United States. Congress. House.

MILLER ACT AMENDMENT

Committee on the Judiciary.

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 3185

MILLER ACT AMENDMENT

JUNE 28, 1978

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MILLER ACT AMENDMENT

WEDNESDAY, JUNE 28, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2226, Rayburn House Office Building, Hon. George E. Danielson (chairman of the subcommittee) presiding.

Present: Representatives Danielson and Kindness.

Also present: William P. Shattuck, counsel; Alan F. Coffey, Jr., associate counsel; James H. Lauer, assistant counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The hour of 10 o'clock having arrived and a quorum being present in spirit if not in number, we will commence.

[The information follows:]

95TH CONGRESS
1ST SESSION

H. R. 3185

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 1977

Mr. MOORHEAD of Pennsylvania introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Act commonly known as the Miller Act to raise the dollar amount of contracts to which such Act applies from $2,000 to $50,000.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of the first section of the Act entitled "An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work", approved August 24, 1935 (49 Stat. 793; 40 U.S.C. 270a (a)), is amended by striking out "$2,000" and inserting in lieu thereof "$50,000".

I

Mr. DANIELSON. Mr. Moorhead, I believe we have the honor of having you with us today.

TESTIMONY OF HON. WILLIAM S. MOORHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, ACCOMPANIED BY CLYDE JACKSON, PRESIDENT, GREATER PITTSBURGH BUREAU AND JOB DEVELOPMENT CORP.

Mr. MOORHEAD. Thank you, Mr. Chairman. May I ask to accompany me to the witness table——

Mr. DANIELSON. We are so pleased to have you here.

Mr. MOORHEAD [continuing]. The next witness?

Mr. DANIELSON. You can just do it any way you want. If you have a prepared statement, it will, without objection, be received in the record and you are now free to present your case in any way you would like.

[The prepared statement of Hon. William S. Moorhead follows:]

STATEMENT OF HON. WILLIAM S. MOORHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, I welcome the opportunity to testify this morning on H.R. 3185, my legislation to amend the Miller Act, and other issues related to the availability of surety bonds for small and minority contractors. I know that the Chairman appreciates that the issues involved here extend far beyond the insurance industry and surety bond per se. We are discussing a social and economic matter as well as an insurance matter. We are discussing justice and equity as much as we are looking at balance sheets and industry profits.

I note that later this morning your Subcommittee will hear from some of the people and associations with whom I've worked for years on this problem.

I come before you proud of my achievements on this front, yet humble because what I and others have done to insure that small and minority contractors have access to surety bonds has not been enough.

The problem of unavailability still persists.

My introduction to the surety bond problem came 10 years ago when the House Banking Committee's Housing Subcommittee, on which I serve, began a long inquiry into the insurance problems of central cities.

It was those hearings that brought the word "redlining" into the popular vernacular. Our Subcommittee produced rather startling evidence that insurance companies were refusing to sell necessary property and crime insurance to inner city neighborhoods, hastening the decline of these once proud communities.

Our hearings led to landmark legislation, which I was privileged to sponsor, creating Federal property and crime insurance programs which guarantee that any homeowner or businessman can purchase the necessary insurance protection for his or her property or business no matter where the location.

Through the course of the hearings, which were held in Washington, Chicago, and other cities, the problems of black contractors, who could not get insurance companies to issue them the necessary insurance—or surety bonds—to bid on construction and other contracts, continued to surface.

As the Subcommittee knows, surety bonds are typically required of firms engaged in the construction industry, as well as in certain parts of the services and supply sectors of the economy. A surety bond is required on Federal construction projects with a value of $2,000 or more. This level was established by the Miller Act of 1935. Many State or other public bodies have similar requirements for bonding. Basically, the bond is purchased by the contractor and furnished to the user of his services; it serves to guarantee the latter that the contractor will perform according to the construction or supply contract. In construction, for example, the bond may be offered to insure the performance of contract on time and according to standards set in the agreement.

Since most contractors do not have or do not wish to furnish direct capital for this purpose, surety bonding companies have been formed to undertake this function and the risks involved, for a premium fee. Generally speaking, surety bonds are required of contractors in order to bid on projects and services. As a result the lack of a bond, effectively excluded firms from securing such contracts.

The issuance of a bond by a surety company in essence says that the insurance company believes that a contractor can perform according to the specifications of the contract.

If the contractor fails, the insurance company is responsible for completing the contract at its own expense. Naturally, insurance companies did not issue bonds to anyone—white or black—whom they felt could not perform adequately. This, to them, was simply good business. To the rejected contractor denied access to work it was more. It was denial of his lifeblood.

The economics of the bonding industry are such that many small contractors, black and white, have had difficulty securing surety. On the one hand, surety companies have argued that the premiums from small contract bonds do not cover the administrative costs involved, much less the risk of default, and they have been reluctant to raise premiums to the level necessary to cover costs. On the other hand, the premiums that would be necessary to gain insurance would inhibit the small contractor's ability to win the contract, since his costs would necessarily include expenses involved in obtaining surety.

Into this fray stepped the federal government.

I introduced legislation, which ultimately became part of the 1970 Housing bill, to have the federal government re-insure any losses that surety companies incurred as a result of issuing a bond to a small or minority contractor who failed to perform the necessary work. This program proved very successful for many small contractors who for the first time were getting bonds and could show their skills and compete in the lucrative yet very predatory casualty filled construction business.

The surety bond program, administered by SPA, has insured some 71,200 contracts since January of 1970, worth over $4.7 billion. Of those totals, approximately, 11,000 contracts, worth $623 million were for minority contractors. Yet the SBA program, while welcomed, has not been seen as an unqualified success, especially by the black community of contractors.

In the SBA program, approximately one in every seven contracts goes to minority contractors. The red tape and procedure involved in securing an SBA backed bond deterred and discouraged many small businessmen from applying, and since SBA still, as it should, had certain capability and performance standards, small contractors without much capital or experience failed even to get the SBA backed bond.

Those that did and performed well in their contracts encountered difficulties "graduating" or going from the guaranty program into the normal surety market when competing for larger contracts and jobs. It was as if "once an SBA bond user, always an SBA bond user". While that's a bit oversimplified, it is not too far wrong.

I have wrestled with this issue for years about how to bring together contractors who need, and in many instances deserve but don't get bonds, and an insurance industry that feels no great social responsibility to provide bonds, an industry which can easily say, based on sound business principle, it should not be insuring risks that will not produce profits for the company.

The Congress would never approve legislation forcing the industry to write the bonds. The Congress will not usurp the function of the surety and seriously consider a program of federal bonding, although the industry always fears that possibility. And most local governments will not, wisely I think, drop their requirements for bonds.

In this environment, as the Chairman I am sure will bear me out, the ability of government is somewhat limited in its desire to help. However, there are two prospects which offer hope that more and more contracts can work on a bonded and a limited Unbonded basis.

The 1977 Housing and Community Development Act authorized communities receiving federal community development funds to use some of that money to provide bonding services for small contractors.

The form which that may take is at the discretion of the community and it is not mandatory. Several communities, including my own City of Pittsburgh, already have planned bonding programs using their CD funds.

The second item or promise is H.R. 3185, the bill the Subcommittee has before it this morning. My bill would raise, from $2,000 to $50,000, the level of federal contract which would not require a bond. The $2,000 figure was established in 1935, as part of the Miller Act, and has stood unchanged today. Anybody wishing to work with the federal government and handle a contract of larger than $2,000 must now get the necessary surety bonds. I know of nobody familiar with this issue—including officials of the insurance industry—who does not feel the Miller limits should be raised.

By increasing the number of small government contracts which require no bond, the obstacle which has confronted many small contractors would suddenly cease to exist. Granted that $50,000 does not seem like a big contract to some, but when you realize that the federal government let $10 billion, I repeat $10 billion, in contracts of under $50,000 in fiscal year 1977, you see that we are talking about a pretty big piece of change.

Mr. Chairman and members of the Committee, the time has come to increase the Miller Act limits.

The $2,000 of 1935 makes little sense today. The paperwork involved in these bonds make them a nuisance to the insurance industry rather than a profit making operation.

The industry itself will testify later in favor of an increase—although not the full $50,000 which my bill contemplates.

Passage of this legislation would be a spur to small and minority businessmen and would remove an obstacle blocking the path to realization of their share of the American dream.

A simple increase in the Miller Act level is a strong step in the direction of our national policy of expanding the business opportunities for minority entrepreneurs. It most certainly would have a positive influence on the level of urban unemployment.

I do not think approval would put the federal government in a threatened position since contractors still would have to compete for the work and the government still would have to choose the most viable contractor.

But we would, I submit, be opening the door of opportunity to more and more independent contractors.

Mr. Chairman, in further consideration of this legislation, it may be the Subcommittee's wisdom that an increase of $50,000 is too great at this time.

I hope that the Subcommittee would not go too far below that number but that is a matter for you to decide. I would state in conclusion though that everybody in this room, familiar with the trials of the small and minority contractor and sympathetic to his plight, would consider a victory any significant increase in the Miller ceilings.

Mr. Chairman, I would now like to introduce to the Subcommittee, Mr. Clyde Jackson, President of the Greater Pittsburgh Business and Job Development Corporation.

Mr. Jackson has worked with minority contractors and the surety matter for many years now. He knows what the Miller Act proposal means to this segment of the population and he will bear eloquent witness to the need for this legislation.

