

## Chapter 468-320 WAC

# WASHINGTON STATE FERRY VESSEL CONSTRUCTION, MAINTENANCE AND REPAIR CONTRACTS—ALTERNATE FORMS OF SECURITY AND DETERMINATION OF BONDING AMOUNT REQUIRED

### WAC

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**WAC 468-320-010 Marine contract security—General requirements.** (1) As required by chapter 58, Laws of 1989, the bond and/or alternate form(s) of security for a contract for construction, maintenance or repair of a marine vessel by the Washington state department of transportation (hereafter "contract"), shall be in an amount adequate to protect one hundred percent of the state's exposure to loss on such contract. The contractor shall provide either:

(a) An executed contract bond, as described in RCW 39.08.010, in the amount of one hundred percent of the state's exposure to loss and in the form required in the bid specifications; or

(b) A combination of security, totaling one hundred percent of the state's exposure to loss, consisting of:

(i) An executed payment bond in the amount of the state's payment exposure (see WAC 468-320-030) as stated in the bid specifications, which is adequate to fully protect the state against claims for work done by laborers, mechanics, subcontractors, materialmen and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, when such persons have not been paid by the contractor, and the state has paid for such work; and

(ii) An executed contract bond and/or alternate form(s) of security totaling one hundred percent of the state's performance exposure (see WAC 468-320-030) as provided herein; or

(c) An executed contract bond and/or alternate form(s) of security totaling one hundred percent of the state's performance exposure, if the state, in performing the analysis described in WAC 468-320-030, determines that contract payment procedures completely eliminate its payment exposure (see WAC 468-320-030), and the state so provides in the bid specifications.

(2) Subject to the warranty coverage requirements of WAC 468-320-060 and 468-320-070, such bond and/or alternate form(s) of security shall remain in effect from the date of contract execution until the state has accepted the contract work, the lien claim period has passed, any liens filed under

chapter 60.28 RCW have been settled, and all releases from other state of Washington agencies have been received.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-010, filed 10/26/89, effective 11/26/89.]

**WAC 468-320-020 State's exposure to loss.** The state's exposure to loss in such a contract is equal to the amount calculated in the written loss evaluation process described in WAC 468-320-030.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-020, filed 10/26/89, effective 11/26/89.]

**WAC 468-320-030 Calculation of state's exposure to loss.** (1) For each contract, a written loss evaluation will be conducted by the project design team during the estimating phase of plan preparation. This evaluation will determine the amount of the state's exposure to loss broken down into performance exposure (subsection (2)(a) through (f) of this section) and payment exposure, if any (subsection (2)(g), (h), and (i) of this section). These amounts will be included in the bid specifications. The amount of the state's exposure to loss will be expressed in terms of a dollar amount or a percentage of the contract amount. After bid opening, copies of the written evaluation will be made available upon request.

(2) The evaluation will include consideration of all potential costs to the state (including engineering and administration (overhead)) in the following risk categories, mitigated generally by permitted delays in payments to the contractor and by contract retainage, and mitigated specifically as described below:

(a) Damage to the vessel, mitigated as appropriate by the required builder's risk insurance.

(b) Noncomplying or faulty material, mitigated as appropriate by the manufacturers' warranties and/or the degree of anticipated state inspection and testing.

(c) Work done poorly, incompletely, or incorrectly, mitigated as appropriate by the nature, complexity, and accessibility of the work, and/or the degree of anticipated state inspection.

(d) Out of service costs due to delays in the work.

(e) Failure to receive United States Coast Guard or American Bureau of Shipping approval, when required, for work already paid for by the state.

(f) Default or bankruptcy of the contractor, including:

(i) Removing the vessel from the contractor's facility;

(ii) Identifying and removing from the contractor's facility material paid for by the state;

- (iii) Delivering the vessel to alternate shipyard facilities (contractor or state);
  - (iv) Completing the work, whether by new contract or by state forces; and
  - (v) Administering all such actions.
  - (g) Failure of the contractor to pay taxes or other governmental obligations related to the contract.
  - (h) Failure of the contractor to pay wage rates required by law.
  - (i) Failure of the contractor to pay claims of laborers, mechanics, subcontractors, materialmen and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work.
- (3) If a contract change order significantly increases the amount of the state's exposure to loss, such change order shall specify the amount of such increase and shall provide the amount and form of additional contract security required.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-030, filed 10/26/89, effective 11/26/89.]

