SBA SOP 50 45 4

The Surety Bond Guarantee Program

Office of Surety Guarantees

Office of Capital Access

U.S. Small Business Administration

Small Business Administration

Standard Operating Procedure

National

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Chapter 1. General Overview of the Surety Bond Guarantee Program

1. Introduction and Authority

This Standard Operating Procedure (SOP) provides guidelines for the management and administration of the Surety Bond Guarantee (SBG) Program. It is for use by SBA personnel, participating surety companies, agents and representatives, and all other interested parties. The SBG Program is authorized by § 410 *et seq*. of the Small Business Investment Act of 1958, 15 USC §694a et seq. Program regulations are in Chapter 13 of the Code of Federal Regulations (CFR), Part 115.

2. Mission, Objective and Purpose

The mission of the SBG Program is to provide bonding assistance, in partnership with surety companies, to qualified small businesses to bid on or enter contracts. By assisting these small and emerging businesses, SBA's objective is to enable them to eventually become bondable without SBA's assistance. A surety bond is an essential financial instrument issued by a Surety and protects a public or private contract owner against all or part of the loss if a contractor defaults. Not all private contracts require a bond but in the case of federal contracts The Miller Act requires a surety bond on federal construction contracts exceeding $150,000.

3. Program Operation

Under the SBG Program, SBA guarantees bonds that are issued by surety companies on behalf of small contractors. If a default occurs, SBA reimburses the Surety a specified percentage of losses and expenses incurred. The program is delivered through the Prior Approval and the Preferred Surety Bond (PSB) programs. Under the Prior Approval Program, SBA approves each surety bond guarantee. Under the PSB Program, Sureties are delegated the authority to issue, service, and monitor bonds without SBA's prior approval.

4. Program Administration

The Office of Surety Guarantees (OSG), located at SBA Headquarters, administers the SBG Program. SBG Area Offices located in Denver, Seattle, and Washington, D.C., process guarantee applications for the Prior Approval Program.

a. Responsibilities of Headquarters Staff

(1) Establishing plans, operating procedures, policies, and standards for the program.

(2) Developing legislative proposals about relevant program issues.

(3) Developing program goals and objectives.

(4) Reviewing and evaluating program effectiveness.

(5) Coordinating marketing efforts.

(6) Maintaining liaisons with surety companies, agents, industry associations, and federal and state agencies.

(7) Monitoring program allotments and budget appropriations.

(8) Processing surety applications for program participation and monitoring surety program performance.

(9) Planning and conducting surety reviews, audits, and SBA reviews.

(10) Coordinating SBG Program activities with other SBA offices.

(11) Handling all claim and recovery activities for the Prior Approval and PSB programs.

(12) Administering the PSB Program.

b. Responsibilities of SBA Staff

(1) Processing and approving or declining applications for surety bond guarantees in the Prior Approval Program.

(2) Conducting SBG activities in accordance with rules, regulations, SOPs, and notices.

(3) Performing marketing and outreach activities to promote and increase awareness of the program and assisting district offices with their marketing efforts.

(4) Monitoring SBA's allotment of guarantee authority.

(5) Maintaining liaisons with surety companies and agents, industry associations, and federal and state agencies.

5. Surety Bond Guarantee Approval Authority in the Prior Approval Program

a. Delegation of Authority for Approval of Surety Bond Guarantee Agreements

The Authorities Delegated to the AA/OCA are Redelegated to the Director for the Office of Surety Bond Guarantees (D/OSG). The following SBA positions can approve surety bond guarantees in the Prior Approval Program: Director, Supervisory Surety Bond Guarantee Specialist, Surety Bond Guarantee Specialist within specified limits.

b. Rule of Two

The approval or declination of a surety bond guarantee application requires the combined action of two SBA employees with delegated authority. An SBA professional must recommend the action, and an approving official will render a final decision.

c. Oral Approvals

SBG personnel cannot provide oral approvals for surety bond guarantee agreements. They can notify the surety of SBA's decision if the SBA Form 990 has been approved electronically or signed but has not been received by the surety. If there is a conflict between the oral advice and the written/electronic decision, the latter prevails.

d. Defaults, Claims and Recoveries

All defaults, claims and recovery functions, including final action on claim payments or recovery settlements, are handled by the Claims and Recovery Division. Please reference SOP 40 46 - Claims and Recovery Program for additional information.

Chapter 2. SBA's Surety Bond Guarantee Agreement

1. Terms and Conditions of SBA's Guarantee

a. Responsibilities of SBA

Under its agreement with a surety company, SBA will reimburse the Surety for a specified percentage of losses and expenses incurred because of the contractor's default or the contractor's failure to repay sums advanced by the Surety to avoid an Imminent Breach. SBA may deny liability in whole or in part under the circumstances described in 13 CFR § 115.19. No rights or benefits are granted to any other party under the guarantee and bond claimants do not have a right of action against SBA.

b. Responsibilities of the Surety

(1) Underwriting

The Surety must use underwriting standards generally accepted in the surety industry and must use the same principles and practices that it uses on bonds not backed by SBA.

(2) Servicing

The Surety must monitor the contractor's progress on SBA-guaranteed bonded contracts and request job status reports from obligees on final bonds. The Surety must maintain documentation of the job status requests. SBA may request a status report from a Surety when deemed necessary to monitor, service or approve surety bond guarantees.

(3) Claims, Salvage, and Recovery

The Surety must follow the guidelines and procedures for claims, salvage and recovery are found in SOP 50 46, Claims and Recovery Program.

2. Prior Approval Guarantee Agreement (SBA Forms 990)

The Prior Approval Surety Bond Guarantee Agreement is the written agreement between SBA and a surety company under which SBA agrees to provide a guarantee to a surety company on a specific bond. The form that is used for this agreement is SBA Form 990. SBA must approve the SBG application referenced on the form before the Surety executes a bond unless the bond is issued under an SBA bonding line.

3. Preferred Surety Bond (PSB) Agreement

The PSB Agreement is a written agreement between SBA and a surety company under which the surety can issue, monitor, and service bonds without SBA's prior approval. The agreement specifies the expectations and understandings between the Surety and SBA and may be modified with the agreement of both parties. The terms of this agreement may vary depending on SBA's experience with the surety. Guidelines and procedures for the management and administration of the PSB Program is found in SOP 50 49, Preferred Surety Bond Agreement.

4. Maximum Contract Amount

At the time that the Surety executes the bond, the original contract amount or total work order cannot exceed the amount listed in 13 CFR 115.10 (subject to adjustment for inflation in accordance with 41 U.S.C. 1908 and approval by SBA).

Federal contracts exceeding the amount listed in 13 CFR 115.10 – Applicable Statutory Limit (1), must be accompanied by a contracting officer certification stating that SBA's guarantee is necessary as described in 13 CFR 115.12(e)(3). The certification must be either express mailed to SBA, Office of Surety Guarantees, 409 Third Street SW, Washington, DC 20416 or sent by email to suretybonds@sba.gov, and include the following additional information:

(1) Name, address, and telephone number of the small business;

(2) Offer or Contract number and brief description of the contract; and

(3) Estimated Contract value and date of anticipated award determination.

5. Guarantee Percentage – All Programs

a. SBA's guarantee percentage is equal up to 90 percent if:

The total contract amount at the time of bond execution is $100,000 or less. If the contract amount increases to more than $100,000 after the bond is executed, the guarantee percentage decreases by one percentage point for each $5,000 increase or part thereof. The guarantee percentage does not decrease below 80 percent. This provision does not apply to the small business covered by (b) below. If the contract amount decreases to $100,000 or less after the bond is executed, the guarantee percentage will increase to 90 percent. The surety must provide SBA with evidence to support the decrease and other requested information or

The bond was issued on behalf of:

(1) an SBA 8(a) Certified Contractor according to 13 CFR Chapter 1, Part 124.

(2) an SBA Certified HUB Zone Contractor according to 13 CFR Chapter 1, Part 126.

(3) a Veteran Owned Small Business according to 13 CFR Chapter 1, Part 115

(4) a Service-Disabled Veteran Owned Small Business according to 13 CFR Chapter 1, Part 115.