Mr. DANIELSON. Would you kindly identify your friend, accompanist, whatever you wish to call the gentleman, for the record.

Mr. MOORHEAD. Mr. Chairman, I would like to present Mr. Clyde Jackson of Pittsburgh, who is, among other things, head of the United Black Front of Pittsburgh and has been very active with the Minority Contractors Association of our area.

I believe that Mr. Jackson is also scheduled to testify before your committee.

Mr. DANIELSON. Fine.

Mr. MOORHEAD. Mr. Chairman, I welcome the opportunity to testify in behalf of H.R. 3185, my legislation to amend the Miller Act, and other issues related to the availability of surety bonds for small and minority contractors.

This problem, as I discuss in my prepared statement, goes much further than this particular legislation involving the availability of insurance generally, the apparent difficulties that small businesses and minority businesses in particular have had in obtaining contracts generally.

We have enacted in the Congress, legislation relating to insurance generally and we have a program of small business performance bonds for contractors, but there is one glaring block or obstacle to the progress of minority contractors in obtaining business, and that is the Federal Government itself.

Back in 1935 Congress enacted the Miller Act which said that a bond must be required on any Federal contract of $2,000 or more.

Well, Mr. Chairman, we know that dollars in 1935 were different than they are today, and I think we also have an awareness of the importance of extending the opportunities to participate in the free enterprise system to small and minority contractors; therefore, the legislation which I am proposing, which is very brief—it is one page and two lines on page 2—would raise that 1935 limit from $2,000 to a more realistic figure of $50,000.

I have and would like to submit for the record a letter from the Surety Association of America. They endorse the principle of the bill.

[The information follows:]

THE SURETY ASSOCIATION OF AMERICA,
New York, N.Y., June 22, 1978.

Re: Miller Act bond requirement (40 USCA § 270 a)

Hon. William S. Moorhead,
Congress of the United States
Washington, D.C. 20515

DEAR CONGRESSMAN MOORHEAD: In response to your inquiry with respect to your proposal (HR 3185) to raise the dollar threshold of the Miller Act, the Surety Association agrees that some increase is justified. The $2,000 contract amount applying to all construction, alteration or repairs of federal buildings or public works of the U.S. over which amount of performance and payment bond becomes mandatory is not a realistic figure. $2,000 has been the bond requirement since 1935 and the inflationary impact on the dollar since that time suggests that the intention of the original drafters of the Miller Act would be restored by increasing the threshold to an amount which more appropriately reflects todays building costs.

It is possible to argue for different threshold amounts depending on one's point of view, but it is evident that obtaining a $2,000 bond from a surety company places a requirement on a small contractor which may cause him to be unable to bid. If he is not already obtaining bonds in larger amounts from a surety company it is probably not economically feasible for a bonding agent and a bonding company to do the investigation necessary to ascertain his financial condition and ability to perform the contract at hand for any premium which can be logically related to a $2,000 bond.

At some point the valid public concern of protecting suppliers and granters of credit enters the picture and the bond requirement and cost become economically justifiable. This occurs somewhere closer to the $25,000 contract in our opinion but not all surety companies would agree at exactly where the marginal cost of protection to the government and suppliers equates to the premium charge which the surety must make for performing the services of qualification and putting this business on its books. Also it is obvious that surety companies operate in different ways and have varying expense costs. We would, therefore, support some increase to the $25,000 level.

I hope this discussion is helpful to you.

Yours very truly,

ELVER T. PEARSON.

Mr. DANIELSON. Can you tell us who this group is, the Surety Association of America? It sounds to me like they are people involved in the insurance business.

Mr. MOORHEAD. That is correct, Mr. Chairman. While they endorse the principle of the legislation, quite understandably, to protect their business interests, they recommend that the limit be raised only to $25,000. That is a question for the judgment of your subcommittee as to what the appropriate figure is, but I think we at least now have those whose economic interests would be adversely affected, because there would be no surety bonds required on contracts at some figure above $2,000 supporting this legislation.

Obviously, I think that $50,000 is a preferable figure but if the subcommittee in its judgment believes that it should be $25,000 or some amount in between those, I could not in good conscience object, because I think the main thing is to establish the principle—the $2,000 limit in 1935 is totally inadequate—and put in a figure which in my judgment should be $50,000, but in the judgment of the industry that would be adversely affected should be $25,000.

Mr. DANIELSON. The need for a change is self-evident. Anyone who has gone so far these days to recarpet his home or to do almost any one of a thousand things that can be done in the field of construction knows that $2,000 is a less than minimal level; it just doesn't count anymore.

Mr. MOORHEAD. One of the problems we had with the Small Business Administration program which involves not just Government contracts but also private contracts is that once the contractor goes through the process of getting an SBA guarantee, he is sort of locked into the SBA program and can't graduate into the larger program, the free program.

Mr. DANIELSON. Mr. Moorhead, you have heard the buzzer on the wall, as have I. It seems like it never quits these days.

I have looked over the bill; it is a very brief, simple bill; it is not hard to understand. I think I understand the thrust of your testimony. You feel that the limit, the bond ceiling or bond minimum, maybe I should say, which was imposed in 1935, is not realistic in today's economy, that it is not only administratively burdensome but also that it serves as a bar to allowing all Americans to share in the action in our country; and you urge that the limit be raised to $50,000; is that about it?

Mr. MOORHEAD. Mr. Chairman, you have said it better and briefer than I could.

Mr. DANIELSON. Briefer, but not better. You recognize that there are some who would dispute what the new limit should be, be it $50,000 or maybe a figure somewhere between $25,000 and $50,000. That should be the wisdom of the committee after hearing all of the testimony.

Can you tell me one thing: Under the Miller Act there must be a performance bond running to the United States. There must be a materialman's bond running to these suppliers, materials, et cetera. These are two separate bonds. Does that mean under current practice that a person must put up two bonds of equal amount, or can you tell me that? If not, we are going to have people more closely related to the industry testifying and maybe they can explain it to us.

Mr. MOORHEAD. I don't think they are necessarily the same amount because the performance bond means that the insurance company must see that the contract was performed.

The material and laborers' bond is to see that the workers are paid; so I do not believe they would be the same amount.

Mr. DANIELSON. The reason I am pushing a little is the noticed vote on the floor; it is probably a very important vote and so I am going to ask if Mr. Jackson would like to comment. We are running against time, sir, and that is why I am interrupting at this point.

You could wait until after I go vote and come back, but go right ahead.

Mr. JACKSON. I can do it now, Congressman.

I would like to emphasize, as Congressman Moorhead has said, the Miller Act, enacted in 1935 at a ceiling of $2,000, is sort of stumbling block for small minority contractors. It is a stumbling block because the bulk—something like $10 billion or better—has been let by the Federal Government on bonds under $50,000.

We would like very much for the sake of the growth of small and minority contractors that the Miller Act be changed, wherein the bond will read $50,000; and we would also like to make a strong recommendation that those bonds required by service contractors be abolished altogether.

We feel that this will not impose any undue hardship on the public sector because the custom in construction is to pay for work completed. It is a phased time plan, actually, which most construction developers use.

Once you do the work in quarters, or what have you, they pay you for work completed, so we feel that the bond that minority or small contractors put up, plus his cash flow which he must somehow manage to get, plus the competitive angle in vying for the best price in construction letters and what not, we strongly recommend that the Miller Act be changed in those two most important aspects: From the aspect of $2,000 to $50,000, and we strongly feel. Congressman, that anything under $50,000 would not have the same meaning and value for the growth of minority and small contractors.

We would like to also reemphasize that we are suggesting and recommending that bonding for service contractors be eliminated altogether, inasmuch as it serves no useful purpose. It ties up the cash flow of small and minority contractors.

Mr. DANIELSON. Thank you very much, Mr. Jackson.

I am glad you brought up this last point on the service contractors. Though I had familiarized myself with the law and the bill and so forth. I haven't been thinking about the service contractors, so we will expand on that a bit as we hear the various witnesses.

We are going to have to recess, pending time for the subcommittee to go and vote and return.

Mr. Moorhead, did you have any other comments you would like to make?

Mr. MOORHEAD. No; I just ask unanimous consent that Mr. Jackson's statement in full be made part of the record.

Mr. DANIELSON. Without objection—and I hear none—it will be part of the record.

Mr. JACKSON. Thank you, Mr. Chairman.

[The information follows:]

GREATER PITTSBURGH BUSINESS DEVELOPMENT CORP.,
Pittsburgh, Pa., July 28, 1978.

HOUSE JUDICIARY BONDING HEARINGS

The construction industry represents a segment of American industry which is conducive for maximum participation by minority and/or small business persons. The very nature of our economic system has dictated that the construction field is essentially the most feasible and lucrative area wherein minority and/or small business people might enjoy a real degree of success. However, the possibility of success has been reduced significantly due to the acute bonding problems faced by minority and/or small business entrepreneurs. bonding for minority and/or small contractors has been and continues to be the number one deterrent prohibiting these contractors from fully participating in the mainstream of the construction industry. The problem is not merely a local or regional one—but one that is national in scope and influences the course of minority and/or small contractors participation throughout the country. Hopefully today we can provide the initial momentum toward improving this bonding situation.

