

Miller Act

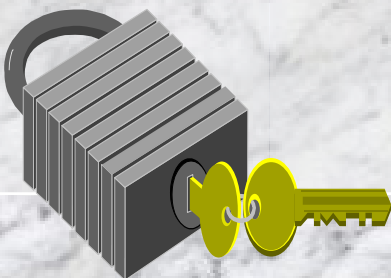
- ✎ Enacted in 1935
- ✎ Federal Contracts over \$25,000
- ✎ Contractor shall provide Bonds
- ✎ Performance Bonds in the amount to protect the U.S.
- ✎ List of Surety Companies acceptable in Federal Register
- ✎ Bid & Payment Bonds required
- ✎ First and second tier Subs & Material Suppliers protected
- ✎ 50 States have passed “Little Miller Acts”

Bid Security

- When contractors submit bids on projects, they must put down a deposit to ensure that they will enter into an agreement if they are the successful bidder
- This is also known as a “bid bond”
- The bid security may be a fixed amount or a % of the project’s cost

Bid Security

- If the successful bidder fails to enter into a contract, he may be liable for the difference between his low bid and the second bid, up to the amount of the bid bond.
- Owners usually retain the bid security until a contract has been signed
- Owners may also retain the bid security of the second and third lowest bidders as well



Bid Bond Premiums

- ❖ Bid bonds are furnished by surety companies who may charge a premium or fee
- ❖ Normal practice is to furnish the bid bond without a fee on the anticipation of collecting a fee from the performance bond
- ❖ Should not be considered as insurance by the contractor
- ❖ Services as guarantee to the owner that the bidder will enter into contract

Subcontractor Bid Bonds

- ✧ Done when the general contractor is working in an unfamiliar location
- ✧ May be required when a new sub is used

Performance Bond Requirements J164

- A requirement on all federally funded projects over a stated minimum amount (usually \$25,000)
- Most States and municipalities have passed companion legislation for the protection of publicly funded contracts
- Private contracts may or may not require performance bond, depends on private owner

Performance Bond Requirements J164

- If owner has any doubt regarding the financial capacity of any bidder, he may ask bidder to furnish performance bond
- The owner may ask for a performance bond only from the successful bidder while signing a contract and not necessarily while bidding

Amount and Form of Performance Bond

- ← Amount of performance bond is 10% to 100% of contract amount
- ← If additions are made in contract, the amount of the performance bond is increased accordingly
- ← There are numerous forms of performance bonds published by:
 - Associations
 - Bonding Companies
 - Government Agencies
 - Private Owners

Performance Bond

- ← It is required to insure the contract against default by the contractor
- ← It is to protect the owner's interest, especially in the case of public projects
- ← Protects the reasonable explanation of the owner to receive the project as described in the contract documents for the amount of money stipulated

Payment Bonds or Labor & Material Bond

J171

Payment Bond protects the interest of the subcontractors, material suppliers and laborers if the construction firm/general contractor fails to make payments.

- ★ It protects the owner.
- ★ Usually issued in conjunction with performance bond.
- ★ Payment Bond are not required on private projects. Owner may or may not require this.

Amount And Claims Payment Bond (Cont.)

- ★ Payment Bond amount can be anything up to 100% of the contract amount.

(Usually it is 50%)

- ★ Should be sufficient to cover all costs of labor and materials furnished by the third parties.

Payment Bond Claims

- ★ Claims against the Payment Bond must satisfy the following requirements:
 - ❖ Claims to be filed in proper court
 - ❖ Claims to be filed within one year after GC has completed the project
 - ❖ A formal written notice must be given to the general contractor, the owner, and the surety company
 - ❖ Claims must be made within 90 days after the claimant last performed work on project

Warranty Bond J174

Warranty Bond are issued:

- ★ By different sureties
- ★ For different periods
- ★ To cover different circumstances
- ★ To cover particular items
- ★ Examples:

Roofing Bonds, Equipment Bonds,
Subdivision Bonds, Supply Bonds

An owner can secure and require
bonds for just about anything on
the project if there is a sufficient
cause

Investigation By The Surety

J164

- A surety conducts two stage investigation.
- First: Data collected to find out whether to bond the firm.
 - Ability of: Principals, Personnel, Firm as a whole
 - Integrity of firms principal
 - Financial standing and line of bank credit of firm
 - Financial standing and credit rating of principals of firm
 - Experience of firm, principal, key personnel in the line of work to be bonded

Second Stage Investigation

J164

- Data collected to determine whether to bond particular project
 - Amount of work at present
 - Recent bidding record
 - Present working capital
 - Availability of credit
 - Terms of payment under the proposed contract
 - Contractors previous experience with work on similar to that proposed project
 - Amount of project that will be subcontracted.

Completion By The Surety

J168

- In case of default bonding company has option of completing the project in their own way,
 - Make use of the labor and equipment of original competitive contractor.
 - Take competitive bids for balance of the work.
 - Enter into negotiated contract with a firm.

Completion By The Surety

- The retainage % is collected usually by surety company.
- If bonding company insures any loss of money in the completion of the contract, they are entitled, by means of litigation, to collect such money from defaulting contractor. (Important)