(5) is a federally recognized Tribal Entity according to 13 CFR Chapter 1, Part 124.

(6) a socially and economically disadvantaged small business according to 13 CFR Part 124.103 and 124.104.

(7) a Small Disadvantaged Business according to 13 CFR 124.1001.

To be deemed "owned and controlled" by one or more individuals in any of these categories, the firm must be 51 percent owned, and its daily business operations must be managed and controlled by one or more individuals who fall within any of these categories. Please reference Section 8(a) of the Small Business Act and 13 CFR, Part 124.103 for the complete list of socially disadvantaged individuals.

Individuals who are members of designated socially disadvantaged groups may be economically disadvantaged if the individuals meet the requirements outlined in 13 CFR Part 124.104 and any verification mechanisms as deemed necessary by SBA. Any falsification of information, withholding of pertinent information, or intentional neglect will result in the revocation of the 90 percent guarantee and all associated parties will be responsible for covering damages to SBA.

For the purpose of any federal subcontracting program, unless specifically stated otherwise, the phrase “socially and economically disadvantaged individuals “includes Indian tribes, ANCs, CDCs, and NHOs. A firm may represent that it qualifies as an SDB for any federal subcontracting program if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals (see 13 CFR Part 124.10001)

b. SBA’s guarantee percentage may not exceed 80 percent for all other bonds.

c. Increase Above the Maximum Contract Amount.

If the contract amount increases above the statutory limit after the bond is executed, SBA’s guarantee percentage is reduced. SBA’s share of the loss is the percentage of the increased contract amount that the statutory limit represents, multiplied by the original guarantee percentage. SBA’s revised guarantee percentage would be calculated as:

*(statutory limit) / (SBG value) * (SBA guarantee percentage) = Reduced SBA guarantee percentage*

The statutory limit of an SBG is based on the limit at the time of its origination, not the year of the increased amount. If the statutory limit has increased since origination of the SBG, the SBG is still subject to the original statutory limit without exception.

d. Guarantee Agreement Terms

The terms and conditions of SBA's bond guarantee agreement may vary from Surety to Surety, depending on the small business and Surety's program performance according to 13 CFR 115.12(d). SBA will determine if a reduced a guarantee percentage is appropriate based on historical performance and other operational factors of the small business and Surety. The reduction in guarantee percent may apply to a specific bond or all submission from a Surety.

6. Cost of SBA's Guarantee

SBA does not charge fees for bid bond guarantees. Fees are charged for final bond guarantees (performance, payment, maintenance, and ancillary bonds). SBA determines the fee and publishes the percentages from time to time in the *Federal Register*.

a. Surety Fee

(1) Amount of Surety Fee.

SBA charges the Surety a percentage of the bond premium that the Surety charges the contractor. The surety fee is rounded to the nearest dollar. (See the *Federal Register* for the most recent update to SBA fee rates).

(2) Timeline for Payment

A Prior Approval Surety must pay its fee to SBA within 60 calendar days after SBA approves the Prior Approval Agreement. In the case of outstanding fees exceeding 60 calendar days, SBA will issue a notification requesting remittance of all delinquent payments within 10 working days of the notification. If the Surety fails to remit delinquent payments timely a conference will be conducted by SBA and Surety to discuss a resolution. (see SOP 50 49 for The PSB Surety submission requirements).

b. Contractor Fee and Costs

(1) Amount of Contractor Fee

SBA charges a rate per $1,000 of the contract amount. The contractor fee is rounded to the nearest dollar. (See the *Federal Register* for the most recent update to SBA fee rates).

(2) Timeline for Payment

In the Prior Approval Program, the Guarantee Agreement (SBA Form 990) is conditionally approved until the fee payment has been made through pay.gov. SBA's approval of the Guarantee Agreement is not deemed final until the contractor fee has been paid and SBA has approved the bond guarantee.

(3) Unpaid Fees

If the contractor's fee is not paid, SBA will not issue the guarantee and additional guarantees on behalf of the contractor. In addition, SBA is not liable under a guarantee for which the original guarantee fee, or any additional fees due from change orders, has not been paid. The surety is responsible for all SBA fees due to SBA.

(4) Amount of Bond Premium Charged by the Surety

The Surety must not charge the contractor a bond premium that is greater than that authorized by the appropriate insurance department.

(5) Non-Premium Surety Charges to the Contractor

The Surety may charge the contractor non-premium charges if the Surety performs other services for the contractor, the additional fee is permitted by State law, and the contractor agrees to the fee. SBA does not require the contractor to purchase insurance or any other services from the Surety, its affiliates, or its agents as a condition of an SBA bond guarantee but the Surety may offer ancillary services if it is deemed necessary.

c. Fee Changes

(1) Notification of Increases and Decreases

The Prior Approval Surety must request SBA's approval for any increases or decreases in the contract or bond amount that aggregate 25 percent or $500,000, whichever is less as soon as it is aware of the change. If a change order increases the contract or bond amount by at least 25 percent or $500,000, the Surety must receive SBA's approval before issuing a change rider, consent of surety, or new bond. The Surety must submit a supplemental SBA Form 990 to SBA for all changes meeting this threshold. SBA reserves the right to decline any increase that would, in its estimation, expose SBA to a greater risk of claim.

(2) Additional Fees Due as a Result of Increases

If the contract or bond amount is increased, additional Surety and contractor fees are due. The Surety must pay the prescribed percentage of the additional premium that it charges the contractor, and the contractor must pay SBA the prescribed rate per $1,000 of the increase to the contract amount.

In the Prior Approval Program, the Guarantee Agreement for the increase is conditionally approved until the contractor fee payment has been made through Pay.gov. SBA's approval of the Guarantee Agreement for the increase is not deemed final until the contractor fee payment has been paid and SBA approved the bond guarantee. The Prior Approval Surety must also remit any additional Surety fees due within 60 calendar days of SBA's approval of the Guarantee Agreement.

For both the Prior Approval Program and the PSB Program, additional fees are not due until the increase in the contractor's or surety's fee equals or exceeds $250. (See the *Federal Register* for the most recent update to SBA fee rates).

(3) Refunds Due as a Result of Decreases

If SBA is notified of a decrease in the contract or bond amount, it will refund proportionate amount of the surety and contractor fees. The contractor fee refund is paid to the contractor, not to the Surety or agent, and sent to the contractor's mailing address on file. The surety fee refund is paid to the surety company. When the Surety receives the refund from SBA, the Surety must promptly refund a proportionate amount of the bond premium to the contractor. Refunds to the Surety and contractor are not due until the decrease in the contractor's or surety's fee equals or exceeds $250.

d. Pay.gov

Pay.gov is a financial management transaction portal managed by the U.S. Treasury's Financial Management Service that enables the public to electronically remit payments to federal agencies 7 days a week, 24 hours a day. Contractor and Surety fees in the Prior Approval and PSB programs must be paid through Pay.gov, at https://www.pay.gov, with a checking or savings account or a credit card.

(1) Payment Programs

Contractors and surety companies must register and select from two payment options: one-time payment or recurring payments.

Payment Process for the Prior Approval Program

i. The application for a Final Bond is submitted electronically to SBA's SBA.

ii. The agent signs the Guarantee Agreement (SBA Form 990 or 990A) and submits it through Capital Access Financial Systems (eApps).

iii. SBA conditionally approves the application in the SBA system and an email is sent to the agent advising that the contractor fee payment is due.

iv. The contractor fee is paid through Pay.gov and the agent notifies SBA through Application Comments that the contractor fee has been paid and uploads the pay.com receipt into the eApps system.

v. SBA associates the payment in the SBG system with the correct SBG number.

vi. SBA approves the application, and an approval email is sent to the agent of record.

SBA is not liable under the Guarantee Agreement until the contractor's fee is paid.

The Surety fee is paid through Pay.gov no later than 60 days after the Guarantee Agreement is approved by SBA.

(2) Payment Process for the PSB Program (see SOP 50 49)

i. The PSB Surety inputs the Final Bond into the PSB system.

ii. The contractor pays the fee through Pay.gov before the PSB Surety issues the bond.

iii. The PSB Surety pays the required surety fees through Pay.gov when it submits the monthly bordereau to SBA that lists the Final Bonds for which the fees are owed.