Basically there are two sectors that support all the construction activity that is conducted in this country; the private sector and the public sector. As you are well aware, the public sector represents a significant portion of these construction activities and can potentially play an important part on the focus of this construction activity. I must emphasize the word potential. The public sector has the power to create an environment that is conducive to the development of strong, viable minority and/or small contractors, but in many cases has failed to take the necessary actions required to do so. This is particularly true in the case of the Miller Act. It represents a thorn in the side of most minority and/or small contractors trying to make his start in the construction industry.

Bonding is a device used in the construction industry to protect the owner of a construction project. It is the vehicle that insures the owner that the project will be complete in the event any one of the participating contractors is unable to complete his portion of the work. The body that provides this protection is the surety. The Miller Act, enacted in 1935, plays a significant part in this bonding process because it sets the upper limits on the dollar amount of any public work that does not require a bond. In 1935 this limit was $2,000 and this limit remains the same today. This $2,000 limit represents a gross injustice to the minority and/or small contractor and therefore should be raised to $50,000.

This demand for an increased limit can be better understood if you understand why the present limit represents an injustice to the minority and/or small contractor. This understanding can come about by examining some aspects of surety industry and the bill itself.

When making a determination to issue a surety bond, surety companies value experience and managerial capability as prime prerequisites. Since many owners of construction companies rise through the ranks from the skilled crafts, minority and/or small contractors by and large have not had the same opportunities for business experience as others. When this criteria is taken into consideration by the bonding agency, these contractors are scrutinized more closely and in many cases are denied a bond.

In many cases these contractors are denied a bond even without the benefit of closer examination due to the high cost to the surety agency (normal fee for sureties are around 1 percent which means that on a $30,000 job the surety only receives $300 which is hardly enough for a close examination or special assistance). In either event the bond rejection in effect, excludes the minority and/or small contractor from participating in the construction industry.

Even in the cases where these minority and/or small contractors are able to secure a bond, the present system places them at a competitive disadvantage for the following reasons:

(1) When they are able to secure a bond it is often at a premium above the prevailing rate which means increased costs of doing business. The ratio is normally 1 percent or more higher which can mean the difference between getting or not getting a job in a competitive situation.

(2) Also when the minority and/or small contractor does receive a bond, they are normally required to process more paperwork which requires more time. For them, as for all of us time is money.

These newly started minority and/or small contractors have enough problems starting out without putting them at a competitive disadvantage due to the bonding requirements.

As was stated previously, the Miller Act was enacted in 1935. In those years the upper limit for construction projects not requiring a bond has not changed from the initial $2,000. Surely no one can advance a solid argument as to why this figure was not changed long ago. Can anyone argue that a dollar today is worth much lwss than in 1935. Therefore we recommend that the $2,000 limit be raised to $50,000.

When considering this $50,000 limit the public sector should not feel that it is unprotected to the tune of $50,000. The system and processes of the construction industry provides additional protection. In almost all cases in the construction industry any payment made to the contractor is based on completed work. Since the public sector monitors the work of all contractors, they are in a position to insure that the contractor is not paid more than the cost of the completed work.

Although our primarily immediate concern is to get the Miller Act ceiling raised, there are some other longer range things that could be done.

Obviously, if anything substantive is to be done to help the minority contractor, what is needed is a well thought out strategy and a dynamic action plan to alleviate the bonding problem and, most important, a coordinated forceful implementation and follow through on the plan.

A coordinated plan could have five major components;

(1) Knowledge of available jobs, especially those jobs which encourage minority participation.

(2) Management and technical assistance in the areas of estimating, financial control, etc.

(3) Sufficient internal cash flow to perform the job. This includes working capital loans and lines of credit.

(4) Bonding.

(5) Follow-up and continuous assistance once the job has started.

The Federal, State and to some extent the local government has attempted to provide these five elements in a piece meal approach. What is needed is a coordinated comprehensive attack on the problem of minority and/or small contracts. This attack must be launched at the Federal level because as previously mentioned the bonding problem is national in scope. We would like to suggest the following approach on the bonding problem. An approach that must be taken if we expect to ever see real growth—and development of minority contractors.

(1) Federal hearings must be called in Washington and throughout this country. These hearings would allow our representatives to see how this bonding requirement is eating minorities and/or small contractors alive. It would also allow the construction industry to present its side before the public and give them one last chance to straighten up their act before the Federal government does it for them.

(2) New H.U.D. regulations allow the use of Federal dollars by private non-profit organizations (Minority Enterprise Small Business Investment Company known as M.E.S.B.I.C.) to provide bonding for minority and/or small contractors. Such programs are operated in various cities throughout the United States but it must be noted that the funds committed to such programs are grossly inadequate to meet the needs of minority and/or small contractors. The public sector should be in a position to intensify this effort because now federal, state, county, and city monies can be mixed together to establish an M.E.S.B.I.C.

(3) We also advocate that the Federal government make an attempt to have the bonds waived for sub-contractors on private work. What happens presently is that the general contractor secures a bond for the total job and then requires each individual subcontractor to secure a bond. We recommend that the general contractors bond be used for all contractors. In an effort to limit the general contractors liability the $50,000 limit could also be used in private work. There should not be bonding constraints for service or supply contracts. This would allow minority and/or small service or supply contractors an opportunity to grow and develop the necessary tract record without the hindrance of unnecessary bonding. The removal of all bonding requirements on service or supply contracts will not place an undue strain on the public or private sector since they do not pay for goods or services until they are delivered.

We feel that if these approaches are taken the Federal government could go a long way toward strengthening the survival rate and competitive position of the minority and/or small contractor.

We appreciate the opportunity to present our views on this critical problem and hope that something will be done to correct it.

Mr. DANIELSON. I might add, Mr. Jackson, that I am glad you got here today. Mr. Moorhead has been on my back for weeks to get this matter taken care of. You couldn't possibly have a more diligent representative.

We are going to be in recess. I will be back in a few minutes.

[Brief recess.]

Mr. DANIELSON. We will continue with the hearing on the bill H.R. 3185 and related bills relating to changes in the Miller Act.

Our next witness in Mr. William H. Harrell of the Coastal Construction Products, Inc.

Mr. Harrel, would you please come forward?

Sir, you indicate that you would like to tape-record your statement. You may do so, if there is no objection. I hear no objection; it is so ordered.

You have handed me a document. Is this your statement, or did you have another statement?

TESTIMONY OF WILLIAM H. HARRELL, PRESIDENT, COASTAL CONSTRUCTION PRODUCTS, INC.

Mr. HARRELL. Mr. Danielson, my appearance here was scheduled as of yesterday. Because of the power outage last night——

Mr. DANIELSON. It is your statement?

Mr. HARRELL. Yes.

Mr. DANIELSON. Without objection, it will be received in the record and you may proceed.

[The information follows:]

STATEMENT OF WILLIAM H. HARRELL

1. Overview:
   - *(a)* Purposes of Millers Act (MA) per 270 a (1) & (2).
   - *(b)* Need to simplify bidding opportunities & procedures.
   - *(c)* Need to simplify dispute settlements by local procedures.
   - *(d)* Problems for "unbondable" contractors w/o Miller Act limits.
   - *(e)* Proposed solution to general benefit of all.
2. Purpose of Miller Act:
   - *(a)* For government—performance.
   - *(b)* For subcontractors and suppliers—payment.
   - *(c)* For contractors—credit.
3. Simplify bidding opportunities & procedures:
   - *(a)* Bonding company—investigating costs & bidders vs low bid.
   - *(b)* Complexity of paperwork for many small businesses. No bid.
   - *(c)* Social programs to improve minority contractor opportunities.
4. Dispute settlement via Federal court vs local courts:
   - *(a)* Small claims procedures vs Federal courts for small.
   - *(b)* SBA guarantees & multiple attorney expenses for Bond.
   - *(c)* 28 U.S.C. Sec. 1352 re: concurrent jurisdiction.
   - *(d)* No response dates per M.A. on bonding co.-to supplier action dates.
5. Results of eliminating bond requirement for <$25,000 contracts.
   - *(a)* Reduction in bond expense.
   - *(b)* Change in material/labor prices.
   - *(c)* Credit vs COD transactions. (1) "Hot" money for Senator Chiles' hearing, Miami, June 5, 1978.
6. Proposed solution:
   - *(a)* Bidding in 2 parts—base bid + Performance and Payment insurance.
   - *(b)* Options a contracting agency—with agency financial responsibility.
   - *(c)* Delete Federal court *only* & name of U.S. Requirements.

Mr. HARRELL. My name is William Harrell. I am president of Coastal Construction Products, Inc., a material supply company. I am appearing for the purpose of trying to explain some problems that the material supply people feel would exist with the change in the limits up to the $50,000 proposed amount.

I would like to review briefly the purposes from the Miller Act as far as insuring the Government's performance and the payment ot the suppliers and subcontractors, recognizing the need to simplify the bidding opportunities for small businesses—which I am one of—to simplify the disputes settlement in the event the general contractor has financial problems, and to ensure that the committee is acquainted with the problems that will befall the general contractor who is unbondable under the current rules that would be expected to be a potential bidder under the revised rules.

Finally, I have a proposal that I would like to introduce.

Mr. DANIELSON. Proceed. You may make your total presentation. Just proceed.

Mr. HARRELL. The Miller Act is protecting the Government by the performance bond and subcontractor and supplier by the payment bond, and the benefit it gives the contractor is that it extends credit more readily because material suppliers are reasonably confident of being paid.

