

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)*.

Parent topic: [28.203 Individual Sureties.](#)