28.102-1 General.

(a) 40 U.S.C. chapter 31, subchapter III, *Bonds* (formerly known as the Miller Act), requires performance and payment *bonds* for any *construction* contract exceeding $150,000, except that this requirement *may* be waived-

(1) By the *contracting officer* for as much of the work as is to be performed in a foreign country upon finding that it is impracticable for the contractor to furnish such *bond*; or

(2) As otherwise authorized by the *Bonds* statute or other law.

(b)

(1) Pursuant to 40 U.S.C. 3132, for *construction* contracts greater than $35,000, but not greater than $150,000, the *contracting officer shall* select two or more of the following payment protections, giving particular consideration to inclusion of an *irrevocable letter of credit* as one of the selected alternatives:

(i) A payment *bond*.

(ii) An *irrevocable letter of credit* (ILC).

(iii) *A tripartite escrow agreement*. The prime contractor establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement *shall* establish the terms of payment under the contract and of resolution of disputes among the parties. The Government makes payments to the contractor's escrow account, and the escrow agent distributes the payments in accordance with the agreement, or triggers the disputes resolution procedures if required.

(iv) *Certificates of deposit*. The contractor deposits certificates of deposit from a federally insured financial institution with the *contracting officer*, in an acceptable form, executable by the *contracting officer*.

(v) A deposit of the types of security listed in 28.204-1 and 28.204-2.

(2) The contractor *shall* submit to the Government one of the payment protections selected by the *contracting officer*.

(c) The contractor *shall* furnish all *bonds* or alternative payment protection, including any necessary *reinsurance* agreements, before receiving a notice to proceed with the work or being allowed to start work.

Parent topic: 28.102 Performance and payment bonds and alternative payment protections for construction contracts.