

## § 115.11

persons, and is the Person whose performance or payment is bonded by the Surety. A Principal may be a prime contractor or a subcontractor.

*Prior Approval Agreement* means the Surety Bond Guarantee Agreement (SBA Form 990) entered into between a Prior Approval Surety and SBA under which SBA agrees to guarantee a specific bond.

*Prior Approval Surety* means a Surety which must obtain SBA's prior approval on each guarantee and which has entered into one or more Prior Approval Agreements with SBA.

*PSB Agreement* means the Preferred Surety Bond Guarantee Agreement entered into between a PSB Surety and SBA.

*PSB Surety* means a Surety that has been admitted to the Preferred Surety Bond (PSB) Program.

*Surety* means a company which:

(1)(i) Under the terms of a Bid Bond, agrees to pay a sum of money to the Obligee if the Principal breaches the conditions of the bond;

(ii) Under the terms of a Performance Bond, agrees to pay a sum of money or to incur the cost of fulfilling the terms of a Contract if the Principal breaches the conditions of the Contract; and

(iii) Under the terms of a Payment or an Ancillary Bond, agrees to make payment to all who have a right of action against such bond, including those who have furnished labor, materials, equipment and supplies in the performance of the Contract.

(2) The term Surety includes an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of the Surety.

[61 FR 3271, Jan. 31, 1996; 61 FR 7985, Mar. 1, 1996]

### § 115.11 Applying to participate in the Surety Bond Guarantee Program.

Sureties interested in participating as Prior Approval Sureties or PSB Sureties should apply in writing to the AA/SG at 409 3rd Street, SW., Washington, DC 20416. OSG will determine the eligibility of the applicant considering its standards and procedures for underwriting, administration, claims and recovery. Each applicant must be a corporation listed by the U.S. Treasury

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as eligible to issue bonds in connection with Federal procurement contracts.

### § 115.12 General program policies and provisions.

(a) *Description of Surety Bond Guarantee Programs.* SBA guarantees Sureties participating in the Surety Bond Guarantee Programs against a portion of their Losses incurred and paid as a result of a Principal's breach of the terms of a Bid Bond, Final Bond or Ancillary Bond, on any eligible Contract. In the Prior Approval Program, the Surety must obtain SBA's approval before a guaranteed bond can be issued. In the PSB Program, selected Sureties may issue, monitor, and service SBA guaranteed bonds without further SBA approval.

(b) *Eligibility of bonds.* Bid Bonds and Final Bonds are eligible for an SBA guarantee if they are executed in connection with an eligible Contract and are of a type listed in the "Contract Bonds" section of the current Manual of Rules, Procedures and Classifications of the Surety Association of America (100 Wood Avenue South, Iselin, New Jersey 08830). Ancillary Bonds may also be eligible for SBA's guarantee. A Performance Bond must not prohibit a Surety from performing the Contract upon default of the Principal.

(c) *Expiration of Bid Bond Guarantee.* A Bid Bond guarantee expires 120 days after Execution of the Bid Bond, unless the Surety notifies SBA in writing before the 120th day that a later expiration date is required. The notification must include the new expiration date.

(d) *Guarantee agreement.* The terms and conditions of SBA's bond guarantee agreements, including the guarantee percentage, may vary from Surety to Surety, depending on past experience with SBA. If the guarantee percentage is not fixed by the Investment Act, it is determined by OSG after considering, among other things, the rating or ranking assigned to the Surety by recognized authority, and the Surety's Loss rate, average Contract amount, average bond penalty per guaranteed bond, and ratio of Bid Bonds to Final Bonds, all in comparison with other Sureties participating

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in the same SBA Surety Bond Guarantee Program (Prior Approval or PSB) to a comparable degree. Any guarantee agreement under this part is made exclusively for the benefit of SBA and the Surety, and does not confer any rights (such as a right of action against SBA) or benefits on any other party.

(e) *Amount of Contract*—(1) *Statutory ceiling*. The amount of the Contract to be bonded must not exceed \$2,000,000 in face value at the time of the bond's Execution.

(2) *Aggregation of Contract amounts*. The amounts of two or more Contracts for a "single project" are aggregated to determine the Contract amount unless the Contracts are to be performed in phases and the prior bond is released before the beginning of each succeeding phase. A bond may be considered released even if the warranty period it is covering has not yet expired. For purposes of this paragraph, a "single project" means one represented by two or more Contracts of one Principal or its Affiliates with one Obligee or its Affiliates for performance at the same location, regardless of job title or nature of the work to be performed.

(3) *Service and supply contracts*. A service or supply Contract covering more than a 1 year period is eligible for an SBA guaranteed bond if neither the annual Contract amount nor the penal sum of the bond exceeds \$2,000,000 at any time.

(f) *Transfers or sales by Surety*. Sureties must not sell or otherwise transfer their files or accounts, whether before or after a default by the Principal has occurred, without the prior written approval of SBA. A violation of this provision is grounds for termination from participation in the program. This provision does not apply to the sale of an entire business division, subsidiary or operation of the Surety.

[61 FR 3271, Jan. 31, 1996, as amended at 66 FR 30804, June 8, 2001]

### § 115.13 Eligibility of Principal.

(a) *General eligibility*. In order to be eligible for a bond guaranteed by SBA, the Principal must comply with the following requirements:

(1) *Size*. Together with its Affiliates, it must qualify as a small business under part 121 of this title.

(2) *Character*. It must possess good character and reputation. A Principal meets this standard if each owner of 20% or more of its equity, and each of its officers, directors, or general partners, possesses good character and reputation. A Person's good character and reputation is presumed absent when:

(i) The Person is under indictment for, or has been convicted of a felony, or a final civil judgment has been entered stating that such Person has committed a breach of trust or has violated a law or regulation protecting the integrity of business transactions or business relationships; or

(ii) A regulatory authority has revoked, canceled, or suspended a license of the Person which is necessary to perform the Contract; or

(iii) The Person has obtained a bond guarantee by fraud or material misrepresentation (as described in §115.19(b)), or has failed to keep the Surety informed of unbonded contracts or of a contract bonded by another Surety, as required by a bonding line commitment under §115.33.

(3) *Need for bond*. It must certify that a bond is expressly required by the bid solicitation or the original Contract in order to bid on the Contract or to serve as a prime contractor or subcontractor.

(4) *Availability of bond*. It must certify that a bond is not obtainable on reasonable terms and conditions without SBA's guarantee.

(5) *Partial subcontract*. It must certify the percentage of work under the Contract to be subcontracted. SBA will not guarantee bonds for Principals who are primarily brokers or who have effectively transferred control over the project to one or more subcontractors.

(6) *Debarment*. It must certify that the Principal is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions with any Federal department or agency, under governmentwide debarment and suspension rules.

(b) *Conflict of interest*. A Principal is not eligible for an SBA-guaranteed bond issued by a particular Surety if that Surety, or an Affiliate of that Surety, or a close relative or member of the household of that Surety or Affiliate owns, directly or indirectly, 10%