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41 USC 431a Must Be Amended to Exempt the Miller Act

41USC§ 431a provides for periodic inflation adjustments to procurement thresholds. Certain thresholds, however, specifically are excluded from this provision. The threshold for construction contracts that must be bonded under the Miller Act should be added as an exclusion, since increasing this threshold exposes more small construction businesses to loss of payment protection on federal construction projects. The Miller Act is a statute that was put in place for protection: protection for subcontractors and protection for US taxpayers.

Many subcontractors and suppliers on federal projects are small businesses. These small businesses often find that their only avenue into the federal procurement arena is as subcontractors and suppliers. Surety bonds, in the form of payment bonds, ensure that they get properly paid, whether the general contractor on the project pays them or not. Such protections cannot be allowed to be compromised as a result of periodic adjustments for inflation. Each adjustment, which may occur every five years, in turn means that there can be an increase in the threshold so that many more federal subcontractors and suppliers perform work on federal projects without the protection of payment bonds. Periodic adjustments to address inflation should not be the reason to decrease the protection provided by performance bonds to the US taxpayers. These bonds protect the taxpayer from loss if the contractor on a federal project defaults.

Congress recognized that certain protections should not be subject to this periodic adjustment. Specifically, Davis Bacon is excluded from the application of this periodic review to protect the payment of wages to laborers on federal projects. The same basis applies to excluding the application to surety bonds to protect payments to subcontractors and suppliers performing work on federal construction projects.

The Federal Acquisition Regulatory Council already has relied on 41 U.S.C. § 431a to increase the threshold for payment security under the Miller Act. In 2006, the contract size threshold for payment security on federal construction projects was increased from $25,000 to $30,000. In 2010, the Council increased the threshold for performance and payment bonds from $100,000 to $150,000, significantly increasing the number of contracts where protection to small businesses and taxpayers is not provided. This dramatic increase is a bad idea, but one mandated by the current statute.

Please amend 41 USC 431a(d)(1) by inserting "3131 through 3134," after "sections." The payment protections afforded small businesses performing work on federal construction projects cannot be comprised by continual adjustments for inflation.