

Federal Miller Act

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Attorneys for construction contractors beware: The Miller Act (40 USCA §3131, *et. seq*) sets out specific time and notice requirements for subcontractors and sub-subcontractors to meet in order to collect on the payment bond posted on federal construction contracts. The Miller Act applies to contracts of more than \$100,000 for construction, alteration or repair of public buildings or public works, with some exceptions. In most cases the general contractor must post a payment bond to ensure payment of sub and sub-subcontractors, who may seek payment under the bond. You and your clients must comply with strict time and notification requirements, which are especially time-sensitive for sub-subcontractors, or else you forfeit your right to collect on the payment bond.

A subcontractor who has not been paid in full within 90 days after the last day that labor or materials were furnished under the contract may file a civil action on the payment bond for the amount unpaid (§3133(b)(1)). Any such action must be brought no later than 1 year after the last day labor or materials were furnished under the contract (§3133(b)(4)).

However, a sub-subcontractor (one who has a direct contractual relationship with a subcontractor but no contractual relationship with the general who furnished the payment bond) must give written notice to the general contractor within 90 days from the last date that labor or materials were furnished (§3133(b)(2)) if it wants to collect under the payment bond. The written notice must be served by a sheriff or any other means providing written, third-party verification of delivery to the contractor where the contractor maintains his office, conducts business, or at the contractor's residence (i.e. certified mail, return receipt requested; §3133(b)(2)(A) and (B)). The notice should include the amount claimed and the name of the party to whom material or services were furnished (§3133(b)(2)). Only after providing written notice within this 90-day period can the sub-subcontractor file a civil action. Once notice is given, suit must be filed within 1 year after the last day labor or materials were furnished under the contract (§3133(b)(4)). Failure to provide the 90-day written notice will in all likelihood preclude recovery under the payment bond and force the sub-subcontractor to sue the subcontractor directly or to get in line behind other contractors for joint payments from the general contractor.

Different requirements may apply to contracts for less than \$100,000, or contracts for the military or Secretary of Transportation. Follow up maintenance or corrective services do not generally extend the 90-day deadline for sub-subcontractors.

Our next article will provide information for contractor clients working on state contracts which are controlled by the Maryland Little Miller Act....