**WAC 468-320-040 Alternate forms of security.** In addition to a contract bond, the following alternate forms of contract security are acceptable if they provide protection in an amount at least equal to the state's exposure to performance loss, meet all legal requirements for effectiveness and authenticity, are specified in the bid specifications for a particular contract as being acceptable for that contract, and meet all of the special requirements set forth below and in the bid specifications for the particular contract:

- (1) Certified check;
- (2) Cashier's check;
- (3) Treasury bill(s);
- (4) Irrevocable bank letter of credit;
- (5) Assignment of a savings account;
- (6) Assignment of other liquid assets specifically approved by the assistant secretary for marine transportation or his designee.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-040, filed 10/26/89, effective 11/26/89.]

**WAC 468-320-050 Specific requirements for alternate forms of security.** In addition to meeting any special requirements contained in the bid specifications for a contract, alternate forms of contract security will be subject to the following requirements:

- (1) Certified check.
  - (a) Must be issued by a bank which:
    - (i) Is a qualified public depository under RCW 39.58.010 and meets any other requirements contained in the bid specifications; or
    - (ii) Meets alternate standards set forth in the bid specifications.
  - (b) Will be deposited as directed by the contractor at the time of contract execution, with the options specified in WAC 82-32-010.
- (2) Cashier's check.
  - (a) Must be issued by a bank which:
    - (i) Is a qualified public depository under RCW 39.58.010 and meets any other requirements contained in the bid specifications; or

- (ii) Meets alternate standards set forth in the bid specifications.

(b) Will be deposited as directed by the contractor at the time of contract execution, with the options specified in WAC 82-32-010.

(3) Treasury bill(s).

(a) Must be issued by the Treasury Department of the United States and meet any other requirements contained in the bid specifications.

(b) Must be used only for contract security, not warranty coverage.

(c) Must bear a maturity date which is at least six months past the date specified for contract completion. If for any reason, the actual contract completion date extends to within sixty days of the maturity date of the treasury bill(s) furnished by the contractor, the contractor shall, at least thirty days prior to the maturity date, substitute treasury bill(s) with a maturity date at least six months longer than the state's new estimate of the time required for contract completion.

(d) Must be held in book entry at the Federal Reserve in San Francisco and be pledged to the state's account.

(4) Irrevocable bank letter of credit.

(a) Must be issued by a bank which:

(i) Is a qualified public depository under RCW 39.58.010 and meets any other requirements contained in the bid specifications; or

(ii) Meets alternate standards set forth in the bid specifications.

(b) If at any time during the contract or warranty period, as applicable, the issuing bank fails to meet the standards specified in (a) of this subsection, the contractor shall inform the state of such event, and shall, within ten days, substitute an irrevocable letter of credit from a bank which meets the standards specified in (a) of this subsection.

(c) Must be in the form required in the bid specifications, unless an alternate form is approved as provided in (d) of this subsection.

(d) If a contractor cannot obtain an irrevocable letter of credit in the form required in the bid specifications, and wishes to propose an alternative form of irrevocable letter of credit, it shall submit such alternate irrevocable letter of credit to the contracts department of Washington state department of transportation, marine division, for approval on or before the date set forth in the bid specifications. The state, in its sole discretion, may approve or reject the proposed letter of credit, or may suggest changes in it which will make it acceptable, provided the contractor and its bank concur with such changes, in writing, prior to the date set for bid opening.

(5) Assignment of savings account.

(a) The assigned account must be in a bank which:

(i) Is a qualified public depository under RCW 39.58.010 and meets any other requirements contained in the bid specifications; or

(ii) Meets alternate standards set forth in the bid specifications.

(b) The proposed document of assignment shall be submitted to the contracts department of Washington state department of transportation, marine division, on or before the date set forth in the bid specifications. The state, in its sole discretion, may approve or reject the proposed document of assignment, or may suggest changes in it which will make it

acceptable, provided the contractor and its bank concur with such changes, in writing, prior to the date set for bid opening.

