

furnished or supplied or for whom the labor was done or performed. The notice shall be served—
(A) by any means that provides written, third-party verification of delivery to the contractor at any place the contractor maintains an office or conducts business or at the contractor's residence; or
(B) in any manner in which the United States marshal of the district in which the public improvement is situated by law may serve summons.
(3) **Venue.**— A civil action brought under this subsection must be brought—
(A) in the name of the United States for the use of the person bringing the action; and
(B) in the United States District Court for any district in which the contract was to be performed and executed, regardless of the amount in controversy.
(4) **Period in which action must be brought.**— An action brought under this subsection must be brought no later than one year after the day on which the last of the labor was performed or material was supplied by the person bringing the action.
(5) **Liability of federal government.**— The Government is not liable for the payment of any costs or expenses of any civil action brought under this subsection.
(c) A waiver of the right to bring a civil action on a payment bond required under this subchapter is void unless the waiver is—
(1) in writing;
(2) signed by the person whose right is waived; and
(3) executed after the person whose right is waived has furnished labor or material for use in the performance of the contract.

Who is protected by the Miller Act

First tier subcontractors and suppliers may bring a civil action in U.S. District Court for the amount unpaid at the time the action is brought on the payment bond provided by the prime contractor. The case may be filed 90 days after, but no later than one year after, the last labor was furnished or materials supplied. First tier subcontractors and suppliers do not need to provide any notice to the prime contractor prior to filing such a suit.

When a civil action is filed by first tier subcontractors in U.S. District Court for the amount owed them, their second tier subcontractors and the second tier subcontractor's suppliers may also bring a civil

action for the amount owed them on the payment bond provided by the prime contractor. However, prior to bringing an action in U. S. District Court, a second tier subcontractor or their supplier must provide written notice to the prime contractor of its claim within 90 days from the date when the last labor was furnished or materials supplied. After providing notice, a second tier subcontractor or supplier may file a suit no later than one year after, the last labor was furnished or materials supplied.

Determining whether a bond was required on a particular contract

You can obtain information from the head of the GSA contracting activity that issued the contract or by calling or writing the Contracting Officer assigned to the contract for which the unpaid work was performed. Please provide the name of the prime contractor, the project description and the contract number in order to expedite your inquiry.

Where to get a copy of the payment bond and the contract for which it was given

You can obtain a certified copy of the bond and the contract from the head of the GSA contracting activity that issued the contract or by calling or writing the Contracting Officer assigned to the contract for which unpaid work was performed. You must send with your request an affidavit that you supplied labor or materials for the contract work and have not received payment. You may forward your request to the GSA Contracting Officer assigned to the contract for which the unpaid work was performed. You will be required to pay a fee for the cost of preparing the copies. Any person being sued on a payment bond can also obtain certified copies by sending an affidavit that indicates a suit has been filed.

Where to file suit

You must sue in the U.S. District Court in which the contract was performed.

Where to obtain additional information

You may contact regional GSA offices for further information but should also consult your own attorney if you have further questions about your protection under the Miller Act

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THE MILLER ACT

**How payment bonds
protect
subcontractors and suppliers**



**U.S. General Services Administration
Public Buildings Service**

Overview

The purpose of this pamphlet is to provide you, a subcontractor, with information on what to do if you have furnished labor or materials to a prime contractor or other subcontractors while working on a GSA Federal building construction project and are unable to collect money you believe is owed to you. The pamphlet explains:

- How a Federal law, the Miller Act, is designed to protect businesses on construction projects and how it may help you;
- The steps to take to use the Miller Act; and,
- How and where to obtain information about bonding requirements.

This pamphlet also includes a portion of the text of the Miller Act that you may find helpful.

What GSA can do

When GSA receives a complaint regarding a supplier or subcontractor's unpaid bill, the reported nonpayment may be brought to the attention of the prime contractor responsible for the project. However, GSA does not explore the merits of the claim and has no legal authority to enforce payment by a contractor. Because Federal buildings are not subject to mechanic's liens, your legal recourse for seeking payment is set forth in the Miller Act.

The Miller Act

The Miller Act requires that prime contractors for the construction, alteration, or repair of Federal buildings furnish a payment bond for contracts in excess of \$100,000. Other payment protections may be provided for contracts between \$30,000 and \$100,000. The payment bond is required as security for the protection of those supplying labor and/or materials in the construction of public buildings. Failure by a contractor to pay suppliers and subcontractors gives such suppliers and subcontractors the right to sue the contractor in U.S. District Court in the name of the United States.

