THE MILLER ACT: A PRIMER

The Miller Act is codified at 40 U.S.C. §§ 3131-3134. The Act requires a general contractor contracting with the federal government or a federal governmental entity for a construction project with a contract in excess of $100,000 to obtain both a performance bond and a payment bond.

The Miller Act's primary function is to foster construction and development in the public sector, while protecting infrastructure and public projects from the potential lien rights of material suppliers and subcontractors.

Miller Act v. Mechanics Lien

When a subcontractor is not paid for labor or materials furnished to a prime contractor in a private construction contract, the aggrieved party is normaly able to seek recourse if not paid by taking out a mechanic's lien against the property. However, the doctrine of sovereign immunity prohibits a lien being taken out against any public property, and this applies to construction contracts awarded by the federal government.

To afford subcontractors a form of redress, Congress enacted the Miller Act (40. U.S.C.A. § § 3131 and 3133). In our next installment we will discuss specific details covered by the Act including the distinctions between a payment bond and performance bond.