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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-168106

DATE: November 18, 1977

MATTER OF: United States Forest Service

**DIGEST:**

Applicable Federal Procurement Regulations (FPR) do not authorize contracting officers to remit, prior to expiration of contract warranty period, any part of cash deposited as security for contract performance of construction contracts covered by the Miller Act, 40 U.S.C. § 270a et seq. (1970).

The United States Forest Service, Department of Agriculture, has requested our opinion whether contracting officers have authority to remit, prior to expiration of the contract warranty period, part or all of the cash deposited by a contractor as security for performance of construction contracts covered by the Miller Act, 40 U.S.C. § 270a et seq. (1970).

Federal Procurement Regulations (FPR) § 1-10.204-2 (1964 ed. amend. 27) permits a contractor to deposit cash in an amount equal to the penal sum of a required bond in lieu of furnishing a surety or sureties. In general, the penal sum is equal to 100 percent of the contract price at the time of award, although the contracting officer may prescribe a lesser amount. FPR § 1-10.104-1(b) (1964 ed. amend. 48). Under FPR § 1-10.204, where security is provided other than by the furnishing of a surety:

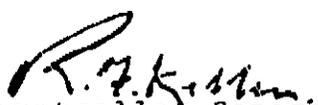
"Agencies \* \* \* shall return such security or its equivalent when, by its terms, the obligation of the bond has ceased."

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"Standard Form 25, Performance Bond", required by FPR § 1-16.801(a)(2) (1964 ed. amend. 179) provides that the obligation under a performance bond shall continue "\* \* \* during the life of any guaranty required under the contract." FPR § 1-16.901-25 (1964 ed. amend. 34). The Forest Service advises our Office that, under its construction contracts, this warranty period is one year.

The Forest Service points out that, in general, firms which furnish cash bonds are small and are frequently unable to obtain corporate or individual surety bonds. Furthermore, these firms are often hard pressed to forego the use of the cash security for periods extending well beyond the date of performance. The Forest Service states, "It would not be harmful to the Government to return all or at least a percentage of the cash securities on Performance Bonds prior to expiration of the warranty period."

It may be that in the circumstances described by the Forest Service remission of the cash bond prior to the expiration of the obligation period of the bond would not be harmful to the Government. We note, however, that applicable regulations do not provide for remission of a bond prior to the expiration of that period. FPR § 1-10.204. In the absence of regulatory coverage setting forth standards for early remission of cash bonds, we must conclude that remission may not be permitted at any time prior to expiration of the obligation period of the bond.

  
Deputy Comptroller General  
of the United States