

SURETY ASSOCIATION of WISCONSIN

August 6th, 2019

Senator Ron Johnson
Chairman, Homeland Security & Government Affairs Committee (HSGAC)
328 Hart Senate Office Building
Washington, DC 20510

RE: Support for and to waive jurisdiction over Section 877 of H.R. 2500, the National Defense Authorization Act (NDAA) for fiscal year 2020 to exempt certain contracts from the periodic inflation adjustments to an acquisition-related dollar threshold.

Dear Chairman Johnson:

We are writing because the House and Senate Armed Services Committee will soon begin to consider language in the annual defense spending bill that impacts small businesses, many of whom are subcontractors and suppliers on federal construction projects, which concerns our members of the Surety Association of Wisconsin. As enacted by the House, Section 877 of H.R. 2500, exempts the federal Miller Act bond threshold from the required indexing of all federal acquisition thresholds for inflation.

The Miller Act has required federal infrastructure projects to be bonded for over 90 years. The payment bond protects subcontractors and suppliers against the risk of non-payment. They rely on the payment bond in case the general contractor does not or cannot pay them. Subcontractors cannot lien public property, so the payment bond provides them their only protection. Subcontractors and suppliers often are small businesses on federal projects and the risk of non-payment can be catastrophic to their businesses.

The performance bond protects taxpayers by ensuring completion of the contract. In the event of a default, the surety steps in to complete the construction contract or hires a new contractor to complete the project, saving the taxpayers from costs of re-letting the project and stopping and restarting. The performance bond assures the public contracting entity that the construction contract will be completed for the contract price.

The Miller Act bond threshold is scheduled to increase from \$150,000 to \$200,000 by 2020. Industry data shows that the federal government's annual exposure to loss from contractor default in just this class of small contracts is \$300 million annually. Assuming an average contract of \$175,000, over 1700 contracts/year are affected. Each adjustment also will increase the payment bond threshold, so more small construction businesses acting as subcontractors and suppliers will not have payment bond protection on increasingly larger federal construction contracts.

Indexing of all federal acquisition thresholds was added to the FY 2005 NDAA report. A few thresholds were exempted at time, such as the wage law and trade agreements. The Miller Act was enacted as a protective statute, and as such, the Miller Act should also be exempted from these inflationary adjustments.

In 2017, the Wisconsin Legislature took corrective action and repealed the state's requirement that the Wisconsin bonding thresholds be indexed every two years. At that time, Wisconsin was the only state in the nation that indexed its state bond threshold. When the legislature realized that the inflationary indexing overtime had given Wisconsin one of the highest bond thresholds in the nation, it repealed this statutory requirement.

In addition to the members of the Surety Association of Wisconsin, Section 877 has widespread support amongst the construction industry, which includes the 15 national organizations listed below who comprise the Construction Industry Procurement Coalition (CIPC).

Please let me know if you have any questions. Thank you for your prompt attention and consideration of this request.

Sincerely,



Michael Zahn
President
Surety Association of Wisconsin

Members of the CIPC urge the 2020 NDAA Conference Report include Section 877 as enacted in H.R. 2500.

- American Council of Engineering Companies
- Associated General Contractors
- American Institute of Architects
- American Society of Civil Engineers
- American Subcontractors Association
- Association of the Wall and Ceiling Industry
- Construction Management Association of America
- Design-Build Institute of America
- Independent Electrical Contractors
- National Association of Surety Bond Producers
- National Electrical Contractors Association
- National Society of Professional Surveyors
- Sheet Metal & Air Conditioning Contractors National Association
- Surety & Fidelity Association of America
- Women Construction Owners & Executives