28.204-3 Irrevocable letter of credit.

(a) Any person required to furnish a *bond* has the *option* to furnish a *bond* secured by an *irrevocable letter of credit* (ILC) in an amount equal to the *penal sum* required to be secured (see 28.204). A separate ILC is required for each *bond*.

(b) The ILC *shall* be irrevocable, require presentation of no document other than a written demand and the ILC (and letter of confirmation, if any), expire only as provided in paragraph (f) of this subsection, and be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (g) of this subsection.

(c) To draw on the ILC, the *contracting officer shall* use the sight draft set forth in the clause at 52.228-14, and present it with the ILC (including letter of confirmation, if any) to the issuing financial institution or the confirming financial institution (if any).

(d) If the contractor does not furnish an acceptable replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the *contracting officer shall* immediately draw on the ILC.

(e) If, after the period of performance of a contract where ILCs are used to support payment *bonds*, there are outstanding *claims* against the payment *bond*, the *contracting officer shall* draw on the ILC prior to the expiration date of the ILC to cover these *claims*.

(f) The period for which financial security is required *shall* be as follows:

(1) If used as a *bid guarantee*, the ILC *should* expire no earlier than 60 days after the close of the *bid* acceptance period.

(2) If used as an alternative to corporate or individual *sureties* as security for a performance or payment *bond*, the *offeror*/contractor *may* submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or an ILC with an initial expiration date that is a minimum period of oneyear from the date of issuance. The ILC *shall* provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for oneyear from the expiration date, or any future expiration date, until the period of required coverage is completed and the *contracting officer* provides the financial institution with a written statement waiving the right to payment. The period of required coverage *shall* be:

(i) For contracts subject to the *Bonds* statute, the later of-

(A) Oneyear following the expected date of final payment;

(B) For performance *bonds* only, until completion of any *warranty* period; or

(C) For payment *bonds* only, until resolution of all *claims* filed against the payment *bond* during the one-year period following final payment.

(ii) For contracts not subject to the *Bonds* statute, the later of-

(A) 90 days following final payment; or

(B) For performance *bonds* only, until completion of any *warranty* period.

(g) Only federally insured financial institutions rated investment grade *shall* issue or confirm the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least $25 million in the past year, ILCs over $5 million *must* be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

(1) The *offeror*/contractor is required by paragraph (d) of the clause at 52.228-14. *Irrevocable Letter of Credit*, to provide the *contracting officer* a credit rating from a recognized commercial rating service that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(2) To support the credit rating of the financial institution(s) issuing or confirming the ILC, the *contracting officer shall* verify the following information:

(i) Federal *insurance*: Each financial institution is federally insured. Verification of federal *insurance* is available through the Federal Deposit *Insurance* Corporation (FDIC) institution directory at the website http://www2.fdic.gov/idasp/index.asp.

(ii) Current credit rating. The current credit rating for each financial institution is investment grade and that the credit rating is from a Nationally Recognized Statistical Rating Organization (NRSRO). NRSROs can be located at the website http://www.sec.gov/answers/nrsro.htm maintained by the SEC.

(3) The rating services listed in the website http://www.sec.gov/answers/nrsro.htm use different rating scales (e.g., AAA, AA, A, BBB, BB, B, CCC, CC, C, and D; or Aaa, Aa, A, Baa, Ba, B, Caa, Ca, and C) to provide evaluations of institutional credit risk; however, all such systems specify the range of investment grade ratings (e.g., BBB-AAA or Baa-Aaa in the examples in this section) and permit evaluation of the relative risk associated with a specific institution. If the *contracting officer* learns that a financial institution's rating has dropped below investment grade level, the *contracting officer shall* give the contractor 30 days to substitute an acceptable ILC or *shall* draw on the ILC using the sight draft in paragraph (g) of the clause at 52.228-14.

(h) A copy of the Uniform Customs and Practice (UCP) for Documentary Credits, 2007 Edition, International Chamber of Commerce Publication No. 600, is available from:

ICC Books USA, 1212 Avenue of the Americas, 21 st Floor, New York, NY 10036;

Phone: 212-703-5078; Fax: 212-391-6568; E-mail: iccbooks@uscib.org; Via the Internet at:http://www.uscib.org/ucp-600-ud-4465/.

Parent topic: 28.204 Alternatives in lieu of corporate or individual sureties.