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Ms. Marissa Ryba
Procurement Analyst
General Services Administration (GSA)
1800 F Street, NW
Washington, DC 20006

RE: FAR Case 2022-002--41USC §1908 *Exemption of Certain Contracts from the Periodic Inflation Adjustments*

Comment letter submitted via [*https://www.regulations.gov*](https://www.regulations.gov)

Dear Ms. Ryba;

On behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of firms employing professional surety bond producers licensed and conducting business throughout the United States and its territories, I am contacting you in support of regulatory implementation of Section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year 2022, which removes the Miller Act (40 U.S.C. §§3131-3134) from periodic inflation adjustments as required by 41 U.S.C. §1908. By including Section 861 in the annual defense spending bill, Congress identified additional exceptions for exclusion from periodic inflationary adjustments as set forth by §1908.

The federal government long has recognized the importance of surety bonding requirements on federal construction contracts. The Miller Act, enacted in 1935, and related regulations, require that a payment and performance bond be secured on federal construction contracts in excess of $150,000 (*aka Miller Act bond threshold*). The performance bond assures the federal government and U.S. taxpayers that the construction contract will be performed fully in accordance with its terms and conditions. The payment bond provides invaluable payment protection to parties furnishing labor and/or materials on federal construction contracts. Subcontractors and suppliers rely on the payment bond in the event of non-payment of the prime contractor. Subcontractors cannot lien public property, so the payment bond provides their only means of protection. Often subcontractors are small businesses, and the risk of non-payment can be catastrophic to their businesses. Federal courts long have liberally construed and given effect to the remedial purposes of the Miller Act, routinely noting in decisions that such purposes should not be frustrated.

By decoupling the Miller Act from §1908, Congress made the sound public policy decision that surety bond protections cannot be allowed to be compromised. Every inflationary adjustment means a rote increase to the Miller Act bond threshold (*current level is $150,000.00*), thereby jeopardizing performance protections benefiting contracting agencies and payment protections benefiting subcontractors and suppliers, protections especially critical to small businesses which cannot readily withstand non-payment or severe cash flow interruptions.

It is for these reasons that NASBP strongly urges prompt issuance of regulations implementing Section 861, which decouples the Miller Act from further indexing.

Thank you for your consideration,

Larry LeClair
Director, Government Relations