(3) Forms of Refunds

Any fee refunds due to the contractor are paid by check and any fee refunds due to the Surety are paid by ACH. If the business mailing address on file for the contractor is incorrect, it will result in an undelivered refund check. Please verify the business mailing address located on the Business Information section of an application before submitting a change that could result in a refund.

Chapter 3. Surety Eligibility and Participation Requirements

1. Eligibility Criteria

a. Prior Approval and PSB Sureties.

(1) Treasury List

A surety company must be approved by the U.S. Treasury to issue bonds on federal procurement contracts. Eligible sureties, co-sureties, and reinsurers are listed in Treasury Circular Number 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies" (Treasury List). The Treasury List is published annually and shows each Surety's underwriting limitation. When registered on the Treasury List, all federal and non-federal contract bonds issued by the surety company are subject to the listed underwriting limitation.

The surety underwriting limitations published in the Treasury List are on a per bond basis and apply to all federal and non-federal bonds for which an SBA guarantee is requested in the SBG Program. If the bond's penal sum exceeds the Surety's underwriting limitation, the excess must be protected by either co-surety or reinsurance and reported to the U.S. Department of Treasury prior to applying for SBA's guarantee. SBA's guarantee does not increase the Treasury Department's underwriting limitation for a Surety.

(2) Debarment

The Surety must not be debarred, suspended, voluntarily excluded from, or declared ineligible for participation in federal programs.

(3) Rating or Ranking by Surety Authority

SBA considers the Surety's rating or ranking by recognized authorities when reviewing a Surety's application.

(4) Business Integrity

The Surety, including any officer, director, individual holding 20 percent or more of the Surety's voting securities, and any agents, underwriters, or any individual empowered to act on behalf of the Surety (such individuals and entities separately and collectively referred to as "Person" for purposes of this provision), shall possess good character and business integrity. The Person will be deemed to lack good character and business integrity when:

i. The State or any authority regulating insurance revokes or cancels the license required of such Person to engage in the surety business;

ii. The Person has been indicted or formally charged with a misdemeanor or felony bearing on fitness to participate in the SBG Program. The Person may be suspended pending disposition of the charge, and, upon conviction, participation may be denied or terminated;

iii. The Person has suffered an adverse final civil judgment holding that a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships has occurred; or

iv. The Person has made a material misrepresentation or willfully false statement when it presents oral or written information to SBA in connection with an application for a surety bond guarantee or the presentation of a claim, or committed a material breach of the Prior Approval or PSB Agreements or committed a material violation of the regulation (as described in 13 CFR § 115.19).

b. Eligibility Requirements to become a PSB Surety Partner (also see SOP 50 49)

(1) The Surety must meet the Treasury List underwriting limitation requirements as indicated in 13 CFR §115.60 (a)(1) SOP 50 49.

(2) The Surety must agree not to charge a bond premium in excess of that authorized by the appropriate state insurance department, nor impose any non-premium fees unless the fee is permitted by state law and approved by SBA.

(3) The premium income from contract bonds guaranteed by SBA can equal no more than one-quarter of the Surety's total contract bond premium income.

(4) The underwriting authority for SBA guaranteed bonds must be vested only in the Surety's salaried employees.

(5) The final settlement authority for claims must be vested only in the Surety's salaried employees.

2. Application Procedures

a. Application Package

A surety's application for participation in the Surety Bond Guarantee Program must include the following information:

(1) Identification of the corporate entity that is applying for participation in the SBG Program; names, titles, and telephone numbers of key executives; points of contact responsible for the management and administration of its programs; and a company organization chart;

(2) A summary statement describing any ongoing or planned mergers, acquisitions, or other changes in organizational structure or key management positions that may influence participation and performance in the program. Such statement includes any revisions to the company organizational chart;

(3) A narrative summary that addresses the reasons for applying to participate in the SBG Program and the projected annual SBA bond activity, including the projected number of bonds and total dollar value for each of the first three years of program participation;

(4) A summary of the applicant's performance for each of the past three years that includes the total numbers and dollar value of bonds issued, the total number and dollar value of contract defaults, and the total dollar value of recoveries;

(5) A narrative summary of its underwriting standards, processes, and procedures, including any applicable manuals; and

(6) A narrative summary of its standards, processes, and procedures for administering and paying claims and submitting claims reimbursements requests to the Small Business Administration, including any applicable manuals.

b. Application Submission

The surety's application should be submitted to the attention of the Director, Office of Surety Guarantees (OSG), at suretybonds@sba.gov, or

U.S. Small Business Administration
Office of Surety Guarantees,
Suite 8600 409 Third Street, S.W.
Washington, D.C. 20416

3. Approval for Surety Participation

a. Notification

The Director/OSG will notify the Surety, in writing, of SBA's approval for program participation. For PSB Sureties, the letter will include a PSB Agreement, which must be signed and returned to SBA by the PSB Surety. If the Surety is not approved for program participation, the Director/OSG will notify the Surety, in writing, of the reasons for non-approval.

b. Required Information

The approved Surety must complete and immediately submit the ACH Vendor/Miscellaneous Payment Enrollment Form (sba.gov). This form facilitates payment electronically to the Surety for claim reimbursements or fee refunds.

c. Training

After the Surety is approved for program participation, OSG will provide training in program regulations, procedures, and application and claims processes. The Surety's underwriters and claims administration staff are encouraged to attend this training.

d. Authorization for SBA's Capital Access Financial System (CAFS)

Prior Approval Sureties and their agents use the eApps system to submit bond guarantee applications. SBA's Capital Access Financial System (CAFS) is the single login point for all SBA services. Prior Approval and PSB surety companies may authorize their staff to submit claims, process fees and recoveries, and view or submit bond guarantee applications. Prior Approval Sureties may also authorize agents to submit bond guarantee applications to SBA. To obtain an account, an individual must be authorized by a surety company as follows:

(1) The surety company sends documentation to suretybonds@sba.gov for each individual it is authorizing.

(2) OSG contacts the individual by email with instructions to complete CAFS account setup.

4. Conditions of Surety Participation

a. Definition of Surety

The term "Surety" has the meaning set forth in 13 CFR § 115.10 and includes agents, independent agents, underwriters, or any other companies or individuals who are empowered to act on behalf of the Surety.

b. Regulatory Requirements

Participating Sureties must comply with SBA policies, procedures, and regulations. Program regulations are contained in 13 CFR, Part 115. Applicable regulations for Prior Approval Sureties are in Subparts A and B.

c. State Licensing Requirements

A Surety must be licensed in the state or other area in which it provides an SBA-guaranteed bond and where the contract will be performed. The term “other area” includes the Territories and Possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia. The Surety must be in “good standing” with licensing authorities and State Insurance Departments.

d. Generally Accepted Industry Practices and Procedures

A participating Surety must use standards generally accepted by the surety industry in evaluating the credit, capacity, and character of a contractor unless SBA program requirements provide otherwise. It must process and underwrite a bond application using the same standard practices and procedures used on its non-SBA guaranteed bonds. The Surety must reasonably expect the contractor to successfully complete the bonded contract.

e. Use of SBA Logo

SBA's surety and agent partners are not permitted to use the SBA logo in their emails or marketing materials without SBA’s authorization. However, they may describe their relationship with SBA in narrative form, i.e. "Surety Bonds Guaranteed by SBA".

f. Mergers and Acquisitions

Mergers or acquisitions of surety partners must comply with 13 CFR 115.12 (f). Sureties must not sell or otherwise transfer their SBA bond 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. SBA bond files and accounts sales to surety companies not affiliated with SBA's Surety Bond Guarantee Program is prohibited. SBA files and accounts must be owned and serviced by approved SBA Surety partners regardless of their activity or inactivity in the program.

5. SBA Web Icon Guidelines

There is one Surety Partner web icon for use by SBA-partnered surety companies and one SBA bond agent web icon provided for use by active SBA-authorized bond agents.

a. SBA web icon eligibility

(1) Active SBA status is required for utilization of SBA web icons. Active status refers to those sureties and agents in good standing with SBA who submit at least one approved bond guarantee application through the Program each federal fiscal year.

