



**NATIONAL ASSOCIATION OF SURETY BOND PRODUCERS**

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March 1, 2007

Gina Pinzino  
External Affairs Manager, Overseas Building Operations  
US Department of State, Mail Code OBO  
Washington, DC 20522

Dear Ms. Pinzino:

On behalf of the National Association of Surety Bond Producers (NASBP), an international organization of professional surety bond producers and brokers, representing over 5,000 personnel who specialize in surety bonding, including issuing bid, performance, and payment bonds for construction projects, I am writing you to request information about the bonding practices and procedures of the Bureau of Overseas Building Operations with respect to projects under its jurisdiction. It has come to my attention that, in some instances, contractors constructing overseas facilities have had to demonstrate their ability to obtain payment and performance bonds but, upon award, have not been required to furnish payment and performance bonds.

As you may be aware, the Miller Act (40 USCA Sec. 3131 et seq.) requires contractors awarded contracts to construct a public building of the Federal Government exceeding \$100,000.00 to furnish to the Government payment and performance bonds. Numerous courts have held that Miller Act requirements are highly remedial in nature and should be liberally construed to protect the federal government and subcontractors and suppliers furnishing labor and materials on federal construction projects.

Nonetheless, the Miller Act does permit waiver of bonds for contracts performed in foreign countries, but only when the contracting officer determines that it is *impracticable for the contractor* to furnish such bonds. Such a standard does not appear met where, for example, a contractor already has demonstrated its ability to provide payment and performance bonds through the request for qualifications process; in such instances, failure to require payment and performance bonds by the contracting officer of the contractor awarded the contract would not be appropriate.

We believe that the each federal contracting agency's interest is best served when bonding requirements are consistently observed and applied. To that end, we, together with other surety and construction industry representatives, would appreciate an opportunity to meet with you, to learn of the current bonding practices and policies of the Bureau of Overseas Building Operations, and to answer any questions you may have regarding the current surety bond marketplace.

Sincerely,

Mark H. McCallum  
General Counsel & Director of Government Relations

cc: Perry Fowler, Associated General Contractors of America  
Edward Gallagher, Surety & Fidelity Association of America