Federal Acquisition Regulation 28.203–3

entry account indicating that the security has been pledged in favor of the respective agency; (ii) agreed to notify the agency prior to maturity of the security; and (iii) agreed to hold the proceeds of the security subject to the pledge in favor of the agency until a substitution of securities is made or the security interest is formally released by the agency;

(3) Stocks and bonds actively traded on a national U.S. security exchange with certificates issued in the name of the individual surety. National security exchanges are—(i) the New York Stock Exchange; (ii) the American Stock Exchange; (iii) the Boston Stock Exchange; (iv) the Cincinnati Stock Exchange; (v) the Midwest Stock Exchange; (vi) the Philadelphia Stock Exchange; (vii) the Pacific Stock Exchange; and (viii) the Spokane Stock Exchange. These assets will be accepted at 90 percent of their 52-week low, as reflected at the time of submission of the bond. Stock options and stocks on the over-the-counter (OTC) market or NASDAQ Exchanges will not be accepted. Assistance in evaluating the acceptability of securities may be obtained from the Securities and Exchange Commission, Division of Enforcement, 450 Fifth Street NW., Washington, DC 20549.

(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in paragraph (c)(3)(iii) of this subsection, and located in the United States or its outlying areas. These assets will be accepted at 100 percent of the most current tax assessment value (exclusive of encumbrances) or 75 percent of the properties’ unencumbered market value provided a current appraisal is furnished (see 28.203–3).

(5) Irrevocable letters of credit (ILC) issued by a federally insured financial institution in the name of the contracting agency and which identify the agency and solicitation or contract number for which the ILC is provided.

(c) Unacceptable assets include but are not limited to—

(1) Notes or accounts receivable;
(2) Foreign securities;
(3) Real property as follows:
(i) Real property located outside the United States and its outlying areas.
(ii) Real property which is a principal residence of the surety.
(iii) Real property owned concurrently regardless of the form of co-tenancy (including joint tenancy, tenancy by the entirety, and tenancy in common) except where all co-tenants agree to act jointly.
(iv) Life estates, leasehold estates, or future interests in real property.
(4) Personal property other than that listed in paragraph (b) of this subsection (e.g., jewelry, furs, antiques);
(5) Stocks and bonds of the individual surety in a controlled, affiliated, or closely held concern of the offeror/contractor;
(6) Corporate assets (e.g., plant and equipment);
(7) Speculative assets (e.g., mineral rights);
(8) Letters of credit, except as provided in 28.203–2(b)(5).


28.203–3 Acceptance of real property.

(a) Whenever a bond with a security interest in real property is submitted, the individual surety shall provide—

(1) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at http://www.justice.gov/enrd/ENRD_Assets/Title_Standards_2001.pdf. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government under paragraph (d) of this subsection. Agency contracting officers should request the assistance of their designated agency legal counsel in determining if the title evidence is consistent with the Department of Justice standards;

(2) Evidence of the amount due under any encumbrance shown in the evidence of title;

(3) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond,
28.203–4 Substitution of assets.

An individual surety may request the Government to accept a substitute asset for that currently pledged by submitting a written request to the responsible contracting officer. The contracting officer may agree to the substitution of assets upon determining, after consultation with legal counsel, that the substitute assets to be pledged are adequate to protect the outstanding bond or guarantee obligations. If acceptable, the substitute assets shall be pledged as provided for in subpart 28.2.


(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety’s assets using the Optional Form 90, Release of Lien on Real Property, or Optional Form 91, Release of Personal Property from Escrow, or a similar release as soon as possible consistent with the conditions in subparagraphs (a) (1) and (2) of this subsection. A surety’s assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release.

(1) Contracts subject to the Miller Act. The security interest shall be maintained for the later of (i) 1 year following final payment, (ii) until completion of any warranty period (applicable only to performance bonds), or (iii) pending resolution of all claims filed...