoint a single manager or point of contact for each arrangement.

## **28.305 Overseas workers' compensation and war-hazard insurance.**

(a) "Public-work contract," as used in this subpart, means any contract for a fixed improvement or for any other project, fixed or not, for the public use of the *United States* or its allies, involving *construction*, alteration, removal, or repair, including projects or operations under service contracts and projects in connection with the *national defense* or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project.

(b) The Defense Base Act ([42 U.S.C.1651](#), *etseq.*) extends the Longshoremen's and Harbor Workers' Compensation Act ([33 U.S.C. 901](#)) to various classes of employees working outside the *United States*, including those engaged in performing-

(1) Public-work contracts; or

(2) Contracts approved or financed under the Foreign Assistance Act of 1961 (Pub.L.87-195) other than-

(i) Contracts approved or financed by the Development Loan Fund (unless the Secretary of Labor, acting upon the recommendation of a department or agency, determines that such contracts *should* be covered); or

(ii) Contracts exclusively for materials or *supplies*.

(c) When the Defense Base Act applies (see [42 U.S.C.1651](#), *etseq.*) to these employees, the benefits of the Longshoremen's and Harbor Workers' Compensation Act are extended through operation of the War Hazards Compensation Act ([42 U.S.C.1701](#), *etseq.*) to protect the employees against the risk of war hazards (injury, death, capture, or detention). When, by means of an *insurance* policy or a *self-insurance* program, the contractor provides the workers' compensation coverage required by the Defense Base Act, the contractor's employees automatically receive war-hazard risk protection.

(d) When the *agency head* recommends a waiver to the Secretary of Labor, the Secretary *may* waive the applicability of the Defense Base Act to any contract, subcontract, work location, or classification of employees.

(e) If the Defense Base Act is waived for some or all of the contractor's employees, the benefits of the War Hazards Compensation Act are automatically waived with respect to those employees for whom the Defense Base Act is waived. For those employees, the contractor *shall* provide workers' compensation coverage against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention. The contract *shall* provide either that the costs of this liability or the reasonable costs of *insurance* against this liability *shall* be allowed as a cost under the contract.

## **28.306 Insurance under fixed-price contracts.**

(a) *General.* Although the Government is not ordinarily concerned with the contractor's *insurance* coverage if the contract is a fixed-price contract, in special circumstances agencies *may* specify *insurance* requirements under fixed-price contracts. Examples of such circumstances include the following:

- (1) The contractor is, or has a separate operation, engaged principally in Government work.
- (2) Government property is involved.
- (3) The work is to be performed on a Government installation.
- (4) The Government elects to assume risks for which the contractor ordinarily obtains commercial *insurance*.

(b) Work on a Government installation.

(1) When the clause at [52.228-5, Insurance-Work on a Government Installation](#), is required to be included in a fixed-price contract by [28.310](#), the coverage specified in [28.307](#) is the minimum *insurance* required and *shall* be included in the contract Schedule or elsewhere in the contract. The *contracting officer* may require additional coverage and higher limits.

(2) When the clause at [52.228-5, Insurance-Work on a Government Installation](#), is not required by [28.310](#) but is included because the *contracting officer* considers it to be in the Government's interest to do so, any of the types of *insurance* specified in [28.307](#) may be omitted or the limits *may* be lowered, if appropriate.

## **28.307 Insurance under cost-reimbursement contracts.**

Cost-reimbursement contracts (and subcontracts, if the terms of the prime contract are extended to the subcontract) ordinarily require the types of *insurance* listed in [28.307-2](#), with the minimum amounts of liability indicated. (See [28.308](#) for *self-insurance*.)

## **28.307-1 Group insurance plans.**

(a) *Prior approval requirement.* Under cost-reimbursement contracts, before buying *insurance* under a group *insurance* plan, the contractor *must* submit the plan for approval, in accordance with agency regulations. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government requires similar approval.