(2) SBA-partnered surety companies and SBA agents who are under a corrective action plan are automatically disqualified from using an SBA web icon until all conditions set by SBA for resumption of standard Program activity are satisfactorily met.

b. Terms of use

(1) SBA's web icons are only available as provided by SBA in electronic format. SBA's agent web icon must be downloaded from SBA surety agents | SBA Brand Guide. All requests for SBA's "Powered by SBA" web icon must be sent to the program office for approval and issuance.

(2) SBA's web icon may only be used to inform the public of the active participation in the SBA's Surety Bond Guarantee Program. It may not be used for any promotional/ advertising materials, be combined with other product offering, packaging, manuals, documentation, or web pages other than as described here and must be removed from all web pages upon withdrawal from participation in the SBG Program.

(3) The web icon should be placed in a location and manner that does not promote or appear to promote non-SBA products or services.

(4) The web icon must be accompanied by the following public statement: "Approved to offer SBA guaranteed bonds through the SBA's Surety Bond Guarantee Program."

(5) SBA's web icon may only be used as a hyperlink if it links back to www.sba.gov/osg or an internal icon user web page that only provides information about SBA's products and services.

(6) Icon users must not create their own versions of SBA web icons and may not edit or otherwise modify the appearance of icons other than to proportionally resize them.

(7) SBA web icons may be placed at the bottom of the icon user's web page provided:

(8) It is not the most prominent element on the web page.

(9) It is no larger or smaller than the other icons on the web page and is not placed in such a manner as to convey SBA's endorsement of a non-SBA product, service, or entity.

(10) Aside from proportional resizing of the image, its appearance has not been altered or modified in any way, including being combined with other elements, graphics, logos, icons, photos, slogans, numbers, design features, words, or symbols.

(11) It is not displayed on its side or inverted.

(12) Its text reads from left to right.

(13) Its colors and proportions are not altered.

(14) No part of the web icon has been changed or resized relative to the rest of the web icon.

(15) There exists a minimum spacing of 25 pixels between each side of the web icon and other textural or graphic elements on the web page.

(16) SBA's web icon is not displayed on any website other than that of active SBA status entities.

c. Permission, Review, and Oversight

(1) Entities must seek written permission from SBA's Office of Capital Access for any use of SBA's web icons not outlined in the above terms of use.

(2) Use of SBA's web icon is prohibited in any manner that is in SBA's sole discretion misleading, unfair, defamatory, infringing, libelous, disparaging, obscene or otherwise objectionable to SBA.

(3) Use of web icons will be reviewed periodically for compliance with all guidelines.

d. Upon request by SBA, an icon user will promptly remove all SBA web icons from its website. SBA, at its sole discretion, may also request prompt correction for any misuse as determined or directed by SBA to be non-compliant with SOPs 50 45, 90 78, and these guidelines.

6. Electronic Form of Signature

SBA's Surety Partners and small business concerns may utilize electronic signatures on SBA Forms and other SBG documents requiring signatures in accordance with the performance standards outlined herein. Electronic signatures meeting the requirements will be treated as equivalent to handwritten signatures.

SBA's policy for electronic signature utilization in this program is consistent with, and requires Surety Partners to comply with, the current version of the National Institute of Standards and Technology (NIST) SP 800-63 Digital Identity Guidelines. SBA requires compliance with Identity Assurance Level 2 (IAL2), as described in the NIST Digital Identity Guidelines.

a. Electronic Signature Eligible Documents

Unless otherwise prohibited by law, Surety Partners may use electronic signatures on the documents referenced below (collectively referred to as “Eligible Documents”), provided that the signatories comply with the standards outlined in this Notice. Electronic signatures cannot be used on any document identified below if the recording office requires wet ink signatures.

(1) Office of Surety Guarantees, SBG application and claims documents;

(2) All other Federal Government documents [i.e., Documents and agreements related to the guaranteed bond];

(3) Liquidation documents;

(4) Litigation documents, unless otherwise specified by a court order;

(5) Post-default action documents; and

(6) Surety on-boarding documents (i.e., Surety participation applications and agreements), delegated authority documentation, targeted and full Surety review documentation.)

The use of electronic signatures is voluntary. However, Surety Partners who choose to use electronic signatures must fully comply with the standards outlined in this Notice and may be held liable for failure to adhere to these standards. Electronic signatures may not be used for transactions that require filing of security or other documents with a jurisdiction that does not have electronic filing capabilities.

b. Vendor/Technology Selection Requirements

A Surety Partner must ensure that any electronic signature technology vendor it uses:

(1) Complies with Section 101 of the Electronic Signatures in Global and National Commerce (ESIGN) Act;

(2) Has the experience, capabilities, and expected longevity to meet all SBA electronic signature requirements;

(3) Includes vendor agreements that contain express provisions that vendors will comply with all applicable SBA requirements pertaining to this procedural notice;

(4) Includes vendor agreements language that would ensure that vendor representatives will be available to provide testimony to support the United States government in litigation regarding electronic signature data that will be introduced in court;

(5) Meets disaster recovery and archiving requirements; and

(6) Has adequate quality control processes.

c. Surety Liability for Failure to Adhere to Prescribed Standards

OSG will review compliance with the ESIGN Act as well as standards in this Notice as components of its oversight of Surety Partners.

d. Quality Control

Surety Partners must ensure that their electronic signature policies and procedures meet all requirements including their own oversight of the electronic signature process.

e. Record Retention

SBA's record retention requirements are the same for both wet ink and electronic signatures. For records signed electronically, the audit trail as well as any computer systems (including hardware and software), controls, and documentation must be readily available for, and subject to, SBA inspection for the same periods as records signed in wet ink. A Surety Partner's system must be able to reproduce electronic records as accurately as if they were paper when printed or viewed. These records must be made available to SBA on request.

Chapter 4. Co-Surety and Reinsurance

Generally, SBA will not guarantee a surety bond if the penal sum exceeds the surety's underwriting limitation in Treasury Circular 570, as amended. SBA will guarantee surety bonds when there is a co-suretyship or reinsurance arrangement if the following conditions are met:

1. Co-Suretyship

The bond is issued with two or more SBA partner surety companies on Treasury Circular 570 that directly participate in the bond and share liability. Both co-sureties must be licensed in the state or other area where the SBA-guaranteed bond is provided and where the contract will be performed. Each co-surety's pro-rata portion of the penal sum must be within its underwriting limitation. SBA must receive a copy of the bond within 15 days of its execution. Each co-surety must be named on and sign the SBA Form 990, with the percentage or dollar limitation of their respective exposures stated therein. Each attorney-in-fact signing the SBA Form 990 for a co-surety must be authorized by the co-surety to do SBA business. The Surety assuming the larger/largest share of the penal sum is the lead or primary Surety. After the SBA Form 990 is signed, the lead or primary Surety is responsible for all communications between SBA and the Sureties and for informing its co-surety partners of any communications with SBA.

2. Reinsurance

If the Surety wishes to issue a bond covered by reinsurance for a prime contractor under the Miller Act, where the U.S. Government is the obligee, the Surety must submit to SBA a copy of the signed federal reinsurance form with the SBA Form 990, Surety Bond Guarantee Agreement. The "Reinsurance Agreement for a Bond Statute Performance Bond" (SF 273) is used for Miller Act bonds and the "Reinsurance Agreement in Favor or the United States" (SF 275) is used for all other bonds. In either of these forms, the reinsurance company agrees to pay the United States the amount of reinsurance that is necessary to pay for losses and expenses resulting from a default not paid by the Surety. These forms also say that the United States may bring suit against the reinsurer for the full amount of the loss, up to the amount of reinsurance. The reinsuring company must be clearly identified on the SBA Form 990 but does not have to be licensed in the state or other area where the SBA-guaranteed bond is provided and where the contract will be performed.

