Individual Surety Fraud

Presented by: L. Jay Labe, ALLEN & CURRY, P.C. - Denver

September 6, 2016
Presenter Biography

Jay Labe is of counsel to the law firm of Allen & Curry, P.C. in Denver, Colorado. For the past forty years his practice has focused on the defense of construction contract sureties confronted with payment and performance bond claims on federal and state public works projects and large private projects.

Jay is a member of numerous national and local surety industry organizations including ABA Forum on the Construction Industry, the ABA Tort Trial & Insurance Practice Section and the NASBP Attorney Advisory Council. He is a frequent speaker on a broad range of surety topics including construction, commercial and miscellaneous bonds, commercial bail insurance and surety fraud.
An “Individual Surety” Case Study

ABBA Bonding
Regulation of Standard Surety Companies

- Corporate sureties are regulated by departments of insurance of their state of domicile
- They are also regulated by the department of insurance in each state where they do business
- The U.S. Treasury Department approves their acceptability as sureties on Federal projects
TREASURY LIST – CIRCULAR 570

“One Click Underwriting”

FINANCIAL MANAGEMENT SERVICE
A Bureau of the United States Department of the Treasury
fms.treas.gov

Surety Bonds

Department of the Treasury's Listing of Approved Sureties (Department Circular 570)

- Certified Companies
- Certified Reinsurer Companies
- Footnotes
- Notes
- States Insurance Departments
- Supplemental Changes to Circular 570

For Customs 3 Digit Surety Codes call (317) 614-4484

4810-35

Department of the Treasury
Fiscal Service
(Dept. Circular 570; 2007 Revision)

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies

Effective July 1, 2007

NARS
Acadia Insurance Company (NAIC #31325)
BUSINESS ADDRESS: P.O. Box 9010, Westbrook, ME 04098-5010. PHONE: (207) 772-4300. UNDERWRITING LIMITATION b/: $5,930,000. SURETY LICENSES c,f/: AZ, AR, CO, CT, DE, DC, GA, KY, ME, MD, MA, MS, NH, NM, NY, OK, PA, RI, SC, TN, TX, UT, VT, VA. INCORPORATED IN: Maine.

ACCREDITED SURETY AND CASUALTY COMPANY, INC. (NAIC #26379)
BUSINESS ADDRESS: P.O. Box 2067, Winter Park, FL 32790-2067. PHONE: (407) 629-2131. UNDERWRITING LIMITATION b/: $2,139,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.
What is an “Individual Surety”? 

- Only individuals, not business entities, can be an individual surety. 

- Contracting Officer approval is required. 

- FAR (Federal Acquisition Regulation) compliance, including:

  SUBMISSION OF AN AFFIDAVIT OF INDIVIDUAL SURETY

  PLEDGING COLLATERAL: Value of assets pledged to the specific bonded project. Its value must equal or exceed the bond penalty.

  COMPLYING WITH REQUIREMENTS REAL PROPERTY PLEDGED:
  (a) Proof of property value & ownership of property
  (b) Providing contracting agency with perfected security interest

  (FAR §28.203-1(b)(1)).
What you need to become an “Individual Surety”

- A phone number
- A mailing address
- “Collateral”
- Marketing
- Forms
- Chutzpah
- An office
What you don’t need to become an “Individual Surety”

• A track record
• Financial capacity or reserves
• An underwriting office
• A claims office
• Trained staff
• Policies or procedures
An “Individual Surety” in Cyberspace
The Scenario

- A contracting officer confronts an “Individual Surety” Miller Act bond submission:
  - A $1,000,000 federal project is being procured
  - The contractor wants to use an individual surety
  - The contracting officer is told that this is an “FAR approved alternative” to Circular 570 qualification
  - The contractor tenders:
    Miller Act Bonds (SF 25 & 25A)
    “Affidavit of Individual Surety” (SF 28)
SPECIAL INFORMATIONAL NOTICE TO ALL BOND-APPROVING (CONTRACTING) OFFICERS

Important Information Regarding the Use of Individual Sureties on Federal Bonds

Subchapter E, Part 28 of the Federal Acquisition Regulation (FAR) provides guidance as to the acceptability of sureties and other security for Federal bonds. Acceptable security on Federal bonds include, but are not limited to, both corporate and individual sureties. FAR § 28.201. Acceptable corporate sureties must appear on the Department of Treasury’s Circular 570. Treasury’s Financial Management Service, Surety Bond Branch (FMS), publishes Department Circular 570 in the Federal Register.