(b) *Premium refunds or credits.* The plan *shall* provide for the Government to share in any premium refunds or credits paid or otherwise allowed to the contractor. In determining the extent of the Government's share in any premium refunds or credits, any special reserves and other refunds to which the contractor *may* be entitled in the future *shall* be taken into account.

## **28.307-2 Liability.**

(a) *Workers' compensation and employer's liability.* Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they *shall* be covered under the employer's liability section of the *insurance* policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 *shall* be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers. (See [28.305\(c\)](#) for treatment of contracts subject to the Defense Base Act.)

(b) General liability.

(1) The *contracting officer shall* require bodily injury liability *insurance* coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

(2) Property damage liability *insurance shall* be required only in special circumstances as determined by the agency.

(c) *Automobile liability.* The *contracting officer shall* require automobile liability *insurance* written on the comprehensive form of policy. The policy *shall* provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the *United States shall* provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies *shall* be commensurate with any legal requirements of the locality and sufficient to meet normal and customary *claims*.

(d) *Aircraft public and passenger liability.* When aircraft are used in connection with performing the contract, the *contracting officer shall* require aircraft public and passenger liability *insurance*. Coverage *shall* be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury *shall* be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(e) *Vessel liability.* When contract performance involves use of vessels, the *contracting officer shall* require, as determined by the agency, vessel collision liability and protection and indemnity liability *insurance*.

## 28.308 Self-insurance.

(a) When it is anticipated that 50 percent or more of the *self-insurance* costs to be incurred at a *segment* of a contractor's business will be allocable to negotiated Government contracts, and the *self-insurance* costs at the *segment* for the contractor's fiscal year are expected to be \$200,000 or more, the contractor *shall* submit, *in writing*, information on its proposed *self-insurance* program to the administrative *contracting officer* and obtain that official's approval of the program. The submission *shall* be by *segment* or *segments* of the contractor's business to which the program applies and *shall* include-

(1) A complete description of the program, including any resolution of the board of directors authorizing and adopting coverage, including types of risks, limits of coverage, assignments of safety and loss control, and legal service responsibilities;

(2) If available, the corporate *insurance* manual and organization chart detailing fiscal responsibilities for *insurance*;

(3) The terms regarding *insurance* coverage for any Government property;

(4) The contractor's latest financial statements;

(5) Any *self-insurance* feasibility studies or *insurance* market surveys reporting comparative alternatives;

(6) Loss history, premiums history, and industry ratios;

(7) A formula for establishing reserves, including percentage variations between losses paid and losses reserved;

(8) *Claims* administration policy, practices, and procedures;

(9) The method of calculating the *projected average loss*; and

(10) A disclosure of all captive *insurance* company and *reinsurance* agreements, including methods of computing cost.

(b) Programs of *self-insurance* covering a contractor's insurable risks, including the deductible portion of purchased *insurance*, *may* be approved when examination of a program indicates that its application is in the Government's interest. Agencies *shall* not approve a program of *self-insurance* for workers' compensation in a jurisdiction where workers' compensation does not completely cover the employer's liability to employees, unless the contractor-

(1) Maintains an approved program of *self-insurance* for any employer's liability not so covered; or

(2) Shows that the combined cost to the Government of *self-insurance* for workers' compensation and commercial *insurance* for employer's liability will not exceed the cost of covering both kinds of risk by commercial *insurance*.

(c) Once the administrative *contracting officer* has approved a program, the contractor *must* submit to that official for approval any major proposed changes to the program. Any program approval *may* be withdrawn if a *contracting officer* finds that either-

(1) Any part of a program does not comply with the requirements of this subpart and/or the criteria at [31.205-19](#); or

(2) Conditions or situations existing at the time of approval that were a basis for original approval of the program have changed to the extent that a program change is necessary.

(d) To qualify for a *self-insurance* program, a contractor *must* demonstrate ability to sustain the potential losses involved. In making the determination, the *contracting officer shall* consider the following factors:

(1) The soundness of the contractor's financial condition, including available lines of credit.

