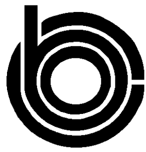

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

June 9, 1999

H.R. 1219
Construction Industry Payment Protection Act of 1999

As ordered reported by the House Committee on Government Reform on May 19, 1999

H.R. 1219 would make several amendments to the Miller Act of 1935, which governs the bonding requirements for federal construction projects. CBO estimates that enacting the bill would not have any significant impact on the federal budget. The bill would (1) require that a general contractor of a project generally obtain a payment bond in an amount that is equal to the total value of the federal contract, (2) permit subcontractors to notify contractors of an intent to sue by means other than registered mail, and (3) require that any waiver of a subcontractor's right to sue on a payment bond be in writing, signed, and executed after the subcontractor has furnished labor or materials for use in the project. The Office of Management and Budget would have 180 days to develop and publish final regulations for implementing the bill's provisions.

The Miller Act requires that general contractors of federal projects provide both a performance bond and a payment bond. A performance bond is a guarantee to the government that the contractor will complete a contract within its time frame and conditions. The amount of the performance bond is generally equal to the price of the contract. A payment bond is a guarantee to subcontractors and suppliers that they will be paid for work they perform properly under the contract. With some exceptions, the amount of a payment bond for a federal project cannot exceed $2.5 million. The Administration, however, has proposed a rule that would lift that ceiling and instead require contractors to provide payment bonds in amounts that are equal to 40 percent of the value of any contract that exceeds $6.25 million (*Federal Register*, December 29, 1998).

CBO estimates that implementing H.R. 1219 would not significantly affect the costs of federal construction, because the surety industry, which issues the payment and performance bonds, generally charges one premium for both bonds. As such, the surety premium—including the cost for issuing the payment bond—for a federal project is already calculated based on the higher contract price. Because it appears the Administration will adopt its proposed rule on payment bonds, it is even less likely that implementing the bill would appreciably affect such costs. To the extent that implementing H.R. 1219 would increase bonding costs for federal projects, CBO expects that contractors would pass

through such costs to the federal government. However, by reducing the risk of nonpayment for subcontractors, H.R. 1219 could also result in some savings if subcontractors were to reduce any risk-related premiums currently charged for working on federal projects. CBO, however, has no basis for estimating the amount of such potential savings.

Because enacting the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 1219 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on the budgets of state, local, or tribal governments.

The CBO staff contact is John R. Righter. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.