3. Impacts on Recovery Due to SBA

If a Surety has a reinsurance or coinsurance agreement (whether or not for a Miller Act Bond) or any other arrangement to reduce its percentage of loss on an SBA-guaranteed bond, the Surety must account to SBA for its recovery under the agreement. Before submitting a claim to SBA, the Surety must reduce its loss (as defined in 13 CFR 115.17(b)) on the bond by the actual or estimated recovery amount. If the Surety receives any additional recovery under the agreement or arrangement that exceeds the estimated or prior recovery amount, it must pay SBA its pro-rata share as required in 13 CFR 115.17(b)(2). If SBA has paid the Surety under its guarantee, any future recovery that the Surety obtains from any source must first be applied to reimburse SBA in full for its pro-rata share. Accordingly, the Surety cannot enter into an indemnity agreement to recover its exposure on any SBA-guaranteed bond unless SBA receives its pro rata share on any such recovery. The Surety must submit the recovery to SBA within 45 days of the Surety's receipt of the recovery.

Chapter 5. Contractor Eligibility Requirements

1. Required Certifications

The contractor must provide specific certifications in its application for SBG assistance. The contractor's required certifications are found on SBA Form 994, "Application for Surety Bond Guarantee Assistance". The required certifications are:

a. Need for a Bond

A bond is expressly required by the bid solicitation or the original contract to bid on the contract or to serve as a prime or subcontractor.

b. Availability of a Bond

A specific bond is not obtainable under reasonable terms and conditions without SBA's guarantee.

c. Partial Subcontract

The contractor must certify the percentage of work to be subcontracted. The contractor cannot subcontract the full scope of the work under the contract. It must be fully responsible for the oversight and management of the contract, including the work performed by any subcontractors.

d. Debarment

The contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions with any federal department or agency, under government-wide debarment and suspension rules. In addition to the company certification, each proprietor, general partner, guarantor, limited partner, stockholder, or other equity holder owning 20 percent or more of the small business must also provide such certifications.

2. Size Standards

a. Size Standard Eligibility Rule

A contractor must be independently owned and operated and, together with its affiliates, must qualify as a small business under 13 CFR, Part 121, and not exceed the size standard for the North American Industrial Classification System (NAICS) code that corresponds to the primary industry in which it, including its affiliates, is engaged. A joint venture of two or more business concerns may submit an offer as a small business for a federal procurement, subcontract, or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract. 13 CFR, Part 121, contains provisions related to the calculation of receipts and the impact of affiliates on size determination.

(1) Service, Supply and Construction Industries

The company's average annual receipts for the last three or five years, including affiliates, are used to determine eligibility.

(2) Manufacturing Industries

The average number of employees on payrolls for the last 24 months, including affiliates, is used to determine eligibility.

b. Affiliates

13 CFR Part 121 provides a detailed explanation of the term "affiliate". For SBA, determination of affiliation is based the individual or entity's ability to control to control the potential affiliate. Whether the applicant qualifies as a small business is based on its revenue or number of employees in combination with its affiliates.

(1) Mentor Protégé Programs

Joint venture entities derived from SBA's Mentor Protégé Program are considered small businesses, regardless of affiliate size, and are eligible for bond guarantee assistance. Program underwriting standards are the same for these joint venture entities as they are for other small business joint venture applicant entities.

c. Determination of Size Eligibility

For the Prior Approval Program, SBA personnel review the application package and make the initial determination about size eligibility, using financial statements and tax returns. Consolidated financial statements must include consolidating schedules separating the assets, liabilities, revenues, and expenses of the applicant from those of its affiliates.

3. Character of the Contractor

The contractor must possess good character and reputation to be eligible for SBG assistance.

a. Presumption of Good Character

The contractor possesses good character and reputation if each owner of 20 percent or more equity, and each of its officers, directors, or general partners (the contractor and each such owner, officer, director, or partner referred to as "Person(s)" for purposes of this paragraph) possesses good character and reputation. Each of these Persons must submit a completed SBA Form 994 including Individual Certifications on citizenship, character, and other matters with the initial application, and with the first application submitted on or after October 1 of each year following any changes in ownership of the small business, or if any of the answers change with respect to any Person who previously answered these questions in connection with a prior application. There must be a reasonable expectation that the contractor can successfully perform the project. The contractor must possess the skills and abilities necessary for the project and have experience in the type of work required by the contract.

b. Absence of Good Character

A Person's good character and reputation is presumed absent according to 13 CFR 115.13(a)(2) and when:

(1) The Person is currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty, or under indictment for a felony;

(2) A final civil judgment has been entered stating that the Person committed a breach of trust or has violated a law or regulation protecting the integrity of business transactions or business relationships;

(3) A regulatory authority has revoked, canceled, or suspended a Person's license which is necessary to perform the contract;

(4) The Person has obtained a bond guarantee by fraud or material misrepresentation; or

(5) The Person fails to inform the Surety of unbonded contracts or of a contract bonded by another Surety, as required by a bonding line commitment.

c. Illicit Activity

Firms that participate in illicit activities or are involved with otherwise legal products that will be used in connection with an illicit activity are ineligible for SBG assistance.

4. Types of Eligible Organizations and Entities

Proprietorships, partnerships, corporations, associations, or joint ventures are eligible if they meet other eligibility requirements. The business must be a for profit entity. A cooperative is eligible if it carries on a business activity that produces monetary benefits for its members.

a. Tribal Entities and Native American Firms

Tribal obligees must provide either a waiver of sovereign immunity or dispute resolution contract language acceptable to SBA. Waivers of sovereign immunity may be partial waivers applicable to SBA guaranteed projects/bonds.

Tribally owned small businesses must provide a waiver of sovereign immunity, business and personal indemnity, and the personal indemnitor. The individual acting on behalf of the tribe must demonstrate the legal authority to bind the tribal entity. Waivers of sovereign immunity may be partial waivers applicable to SBA guaranteed projects/bonds.

5. Business Location and Resident Status

a. Business Location

The principal place of the contractor's business must be in the United States, including its territories and possessions. A firm located in a foreign country is not eligible for SBG assistance.

b. Commercial Activity Performed in a Foreign Country

A domestic firm that conducts its commercial activity partially or fully in a foreign country (i.e. military bases, embassies) may be eligible for SBG assistance. This requires a detailed eligibility review to determine if the firm will make a significant contribution to the American economy through the payment of taxes or the use of American products, material, or labor.

If the bonded contract involves work in a foreign country, the application must be approved by the Director/OSG. SBA may need to consult with the appropriate U.S. department or agency concerning American business operations in the foreign country. The enforcement of the General Indemnity Agreement in a foreign country must be strongly considered.

c. Businesses Owned by Non-Citizens

A small business owned by an individual who is in the United States illegally is not eligible for SBG assistance. Legal permanent residents and other non-citizens with active work visa status are eligible for SBG assistance. The surety/agent must obtain evidence of legal status for all applicants that are not citizens. Evidence includes a Social Security Number (SSN), Individual Taxpayer Identification Number (ITIN), a Permanent Resident Card (Green Card), work visa or other documentation of legal status from the United States Citizenship and Immigration Services (USCIS).

6. Contractor Graduation

There is no time limit for a contractor's participation in the SBG Program, but participating Sureties should assist contractors in graduating from the program. Once a contractor can obtain bonds under reasonable terms without an SBA guarantee, it is no longer eligible for SBG assistance. If, in the future, the contractor is unable to obtain bonding, the contractor may reapply to the SBG Program. A surety cannot apply for assistance for the sole purpose of mitigating risk associated with the nature of a contract.

7. Conflict of Interest

The contractor is ineligible for SBG assistance if a conflict of interest or the appearance of a conflict of interest exists between the contractor and its Surety.

a. Conflict of Interest

A conflict of interest exists if the Surety or any of its Affiliates, or a close relative or member of the household of that Surety or Affiliate owns, directly or indirectly, (ten percent or more), of the contractor, including its Affiliates. Close relatives include father, mother, brother, sister, spouse, lineal descendant, or in-law. This prohibition applies to individuals empowered to act on behalf of a Surety and close relatives of those individuals and members of the individual's household.

b. Possible Conflict of Interest

A possible conflict of interest may exist when:

(1) An SBA employee or member of an employee's household or immediate family has any financial interest in the contractor.

(2) A former SBA employee, separated for less than one year, has any financial interest in the contractor or surety.

(3) A member of Congress or person within the member's household is an officer, director, or shareholder with ten percent or more interest in the contractor.