(2) The geographic dispersion of assets, so that the potential of a single loss depleting all the assets is unlikely.

(3) The history of previous losses, including frequency of occurrence and the financial impact of each loss.

(4) The type and magnitude of risk, such as minor coverage for the deductible portion of purchased *insurance* or major coverage for hazardous risks.

(5) The contractor's compliance with Federal and State laws and regulations.

(e) Agencies *shall* not approve a program of *self-insurance* for catastrophic risks (*e.g.*, see [50.104-3](#), Special procedures for unusually hazardous or nuclear risks). *Should* performance of Government contracts create the risk of catastrophic losses, the Government *may*, to the extent authorized by law, agree to indemnify the contractor or recognize an appropriate share of premiums for purchased *insurance*, or both.

(f) *Self-insurance* programs to protect a contractor against the costs of correcting its own defects in materials or workmanship *shall* not be approved. For these purposes, normal rework estimates and *warranty* costs will not be considered *self-insurance*.

## **28.309 Contract clauses for workers' compensation insurance.**

(a) The *contracting officer shall* insert the clause at [52.228-3](#), Workers' Compensation Insurance (Defense Base Act), in *solicitations* and contracts when the Defense Base Act applies (see [28.305](#)) and-

(1) The contract will be a public-work contract performed outside the *United States*; or

(2) The contract will be approved or financed under the Foreign Assistance Act of 1961 (Pub.L.87-195) and is not excluded by [28.305\(b\)\(2\)](#).

(b) The *contracting officer shall* insert the clause at [52.228-4](#), Worker's Compensation and War-Hazard Insurance Overseas, in *solicitations* and contracts when the contract will be a public-work contract performed outside the *United States* and the Secretary of Labor waives the applicability of the Defense Base Act (see [28.305\(d\)](#)).

## **28.310 Contract clause for work on a Government installation.**

(a) Insert the clause at [52.228-5](#), *Insurance-Work on a Government Installation*, in *solicitations* and contracts if a fixed-price contract is contemplated, the contract amount is expected to exceed the *simplified acquisition threshold*, and the contract will require work on a Government installation, unless-

(1) Only a small amount of work is required on the Government installation (*e.g.*, a few brief visits per month); or

(2) All work on the Government installation will be performed outside the *United States* and its *outlying areas*.

(b) The *contracting officer* may insert the clause at [52.228-5](#) in *solicitations* and contracts described in paragraphs (a)(1) and (2) of this section if it is in the Government's interest to do so.

## **28.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.**

### **28.311-1 Contract clause.**

In accordance with agency *acquisition* regulations, the *contracting officer* shall insert the clause at [52.228-7](#), *Insurance-Liability to Third Persons*, in *solicitations* and contracts, other than those for *construction* contracts and those for *architect-engineer services*, when a cost-reimbursement contract is contemplated.

### **28.311-2 Agency solicitation provisions and contract clauses.**

Agencies may prescribe their own *solicitation* provisions and *contract clauses* to implement the basic policies contained in this [subpart 28.3](#).

## **28.312 Contract clause for insurance of leased motor vehicles.**

The *contracting officer* shall insert the clause at [52.228-8](#), *Liability and Insurance-Leased Motor Vehicles*, in *solicitations* and contracts for the leasing of motor vehicles (see [subpart 8.11](#)).

## **28.313 Contract clauses for insurance of transportation or**

## **transportation-related services.**

(a) The *contracting officer shall* insert the clause at [52.228-9](#), *Cargo Insurance*, in *solicitations* and contracts for transportation or for transportation-related services, except when *freight* is shipped under rates subject to released or declared value.

(b) The *contracting officer shall* insert a clause substantially the same as that at [52.228-10](#), *Vehicular and General Public Liability Insurance*, in *solicitations* and contracts for transportation or for transportation-related services when the *contracting officer* determines that vehicular liability or general public liability *insurance* required by law is not sufficient.