

REID RIBBLE
8TH DISTRICT, WISCONSIN

333 WEST COLLEGE AVENUE
APPLETON, WI 54911
920-380-0067
WWW.RIBBLE.HOUSE.GOV



Congress of the United States
Washington, DC 20515

1513 LONGWORTH BUILDING
WASHINGTON, DC 20515
202-225-5665

September 12, 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 federal 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. The performance bond assures the public entity and taxpayers that the construction contract will be performed fully according to its terms and conditions. The payment bond provides invaluable protection to parties furnishing labor or material on federal construction projects. Subcontractors and suppliers rely on the payment bond in case the prime contractor does not or cannot pay them.

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.

Regardless of whether funded through direct federal expenditures or by utilizing federal funding through P3 agreements, bonding should be required to protect taxpayer investments and to provide payment assurances to the many small businesses furnishing labor, materials, and equipment on construction projects. Subsequently, I believe it is critical to assure that bonding is a required protection for the design-build or construction portion of P3s receiving financing

through WIFIA. By requiring payment bonds to be furnished on WIFIA-financed P3 arrangements, EPA will ensure that certain subcontractors and suppliers on these projects will have payment remedies in the event of nonpayment, ensuring the continued viability of these often local small businesses.

My office looks forward to working with you on this important issue.

Respectfully submitted for consideration,

Reid J. Ribble

A handwritten signature in blue ink, appearing to read "Reid Ribble", is written over the printed name. The signature is stylized with a large initial "R" and a cursive "J" and "R".

Member of Congress.