

Part I Chapter 37

Contract Performance Security

A. Materials and Services. For material and/or service contracts:

- 1.** Contract performance security may be required when the Agency identifies the need to protect the Commonwealth from a potential supplier default.
- 2.** The following forms of performance security are approved by DGS:
 - a.** A certified or bank check.
 - b.** A performance bond issued by a surety authorized to do business in the Commonwealth.
 - c.** An irrevocable letter of credit.
 - d.** A certificate of deposit.
- 3.** When performance security is required, the IFB or RFP shall clearly state all of the following:
 - a.** The requirement for performance security.
 - b.** The acceptable forms of performance security.
 - c.** The dollar amount of the performance security. This may be either as a fixed amount (i.e., \$5,000.) or as a % of the total contract price (i.e., 10% of the total contract price).

B. Construction. For construction contracts, the following is required in accordance with Section 903 of the Commonwealth Procurement Code.

- 1.** Under \$30,000.00, the Agency shall determine whether performance security is required, in what for, and in what amount.
- 2.** From \$30,000.00 to \$120,000.00, the Agency MUST require contract performance security. It is at the Agency's discretion in determining the amount necessary to protect the interests of the Commonwealth, but it must be, AT MINIMUM, 50% of the contract price.
- 3.** In excess of \$120,000.00, a performance bond will be executed by a surety company authorized to do business in this Commonwealth. The performance bond will be made payable to the Commonwealth in an amount equal to 100% of the price specified in the contract. The performance bond will be conditioned upon the faithful performance of the contract in accordance with the plans, specifications, and conditions of the contract.
- 4.** The thresholds set forth in Sections 2.a, 2.b, and 2.c take into consideration the adjustments to the amounts stated in the Commonwealth Procurement Code in accordance with the total % change in the Composite construction

Cost Index by the United States Department of Commerce from 1998 to 2003.