(4) A sole proprietor, officer, director, or shareholder with ten percent or more interest in the contractor is:

(5) An appointed official or employee of the legislative or judicial branch of the federal government;

(6) A member or employee of a Small Business Advisory Council;

(7) A SCORE volunteer, or a member of the household of the official or employee;

(8) An individual currently involved in the SBDC Program (e.g., coordinator, instructor, student, director); or

(9) A Government employee who is at the GS-13 level, or above, or who holds the military rank of Major, Lieutenant Commander, or higher (including members of his/her household) has a significant interest in the contractor. The applicant must submit a written statement of no objection from the individual's department, agency, or branch of the military.

c. Resolution of Possible Conflict of Interest

If a possible conflict of interest exists, SBA must refer the case to SBA's General Counsel, who has the delegated authority to act as an assistant standard of conduct counselor. The general counsel will either make a determination or refer it to the standards of conduct committee if required. Based on the district counsel's determination, appropriate action must be taken on the SBG application.

8. Bankruptcies

Businesses and their owners, partners, or stockholders currently involved in a bankruptcy proceeding are ineligible for an SBA guarantee.

9. Outstanding Taxes and Public Debts

Applicants with outstanding tax debts or other public debts reported through the U. S. Treasury's Do Not Pay portal that have not been paid in full or resolved through a current payment agreement are ineligible for an SBA guarantee. Evidence of full payment or of a payment agreement and evidence that the payment agreement is current for the outstanding debt must be included in the application package.

Chapter 6. Contract and Bond Eligibility Requirements

1. General Contract Eligibility

SBA guarantees bonds for construction, supply, service, and manufacturing contracts. The contract must have the following for eligibility:

a. Include a specific period of performance.

b. State a specified contract amount, which cannot exceed the statutory limit when the surety executes the bonds.

c. Contain a requirement for bonds.

d. Preserve the surety's option to either complete the contract or to pay the penal sum of the bond in the event of default. The SBA will not guarantee a bond that restricts the surety's exercise of these options.

2. General Bond Eligibility

The following types of bonds are eligible for an SBA guarantee:

a. Bid Bond: guarantees the bidder will enter a contract and provide the required performance/payment bonds if awarded the contract.

b. Performance Bond: guarantees the contract will be completed in accordance with its terms and conditions.

c. Payment Bond: guarantees that suppliers and subcontractors will be paid.

d. Ancillary Bond: a bond incidental and essential to a contract for which SBA has guaranteed a performance or payment bond, a maintenance bond for example.

e. Stand-Alone Maintenance Bond: a maintenance bond where no performance or payment bond was required.

3. Contracts requiring Maintenance Agreements or Stand-Alone Maintenance Bonds

a. Contracts with Maintenance Agreements

Contracts that contain maintenance agreements of two years or less covering defective workmanship and materials are eligible. If the maintenance agreement exceeds two years or if other than defective workmanship and materials are covered, SBA's written approval is necessary. To qualify, the agreement must be ancillary to the contract for which SBA is providing a bond guarantee, it must be performed by the same contractor, and it must be customarily required in the relevant trade or industry.

b. Stand-Alone Maintenance Bonds

Stand-alone maintenance bonds are eligible for an SBA bond guarantee. The maintenance agreement must be in connection with a Contract for which a performance or payment bond was not required and only covers defective workmanship or materials that are not covered by a manufacturer's warranty. The maintenance term must cover a period of three years or less that begins immediately after the Contract is complete and the bond must be executed prior to the completion of the Contract. The bond must be issued on behalf of the same Principal that completed the Contract. With SBA's prior written approval, the agreement may cover a period longer than three years if such period is customarily required in the relevant trade or industry.

4. Aggregation of Contract Amounts/Phased Projects

a. Aggregation of Contract Amounts

Multiple bond guarantee requests by one contractor on a single project must be aggregated and must not exceed the statutory limit unless the contracts are to be performed in phases. A single project exists if one contractor and its Affiliates have multiple contracts with one obligee for performance at the same location, regardless of job title or the nature of the work to be performed.

b. Properly Phased Projects

A properly phased project is divided into two or more phases that have separate and identifiable contracts and bonds, and work on each contract is not being completed simultaneously. Each phase must be completed, and work on the next phase is not begun until the preceding phase has been completed and the bonds thereon released. An example of a properly phased project is one where the contractor is the landscaping subcontractor on a two-building project that calls for the first building to be completed before any work on the second building starts.

5. Indefinite Delivery and Definite/Indefinite Quantity Contract (IDIQ)

Indefinite Delivery and Indefinite Quantity Contracts are used when the exact quantity or performance period is not known at the time of contract award. Orders are issued under each type of contract. A “Delivery Order” contract is used for the delivery of supplies. A “Task Order” contract is used for the delivery of services.

a. Definite Quantity Contracts

This type of contract is used when the quantity of supplies or services is known at the time of contract award, and the delivery schedule is established under individual orders issued against the Definite Quantity Contract.

b. Indefinite Quantity Contract

This type of contract specifies both a minimum and maximum dollar value of supplies or services that will be ordered, and at least the minimum dollar value that will be ordered following contract award. The contract amount submitted to SBA is the price of the estimated minimum quantity to be ordered under the contract.

c. Requirements Contract

Under this type of contract, an estimate of the total quantity to be ordered will be provided in the contract solicitation. The contract amount is the price of the total estimated quantity to be ordered under the contract.

6. Multi-Year Contracts

Annually renewable multi-year contracts are eligible for SBA's guarantee if the total contract amount, excluding unfunded or unpriced option years, does not exceed the statutory limit. An annual bond is required unless the obligee is a federal agency. Each option year following the initial contract year is treated as a separate obligation and requires the submission of a new guarantee application. Liability cannot stack and bond form language must include a cancellation clause.

Multi-year contracts that do not annually renew are eligible for SBA's guarantee on a case-by-case basis. The contract term must be within a normal duration period for the project's industry. An explanation from the surety may be required during the application process.

7. Design-Build Projects

Design-build projects are eligible for an SBA guarantee. SBA requires evidence of design liability insurance.

8. Timber Sale Bonds

SBA guarantees bonds for timber sales contracts administered by the U.S. Forest Service and other public and private entities. These contracts require the contractor to pay the Obligee (i.e. the Federal Government or other entity managing the forest) an agreed amount to harvest lumber and other forest products. A bond is usually required to ensure compliance with the contract terms and conditions associated with forest management, including the protection of natural resources, erosion control, and road maintenance.

9. Asbestos Abatement and Hazardous Waste Projects

Contracts that include asbestos abatement or removal of other hazardous wastes or other regulated materials that are considered harmful to the environment are eligible for an SBA guarantee if the contractor meets certain requirements and the Surety secures the necessary documentation. The Surety must ensure the contractor has the appropriate training and certifications for the project tasks as required by federal, state, and local regulations (e.g. asbestos and lead paint certifications, HAZWOPER training), complies with all ordinances and laws pertaining to the type of work, has adequate, specialized equipment available, has obtained authorization for the transportation method and government-approved disposal site, and has secured occurrence based pollution liability insurance in an amount appropriate to the risk involved. SBA requires evidence of pollution liability insurance.

10. Underground Storage Tank Removal Projects

A contractor involved in underground storage tank (UST) removal projects must have a license to remove tanks. If the project involves tank systems that will remain in operation, the contractor must also be licensed in tank installation. Although project sites may be tested prior to work commencement, contamination is rarely known until the project is well underway. Since licensing guidelines vary by state, the Surety must check licensing laws prior to submitting a contractor's guarantee application to SBA.

11. Dual/Multiple Obligee Bonds

Except in cases involving a federal department or agency, dual or multiple obligee bonds are not eligible for an SBA guarantee unless the co-Obligee is bound by the contract to the same extent as the original Obligee. If the Surety arranges for completion of the contract, the co-Obligee must be bound to the Surety to the same extent as the original Obligee. The addition of Obligees cannot increase the liability of the Surety beyond the contract amount. All applications for dual/multiple Obligee bonds for non-federal contracts must include a rider that accomplishes the same purpose. The rider must be on the Surety's letterhead and be submitted with each guarantee application that includes dual/multiple obligees.

