

## 32.202-4 Security for Government financing.

### (a) Policy.

(1) 10 U.S.C. 3805 and 41 U.S.C.4505 require the Government to obtain adequate security for Government financing. The *contracting officer shall* specify in the *solicitation* the type of security the Government will accept. If the Government is willing to accept more than one form of security, the *offeror shall* be required to specify the form of security it will provide. If acceptable to the *contracting officer*, the resulting contract *shall* specify the security (see 32.206(b)(1)(iv)).

(2) Subject to agency regulations, the *contracting officer may* determine the *offeror's* financial condition to be adequate security, provided the *offeror* agrees to provide additional security *should* that financial condition become inadequate as security (see paragraph (c) of the clause at 52.232-29, Terms for Financing of Purchases of *Commercial Products* and *Commercial Services*). Assessment of the contractor's financial condition *shall* consider both net worth and liquidity. If the *contracting officer* finds the *offeror's* financial condition is not adequate security, the *contracting officer shall* require other adequate security. Paragraphs (b), (c), and (d) of this subsection list other (but not all) forms of security that the *contracting officer may* find acceptable.

(3) The value of the security *must* be at least equal to the maximum unliquidated amount of *contract financing payments* to be made to the contractor. The value of security *may* be adjusted periodically during contract performance, as long as it is always equal to or greater than the amount of unliquidated financing.

### (b) Paramount lien.

(1) The statutes cited in 32.201 provide that if the Government's security is in the form of a lien, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the *United States*.

(2) When the Government's security is in the form of a lien, the contract *shall* specify what the lien is upon, *e.g.*, the work in process, the contractor's plant, or the contractor's inventory. *Contracting officers may* be flexible in the choice of assets. The contract *must* also give the Government a right to verify the existence and value of the assets.

(3) Provision of Government financing *shall* be conditioned upon a contractor certification that the assets subject to the lien are free from any prior encumbrances. Prior liens *may* result from such things as capital equipment loans, installment purchases, working capital loans, various lines of credit, and revolving credit arrangements.

(c) *Other assets as security.* *Contracting officers may* consider the guidance at 28.203 and 28.204 in determining which types of assets *may* be acceptable as security. For the purpose of applying the guidance in part 28 to this subsection, the term "*surety*" and/or "*individual surety*" *should* be interpreted to mean "*offeror*" and/or "*contractor*."

(d) *Other forms of security.* Other acceptable forms of security include-

(1) An *irrevocable letter of credit* from a federally insured financial institution;

(2) A bond from a *surety*, acceptable in accordance with [part 28](#) (note that the bond *must* guarantee repayment of the unliquidated contract financing);

(3) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or

(4) Title to identified contractor assets of adequate worth.

(e) *Management of risk and security*. In establishing contract financing terms, the *contracting officer must* be aware of certain risks. For example, very high amounts of financing early in the contract (front-end loading) *may* unduly increase the risk to the Government. The security and the amounts and timing of financing payments *must* be analyzed as a whole to determine whether the arrangement will be in the best interest of the Government.

**Parent topic:** [32.202 General](#).