



NASBP & SFAA 2021 JOINT LEGISLATIVE FLY-IN

Key Messages

1

Surety bond products provide vital protection on construction projects for public entities as well as U.S. small business subcontractors, workers, and suppliers tasked with building public works.

2

Support S. 638 and H.R. 1641 to require performance and payment protections when federal loans are provided through the Transportation Infrastructure Finance & Innovation Act (TIFIA) Program.

3

Support legislation to maintain bonding protections, by exempting the Miller Act from periodic threshold increases to ensure small construction businesses and U.S. taxpayers are not unnecessarily exposed to the risk of contractor default.

4

Advocate for performance bonds as an alternative form of security to letters of credit, as currently required for bidders participating on the Federal Communications Commission's (FCC) rural broadband auctions, so small business internet service providers' (ISPs) can better compete for awards.

Advocate for use of performance and payment bonds when states and/or localities receive federal grant funds for construction of rural broadband infrastructure projects.

Surety Bond Protections Have Been Required for Over 100 Years

- The Federal Miller Act (40 U.S.C. Section 3131 to 3134) and similar regulatory requirements adopted in all 50 states have provided vital financial security to protect public construction projects by assuring contractors are qualified to perform the construction and that a reputable and knowledgeable surety stands ready to complete the job if a contractor fails to perform during the project.
- Surety bonds protect taxpayer dollars and ensure small business subcontractors and suppliers on public construction projects receive payment for their services in the event of a contractor default.

Brief History of Surety

1894

Congress passed the Heard Act, which required surety bonds on all federally funded projects.

1935

The Miller Act was established to require the use of performance & payment bonds on public work contracts.

2010

The Miller Act threshold increased from \$100,000 to \$150,000.

TIFIA Financed P3 Projects

Require Payment and Performance Protections on TIFIA Financed P3 Projects

- The risk of the contractor's default, nonpayment to subcontractors, suppliers and workers, and the increased completion costs are the same regardless of the construction delivery method.
- While Public Private Partnership (P3) infrastructure projects may be managed by a private entity, the completed construction project is for the benefit and welfare of the public and surety bonds should be required.
- Support S. 638 and H.R. 1641 which will require performance and payment security, regardless of whether the project is done by a state, local government, public authority, or a private entity.

In 2017 through 2019, sureties paid over *\$2.6 Billion* in connection with contractor defaults and "at risk" federal, municipal and state projects in the U.S.

Eliminate Indexing Surety Bond Thresholds Maintain Bonding Protections

- In 2006, the Federal Acquisition Regulation (FAR) was amended to require several "acquisition related thresholds" to be adjusted every five years for inflation. In 2010, the Miller Act bonding threshold increased from \$100,000 to \$150,000 and is slated to increase to \$200,000 in the future.
- The Miller Act should not be considered an "acquisition threshold" and should be exempted from periodic inflation adjustments. Each adjustment will increase the amount of small construction businesses exposed to the risk of contractor default.
- Surety bonds, in the form of payment bonds, ensure that subcontractors get properly paid, whether the general contractor on the project pays them or not.
- Should the Miller Act bond threshold increase from \$150,000 to \$200,000, the result is an estimated 1,700 unbonded federal projects annually worth approximately \$300M of taxpayer dollars exposed to unprotected loss. If this threshold increase cascades to state and local thresholds, it could result in an estimated 17,000 unbonded annually worth approximately \$4B.

Support Bonds for Broadband Infrastructure

Permit the Use of Bonds to Guarantee the Construction of Broadband Infrastructure

- Currently the Federal Communications Commission (FCC) requires bidders participating on the rural broadband auctions to secure a letter of credit which impacts small business internet service providers' (ISPs) working capital.
- Allowing surety bonds as an alternative form of security for the federally-financed rural broadband infrastructure projects will protect taxpayers and permit small businesses to compete better for awards in FCC auctions.
- Performance and payment bonds have long protected federal interests in other sectors and should be expanded to include rural broadband infrastructure projects.

Sureties protected approximately *\$3 Trillion* of public works projects from 2009-2019 in the U.S.

The surety industry is an essential part of responsible infrastructure development. In the next decade, we could add \$5.7 trillion to the U.S. economy and create over 2.3 million jobs by 2024 with a \$2.1 trillion investment in public infrastructure over a 10-year period.¹

SOURCE

¹ www.spglobal.com/en/research-insights/featured/infrastructure-productivity-boost-coronavirus