12. Ineligible Bonds

Ineligible Contracts and Bonds

The following types of contracts and bonds are ineligible for an SBA guarantee:

a. Bonds at amounts exceeding the contract value.

b. Advance Payment Bonds

c. Bid Bonds where the project has already bid.

d. Completion Bonds

e. Contract that prohibits the Surety from performing the contract if default occurs

f. Financial Guarantee Bonds, except Timber Sales contracts

g. Lease Bonds (Gas, Oil, Coal, etc.)

h. License and Permit Bonds

i. Reclamation Bonds

j. Release of Lien Bonds

k. Subdivision Bonds

l. Warranty of Fidelity

m. Warranty of Performance or Efficiency

Chapter 7. Application Process for the Prior Approval Program

1. General Application Submission Process

The contractor must apply for a bond with an agent who represents a participating Surety, providing all application information required by the Surety and SBA. The Surety conducts its underwriting analysis, evaluating the character, capacity, and credit of the business. If the Surety determines that it will issue a bond with SBA's guarantee, it applies for SBA's bond guarantee on behalf of the contractor, including required SBA forms and underwriting information. All applications are submitted to SBA electronically, using the electronic application (eApps) system, by an individual (Attorney-in-Fact or Surety employee) authorized by a participating Surety to submit applications and issue bonds. Documents are uploaded to eApps to support the application as either *Business Docs* or *Bond Docs*. Documents generally pertaining to the business, such as business financial statements, are uploaded to *Business Docs* and documents pertaining to the bond guarantee application, such as SBA application forms and contracts, are uploaded to *Bond Docs*. SBG Program underwriting staff execute the SBA Form 990 - Surety Bond Guarantee Agreement form for each bond guarantee and deliver it to the Surety to establish the guarantee. All associated and executed forms and documents are retained by the Surety for retention in accordance with 13 CFR § 115.21(b).

2. Submitting Schedule of Work in Process through eXtensible Business Reporting Language (XBRL)

A Prior Approval Surety and agent will have the option to submit Work in Process information required on SBA Form 994F using XBRL. The XBRL WIP report is an alternative to manual CAFS entry of SBA Form 994F information. All the information contained in the XBRL WIP report is identical to the information contained in the current SBA Form 994F; the only difference between the two forms is the formatting. The XBRL WIP report functions as a computer-readable spreadsheet specifically designed to be translated by CAFS. By using the XBRL WIP report, a Surety Partner will not need to manually enter the information into CAFS. Surety Partners must access XBRL's conversion website at https://sba.xbrl.us/ to submit reports, report issues and download submission instructions. SBA does not own and is not responsible for the XBRL WIP submission website. Submitters should use at their own discretion and all issues must be reported through the website.

3. Standard Application Package (Non-Quick Bond)

The application package consists of information completed by both the contractor and the Surety, including required SBA forms described below, which can be printed from the eApps system during the application submission process. The SBA forms are also available at

https://www.sba.gov/document.

a. Small Business SBA Forms

(1) SBA Form 994 – Application for Surety Bond Guarantee Assistance

This form is the contractor's application for surety bond guarantee assistance and is required for all bid and final bond applications. It consists of 5 parts, which must be completed with the initial submission, but not all parts require updating with each submission. Part I, Business Information, and Part II, Management Information, are completed for the initial application and to update previously submitted information. Part III, Contract Information, and Part IV, Agreements, Certifications and Comments, must be completed for each application for a bid and final bond. Part V, Individual Certifications on Citizenship and Character and Other Matters, and includes summaries of various laws and executive orders, including those related to debarment. The business and individual certifications required in Part V must be completed for each initial application by all parties owning 20 percent or more of the small business and officers with decision-making authority for the applicant entity, annually with the first application of the federal fiscal year, and if there are any ownership changes. Subsequent applications require only one Principal representing the small business to sign Part IV certifying that all information in the form is true, correct, and complete to the best of their knowledge. The signed SBA Form 994 must be retained by the Surety or agent after uploading to Bond Docs in the PDF format. Retention of SBA Form 994 on unsuccessful bids is not required.

(2) SBA Form 991 – Surety Bond Guarantee Agreement Addendum

This form must be included in the application package when a Principal takes any action related to the contract or bond that would have exposed its Surety to liability under applicable law had a bond been Executed (or approved if the Surety is legally bound by such approval) at the time. The "*billed to date*", "*paid to date*", and "*waiver of lien*" amounts must all agree, and the principal must certify that all suppliers and/or subcontractors have been paid current as of the principal's signature date. The Obligee must certify that all payments due by the Principal under the contract to present status have not been reported to the Obligee to be delinquent, under investigation or in dispute, and that the job has been satisfactorily completed to present status.

The following documentation must be included with the SBA Form 991 and uploaded to *Bond Docs* in eApps:

i. Evidence that the requirement for the bonds was contained in the original contract at award.

ii. A statement explaining why the bonds were not obtained prior to commencement of the work and why they are now being required.

iii. Copies of all lien waivers for all subcontractors and suppliers.

iv. A status report signed and dated by the Obligee within 30 days of the application's submission date.

(3) SBA From 994F – Scheduled of Work in Process (WIP)

Information about all the contractor's uncompleted work (i.e. backlog), both bonded and unbonded, is contained on this form. This form, or an alternate form with the same information, is included with the initial application and with every subsequent application where the application submission date is more than 90 days from the WIP on file's effective date. The Surety/agent must verify the accuracy of all information on the WIP.

(4) SBA Form 413 – Personal Financial Statement

Each principal of the company, all persons certifying Part V of SBA Form 994, Individual Certification on Citizenship and Character and Other Matters, and all persons who personally indemnify on the GIA must complete an SBA Form 413 when submitting a non-Quick Bond guarantee application. The Surety must enter the personal net worth of each Principal in eApps annually. Each form must be retained by the agent in accordance with 13 CFR § 115.21(b).

b. Surety SBA Forms

The following SBA forms are submitted by the agent to SBA:

(1) SBA Form 990 – Surety Bond Guarantee Agreement

This form is the legal agreement between SBA and the surety company under which SBA guarantees an individual bond. No substitute form is acceptable to SBA and no employee of SBA has authority to waive, change or alter the terms of this Agreement, unless such alterations are separately attached, and both the SBA and Surety's authorized representatives have signed and dated their assent. SBA Form 990 is required for each application. The SBA Form 990 is generated during the application process, signed by the Attorney-in-Fact, and uploaded to eApps. SBA signs the form and uploads it into the bond guarantee application after making the final decision.

(2) SBA Form 994B – Surety Bond Guarantee Underwriting Review

This form contains business and financial information. It also contains the request for an SBA bonding line on an account. For non-bonding line purposes, it is completed electronically with the initial application for the small business and must be collected with every update to the contained business or financial information. The Surety retains this form with each update and makes it available upon request by SBA. For bonding line purposes, the most recent version of the form must be uploaded with every bonding line request.

(3) SBA Form 2461 – Quarterly Contract Completion Report

The quarterly contract completion report (QCCR) is required by regulation 13 CFR 115.22. The report notifies SBA of final bonds closed during the previous quarter. Surety companies partnered with SBA must submit a QCCR within 45 days of each federal fiscal quarter's end (December 31, March 31, June 30, and September 30). The report is required during the period a program partner has outstanding final bond guarantees with SBA. Remittance is still required on a quarterly basis even when there are no completed contracts to report since submittal of the report confirms no contracts were completed during that fiscal quarter. The report is also still required from inactive program partners until all outstanding final bond guarantees have been closed in CAFS.

Steps for QCCR Compliance:

i. If necessary, completed contracts are adjusted for final contract amounts in CAFS, via the eApps or Preferred Surety systems, by the responsible user for regular submission of changes.

ii. This process is completed via the program's normal increase/decrease procedure.

iii. The surety closes all completed jobs for the quarter via the Bulk Bond Closeout screen.

iv. The surety downloads, signs, and uploads the QCCR within the Surety Report screen.

c. Other Information

(1) General Indemnity Agreement (GIA)

An executed GIA on the Surety's form is required prior to submission of an application for an SBA guarantee. It must include a corporate signature, must be secured by such collateral as the Surety or SBA finds appropriate and must include the personal indemnification of the contractor, each holder of at least 20 percent ownership interest in the contractor, their spouses, and officers with decision-making authority for the applicant entity. The GIA must reflect the proper legal name of the small business and must be signed and dated prior to the submission of any applications. A new GIA must be executed if the business name or corporate structure changes, or if the contractor changes surety companies. GIA information is entered in eApps for each applicant.

