
RIGHTS & REMEDIES UNDER THE MILLER ACT

SUBCONTRACTORS, SERVICE & MATERIAL SUPPLIERS REMEDIES UNDER THE MILLER ACT 40 U.S.C. §§ 3131-3134

HISTORY

The Miller Act, 40 U.S.C. §§ 3131-3134, was enacted in 1935 and replaced the original Heard Act of 1894. (<http://congressionalresearch.com/97-751/document.php>) The Heard Act of 1894 was originally created to give subcontractors and suppliers a “right of action” against a prime contractor in the event of non-payment for work performed on a Government project. The “right of action” was created because liens could not be placed on U.S. Government property and there were no other remedies available at that time to ensure that prime contractors paid subcontractors and suppliers.

The Miller Act changed some of the wording in the Heard Act to provide subcontractors and suppliers with better protection and eliminated wording that subjected subcontractors and suppliers to undue burdens of proof. *Id.* Under the Miller Act, prime contractors are required to provide payment and performance bonds on awarded projects over \$100,000 to ensure the work is completed and the prime contractor pays its suppliers and subcontractors. In the event that either completion of the work or payment to subcontractors and suppliers does not occur, the supplier or subcontractor can initiate a claim against the prime contractor’s payment bond. *Id.*

SUBCONTRACTOR/SUPPLIER RESPONSIBILITY

Subcontractors and suppliers, whether they are first-tier or second-tier, must keep accurate records and follow the requirements for filing a claim against the payment bond of a prime contractor in the event of non-payment. If, after 90 days, a first-tier subcontractor or supplier has not been paid for materials and/or services performed on a U.S. Government project, it can file a claim against the payment bond provided by the prime contractor. (<http://construction.about.com/od/Claims-Management/a/The-Miller-Act.htm>)

Second-tier subcontractors and suppliers can also file a claim along with the first-tier subcontractor or supplier.

Subcontractors and suppliers must provide accurate proof of amounts owed to them, which have not been paid, the item(s) supplied or provided on the project, and the person or persons (i.e. prime contractor) who owe the subcontractor or supplier payment. *Id.*

ENFORCEMENT OF PAYMENT BONDS

Claims against a prime contractor's payment and performance bonds may be filed with a U.S. District Court as a civil action. (<http://construction.about.com/od/Claims-Management/a/The-Miller-Act.htm>) The claim must be filed, in writing, anytime after 90 days of non-payment, but must be filed before a year has passed and the subcontractor or supplier "...must establish that it furnished labor or material that was used in the prosecution of work or that it furnished labor or material in good faith and with the reasonable belief that it was intended for use in the prosecution of work." (http://www.lorman.com/newsletter/article.php?article_id=53&newsletter_id=13)

The claim must state the amount due and payable and the name of the prime contractor to whom the materials or labor was provided. The claim should be delivered to the prime contractor's bonding company with proof of delivery, such as by certified mail, return receipt requested so that the subcontractor or supplier has a signature verifying delivery and receipt. Any lawsuit filed against the bond, after non-payment of the claim, is filed in the name of the U.S. Government acting on behalf of the subcontractor or supplier and must be filed with the U.S. District Court where the job is located. *Id.* First and second tier subcontractors and suppliers are protected under payment and performance bonds provided by the prime contractor, but any further tiered subcontractors and suppliers, such as third or fourth tier, are not. *Id.*

CONCLUSION

The professional consultants at Excell Consulting International, Inc. can help you gain a better understanding of how the Miller Act works and help you understand what remedies may be available. When you partner with Excell Consulting, our consultants will conduct a specialized review of your particular situation and develop recommendations to guide you in making a business judgment towards potential recovery of funds.

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