Contracting officers determine the acceptability of individual sureties and ensure that the individual surety’s pledged assets are sufficient to cover the bond obligation in accordance with the guidance outlined in the FAR § 28.203.

Although FMS is not substantively responsible for approving individual sureties, we believe it prudent to issue this Special Informational Notice on a FYI basis to Agency Bond-Approving (Contracting) Officers who do have that responsibility under the FAR.

Recently, FMS has been made aware of instances where individual sureties are listing corporate debenture notes and other questionable assets on their “Affidavit of Individual Surety”, Standard Form 28. In some instances, the individual sureties used a form other than the Standard Form 29 as their affidavit. FAR § 28.203(b) specifically requires the use of the Standard Form 28. In addition, FAR § 28.203-2(a) states that “the Government will accept only cash, readily marketable assets, or irrevocable letters of credit from a federally insured financial institution from individual sureties to satisfy the underlying bond obligations.”
The Individual Surety Submission

Standard Miller Act Bond

SF 25
The Individual Surety Submission

Affidavit of Individual Surety

SF 28
2. No corporation, partnership, or other unincorporated association or firm, as such, is acceptable as an individual surety.
General Power of Attorney

 KNOW ALL MEN BY THESE:
 REALLY BIG SURETY CO. a corporation of the State of Ariz., has its principal office in the City of Phoenix, pursuant to the following By-law, which was adopted by the Board of Directors, to wit:

 RESIDENT OFFICERS AND ATTORNEYS-IN-FACT. The President or any Vice-President, acting with any Secretary or Assistant Secretary, shall have the power and authority to appoint Resident Vice-Presidents and Attorneys-In-Fact, with the power and authority to sign, execute, acknowledge and deliver on its behalf, as Surety: Any and all undertakings of suretyship and to affix thereto the corporate seal of the corporation. The President or any Vice-President, acting with any Secretary or Assistant Secretary, shall also have the authority to remove and revoke the authority of any such appointee at any time, does hereby make, constitute and appoint

 ****JACK B. NIMBLE****
 OF
 PHOENIX, ARIZONA

It's true and lawful Attorney-in-Fact, to make, execute, seal and deliver for as on its behalf, as Surety:

 And any and all undertakings of suretyship

And the execution of such bonds or undertakings in pursuance of these presents shall be as binding upon said Company, as fully and completely, to all intents and purposes, as if they had been duly executed and acknowledged by the duly elected Officers of the Company at its office in Phoenix, Arizona in their own persons.

The signatures of officers of the Company and the seal of the Company may be affixed by facsimile to any Power of Attorney executed in accordance with the By-Laws; and that any Power of Attorney bearing such facsimile signature, including the facsimile signature of the certifying Assistant Secretary and facsimile seal shall be valid and binding upon the Company with respect to any bond, undertaking or contract of suretyship to which it is attached.

All authority hereby conferred shall remain in full force and effect until terminated by the Company.

IN WITNESS WHEREOF, to be hereunto affixed this.

REALLY BIG SURETY CO
has caused these presents to be signed by its President and its corporate seal

s/ Jack B. Nimble
President

State of ARIZONA
County of MARICOPA

On this the day of 00/00/00, before me personally came: Jack B. Nimble, to me known who being by me duly sworn did depose and say that he resides in the County of Maricopa, Arizona, that he is the President of Really Big Surety Co. corporation described at which executed the above instrument, that he knows the seal of said corporation; that said affidavit to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that he signed his name by like order.