(c) Must be accompanied by a notarized statement, on bank letterhead, stating that the bank concurs in the assignment.

(d) Must be effective:

(i) For at least six months past the date specified for contract completion, if the contractor does not propose to use the assignment for warranty coverage; or

(ii) For at least one year and six months past the date specified for contract completion if the contractor proposes to use the assignment for warranty coverage.

If for any reason, the actual contract completion date or end of the contract warranty period, as applicable, extends to within sixty days of the end of the savings account assignment, the contractor shall, at least thirty days prior to the end of the initial assignment, make a new or extended assignment in compliance with these regulations for a period at least six months longer than the state's new estimate of the time required for contract completion or warranty coverage, as applicable.

(6) Assignment of other liquid assets.

(a) Must be an assignment of assets approved for investment in WAC 82-32-060.

(b) Both a full description of the liquid assets proposed to be assigned and the proposed document of assignment shall be submitted to the contracts department of Washington state department of transportation, marine division, on or before the date set forth in the bid specifications. The state, in its sole discretion, may approve or reject the proposed liquid assets and/or document of assignment, or may suggest changes in them which will make the liquid assets or the document of assignment acceptable, provided the contractor concurs with such changes, in writing, prior to the date set for bid opening.

(c) Must be effective:

(i) For at least six months past the date specified for contract completion, if the contractor does not propose to use the assets for warranty coverage; or

(ii) For at least one year and six months past the date specified for contract completion, if the contractor proposes to use the assignment for warranty coverage.

If for any reason the actual contract completion date or end of the contract warranty period, as applicable, extends to within sixty days of the end of the liquid asset assignment, the contractor shall, at least thirty days prior to the end of the initial assignment, make a new or extended assignment in compliance with these regulations for a period at least six months longer than the state's new estimate of the time required for contract completion or warranty coverage, as applicable.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-050, filed 10/26/89, effective 11/26/89.]

**WAC 468-320-060 Warranty coverage.** All forms of contract security provided by a contractor shall ensure that the state receives warranty coverage for all losses resulting from any defects in material and workmanship for the period beginning on the date of redelivery of the vessel to the state and ending one year after that date. Such warranty coverage shall be at least as effective in protecting the state as that contained in the state's standard contract bond. Warranty cover-

age under a contract bond shall be specified in the bond and shall equal ten percent of the penal sum of the bond. Warranty coverage under alternate forms of security shall be in an amount specified in the bid specifications, increased or decreased by ten percent of the net amount of any change orders, and shall be delivered to the state as provided in WAC 468-320-090.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-060, filed 10/26/89, effective 11/26/89.]

**WAC 468-320-070 Replacement bond option.** As an alternative to the warranty coverage described in WAC 468-320-060, a contractor may, for the period beginning on the date of redelivery of the vessel to the state and ending one year after that date, provide a replacement bond in the amount specified for warranty coverage in the bid specifications, increased or decreased by ten percent of the net amount of any change orders. Such replacement bond shall be in the form required in the bid specifications, and shall be delivered to the state as provided in WAC 468-320-090.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-070, filed 10/26/89, effective 11/26/89.]

**WAC 468-320-080 Prohibition of double security.** Assets used as an alternate form of contract security shall not also be used to secure a contract bond on the contract.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-080, filed 10/26/89, effective 11/26/89.]

**WAC 468-320-090 Delivery of alternate security to the state.** All alternate forms of security permitted by these regulations and the bid specifications for a contract shall be delivered to the state in the manner provided in the bid specifications for delivery of a contract bond, unless provided otherwise in the bid specifications.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-090, filed 10/26/89, effective 11/26/89.]

**WAC 468-320-100 Delegation of authority.** The assistant secretary for marine transportation is hereby delegated authority to administer the provisions of chapter 58, Laws of 1989 and chapter 468-320 WAC. The assistant secretary for marine transportation may further delegate authority to exercise all such powers.

[Statutory Authority: Chapter 34.05 RCW and 1989 c 58. WSR 89-22-028, § 468-320-100, filed 10/26/89, effective 11/26/89.]