Although the suit enters the courts in the name of the United States, the United States is not liable for any of the costs of the suit.

EXCERPT FROM THE MILLER ACT

TITLE 40 > SUBTITLE II > PART A > CHAPTER 31 > SUBCHAPTER III > § 3131

§ 3131. Bonds of contractors of public buildings or works

(a) Definition.— In this subchapter, the term “contractor” means a person awarded a contract described in subsection (b).

(b) Type of Bonds Required.— Before any contract of more than \$100,000 is awarded for the construction, alteration, or repair of any public building or public work of the Federal Government, a person must furnish to the Government the following bonds, which become binding when the contract is awarded:

(1) Performance bond.— A performance bond with a surety satisfactory to the officer awarding the contract, and in an amount the officer considers adequate, for the protection of the Government.

(2) Payment bond.— A payment bond with a surety satisfactory to the officer for the protection of all persons supplying labor and material in carrying out the work provided for in the contract for the use of each person. The amount of the payment bond shall equal the total amount payable by the terms of the contract unless the officer awarding the contract determines, in a writing supported by specific findings, that a payment bond in that amount is impractical, in which case the contracting officer shall set the amount of the payment bond. The amount of the payment bond shall not be less than the amount of the performance bond.

(c) Coverage for Taxes in Performance Bond.—

(1) In general.— Every performance bond required under this section specifically shall provide coverage for taxes the Government imposes which are collected, deducted, or withheld from wages the contractor pays in carrying out the contract with respect to which the bond is furnished.

(2) Notice.— The Government shall give the surety on the bond written notice, with respect to any unpaid taxes attributable to any period, within 90 days after

the date when the contractor files a return for the period, except that notice must be given no later than 180 days from the date when a return for the period was required to be filed under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

(3) Civil action.— The Government may not bring a civil action on the bond for the taxes—

(A) unless notice is given as provided in this subsection; and

(B) more than one year after the day on which notice is given.

(d) Waiver of Bonds for Contracts Performed in Foreign Countries.— A contracting officer may waive the requirement of a performance bond and payment bond for work under a contract that is to be performed in a foreign country if the officer finds that it is impracticable for the contractor to furnish the bonds.

(e) Authority to Require Additional Bonds.— This section does not limit the authority of a contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases, specified in subsection (b).

TITLE 40 > SUBTITLE II > PART A > CHAPTER 31 > SUBCHAPTER III > § 3132

§ 3132. Alternatives to payment bonds provided by Federal Acquisition Regulation

(a) In General.— The Federal Acquisition Regulation shall provide alternatives to payment bonds as payment protections for suppliers of labor and materials under contracts referred to in section 3131 (a) of this title that are more than \$25,000 and not more than \$100,000.

(b) Responsibilities of Contracting Officer.— The contracting officer for a contract shall—

(1) select, from among the payment protections provided for in the Federal Acquisition Regulation pursuant to subsection (a), one or more payment protections which the offeror awarded the contract is to submit to the Federal Government for the protection of suppliers of labor and materials for the contract; and

(2) specify in the solicitation of offers for the contract the payment protections selected.

TITLE 40 > SUBTITLE II > PART A > CHAPTER 31 > SUBCHAPTER III > § 3133

§ 3133. Rights of persons furnishing labor or material

(a) Right of Person Furnishing Labor or Material to Copy of Bond.— The department secretary or agency head of the contracting agency shall furnish a certified copy of a payment bond and the contract for which it was given to any person applying for a copy who submits an affidavit that the person has supplied labor or material for work described in the contract and payment for the work has not been made or that the person is being sued on the bond. The copy is prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay any fees the department secretary or agency head of the contracting agency fixes to cover the cost of preparing the certified copy.

(b) Right to Bring a Civil Action.—

(1) In general.— Every person that has furnished labor or material in carrying out work provided for in a contract for which a payment bond is furnished under section 3131 of this title and that has not been paid in full within 90 days after the day on which the person did or performed the last of the labor or furnished or supplied the material for which the claim is made may bring a civil action on the payment bond for the amount unpaid at the time the civil action is brought and may prosecute the action to final execution and judgment for the amount due.

(2) Person having direct contractual relationship with a subcontractor.— A person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing the payment bond may bring a civil action on the payment bond on giving written notice to the contractor within 90 days from the date on which the person did or performed the last of the labor or furnished or supplied the last of the material for which the claim is made. The action must state with substantial accuracy the amount claimed and the name of the party to whom the material was