To simplify the bidding opportunities allowing people who presently are burdened by the efforts of achieving, of getting a performance payment bond—the bonding companies find themselves in the position of having to investigate multiple potential bidders, only one of whom is going to get the bid, and therefore they investigate a large number and are paid for only one—we propose a solution which would solve that problem.

Mr. DANIELSON. What is your solution?

Mr. HARRELL. If I could, I will finish that. It is all one package.

Mr. DANIELSON. All right. If you want to present a disjointed statement, that is up to you. Proceed.

Mr. HARRELL. The small businesses frequently don't bid on Government contracts because of the complexities of the paperwork of getting the bonds. They don't know how to do it. This is particularly true of the emerging companies. SBA has some programs to help them, but many of them are even unaware of that.

The new efforts of promoting actively the minority and small business set-aside programs has increased substantially beyond the 1935 date of this act the numbers of people involved in the situation that we are talking about.

Finally, the problem exists in the current act and would be substantially multiplied in the settlement of small claims.

The Miller Act requires the settlement of small claims in Federal court. We suggest that with the economic consequences there is just a horrendous problem for material suppliers. It costs us more to go to court, and you are not going to get paid the attorney fees without some special provisions, and so frequently the bonding companies are never even sued on small claims because of the disjointed realtionship of expense to potential recovery.

The material supplies in those cases simply do not get the benefit of the Miller Act.

Under title 28 of the U.S. Code there is a provision for concurrent jurisdiction allowing the use of local courts, including small claims procedures, which is specifically overridden by the Miller Act.

We would approach the committee asking that they delete the requirement in the Miller Act which states that we must sue in the name of the United States in a Federal court. Five hundred claims cannot be successfully prosecuted in the Federal court.

The result of changing the bond requirement to some number of more than $2,000 would reduce the bond expense and the general contractor would not have to include that expense in his bid. It would change the price probably that the general contractor in this condition is going to pay because he is going to find a large number of material suppliers unwilling to sell at the lowest competitive price for a substantially greater risk which the statistics tell us exist on not getting paid for a higher percentage of the sale.

The result is going to be that many of these contractors you are trying to help by eliminating the Miller Act are going to be substantially penalized by the requirement of having cash on delivery of material.

At the hearing on June 5 that Senator Chiles held in Miami, a large number of minority contractors appeared and their common complaint was of a cash flow problem, which we all recognize exists. They spoke many times of the requirement to go to hot money, very, very expensive, perhaps even illegal, interest rates that they were to pay because they had a contract. They had to perform and they had to have money and they had no place to get it.

As you increase the limits on the Miller Act, you are going to multiply the requirement for cash on the front end for the emerging general contractor.

Our proposal, sir, is that the bids be made in effect in two parts, that the general contractor be allowed to bid on Federal work without the requirement of a bond in advance. This eliminates the bonding companies having to research every bidder. It also facilitates bidding by general contractors who don't know how to get the bond. The low one, two, three—whatever the committee decides—bids are then investigated by the bonding companies and an insurance contract is in turn bid by the bonding companies to the governmental agency and for x number of dollars they will guarantee the performance and the payment of those specific contracts.

The SBA has programs readily available to help these people put together the financial statements required by the bonding companies. The bonding companies, I think, would be more inclined to help, knowing that they are only investigating perhaps one-tenth of the number of firms they previously had to investigate; they would be more inclined to help those few, knowing that one of the two of them or one of the three of them is going to get the contract.

The agency then would have two prices, the performance price quoted by the general contractor and an insurance price quoted by insurance firms. The general contractor would have the option on his own to get his own bank or anyone else, any insurance company he might have better relations with, to also give him a price for a performance and payment bond.

The low resulting price of the sum of these two numbers would be the low bid. This would probably extend the bidding time 4 days, 5 days at the most.

Most of these things that I have worked with have been a year in the process of formulation and award. I don't consider that the 5 days is going to be an insurmountable barrier.

The second benefit that goes with this proposal is that in the emerging general contractor category, and particularly or especially the minority contractors, you have a number of contractors who are financially not quite there but they have a good track record of performance. These people are competing against other emerging and minority contractors who have neither a track record nor even a remote semblance of financial stability.

There is a common phrase in our industry of "bad low" on a low-bid contract. If everybody else is in the $20,000 range and somebody bids $10,000, he is referred to in our industry as "bad low." He missed it; he is frequently given the option of forfeiting some small amount of money or a moderate amount of money and getting out of his contract. Frequently they don't do it. The result is that this undereducated example or a person who did not understand the requirements of the contract, did not understand the cost of performing under that contract, is in a position that an insurance company is going to charge him—as they see everybody else in, for instance, the $10,000 range—they are going to charge him a pretty steep fee to provide a performance and payment bond.

On the other hand, the contractor who was the second low bid—it might have been at $19,000, for instance—and has a track record and a good financial ability, is going to get a very low insurance cost. The sum of the two might result in the lowest possible price to the Government being the second contractor, not the first, and it is in the best interest, in my judgment, of the program, of the effort of improving these people in the minority programs and the emerging business programs, to give them the opportunity to compete amongst themselves responsibly.

The third result is that SBA has the statistics that suggest that while there might be $70 million, $80 million over 7 years of losses, there is four times that amount in savings in lower contract prices. If the agency that is awarding the contract is getting the benefit of $3 of savings for every dollar of expense of loss, you can virtually eliminate the requirements that the DBA setback is the godfather in the situation with his hands open with money. They have got some horror stories that they can relate of contracting administrators, perhaps not enthusiastic about the programs, looking for the opportunity to say, "I told you so."

They had one, before Senator Chiles, of a fence going up. The contractor was paid in full and not the first pole was ever put in the ground, and the agency just turned to the SBA and said, "Come fix it. Go get yourself a contractor and you have a fence to put up."

If you put the responsibility and the financial risk back with the agency that is giving the contract, they will be more prone to administer it with attention and with care.

Finally, if we go in this direction, we have simplified the procedures allowing the bidding of the general contractors. We have put the responsibility where we want it, back in the agencies. We have given the disputes that are inevitably going to occur in these situations the opportunity to be settled in local courts by using title 28 instead of the Miller Act. We have done no harm to the Federal Government in deleting the requirement of Federal court. We are not suing the U.S. Government. We are taking those of us who have had situations of trying to sue under the bond and we find the bonding company guaranteeing its expenses, guaranteed by the SBA to the tune of 90 percent, hiring an attorney in Atlanta, who hires an attorney in Orlando, who hires an attorney in Jacksonville to fight us on a $500 claim which the general contractor tried to pay with a bad check. There never was a dispute as to the validity of the debt.

During the preliminary hearings the attorney in Jacksonville who was a third attorney in the chain, and I approached him on why are we fighting, "Is there any dispute on the debt?" said, "We are not going to talk about the dispute until we get into the right court."

The right court is the Federal court, and in my particular community, Jacksonville, Fla., we have so few judges because of some political problems that we are not even hearing civil cases in Jacksonville; they are buried with the criminal cases. We fought it in small claims court. We have gotten our principle; we are still fighting over the expenses associated with it. We have no reason to have to sue in the name of the U.S. Government. It does nothing to help us; it does a great deal to hinder us; it results in a higher cost to us; it makes us less interested in dealing with the small businesses and the minority businesses; it makes us recognize from a price standpoint we have got to include a higher expense element in what you sell under those conditions or you are going to be out of business; and, after all, it takes the profits that we make to pay the taxes, to fund the SBA, to support their programs.

That concludes my testimony, sir. If you have any questions——

Mr. DANIELSON. Mr. Harrell, just so the record reflects who you are—you are identified as William A. Harrell, Coastal Construction Products, Inc.—are you a one-man corporation who sells construction materials or who are you?

Mr. HARRELL. I am the president and owner of the company. It is a three-person company.

Mr. DANIELSON. That is Coastal Construction Products, Inc.?

Mr. HARRELL. That is correct.

Mr. DANIELSON. Go ahead.

Mr. HARRELL. There are three people in the company. We sell specialty waterproofing and concrete accessory materials in Jacksonville, Fla., and generally the Southeastern area.

Mr. DANIELSON. Are you here on your behalf and that of your company?

Mr. HARRELL. That is correct.

Mr. DANIELSON. Are you representing a trade association?

Mr. HARRELL. I represent no trade association, sir. I am here on my behalf.

Mr. DANIELSON. The thrust of your presentation reaches considerably wider than the purposes of the bill before us. The bill is simply to increase the figure $2,000 to a higher figure. You really are suggesting some substantial changes in the Miller Act, as it understand, it.

You wish, for instance, to eliminate subparagraph (b) of section 207(b) of title 40 which says that every suit instituted under the section shall be brought in the name of the United States for the use of the person making the claim, et cetera. That is the law and what you are suggesting is a change in that law, are you not?

Mr. HARRELL. Yes, sir. Recognizing the fact that I am a three-man business—it is 3 years old—I can't come to Washington each time and I am taking advantage of this opportunity.

Mr. DANIELSON. I am just trying to analyze your purpose here, I don't quarrel with you; you are probably right, but that is what you are suggesting?

Mr. HARRELL. Yes, sir.

Why the Miller Act should not be raised to this $25,000 or $50,000 limit is part and parcel of these issues. These issues are why that limit should not be raised without addressing the problems I have discussed.

