



THE FORCON EDITION NEWSLETTER

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IT'S MILLER TIME!!

SURETY is a weighty topic, with a lot to cover but that does not mean you couldn't use a refresher of or an introduction to the Miller Act. While surety concepts have their roots as far back as Mesopotamia, the **Miller Act** was enacted in **1935** and replaced the **Heard Act of 1894**.

WHO IT PROTECTS:

- Protects the Federal Government
- Protects the Taxpayer
- Protects the Subcontractor/Supplier



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WHAT CONDITIONS NEED TO BE MET TO FILE SUIT:

The labor or materials were supplied in the prosecution of the work provided in the contract.

The subcontractor/supplier has not been paid.

The subcontractor/supplier had a good faith belief that the labor or the materials were intended for the specified work (if multiple projects were contracted and materials made cannot be guaranteed that a specific item was for a specific project).

The jurisdictional requisites of the Miller Act have been met.

WHEN A CLAIM CAN BE SUBMITTED AND WHAT NOTICE IS DUE:

First Tier or Direct Contractual Relationship with prime contractor – Claim must be made 90 days after last work

performed or material supplied, but before one year has passed. No notice is due.

Second Tier or No Direct Contractual Relationship with prime contractor- Claim must be made 90 days after last work performed or material supplied, but before one year has passed. Notice is due within 90 days of the last provided labor or materials.

WHY SURETY AND NOT A TRADITIONAL LIEN:

Mechanic's lien may not be placed on public property, pursuant to the doctrine of sovereign immunity. The mechanic's lien entitles more rights to the land itself (ie sale of the land to payoff outstanding debts) and not just the improvements value, thus the restriction on public works.



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HOW IT'S LIMITED:

Suppliers of suppliers are generally not covered.

*Remoteness is a determining factor.

Does not preempt state laws regarding bad faith, as they are in keeping with the spirit of the Act.

As a reminder, each case is different and with the Little Miller Act, each state has different requirements.