My Commission Expires July 19, 2009

Notary Public

NASBP Virtual Seminars
Red Flags Missed

General Power of Attorney

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****JACK B. NIMBLE****

OF

PHOENIX, ARIZONA

It's true and lawful Attorney-in-Fact, to make, execute, seal and deliver for or on its behalf, as Surety:

And any and all undertakings of suretyship
Red Flags Missed

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

WITNESS:
The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

<table>
<thead>
<tr>
<th>PRINCIPAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>SIGNATURE(S)</td>
</tr>
<tr>
<td>NAME(S) &amp; TITLE(S) (Typed)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INDIVIDUAL SURETY(IES)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SIGNATURE(S)</td>
</tr>
<tr>
<td>NAME(S) (Typed)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CORPORATE SURETY(IES)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME &amp; ADDRESS</td>
</tr>
<tr>
<td>SIGNATURE(S)</td>
</tr>
<tr>
<td>NAME(S) &amp; TITLE(S) (Typed)</td>
</tr>
</tbody>
</table>

“Attorney in Fact”?
Red Flags in the Affidavit

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. NAME (First, Middle, Last) (Type or Print)</td>
<td>2. HOME ADDRESS (Number, Street, City, State, ZIP Code)</td>
</tr>
<tr>
<td>Jack B. Nimble</td>
<td></td>
</tr>
<tr>
<td>3. TYPE AND DURATION OF OCCUPATION</td>
<td>4. NAME AND ADDRESS OF EMPLOYER (If Self-employed, so State)</td>
</tr>
<tr>
<td>REALLY BIG SURETY COMPANY / 4 yrs</td>
<td>REALLY BIG SURETY COMPANY</td>
</tr>
<tr>
<td>Atty.-in-Fact for Jack B. Nimble</td>
<td>5 Long Rd, Phoenix, AZ 00000 (Self Employed)</td>
</tr>
<tr>
<td>5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (If any) (Number, Street, City, State, ZIP Code)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>HOME - (000)000-0000</td>
</tr>
<tr>
<td></td>
<td>BUSINESS - (000)000-000</td>
</tr>
<tr>
<td>7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:</td>
<td></td>
</tr>
<tr>
<td>(a) Real estate (Include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)</td>
<td></td>
</tr>
<tr>
<td>Investment Real Property with Clear Title, Lot 5 Rosebud Avenue, Phoenix, AZ $400,000</td>
<td></td>
</tr>
<tr>
<td>Investment Real Property with Clear Title, Lot 6 Rosebud Avenue, Phoenix, AZ $400,000</td>
<td></td>
</tr>
<tr>
<td>(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).</td>
<td></td>
</tr>
<tr>
<td>Financial Statement Attached 00/00/0000 Really Big Bonding Net Worth $120,000,000.00</td>
<td></td>
</tr>
</tbody>
</table>
The Individual Surety Affidavit

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE

None at this time

9. IDENTIFY ALL BONDS, INCLUDING BIG GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT

0

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE

s/ Jack B. Nimble

11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where appropriate)

x 00000 XX 0000.00

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

a. DATE OATH ADMINISTERED

MONTH DAY YEAR

b. CITY AND STATE (Or other jurisdiction)

Arizona

c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH (Type or print)

Joe Notary

d. SIGNATURE

s/ J. Notary

AUTHORIZED FOR LOCAL REPRODUCTION

Previous edition is not usable

NASBP Virtual SEMINARS
New “Affidavit By Individual Surety”

**AFFIDAVIT BY INDIVIDUAL SURETY**

<table>
<thead>
<tr>
<th>OMB No. 1530-2047</th>
</tr>
</thead>
</table>

I, ________________________, being duly sworn, depose and say: I am one of the sureties on the foregoing bond. I am a citizen or resident of the United States, and I am of full age and legally competent.

My legal residence is: ________________________, ________________________. (Number and Street or Rural Route) ________________________, (City) ________________________, (State) ________________________, (ZIP Code) ________________________.

I am the sole owner in fee simple of the real estate located at: (Number and Street or Rural Route) ________________________, (City) ________________________, (State) ________________________, (ZIP Code) ________________________, AND ________________________, (State) ________________________, (ZIP Code) ________________________.

