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The Honorable Howard Coble
Chairman, Subcommittee on Court, Commercial
and Administrative Law
Committee on the Judiciary
517 Cannon H.O.B.
Washington, D.C. 20515

The Honorable Steve Cohen
Ranking Member, Subcommittee on Court,
Commercial and Administrative Law
Committee on the Judiciary
517 Cannon H.O.B.
Washington, D.C. 20515

Dear Chairman and Ranking Member,

I am contacting you about recently introduced legislation, H.R. 3534, titled the "Security in Bonding Act of 2011," which has been referred to the House Judiciary Subcommittee on Courts, Commercial and Administrative Law, of which you are a member. I strongly support passage of this important bill, because it will bolster the integrity of the federal bonding process by making certain that the assets pledged under non-corporate surety bonds are sufficient and in the care of knowledgeable authorities, thereby protecting small businesses and the funds of taxpayers.

I am a Colorado resident and the owner of a small construction business, JBlanco Enterprises, which furnishes labor and materials on federal construction projects. I nearly lost my business as a result of a deficient individual surety bond placed on a federal project that later proved to have no assets behind it. In the spring of 2006, JBlanco Enterprises entered into a contract with a certified 8(a) prime contractor to roof a U.S. Customs House in Denver, Colorado. Because this was a federal project, JBlanco Enterprises felt it could rely on the contracting agency and the federal contracting officer to ensure that a properly executed payment bond was in place to protect subcontractors and suppliers in the event that the prime contractor failed to meet its contractual payment obligations. Sadly, however, this was not the case.

During the course of the project, the prime contractor became in arrears in paying JBlanco Enterprises for its services. As a result, JBlanco Enterprises placed a claim against the payment bond and requested that the federal contracting officer provide the name of the surety company. We did not receive a response from the contracting officer, and the prime contractor promptly terminated our roofing contract. When we filed suit against the prime contractor, the contract officer, upon learning of the lawsuit, then provided the name of the surety to us.

In the course of litigation, our attorney learned the true nature of the payment bond. The prime contractor had secured a bond from a non-corporate individual surety, not from a certified corporate surety approved and listed on Treasury Circular 570. Moreover, the assets pledged to back the payment bond apparently did not exist. We later learned that this non-corporate individual surety had proffered other bonds on multiple federal and non-federal construction projects. Apart from expensive and time-consuming litigation with the prime contractor, the payment bond was our only recourse for payment—we have no lien rights against federal real property. The inability to recover our payment bond claim was a severe financial hardship for JBlanco Enterprises, endangering our business viability.

Passage of H.R. 3534 will ensure that other small businesses relying on payment bonds on federal projects will not have to experience what JBlanco Enterprises experienced; rather, they can have



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confidence that adequate and reliable security is in place to guarantee that they will be paid for their labor and materials in the event a prime contractor will not be able to fulfill its financial obligations.

Under current law, construction contractors have three options for securing their obligations under their contracts with the federal government. They can obtain a surety bond from a surety company, which is vetted and approved by the U.S. Department of Treasury. In lieu of a bond, contractors can pledge and deposit assets with the federal government until the contract is complete. In such situations, only assets backed by the federal government can be pledged. The third option permits individuals to serve as sureties for contractors by pledging their assets to back the bonds. These individuals are called "individual sureties." Only individual sureties are permitted to pledge assets not backed by the federal government. In fact, individual sureties are allowed to pledge stocks, bonds, and real property, and are not required to deposit such assets with the federal government for the duration of the contract.

To the extent that individual sureties pledge assets that do not exist, are difficult to verify, or are not readily convertible into cash to pay the obligations of the contractor in case of default, subcontractors and suppliers are left unprotected. Experience has shown that if the assets pledged are uncollectible, subcontractors, suppliers, and workers on the job are left with no payment remedy if they are not paid. The federal government is left with unfunded expenses to complete the construction projects. Yet, under federal law and regulations, a contractor pledging assets directly to the federal government to guarantee a contract obligation is subject to far more stringent rules than an individual, acting as a surety for profit, who pledges his or her own assets to guarantee a contract obligation.

H.R. 3534 is just good common sense. The security that stands behind every federal contractor's obligations to the federal government should be governed by the same rules. There should be either a corporate surety bond in place from a company approved by the U.S. Treasury or assets with readily identifiable value pledged and relinquished to the federal government while the construction project is ongoing. The same rules that apply to the security that a federal contractor pledges as collateral should also apply to the security proffered by an individual acting as a surety for a contractor.

I urge you to support H.R. 3534. Please do not let another small business owner fall victim to that of a individual surety bond backed with illusory or worthless assets.

Sincerely,

Jeanette Wellers
JBlanco Enterprises Inc.