

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](#).