The fair valuation of said real estate is $ ________________________.

The assessed value of said real estate for taxation purposes is $ ________________________.

The real estate is not exempt from seizure and sale under any homestead, community, or mortgage law, or upon any attachment, execution, or judicial process.

The real estate is not encumbered by any mortgage, trust, lease, or other interest except as follow:

<table>
<thead>
<tr>
<th>Amount</th>
<th>Nature of Encumbrance</th>
</tr>
</thead>
</table>

In addition to the said real estate, I own personal property subject to execution and sale as described below, in the amount of $ ________________________ over and above my just debts and liabilities.

<table>
<thead>
<tr>
<th>Description of Personal Property</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Describe Personal Property Fully)</td>
<td>$ ________________________</td>
</tr>
</tbody>
</table>

I am worth in real estate and personal property together the sum of $ ________________________ over and above my just debts and liabilities.

<table>
<thead>
<tr>
<th>Item</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I swear: (1) all my debts and liabilities, owing and insured; (2) any property except from execution; (3) the aggregate full penalties on all other bonds on which I am principal or surety; (4) any monetary interest I have in the business of the principal on the said bond; and (5) any interest I have in any property, real or personal, held in common, in joint ownership, or in tenancy by the entirety; and I am (named or unamed) ________________________.

SIGN HERE: ________________________

(Surety’s signature)

**CERTIFICATE OF SUFFICIENCY**

This certificate must be executed by an officer of a Federal Reserve Bank or Branch, or of an incorporated bank or trust company, or of a Federal Home Loan Bank System, in the latter case, only for a regular customer or by a judge or clerk of a Federal or State court of record, or by a United States district attorney, commissioner, marshal, or director of internal revenue or collector of customs. The certificate, official, or court seal, as appropriate, must be impressed, but if the certifying officer has no seal, that fact must be shown and attended. (A notary public is NOT an acceptable certifying officer.)

(Signature and official designation of Certifying Officer)

(Name of Bank, Trust Company, Association or Organization, if applicable)

Date: ________________________

(Month and Day) ________________________, (Year)

**PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE**

The collection of the information you are required to provide on this form is authorized by 31 U.S.C. Ch. 31 relating to the public debt of the United States. The furnishing of a social security number, if requested, is also required by Section 6101 of the Internal Revenue Code (26 U.S.C. 1010).

The purpose of requesting the information is to enable the Office of the Fiscal Service and its agents to issue securities, process transactions, make payments, identify customers and their accounts, and provide reports to the Internal Revenue Service. Furnishing the information is voluntary, however, without the information, the Fiscal Service may be unable to process transactions.

Information concerning securities holdings and transactions is considered confidential under Treasury regulations (1 CFR Part 24) and the Privacy Act. The information may be disclosed, to a law enforcement agency for investigative purposes; and to agencies of the government for law enforcement purposes, or other entities entitled to distribution or payment, or to prevent or restrain default; or to otherwise authorized by law or regulation.

We estimate it will take you about 55 minutes to complete this form. However, you are not required to provide information requested unless a valid OMB control number is displayed on the form. Any comments or suggestions regarding the form should be sent to the Office of the Fiscal Service, Forms Management Office, Columbus, OH 43215-0001. DO NOT SEND completed form to the above address, send to address shown in the accompanying correspondence.
The Individual Surety Affidavit

Reliance on an “Financial Statement”?  
A corporate financial statement for an “Individual Surety”?  

<table>
<thead>
<tr>
<th>1. NAME (First, Middle, Last) (Type or Print)</th>
<th>2. HOME ADDRESS (Number, Street, City, State, ZIP Code)</th>
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<th>6. TELEPHONE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Number, Street, City, State, ZIP Code)</td>
<td>HOME - (000)000-0000</td>
</tr>
<tr>
<td></td>
<td>BUSINESS - (000)000-000</td>
</tr>
</tbody>
</table>

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate (include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)

- Investment Real Property with Clear Title, Lot 5 Rosebud Avenue, Phoenix, AZ $400,000
- Investment Real Property with Clear Title, Lot 6 Rosebud Avenue, Phoenix, AZ $400,000

(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

- Financial Statement Attached 00/00/0000 Really Big Bonding Net Worth $120,000,000.00
## ABBA BONDING, INC.