Mr. DANIELSON. There is a pragmatic situation. Neither you nor anyone to my knowledge has caused a bill to be introduced to make any substantial changes in the Miller Act. The only legislation pending before the subcommittee is the proposed change in the bonding figure. I am not adverse to going into the entire Miller Act, but when you consider that this is the 27th or 28th day of June and Congress will no doubt adjourn on or about the first day of October, and there will be a brief hiatus for a vacation in the meanwhile, and all bills must pass both houses of the Congress in the same form before going to the President so he can decide whether or not to sign them and make them into law, I would say that anything much beyond the subject matter of the bill before us is just not possible in the 95th Congress because of time constraints.

I don't know that we can go that far. You may have some very good points here. I was quite interested in your suggested change in procedures on bidding; but as a practical matter I just don't know how we can resolve that this year.

Mr. HARRELL. It may well not be resolvable this year, Mr. Danielson, but if the subcommittee in its wisdom elects to raise the bonding issue to $50,000 or $25,000, or any number—it doesn't matter what you choose—with the thinking that you are helping the minority or emerging general contractor, the points that I am making are that you may very well be making a serious mistake because you have addressed only one of many issues associated with it, and there is high probability that you are going to cause those people you are trying to help more problems than you have ever imagined because of the results of credit.

Emerging contractors cannot survive without credit.

Mr. DANIELSON. Following your reasoning then, that we should leave it at $2,000, at least not raise it above $2,000, if that is good, would it not be better then to have a zero base, less than $2,000?

Mr. HARRELL. If one were to carry the point to an extreme, perhaps that would be true. In practice, I don't know that I have ever found myself in the position with the opportunity to quote on a project that was less than $2,000.

Mr. DANIELSON. I would think that you probably would run into the vigorous opposition of your colleagues if you thought about quoting a bid under $2,000.

How small a contrat do you bid on?

Mr. HARRELL. Well, the norm, probably, in our area, that we would sell some materials on a Government project—we sell principally sealants and some waterproofing accessories—it is unusual for us on the small projects that we are referring to here to have more than perhaps $500 or $1,000, which would be our part of the material in the project.

Mr. DANIELSON. That is because of the specific nature of your product?

Mr. HARRELL. That is correct. The lumber industry and concrete industry would be much higher.

Mr. DANIELSON. What we are trying to address here—and I see from your testimony that probably somebody is interested, might well consider making some substantial changes in the Miller Act—but we can't do that this year—the problem we are trying to address is this: 1935 was when the $2,000 limit was put on. I don't believe you were born at that time.

Mr. HARRELL. No. sir.

Mr. DANIELSON. I was very much alive at that time. I know that earning 25 cents an hour was sort of like heaven, that you could get that much money; $2,000 was a lot more money in 1935 than it is today and if $2,000 was a reasonable floor at that time, something in excess of $2,000, it would follow, would be a reasonable floor today.

You may disagree with the whole idea of having people being permitted to bid without posting a bond when you get into even the $10,000 category, and you have some good, logical reasons, but one of the things we try to achieve here is to let people be in business.

I question the value of compelling people to tie up working capital and posting bonds when you are talking about $2,000, $3,000, $4,000 and $5,000. It must be a tremendous burden.

You probably have good standing, but what do you pay for a bond when you hit $2,000, $2,001?

Mr. HARRELL. We don't quote any material on an installed basis, sir, so I never am involved with a bonding company except in a dispute situation. I don't happen to buy bonds; I am simply relying on the bond from a credit standpoint.

But one point I would like to raise, the $2,000 limit in 1935, and recognizing and addressing the effect of inflation, there has been also a major change in our social feelings of responsibility.

Remember that a bond, in spite of the fact that we address it and look at it as insurance, the bonding company will tell you—and they have told me in writing many times in my few disputes with them—they are a bonding company; they are paid perhaps 1½ percent or 1¼ percent of the fee of the contract to investigate the financial and track record or ability of the company to do the job. If they felt like somebody was not financially sound and without the ability to do it, they would not issue the bond.

What they are doing, they are saying their 1½ percent is to pay them to do the research to insure that the Government gets a responsible bidder. They are not an insurance contract. The law, in effect, has the effect of insurance contracts, but their industry will tell you repetitively they are a bonding company, not an insurance company.

Mr. DANIELSON. I think we all understand that distinction; but the net effect is substantially the same.

Mr. HARRELL. Except you have to have the SBA to stand behind the bond, in effect, provide the insurance, because of our changes in our legislature and social responsibility to encourage this.

In 1935 you would not have found these minority and emerging contractors bidding because they couldn't get the bond; so the $2,000 limit was not an insurance limit. Where the number came from, I don't know, really don't care.

The point is that we have changed our social efforts——

Mr. DANIELSON. What you are trying to tell me is, they couldn't get a bond in 1935?

Mr. HARRELL. That is correct.

Mr. DANIELSON. I for one am not going to tolerate a situation in which they can't get a bond and I don't think you are either.

Mr. HARRELL. No, I am not.

Mr. DANIELSON. Go ahead.

Mr. HARRELL. What you have done is changed the law to encourage, through the SBA set-aside program and the minority program, the 8(b) section, so that these people are absolutely, specifically assured that one of them will get the contract. At the same time you created the SBA and gave them $10 million a year to spend on defaults under those contracts, reimbursing the private enterprise industry that is doing what it said it was doing to begin with. It is writing a bond, not an insurance program. The SBA is the insurer.

Mr. DANIELSON. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Harrell, if legislation like this is passed which increases the exemption level from $2,000 to, say, $50,000, how would you change your ways of doing business with contractors that are not bonded on such jobs?

Mr. HARRELL. I would, for my little world, do the same thing that I do now with contractors that are not bonded on non-Government work. He writes me a check or he gives me cash or he goes somewhere else and shops.

If the man's credit and track record don't suggest that I have a virtually certain situation of getting my money, he is not going to get my material. When he walks out of the door with my material, he has the services I have to offer.

Mr. KINDNESS. Is that true whether or not he is bonded?

Mr. HARRELL. No, sir. If the man has a bond, I would give him credit, very liberal. If a guy has already filed bankruptcy, I am very hesitant to give him credit in my business. If he is newly in business, I am encouraged to start him. Some of my very best customers today are people I extended credit to and carried in the early days, because those are the things that people remember and keep coming back and buying at your store for; so I am doing my best to help them. Yet I am going to also insure that I get my money.

Mr. KINDNESS. In case of a bonded contractor, do you necessarily check on what other indebtedness may be outstanding with respect to that contractor before extending credit?

Mr. HARRELL. We have in our community, sir an association. It is the Builders Supply Credit Association, and it has on file every contractor doing business with the major building material suppliers. We know more about the man than probably he knows, what he owes, because we have one place that consolidates the total debt that he has owed to all of the major material suppliers. I don't sell anybody new without going to them. If they don't have some information on it, I let him contact the manager of that credit association, give the credit manager the references; and I rely very heavily, not exclusively, but very heavily, on the advice I get from the credit association as to what they found on this particular individual.

Mr. KINDNESS. But if that contractor has gone heavily over what is calculated in terms of labor cost and you extend credit beyond, or, let's say, perhaps he has not paid the labor cost but it is far in excess of the portion you would anticipate in that contract, you would have no way necessarily of checking that before extending credit to a bonded contractor?

Mr. HARRELL. That is correct, sir. I have absolutely no way of knowing what his labor situation is; all I can talk about is material. Material is normally a relatively minor part, 20 percent, 30 perhaps, it depends on the contract. It is a moderate part of the bill. As long as I have a bond behind me, behind the general contractor, then I am much more liberal in being willing to extend credit because theoretically somebody has already done the research to insure the financial soundness, and I am relying on their good faith, just as the Federal Government is relying on their good faith.

Mr. KINDNESS. So, in a sense, the bond that is required and provided by the contractor is a convenience to you and other material suppliers in terms of being able to conduct business with them? As you would with someone else with a good credit rating whether they have that or not?

Mr. HARRELL. Absolutely, and the other subcontractors who are quoted to do the work with him, they want to know they are going to get paid, too.

The point is, if you raise it to $50,000, how are you going to solve or address the problem that you created for the emerging contractor? Surely he can quote, but you need to listen to some of the small business people and the minority people talking about the interest rates they pay on hot money. You are making a nightmare for them. We who have the financial ability to carry, probably the financial ability to be here and testify, are going to get helped, but that new, emerging guy, who isn't about to come up here because he can't afford it, is going to get clobbered.

Mr. KINDNESS. Thank you.

Thank you, Mr. Chairman.

Mr. DANIELSON. We again have to vote, and so we will be in recess pending this vote.

Thank you very much, Mr. Harrell. Your testimony, as I indicated, is somewhat broader than the thrust of the bill we have before us, but it is important and I thank you.

Mr. HARRELL. Thank you, sir.

[Brief recess.]

Mr. DANIELSON. The next witness will be Mr. James Kimble, counsel, American Insurance Association.

Mr. Kimble, will you come forward? Do you have a prepared statement?

TESTIMONY OF JAMES KIMBLE, AMERICAN INSURANCE ASSOCIATION

Mr. KIMBLE. Yes; I do, Mr Chairman.

Mr. DANIELSON. Without objection, the statement will be received in the record and you may proceed.

