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

- 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
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 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.
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 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

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- 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

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- 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.
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)