### FINANCIAL STATEMENTS

**JULY 31, 2005**

### ABBA BONDING

#### Balance Sheet

**As of July 31, 2006**

<table>
<thead>
<tr>
<th>Liabilities &amp; Equity</th>
<th>Jul 31, 06</th>
<th>Jul 31, 05</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rosalia Property</td>
<td>9,000.00</td>
<td>9,000.00</td>
</tr>
<tr>
<td>Deposit on Property-Rosalia</td>
<td>3,651.91</td>
<td>3,651.91</td>
</tr>
<tr>
<td>Improvements on Rosalia Prop.</td>
<td>81,035.00</td>
<td>81,035.00</td>
</tr>
<tr>
<td>Total Rosalia Property</td>
<td>93,666.91</td>
<td>93,666.91</td>
</tr>
<tr>
<td>Total Other Assets</td>
<td>310,829.86</td>
<td>310,829.86</td>
</tr>
<tr>
<td><strong>TOTAL ASSETS</strong></td>
<td>126,195,665.61</td>
<td>126,195,665.61</td>
</tr>
<tr>
<td>Liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit Cards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Natl of Marin-Visa Gold</td>
<td>-424.22</td>
<td>-424.22</td>
</tr>
<tr>
<td>Total Credit Cards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Current Liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bond In Place Liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loan From Shareholder-M. Sears</td>
<td>1,789,000.00</td>
<td>1,789,000.00</td>
</tr>
<tr>
<td>Payroll Liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fed-SS &amp; MED Tax Withheld-941</td>
<td>2107.24</td>
<td>2107.24</td>
</tr>
<tr>
<td>State Withholding Tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Payroll Liabilities</td>
<td>854.00</td>
<td>854.00</td>
</tr>
<tr>
<td>Total Other Current Liabilities</td>
<td>752.80</td>
<td>752.80</td>
</tr>
<tr>
<td><strong>Total Current Liabilities</strong></td>
<td>1,791,436.22</td>
<td>1,791,436.22</td>
</tr>
<tr>
<td>Liabilities</td>
<td>1,791,436.22</td>
<td>1,791,436.22</td>
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<tr>
<td>Equity</td>
<td>1,500.00</td>
<td>1,500.00</td>
</tr>
<tr>
<td>Capital Stock</td>
<td>-19,055.88</td>
<td>-19,055.88</td>
</tr>
<tr>
<td>Dividends-Morris Sears</td>
<td>-57,556.98</td>
<td>-57,556.98</td>
</tr>
<tr>
<td>Dividends-Tina</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owners Equity</td>
<td>123,711,000.00</td>
<td>123,711,000.00</td>
</tr>
<tr>
<td>Retained Earnings</td>
<td>282,888.14</td>
<td>282,888.14</td>
</tr>
<tr>
<td>Net Income</td>
<td>485,823.91</td>
<td>485,823.91</td>
</tr>
<tr>
<td><strong>Total Equity</strong></td>
<td>124,404,228.39</td>
<td>124,404,228.39</td>
</tr>
<tr>
<td><strong>TOTAL LIABILITIES &amp; EQUITY</strong></td>
<td>126,195,665.61</td>
<td>126,195,665.61</td>
</tr>
</tbody>
</table>

Prepared by aster Accounting, Inc.
4280 Panorama Parkway
Simi Valley, CA 93065
Phone (555) 649-7877 Fax (555) 649-7877