Mr. KIMBLE. Thank you.
[The information follows:]

STATEMENT OF THE AMERICAN INSURANCE ASSOCIATION

The American Insurance Association is an organization of 147 insurers writing all lines of property and casualty insurance throughout the United States. The AIA members issue fidelity and surety bonds and account for approximately 70 percent of the total surety bond premiums earned throughout the United States. The AIA companies would, in all probability, account for at least 70 percent of all the Miller Act bonds written on all federal government contracts. An exact figure is not available because separate data is not collected on Miller Act premiums.

H.R. 3185 would modify the historic requirement that the performance of public construction contracts, above a $2,000 contract amount, be secured by performance bonds, and that the interests of those furnishing labor and materials toward completion of such contracts be secured by payment bonds. Under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) the Small Business Administration is empowered to enter into contracts with other agencies of the U.S. Government and arrange performance of the contract by letting subcontracts to small business concerns. However, the Miller Act (40 U.S.C. 270a–270d) requires anyone entering into a contract with the United States for construction, repair or alteration of any public building or public work to furnish both a performance bond and a payment bond. H.R. 3185 would increase the threshold for the bond requirement from $2,000 to $50,000.

Every State in the Union requires some form of surety bond as a guaranty of performance of public construction. With the sole exception of Alaska, there is no State with a threshold of $50,000 or more on public construction. It is apparent that the legislatures of 49 States believe a substantially lower threshold is appropriate for the protection of their interest. In addition, all but one State requires payment bond for the protection of laborers, subcontractors, and suppliers, of those 49 states which currently require payment bonds none excluding Alaska, have a $50,000 threshold.

Each year more and more State legislatures mandate a fixed percentage of their construction awards be set aside for minority or emerging contractors. However, none of the states has proposed coupling the set aside with a bond threshold increase. The reasoning has been that, while the State could take the risk of nonperformance, the laborers and material men cannot risk the exposure of nonpayment. This reasoning is borne out by experience of most surety companies and construction material vendors. The smaller contractors and the newly formed contractors have demonstrated the greatest risk of nonpayment. The states have recognized this problem and, in a number of instances, they have included in their set aside legislation a direction that the SBA Surety Bond Guaranty Program be the source of the necessary bonding.

The SBA Surety Bond Guaranty Program has been operating effectively since 1971. One of the chief benefits of the program is to get emerging contractors into the mainstream of contracting, and bring these small businessmen into early contact with suretyship. The SBG program provides an incentive to private sector bonding companies to participate in the provision of bonds for emerging contractors. SBA receives 20 percent of the surety's gross premium as a guarantee fee. In return, the SBA guarantee is at 90 percent of the surety's substantiated claim loss and expenses if the contract value is less than $250,000. The SBA guarantee is at 80 percent if the contract falls within the $250,000 to $1 million range.

During 1976, the Agency approved 29,138 surety bond guarantee requests from participating sureties. Of these, the program's client contractors were the successful bidders in 13,535 instances with these contracts being valued at $868,170,338. During 1977, the Agency approved 29,932 surety bond guarantee requests from participating sureties. Of these, the client contractors were the successful bidders in 15,485 instances, with the contracts being valued at $1 billion. Minority contractors account for approximately 20 percent of SBG activity. The average contract size is $66,000, indicating that a large number of the bonds written by the SBG program fall into the $2,000 to $50,000 contract range which would be eliminated by H.R. 3185.

The American Insurance Association believes that some increase in the threshold is warranted since the original $2,000 figure was fixed in 1935. However, we consider a 25 fold increase to be excessive. While inflation has taken place, there has also been a marked protraction of payment periods. Vendors now offer terms of 60, 90 and 120 days before payment. Thirty percent or more of payroll dollars are owed to fringe benefit funds. The federal and state governments are creditors for income tax and FICA expenses. All of these factors expand the time and amounts a contractor may owe to third parties and amplify the exposure to loss upon contractor default if the bonding requirement is raised to $50,000.

At present, laborers and suppliers are willing to extend credit to contractors working on Federal construction contracts of $2,000 or more in face value because these creditors know that there is a surety company required to make good on the contractor's financial obligations, in the event of a default. We believe that, as the surety bond requirement's threshold is increased, the trade lines of credit for the contractor will decrease.

AIA suggests that the Congress increase the Miller Act threshold to an amount no greater than $25,000. We must remember that contractors do pyramid their unbonded work by taking on more and more jobs that do not require bonding. If a contractor took on 8 of these $50,000 jobs he would have $400,000 in workload. Laborers and suppliers might be exposed to great loss if the contractor went bankrupt. AIA considers the National Association of Credit Management Construction Practices Committee recommendation of a $10,000 threshold to be reasonable. However, it does not take sufficient notice of the effects of inflation. Accordingly, we recommend that both the manufacturers who sell on credit, as well as the trade unions, should be consulted. The Congress should, after hearing those closest to the bonding area, reach a judgment on a new Miller Act threshold somewhere between $10,000 and $25,000.

Mr. KIMBLE. I am going to summarize my remarks.

Mr. DANIELSON. That will be good. Thank you.

Mr. KIMBLE. My name is Jim Kimble. I am counsel for the American Insurance Association.

The American Insurance Association is an organization of 147 insurers writing all lines of property and casualty insurance throughout the United States. The AIA members issue fidelity and surety bonds and account for approximately 70 percent of the total surety bond premiums earned throughout the United States.

The AIA companies would, in all probability, account for at least 70 percent of all the Miller Act bonds written on all Federal Government contracts. An exact figure is not available because separate data are not collected on Miller Act premiums.

The American Insurance Association recognizes that an increase in threshold for bond requirements from the present $2,000 limit is necessary. We feel that there has been, of course, inflation in the construction industry and some degree of increase is justified.

On page 4 of my testimony I have suggested that the National Association of Credit Management Construction Practices Committee has recommended a $10,000 threshold. I think you should begin your deliberations at that point and establish a new figure somewhere between $10,000 and $25,000.

I think it is important that you consider the intended effects and the actual effects of this legislation. The intended effect is to permit the emerging contractor to do Miller Act contract work up to $50,000 without bond. I don't think that that would be the actual requirements.

There are two basic problems that you have if you waive bonds up to $50,000. It should be recognized that the emerging contractor has the greatest experience, greatest potential for default. If you waive bonds up to $50,000 then you remove protection that the payment bond offers to material men, suppliers, and laborers that work for that emerging contractor.

If there is a default, it is likely that those material men and laborers will not be paid.

A second problem which was mentioned by the previous witness is that it is likely that lines of credit will dry up to the emerging contractor. That, I believe, is why the group which I have just mentioned—the National Association of Credit Management Construction Practices Committee—has established as their proposal a $10,000 limit. That association constituency, the members that would extend credit to these emerging contractors, believes that a $10,000 threshold is proper. It seems to me that is a message, that if you waive bond or if you increase the requirement to $50,000, it is likely that between the $10,000 and the $50,000 area there is not going to be an extension of credit.

That contractor is going to have to pay for his bricks as they arrive. He is not going to get credit any longer.

I think those are two results of the increase to $50,000—one, lack of payment bond, removal of protection to laborers and material men, and credit will dry up to these emerging contractors—and I think those two considerations override any consideration of an increase as high as $50,000.

The American Insurance Association suggests that you arrive at some figure which reflects the inflation in the construction industry, somewhere between $10,000 and $25,000.

Thank you.

Mr. DANIELSON. Sir, you are counsel for the American Insurance Association?

Mr. KIMBLE. Yes, I am.

Mr. DANIELSON. Is the position which you present arrived at by yourself, or arrived at by a consulting board or board of directors?

Mr. KIMBLE. This is an association position.

Mr. DANIELSON. How was that arrived at?

Mr. KIMBLE. Well, we are in contact with the Surety Association; they were mentioned earlier. Most of the member companies of the Surety Association are also member companies of the Insurance Association. The Surety Association is a technical——

Mr. DANIELSON. You need not define it that far. I just wondered how is it arrived at, is it at a meeting in a banquet room someplace?

Mr. KIMBLE. Precisely.

Mr. DANIELSON. Is it done by telephone?

Mr. KIMBLE. It is a committee meeting similar to this one, in which ideas are interchanged.

Mr. DANIELSON. And you are presenting the consensus.

Mr. KIMBLE. Yes, sir, I am.

Mr. DANIELSON. On page 4 you say that AIA, American Insurance Association, suggests that the Congress increase the Miller Act threshold to an amount no greater than $25,000. Later you state: "The National Association of Credit Management Construction Practices Committee's recommendation of a $10,000 threshold is deemed reasonable by the American Insurance Association."

Mr. KIMBLE. We see that as a starting point.

Mr. DANIELSON. Your word here is "reasonable" but then you said it does not take sufficient notice of the effects of inflation, from which I am compelled to infer that you think it probably should be up a little bit further?

Mr. KIMBLE. Somewhere between $10,000 and $25,000.

Mr. DANIELSON. We have your points. Were you present a little bit ago when the gentleman from Florida testified?

Mr. KIMBLE. Yes, I was.

Mr. DANIELSON. He attacked other problems in the Miller Act, for instance, the exclusive jurisdiction in the Federal courts for suits on bonds.

Very briefly, will you give us a comment on that?

Mr. KIMBLE. I don't think I can make policy for my association on that today, and I am not at all sure I have the expertise.

Mr. DANIELSON. Very well. That is an understandable position.

Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Kimble, could you tell us whether the American Insurance Association took into account the lack of availability of capital to do business today in our economy, and whether AIA also considered the relatively easy availability of credit in an operating sense to more established firms as factors that make the competition almost impossible for new contractors? Were those factors considered at all?

Mr. KIMBLE. Those are factors that make an increase to $50,000 practical, but I think there are countervailing factors which outweigh the need of the emerging contractor.

I think in this case the cure may be worse than the disease, in the sense that the emerging contractor's credit line would dry up because if it is assumed he is doing unbonded work, then if there is a default that contractor may not be able to make good on his credit; so I think it can be assumed that that result would not be good for the emerging contractor.

Mr. KINDNESS. Thank you.

Thank you, Mr. Chairman.

Mr. DANIELSON. Thank you very much. You have been very helpful to us. We may call on you again sometime.

Mr. KIMBLE. Thank you.

Mr. DANIELSON. Our next witness will be from the General Services Administration, Mr. C. Christopher Law.

Mr. Law, you are the Deputy Assistant Commissioner for Construction Management, Public Buildings Service, of the General Services Administration?

TESTIMONY OF CHARLES C. LAW, DEPUTY ASSISTANT COMMISSIONER FOR CONSTRUCTION MANAGEMENT, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

Mr. LAW. Yes, Mr. Chairman.

Mr. DANIELSON. With a title that long, I am happy to see you have a short statement——

Mr. LAW. Very good.

Mr. DANIELSON [continuing]. Which will be received in the record, without objection.

[The information follows:]

STATEMENT ON BEHALF OF THE ADMINISTRATOR OF GENERAL SERVICES BY CHARLES C. LAW, DEPUTY ASSISTANT COMMISSIONER FOR CONSTRUCTION MANAGEMENT, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

Mr. Chairman, and members of the Subcommittee, I am Charles C. Law, Deputy Assistant Commissioner for Construction Management of the General Services Administration. On behalf of Jay Solomon, Administrator of General Services, I wish to express my appreciation to the Subcommittee for extending the opportunity to present testimony with regard to H.R. 3185, a bill "To amend the act commonly known as the Miller Act to raise the dollar amount of contracts to which such Act applies from $2,000 to $50,000."

The Miller Act presently provides that payment and performance bonds be supplied on all contracts awarded by the Federal Government for public buildings or public works which exceed $2,000. The proposed amendment would raise to $50,000 the minimum contract amount for which bonds would be required.

GSA agrees that the present $2,000 threshold is unrealistically low. An increase in the threshold would reduce paperwork for both the Government and business firms, decrease the amount of capital needed to start work under a contract, and expand competition by opening bidding opportunities to small, new, and minority-owned firms which now have difficulty obtaining bonds.

We recommend, however, that the threshold be established at $25,000 rather than the proposed $50,000 level, in order to maintain a comparable extent of protection for suppliers of labor and material as was envisaged when the Act was originally drafted in 1935. (Today's equivalent of the $2,000 threshold originally established is about $20,000.) With the current threshold of $2,000, GSA has approximately 4,000 contracts at any given time which are subject to the Miller Act. If the threshold were increased to $25,000, somewhat less than 1,000 of our contracts would be subject to the Miller Act at any one time.

GSA's suggestion is predicated on recognition of the continuing need of subcontractors, suppliers, and workmen of an assured means of securing payment in the event a prime contractor or his first tier subcontractor fails or refuses to pay them. The payment bond requirement was originally passed by Congress because unpaid suppliers of materials and labor could not file a mechanic's lien against Federal property when not paid by the contractor for whom they performed work. Without the Miller Act, they would be completely deprived of a remedy. Prime contractors who are such poor risks that sureties are unwilling to bond them (even with a 90 percent Small Business Administration (SBA) guarantee) would, if the bill were passed in its present form, be enabled to bid on and be awarded Government contracts up to $50,000 leaving the subcontractors, suppliers and workmen with no payment bond protection under the very contracts for which there is the greatest likelihood of need for that protection. Many of those subcontractors and suppliers are, themselves, small business firms, who would be seriously harmed if unable to collect for the materials and labor they put into the project for the prime contractor. The performance bonds also protect the Government from the expenses associated with a contractor's failure to complete the contract work.

Even the prime contractors would be exposed to additional harm if the level were raised to $50,000. Firms that could not obtain bonds because of the possibility that they would not be able to complete the contract would, if no bond were required, be tempted to bid on contracts beyond their ability to complete and find themselves subject to default termination and the liability ensuing therefrom.

It is for these reasons that GSA would strongly urge maintaining at least a level of protection roughly comparable to that originally established by Congress. With the above modification, we support the proposed legislation.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions which you or members of the Subcommittee may have.

Mr. DANIELSON. You may proceed, sir.

Mr. LAW. Very good. Thank you, Mr. Chairman and members of the subcommittee.

As you said, I am Charles C. Law, the Deputy Assistant Commissioner for Construction Management of GSA.

On behalf of Mr. Solomon, the Administrator of GSA, I wish to express my appreciation to the subcommittee for extending the opportunity to present testimony with regard to H.R. 3185.

The Miller Act presently provides that payment and performance bonds be supplied on all contracts awarded by the Federal

Government for public buildings or public works which exceed $2,000.

GSA agrees that the present $2,000 threshold is unrealistically low. An increase in the threshold would reduce paperwork for both the Government and business firms, decrease the amount of capital needed to start work under a contract and expand competition by opening bidding opportunities to small, new and minority-owned firms which now have difficulty obtaining bonds.

Mr. DANIELSON. Sir, you have made your point pretty well.

What you are saying is, you think $2,000 is too low; you think $50,000 is too high; you think $25,000 might be pretty reasonable?

Mr. LAW. Yes, sir. Today's equivalent in the construction industry of $2,000 is approximately $20,000, or very relative to the $25,000 threshold which would allow for a little additional inflation, if you will. We have at this time approximately 4,000 contracts that would be affected by the Miller Act under the present $2,000 threshold.

The increase of the threshold to $25,000 would reduce the number of contracts below 1,000 that would be affected by the Miller Act.

Mr. DANIELSON. It would reduce the number of contracts below $1,000?

Mr. LAW. Below $1,000? Below 1,000 contractors.

Mr. DANIELSON. Oh, contractors?

Mr. LAW. Yes, sir. This suggestion, as indicated in the statement, is predicated on the recognition of the continuing need of subcontractors, suppliers, and workmen of an assured means of securing payment in the event a prime contractor or his first tier subcontractor fails or refuses to pay.

Mr. DANIELSON. If you are reading the statement, we already have it in the record.

Do you have any points except those which I summarized—that you think $2,000 is too small, you think $50,000 is too big, you think $25,000 would be realistic?

Mr. LAW. We think $25,000 would be realistic. As others have testified, we think also that the increase to $50,000 could be counterproductive.

Mr. DANIELSON. You made that point.

The reason I have to hurry is that we have other bills besides this and we have other witnesses on this bill. If you have some other points of argument, I would like to have it, but I have skimmed your statement and I only got those three points.

Mr. LAW. Basically, our statement is pretty clear, pretty factual.

Mr. DANIELSON. You favor $25,000, you oppose $50,000, and you recognize $2,000 is too low?

Mr. LAW. Right.

Mr. DANIELSON. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman. No questions.

Mr. DANIELSON. Thank you very much, Mr. Law.

Mr. LAW. Thank you.

Mr. DANIELSON. And good luck. Our next witness will be Mr. John Trask, Associate Administrator for Finance and Investment of the Small Business Administration, who will be accompanied by Mr. Dan Gibb, Chief Underwriter.

Gentlemen, please come forward. Will you identify yourselves for the benefit of the reporter.

TESTIMONY OF JOHN TRASK, ASSOCIATE ADMINISTRATOR FOR FINANCE AND INVESTMENT, SMALL BUSINESS ADMINISTRATION, ACCOMPANIED BY DAN J. GIBB, CHIEF UNDERWRITER, SBA

Mr. TRASK. Yes, sir. I am John M. Trask, Jr., Associate Administrator for Finance and Investment, Small Business Administration.

Mr. GIBB. I am Danny J. Gibb, Chief Underwriter, Surety Bond Guaranty program, SBA.

Mr. DANIELSON. Mr. Trask, without objection your statement will be received in the record.

[The information follows:]

STATEMENT OF JOHN TRASK, ASSOCIATE ADMINISTRATOR FOR FINANCE AND INVESTMENT, U.S SMALL BUSINESS ADMINISTRATION

Mr. Chairman and members of this subcommittee, thank you very much for this opportunity to present our views on H.R. 3185, which would raise the dollar amount of contracts affected by the performance and payment bond requirements of the Act from $2,000 to $50,000.

We at the Small Business Administration believe that the Miller Act, in its present form is outmoded. The $2,000 ceiling may have been appropriate in 1935, but it is not appropriate today.

Enacted in 1935, the Miller Act requires that performance and payment bonds must be furnished under any Federal contract in excess of $2,000 for the construction, alteration, or repair of any public building (or public work) of the United States.

The performance bond is intended to protect the Government against failure of the contractor to perform the contract work.

The payment bond provides protection for employees, suppliers, and subcontractors by ensuring payment for services rendered or products supplied in the event the contractor is unable to pay.

The Miller Act now has thousands of imitations in the statutes of states, counties, cities, school districts and hospital districts.

