



Chairman Steve Chabot  
Small Business Committee  
U.S. House of Representatives  
2371 Rayburn House Office Building  
Washington, D.C. 20515

Ranking Member Nydia M. Velázquez  
Small Business Committee  
U.S. House of Representatives  
2302 Rayburn House Office Building  
Washington, D.C. 20515

May 24, 2017

**RE: Support for H.R. 2594 and H.R. 2350**

Dear Chairman Chabot and Ranking Member Velázquez,

The National Association of Surety Bond Producers (NASBP) and The Surety & Fidelity Association of America (SFAA) are writing to support the enactment of H.R. 2594 and H.R. 2350 as reforms to the federal procurement process to make it simpler and less costly for small businesses to participate. SFAA member insurance companies collectively write the majority of surety and fidelity bonds in the United States. NASBP is a national trade association of firms employing licensed surety bond producers who place bid, performance, and payment bonds throughout the United States and its territories.

***H.R. 2594, “The Small Business Payment for Performance Act,”*** requires federal agencies to make interim partial payments to their construction prime contractors for unilateral changes in contract performance directed by the federal agencies. These reforms will help small business construction contractors and subcontractors shoulder the financial burden of unilateral agency changes to a contract.

Every contractor that wants to procure federal public works contracts must establish a relationship with a surety to obtain the necessary bonds in order to participate on federal projects. Based upon the contractor’s financial standing, the surety provides the contractors with a bonding capacity. This is the maximum amount of surety bonds that the surety will issue to guarantee the contractor’s performance of federal construction projects.

Bonding capacity is expressed in terms of the largest single project that the surety would bond for the contractor and the aggregate limit of bonds that the surety would issue for the contractor. For example, the surety could qualify the contractor for a \$5 million single project/\$25 million in the aggregate. Thus, if a contractor bidding on a \$5 million project could expect the surety to issue bonds for that amount, provided that the new project would not put the contractor over its \$25 million maximum, a term known in the industry as the backlog. If the contractor has five \$5 million bonds in place on projects underway and requests the surety to bond a new \$2 million project, the surety likely would not issue that bond. Although the project is smaller than the ones underway, it would be over the contractor’s backlog.

When contractors and subcontractors are required to perform work change orders that are not approved until a year or two later, the work done on that project, plus the extra work through the change orders, stays in their backlog until the change orders are approved and the construction contract is completed. Most small contractors on federal jobs work as subcontractors. When their work is completed, but tied up by long delays in the approval of change orders, their backlog increases and their bonding capacity decreases—making it harder for them to obtain new jobs. If a subcontractor’s backlog is significant, and one of the jobs that the subcontractor is working on issues a new change order, the surety may not be willing to bond the new change order work. The delay in payment for change orders may make federal projects financially unattractive for small contractors.

Most small contractors cannot afford the uncertainty of change orders being added to their backlog and the long wait times to be paid. The federal procurement process should not put small contractors in the position of essentially providing the federal government with interest free financing for work done under change orders.

***H.R. 2350, “The “Small Business Know-Before-You-Bid Construction Transparency Act of 2017,”*** requires a federal agency to provide prospective federal construction contractors and subcontractors with the information they need to factor into their bids and offers to the federal government the risk and resulting cost of delayed payment for change orders. The Federal Miller Act (40 USC 3131-3134) requires a prime construction contractor with a federal contract of more than \$150,000 to provide a payment bond to assure payment of its subcontractors and suppliers. H.R. 2350 requires a federal agency to post on a Web site a copy of any payment bond provided for the contract. This information will allow all subcontractors or suppliers to obtain a copy of the payment bond without contacting the contracting officer or the prime contractor, and will eliminate numerous responses from individual subcontractors and suppliers. H.R. 2350 also requires posting of other documents and information that all parties to the project want and would otherwise request individually.

These transparent changes offered in H.R. 2350 ensure that subcontractors and suppliers offering labor and materials on federal construction projects have the knowledge they need to make a valid payment bond claim should the general contractor default and fail to meet its financial obligation.

For the reasons stated, NASBP and SFAA support H.R. 2594 and H.R. 2350.

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National Association of Surety Bond Producers  
(NASBP)

Lenore Marema  
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The Surety & Fidelity Association of  
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