**The $126,195,665.61 Financial Statement**
The “Irrevocable Trust Receipt” Scam

<table>
<thead>
<tr>
<th>Date</th>
<th>August 21, 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference No.</td>
<td></td>
</tr>
<tr>
<td>Amount</td>
<td>USD S 26,178.60</td>
</tr>
<tr>
<td>Confirming Account</td>
<td>Bank, an FDIC bank, located at [Address], FL. Account Name: [Name]. The account is a collateral trust account for the benefit of [Trust]. Value Dated August 21, 2012: 528,178.60</td>
</tr>
<tr>
<td>Beneficiary</td>
<td>County Colorado</td>
</tr>
<tr>
<td>Applicant</td>
<td>[Name], CO</td>
</tr>
<tr>
<td>Issuer</td>
<td>[Name], CO</td>
</tr>
<tr>
<td>Solicitation No.</td>
<td>County Justice Center Remodel</td>
</tr>
<tr>
<td>Description</td>
<td>County Justice Center Remodel - 7,700 SF Remodel Project</td>
</tr>
<tr>
<td>Bond Type</td>
<td>Bid Bond</td>
</tr>
<tr>
<td>Bond No.</td>
<td>26-01</td>
</tr>
</tbody>
</table>

We hereby issue our irrevocable letter of credit, which is detailed as under.

**Details of Letter of Credit**

- **Sequence of Total:** 1/2
- **Reference No.:** 26-01
- **Date of Issue:** 08/21/12
Rules for Property “Other than Real Estate”

If the asset is anything other than real estate, it must be held in “an escrow account with a federally insured financial institution in the name of the contracting agency.”

FAR §28.203-1(b)(1)
The Problem in a Nutshell

- This is the ONLY circumstance where a federal contracting officer faces a serious “due diligence” problem when Miller Act bonds are tendered.
- The public must rely on federal contracting officers with:
  - No real appreciation for the risk
  - No tools or training to underwrite qualifications of individual sureties
The Problem in a Nutshell

Unscrupulous Individual Sureties can easily:

✓ Pledge the same “collateral” to multiple projects
✓ Misrepresent the nature of their “ownership” in collateral
✓ Pledge collateral without proof of value
✓ Pledge collateral without disclosing encumbrances
✓ Use representations of “federal acceptability” to deceive state and local governments into accepting bonds
✓ Avoid or evade state cease and desist orders from state insurance regulators
How the ABBA Bonding Case Played Out

- Cease and Desist Orders issued by state regulators were routinely ignored by ABBA
- Multiple Miller Act suits were filed in Colorado and elsewhere
- Formal discovery exposed deception
How the ABBA Bonding Case Played Out

- Sears/ABBA initiates Chapter 11 Reorganization in Southern District Alabama

- Claims poured in: The nationwide scope of the ABBA scam became clear

- Sears recognizes his strategic error and attempts to voluntarily dismiss his Chapter 11 proceeding

- Bankruptcy Court refuses to dismiss and converts case to a Chapter 7 Liquidation
How the ABBA Bonding Case Played Out

- Creditor motions attacking Sears’ entitlement to discharge in bankruptcy were fruitless
- Morris Sears was federally charged with tax evasion and bankruptcy fraud
- Sears dies on the threshold of criminal trial
- The only beneficiary of the bankruptcy estate was the IRS
- Not one Miller Act claimant or supplier was paid
The Consequences

- Suppliers are placed at greater risk of non-payment
- Unqualified contractors can get federal and state work, placing suppliers and the public at greater risk
- Public works projects are placed at greater risk of default
- Qualified general contractors do not get the work
- Financial incentives and lures to scam artists increase
- Even the bond principal is at risk if a tendered bond is rejected after the notice to proceed and the contracting officer demands replacement
- Our industry gets a black eye
What You Can Do

- Be aware that surety bond fraud exists on state, local and municipal levels
- Be aware that surety bond fraud can impact subcontract bonds
- Educate your clients about bond authentication tools
- Participate in educational opportunities for state and local bond intake officials
- Assist your local regulatory authorities. Help them appreciate the risk and the benefits of regulated corporate sureties
- Stay alert to other forms of fraud
Questions?

If you do not have the opportunity to have your question addressed during the seminar, you may contact the presenter directly:

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Email: jlab@allen-curry.com