

GSA ORDER

Subject: General Services Administration Acquisition Manual; GSAM Case 2018-G501, 8(a) Bonding Requirements under the Simplified Acquisition Threshold

1. **Purpose.** This order transmits a revision to the General Services Administration Acquisition Manual (GSAM).
2. **Background.** GSAM 528.1 currently requires that Contracting Officers secure certain bonds for construction and service contracts valued at any dollar value under the 8(a) Program. This is more restrictive than FAR 28.1 and is not necessary nor is it in the best interest of the government. Changes to address this issue in GSAM 528.1 were initially included in a larger effort to revise construction contract administration requirements through GSAR Case 2015-G503. Since GSAR Case 2015-G503 also includes regulatory changes, the case must go through the rulemaking process and has a longer implementation lead time. In order to provide immediate relief from the administrative burdens the current non-regulatory GSAM construction bonding requirements impose, the changes to GSAM 528.1 were removed from GSAR Case 2015-G503 and instead are provided through this GSA Order.
3. **Effective date.** Date of Signature
4. **Explanation of changes.** The GSAM is amended to make editorial changes within GSAM 528.1. This GSAM change will allow contracting officers to forego requiring bid guarantees, performance bonds, and payment bonds from a surety for 8(a) Program construction contracts under the \$150,000. For full text changes to the GSAM, see Attachment A.

Under the 8(a) program, contracts are awarded to the Small Business Administration and then sub-contracted to an 8(a) Small Business Enterprise (SBE). Contractors submit to a rigorous application process for acceptance into the Small Business Administration's (SBA) 8(a) Program. The SBA must approve the use of a given 8(a) SBE prior to the issuance of a solicitation. The SBA's involvement in vetting a SBE under the 8(a) Program precludes the need for bonding for requirements under the SAT.

Furthermore, the FAR allows for contracting officers to set a period of up to 10 days for the return of bonds when FAR Clause 52.228-1 is included. A period of 10 days may account for a significant amount of the Procurement Administrative Lead Time (PALT) on construction contracts, impacting procurement efficiency and indirect

costs. In addition, bonds on average may account for three percent of the estimated cost of construction, which often add unnecessary additional costs to the SBEs and GSA.

Removing the requirement to secure bid guarantees and associated bonds will alleviate administrative and financial burdens for both the government and SBEs. Additionally, eliminating the requirement for such bonds streamlines the process of awarding and administering construction projects and may encourage more small businesses to participate in the procurement efforts by GSA.

Although Section 805 of the FY18 National Defense Authorization Act (FY18 NDAA) increased the simplified acquisition threshold from \$150,000 to \$250,000, FAR Part 28 and GSAM Part 528 are separately governed by 40 U.S.C. 3131 et. seq., formerly known as the Miller Act. Therefore, the thresholds in GSAM 528.1 are listed as "\$150,000" rather than "simplified acquisition threshold", and are not increased to "\$250,000".

5. Cancellations and Rescissions: None



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ATTACHMENT A
GSAM Text, Line-In/Line-Out

GSAM Baseline: Change 84 effective 05/11/2018

- Additions to baseline made by rule are indicated by [bold text in brackets]
- Deletions to baseline made by rule are indicated by ~~strikethroughs~~
- Five asterisks (*****) indicate that there are no revisions between the preceding and following sections
- Three asterisks (***) indicate that there are no revisions between the material shown within a subsection

Part 528— Bonds and Insurance

Subpart 528.1—Bonds and Other Financial Protections

528.101 Bid guarantees.

528.101-1 Policy on use.

(a) *Construction contracts.* [The bid guarantee requirements in FAR 28.101-1 apply to] The contracting officer shall require bid guarantees for contracts [over \$150,000] awarded under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) *Building service contracts.* The contracting officer [may] shall require bid guarantees for building service contracts over [\$150,000] \$100,000 if it is determined under 528.103-2 that a performance bond is essential to protect the Government's interest.

528.102 Performance and payment bonds and alternative payment protections for construction contracts.

528.102-1 General.

[(a)]The performance and payment bond requirements in FAR 28.102-1[a] apply to contracts [over \$150,000] awarded under Section 8(a) of the Small Business Act [, as amended (15 U.S.C. 637(a))].

[(b) The payment protection requirements in FAR 28.102-1(b) apply to contracts greater than \$35,000, but not greater than the \$150,000, awarded under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).]

528.103 Performance and payment bonds for other than construction contracts.

528.103-2 Performance bonds.

(a) The contracting officer shall not require performance bonds for building service contracts unless a written determination is made explaining why the bond is essential to protect the Government's interest and justifying the additional cost of the bonding requirement.

(b) The contracting officer ~~shall~~ **may** require a performance bond for building service contracts ~~over \$150,000~~ awarded under Section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)) ~~if it is determined under 528.103-2(a) that a performance bond is essential to protect the Government's interest~~.

~~(c)~~ The contracting officer shall not require a performance bond for building service contracts awarded to workshops for the blind or other severely handicapped under the Javits-Wagner-O'Day Act, as amended (41 U.S.C. 8501-8506).

~~(d)~~ ~~(e)~~ Consider the circumstances and determine the penal amount of the performance bond on a case-by-case basis.