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Congress of the United States
House of Representatives
Washington, DC 20515-3101

September 14, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

Dear Administrator McCarthy:

I respectfully request that in developing an interim final rule implementing the Water Infrastructure Financing and Innovation Act (WIFIA) program that you consider including provisions clarifying that the Miller Act, 40 U.S.C. §§ 3131-3134 and its associated performance and payment bonding requirements or equivalent bonding requirements apply to any public-private partnerships (P3) projects funded or financed by the federal government. The federal government long has recognized the importance of surety bonding requirements for its direct public works procurements. The Miller Act, which was enacted in 1935, and related regulations, require that a payment and performance bond be in place on any federal construction contract in excess of \$150,000.

However, there is concern that such bonding requirements may not apply to public works projects funded by the federal government if they are carried out by a private entity under a P3 agreement such as those authorized by Section 5014 of the Water Resources Reform and Development Act of 2014 (P.L. 113-121). In addition, there are similar concerns that bonding requirements may not apply to public works projects financed by the federal government, such as those authorized by Subtitle C of (P.L. 113-121) through the WIFIA program.

Bonding requirements are critical to protecting taxpayer investments and providing payment assurances to the many businesses furnishing labor, materials, and equipment on construction projects utilizing federal funding. Therefore, I believe it is important that you consider clarifying that bonding is a required protection for the design-build or construction portion of P3s receiving financing through WIFIA.

Thank you for your attention to this important issue.

Sincerely,



Michelle Lujan Grisham
Member of Congress