August 7, 2019

Chairman James Inhofe
Senate Armed Services
228 Russell Senate Building
Washington, DC 20510

Chairman Adam Smith
House Armed Services Committee
2216 Rayburn House Building
Washington, DC 20515

Ranking Member Jack Reed
Senate Armed Services Building
228 Russell Senate Building
Washington, DC 20510

Ranking Member Mac Thornberry
House Armed Services Committee
2216 Rayburn House Building
Washington DC 20515

***RE: Support for Section 877 of H.R. 2500, the National* Defense Authorization Act (NDAA) for Fiscal Year 2020, *to exempt certain contracts from the periodic inflation adjustments to an acquisition-related dollar threshold*.**

Dear Chairmen Inhofe and Smith and Ranking Members Reed and Thornberry:

The undersigned members of the Construction Industry Procurement Coalition (CIPC) representing tens of thousands of firms and individuals engaged in architecture, engineering, surveying and mapping, prime contracting, subcontracting, specialty trade contracting, supplying, construction and program management and surety bond production urge you to include Section 877 as enacted in H.R. 2500, in the 2020 National Defense Authorization Act Conference Report.

Specifically, Section 877 exempts the federal Miller Act bond threshold from the required indexing of all federal acquisition thresholds for inflation. The Miller Act has required federal infrastructure projects to be bonded for over 90 years. The payment bond protects subcontractors and suppliers against the risk of non-payment. They rely on the payment bond in case the general contractor does not or cannot pay them. Subcontractors cannot lien public property, so the payment bond provides them their only protection. Subcontractors and suppliers often are small businesses on federal projects and the risk of non-payment can be catastrophic to their businesses.

The performance bond protects taxpayers by ensuring completion of the contract. In the event of a default, the surety steps in to complete the construction contract, saving the federal agencies and taxpayers from costs of stopping, re-letting, and restarting the project. The performance bond assures the public contracting entity that the construction contract will be completed for the contract price.

The Miller Act bond threshold is scheduled to increase from $150,000 to $200,000 by 2020. Industry data shows that the federal government's annual exposure to loss from contractor defaults in just this one class of small contracts is $300 million annually. Assuming an average contract price of $175,000, over 1700 contracts/year are affected. Each adjustment also will increase the payment bond threshold, so more small subcontractors and suppliers will not have payment bond protection on increasingly larger federal construction contracts.

Indexing of all federal acquisition thresholds was added to the FY 2005 NDAA report. A few thresholds were exempted at time, such as the wage law and trade agreements. Moreover, the Miller Act was enacted as a remedial protective statute, and as such, the Miller Act should also be exempted from these inflationary adjustments.

Members of the CIPC urge the 2020 NDAA Conference Report include Section 877 as enacted in H.R. 2500.

Sincerely,

The Following Associations from the Construction Industry Procurement Coalition include:

- American Council of Engineering Companies
- Associated General Contractors
- American Institute of Architects
- American Society of Civil Engineers
- American Subcontractors Association
- Construction Management Association of America
- Design-Build Institute of America
- Independent Electrical Contractors
- National Association of Surety Bond Producers
- National Electrical Contractors Association
- National Society of Professional Surveyors
- Sheet Metal & Air Conditioning Contractors National Association
- Surety & Fidelity Association of America
- Women Construction Owners & Executives