Surety bonding is a difficult problem for all small business persons, but particularly minority business persons. Even within our own 8(a) program, contracts can be offered with relative ease, but there can be exasperating difficulties in obtaining a surety bond.

Many small firms may not have the track record necessary to obtain surety bonding, and since some of the potential contractors may not be able to obtain the required bonds, the $2,000 threshold tends to limit competition on small construction jobs.

SBA's Surety Bond Guarantee Program does help to fill the gap. We have attached to this statement some information regarding the program. Although the program does help, we believe some very basic changes must take place.

We believe that legislation to raise the Miller Act ceiling would go a long way toward alleviating the major bonding difficulties faced by small business persons today.

However, in considering a higher threshold, it is important to remember that the bonding system does serve a valuable function of screening out unqualified contractors. The resulting protection for laborers and material-people could be lost if the threshold is raised too high.

At this time, we believe raising the threshold to $25,000 is most appropriate.

This concludes my prepared statement. I will be happy to respond to any questions you may have.

Thank you.

Exhibit A

Consolidated SBG details—January 1971 through May 1978

Guarantees requested	138,335
Guarantees approved	132,526
Contract awards	72,783
Contract amounts	$4,845,127,902
Average contract size	$66,569
Number of contractors (estimate)	28,000
Number of sureties	108
Default notifications	4,612
Expenses:	
Loss (Paid plus outstanding reserves)	$97,438,555
Administrative expenses	3,832,491
Interest paid to U.S. Treasury	5,791,248
Gross SBG expenses	107,062,294
Fees paid to SBA:	
From Sureties	9,057,657
From contractors	10,209,969
Recoveries	6,958,025
Offsetting SBG income	26,225,651
Net loss to SBA/SBG	80,836,643

EXHIBIT B.—NATIONAL SURETY BOND GUARANTEE STATISTICS BY NATION AND REGIONS AS OF MAY 31, 1978

Regions	Guarantees requested by sureties	Guarantees approved by SBA	Contracts actually obtained	Dollar value of contracts awarded	Average value of contracts awarded	Defaulted notices received by SBA (number by regions only)
I—Boston	2,650	2,554	2,175	$143,593,074	$66,020	129
II—New York	3,400	3,290	2,294	179,264,655	78,145	119
III—Philadelphia	8,156	7,183	4,329	274,078,604	63,312	327
IV—Atlanta	34,972	33,169	15,837	1,202,481,254	75,929	1,073
V—Chicago	17,125	16,730	11,820	723,180,030	61,183	626
VI—Dallas	24,567	23,642	13,542	925,497,805	68,343	857
VII—Kansas City	3,313	3,253	1,771	106,142,626	59,934	76
VIII—Denver	3,989	3,884	2,506	177,337,840	70,765	115
IX—San Francisco	29,833	29,081	13,761	790,584,549	57,451	1,059
X—Seattle	10,330	9,740	4,748	322,967,466	68,022	231
National total	138,335	132,526	72,783	4,845,127,902	66,569	4,612

EXHIBIT C.—SBG's MINORITY DATA

Report period	Area	Number of contract awards	Dollar value of contracts
May 1978	Nationally	246 (of 1,554)	$17,489,438 (of $105,531,712)
Cumulatively (Jan. 1971–May 1978)	Nationally	11,135 (of 72,783)	$640,079,588 (of $4,845,127,902)

BREAKOUT OF MINORITY PARTICIPATION

Groups	Nationally
Black	6,879
Puerto Rican	106
American Indian	689
Spanish American	2,997
Asian	440
Eskimo and Aleuts	24
Totals	11,135

Significant Minority Percentages
(Nationally)

18.0 percent of Contracts
13.2 percent of Contract Dollars
16.3 percent of Contractors (Since Dec. 1, 1976)
39.5 percent of Defaults (Thru Feb. 28, 1978)
43.9 percent of Losses (Thru Feb. 28, 1978)

Mr. DANIELSON. It is a nice, succinct one, so proceed ad lib.

Mr. TRASK. Mr. Chairman, I think I can make my comments even more succinct than that.

We favor the $25,000 threshold. We think that $50,000 may be too much, and that $25,000 will give us a chance over the next couple of years to see if these problems—which have a lot of merit—are really as serious as they seem, and so we would like to try out the $25,000 and if, over time, experience proves that we should go back or raise it, then we would be willing to take a look at that time.

Mr. DANIELSON. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

In H.R. 11318 of the 95th Congress which was entitled, "An Act to amend the Small Business Act and the Small Business Investment Act," there is a proposal there to expand the ability of the SBA to waive the bonding requirements under section 8(a).

Could you tell us in connection with this legislation that is proposed how has that bonding requirement waiver operated under section 8(a)? Is it successful in prospect or in practice?

Mr. TRASK. It is my understanding that at the present time SBA still requires the bond, even though we are the prime contractor, so that is an area that I think could be better answered by those in charge of that department. But what I just told you is my understanding of it.

Mr. KINDNESS. It hasn't been fully implemented to a great extent?

Mr. TRASK. Mr. Gibb, who is active daily in the details of the bonding department, might be able to shed some more light on that.

Mr. GIBB. Congressman, it is my understanding that the Federal Procurement Policy Task Force has asked for an SBA opinion of counsel, as well as from the GAO and Comptroller General's office as to whether bonds can be waived on 8(a).

There seems to be some confusion as to whether the 8(a) section is specifically covered or not covered by the Miller Act.

Mr. KINDNESS. I see.

Mr. DANIELSON. I want to compliment you while we are waiting on your statement. You said it without saying it six different times. You said it all here. It is a very good statement. I think we should distribute this to prospective witnesses as an example.

Mr. KINDNESS. Mr. Chairman, if I might just try one more element of this question.

H.R. 11318 has passed the House of Representatives but hasn't been acted on in the Senate, and in that bill, on page 7, it provides for the SBA to be authorized to completely waive. It is broadening the present authority.

I assume that there is a degree of conflict, not conflict of purpose but duality here as between the legislation we are talking about today and H.R. 11318.

Do you know whether SBA has taken any position with respect to H.R. 11318 and its provisions that would broaden that authority to waive bond entirely?

Mr. TRASK. Sir, I do not know the answer to that. Personally, it seems very reasonable to me; but I don't know the agency's policy on that. I will glad to find out and try to get an answer for you.

Mr. KINDNESS. I would appreciate it because I am just concerned, Mr. Chairman, that we are going to have duplication of effort, legislative effort, here, and at least as it relates to section 8(a).

Mr. DANIELSON. I have only really one question: Were you present at the time the gentlemen from Florida testified—I am thinking of the other thrust here, that maybe we shouldn't require suits in the U.S. district court on some of these smaller claims—were you present at that time?

Mr. TRASK. I was present, yes, sir.

Mr. DANIELSON. Just very concisely give us your offhand, curbstone opinion on that.

Mr. TRASK. About where the suit should be brought?

Mr. DANIELSON. Yes.

Mr. TRASK. Sir, I am not a lawyer and I really don't know that I could give you a good answer.

Mr. DANIELSON. The problem really hasn't come to your attention then too much?

Mr. TRASK. No, sir, it hasn't.

Mr. GIBB. If you don't mind the opinion of a guardhouse lawyer——

Mr. DANIELSON. This is just your own opinion?

Mr. GIBB. I agree with Mr. Harrell. It is kind of silly that all these small claims, that could be taken care of in local courts, need now to be heard in Federal courts, simply because the contract involved came under the auspices of the Federal Miller Act.

Mr. DANIELSON. They are beyond the scope of this bill, but it occurs to me that it might not hurt for this committee to do a little overview of the Miller Act. As times goes by it just may not fit today's world.

Mr. TRASK. Let me volunteer one other thing: I have had some experience with small business as a supplier and it would seem to me that if the Federal Government could make the check out jointly to the supplier and the subcontractor, that would assure the payment.

Mr. DANIELSON. It would what the payment?

Mr. TRASK. It would assure that the payment was made to the supplier. I think the fear is now that the subcontractor will get paid by the Government, but then the subcontractor won't pay the supplier.

Mr. DANIELSON. That is as old as contracting. You have no idea how many swimming pools have been paid for two times in California.

Very well. Thank you very much. I appreciate your contribution, and there are no other witnesses on this bill and therefore the hearing of evidence on this bill is concluded.

Thank you very much.

Mr. TRASK. Thank you.

[The following statement was submitted for the record:]

STATEMENT OF AMERICAN SUBCONTRACTORS ASSOCIATION

The purpose of the Miller Act is to secure payment for the subcontractors and suppliers of government contracts. It is a substitute for construction liens ordinarily available on non-public construction projects.

The impact of this proposed change would have a dramatic affect on small subcontractors and suppliers. This would eliminate all securities now available to the small businessman and would enahnce, if not encourage, non-payment. These small subcontractors and suppliers will be especially concerned with the credit worthiness of a general contractor on non-bonded projects, with the result they may refuse to bid to contractors they consider to be credit risks, resulting in less competition on government work and higher prices. Of particular note is the bad affect on minority subcontractors and suppliers who in many substances work for minority general contractors and might receive the blunt of non-payment, a fatal blow in a small business.

ASA recommends the level remain at $2,000.

[Whereupon at 11:30 a.m. the hearing on this subject was concluded and the subcommittee proceeded to other business.]

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