(2) Business Bank Line of Credit (BLOC)

Evidence of a bank line of credit, signed and dated by the bank, may be used to qualify a contractor for SBG assistance. It should include the amount of the BLOC, the amount available for use, any collateral provisions, and the expiration date. Business BLOC's must be provided by federally recognized lending institutions. Private equity and factoring firms are not acceptable.

(3) Reporting Requirements

The agent must provide the small business's financial information to SBA, including the three to five most recent year-end financial statements to support the applicable size eligibility determination and a six-month or later interim financial statement when applicable. All financial statements must be entered and uploaded into eApps within 120 days of the statement date. All applicants must submit financial statements in accordance with the quality and size requirements. Federal tax returns may be substituted for year-end statements. All tax returns must be signed or include evidence of electronic filing. Tax returns may not be substituted for a current financial statement required for working capital calculations.

(4) Contract Size and Type of Financial Statement Depending on the size of the contract, the financial statements must be of the following type:

i. ***Up to $2,000,000*** *– An internally prepared, computer-generated financial statement is required for contracts up to $2,000,000. This is the lowest quality financial statement accepted by SBA.*

ii. ***More than $2,000,000 to $3,000,000*** *– A CPA-compiled or an In-House Plus year-end financial statement is required for contracts more than $2,000,000 to $3,000,000. An in-house plus financial statement is defined as a high quality, computer generated financial statement. To qualify as in-house plus quality, a financial statement must include aged schedules of accounts receivable and accounts payable, current portion of long-term debt, and a correctly structured balance sheet with no negative liabilities.*

iii. ***More than $3,000,000 to $14,000,000*** *– A CPA-reviewed year-end financial statement is required for contracts more than $3,000,000 to $14,000,000.*

iv. ***Interim requirement****: The six-month interim financial statement may be an internally prepared financial statement or higher.*

v. ***Case-based requirements****: SBA may require higher financial statement quality than outlined above due to case-based concerns.*

(5) Contract and Bond Documents

All final bond applications must include copies of the relevant parts of the contract and the bond forms to be used on the project. The relevant parts of the contract include, but may not be limited to, the statement of work, performance period, bond requirement, the contract amount, any liquidated damages provisions, and the parties to the contract. These documents must be uploaded into eApps.

4. Quick Bond Application (The Quick Bond Application)

Quick Bond Application (The Quick Bond Application) is an option used by the small business to apply for SBG assistance not requiring a financial review. The Quick Bond option can be used if the contract amount does not exceed $500,000. If the contract amount later increases above or decreases below $500,000, SBA Form 990 will be used to submit the contract amount changes to SBA. If a bid is revised to an amount above the $500,000 Quick Bond limit, SBA requires cancellation of the approved Quick Bond guarantee and submission of a full bid application. A successful bid with a contract amount exceeding the $500,000 Quick Bond limit requires submission of a full final bond application.

a. Exclusions

The Quick Bond option cannot be used if:

(1) The principal has previously defaulted on any contract or has had any claims or complaints filed against it with any court or administrative agency.

(2) The time for contract completion exceeds 12 months.

(3) Work on the project has started.

(4) Liquidated damages exceed $2,500 per day.

(5) The Contract involves asbestos abatement, removal of hazardous waste or other regulated materials that are considered harmful to the environment, or timber sales.

(6) The bond would be issued under a bonding line.

5. SBA Application Review and Decision

SBA reviews the application package, considering the underwriting factors discussed in this SOP. The decision on the application requires the concurrence of two people referred to as the Rule of Two.

One of the following actions will be taken with respect to the application:

a. **Approve**: SBA approves the application and agrees to guarantee the bond. If the approval is for a final bond, the contractor and surety fees must be paid. Bid applications may be conditionally approved for various reasons. Conditional approvals will be limited, and condition(s) must be met prior to support of any subsequent submissions.

b. **Decline**: SBA does not approve the application because the applicant is ineligible for a guarantee or does not otherwise meet SBA requirements.

c. **Return**: The applicant appears to be eligible for a guarantee, but SBA returns the application because it is incomplete, or a deficiency exists that was not corrected within a reasonable timeframe.

d. **Withdraw**: The agent requests that the application not be processed by SBA.

After the decision is entered into eApps, SBA completes, signs, and dates the SBA Form 990, and makes the executed form accessible to the surety for retention in accordance with 13 CFR § 115.21(b). The executed form is also uploaded into the bond guarantee application. A separate SBA Form 990 is required for each bid and final bond guarantee.

6. Bonding Lines

A bonding line is a commitment from SBA that allows an Attorney-in-Fact to issue bonds to a qualified small business within authorized terms, limits, and conditions. The agent must notify SBA immediately if there are any material changes to the small business or underwriting information upon which the bonding line is based. SBA issues bonding lines with an expiration at the end of each federal fiscal year, September 30, since the guarantee appropriation authority granted to SBA is only valid in the federal fiscal year in which the bonding line was approved. To continue the bonding line, it must be resubmitted for renewal in the following fiscal year.

a. Eligibility

A bonding line is based on SBA's prior experience with the requesting agent/Surety and on a satisfactory underwriting review of the small business. Newly formed businesses or new applicants are eligible buy may undergo a high degree of examination to ensure that the small business is eligible.

b. Limits and Conditions

When applying for a bonding line, the Agent must recommend limits and conditions in eAppshttps://www.sba.gov/document/sba-form-994b-surety-bond-guarantee-underwriting-review which must be approved by SBA as part of a complete application. Bonding line authority will be limited to the terms and conditions in the bonding line section of eApps. Entries must include contractor's full scope of potential work during the fiscal year. Generally, these conditions include:

(1) A single contract dollar limitation.

(2) A total dollar amount and number limitation of all outstanding bids plus uncompleted projects in process that the contractor can reasonably be expected to perform at the same time. The work in process includes both bonded and unbonded jobs.

(3) A specific geographical area for contract performance.

(4) A specific type of work that the contractor will perform.

(5) Removal of hazardous waste or other regulated materials that are considered harmful to the environment, asbestos abatement, lead removal and tank removal/replacement are eligible.

c. Application and Reporting Requirements

(1) Setting Up the Bonding Line

After the first approved application on an account, a contractor is potentially eligible for a bonding line with SBA. Bonding lines with SBA are based on the same criteria as a non-Quick Bond application but applied to the applicant's single and aggregate capacity. The applicant completes, signs and dates SBA Form 994B to request a bonding line. The agent enters the request for a bonding line into eApps (located at Bonds>eApps>Edit>[TIN entry]>*Bonding Line* in CAFS) and uploads the executed SBA Form 994B to *Business Docs*. After SBA makes a decision on the bonding line, an email is sent to the agent indicating the decision. The surety/agent retains the executed form.

(2) Submitting an Application Under a Bonding Line

The Attorney-in-Fact signs and uploads SBA Form 990 to *Bond Docs* for each bond guarantee application submitted under an approved SBA bonding line within 15 calendar days of bond issuance. The contractor fee must be paid before SBA issues a final bond approval. SBA signs and uploads the form in eApps and makes the ~~original~~ executed SBA Forms 990 and SBA form 994 accessible to the Surety for retention in accordance with https://www.ecfr.gov/current/title-13/chapter-I/part-115. The surety fee for all final bond guarantees must be paid in accordance with 13 CFR 115.32 and this SOP.

d. Bonding Line Exceptions

The contractor's account should be managed within the established limits of the bonding line. If an application exceeds the parameters of the bonding line, SBA will advise the agent to request a new bonding line with different parameters, if the contractor qualifies.

e. Cancellation of the Bonding Line

A bonding line may be cancelled at any time at the discretion of SBA or the Surety. The party canceling the bonding line must provide written notification to the other party. SBA may cancel the bonding line if the terms and conditions are exceeded, the financial condition of the small business changes, the WIP schedule becomes past due, or the small business defaults on a previous bond. All bonds issued under the bonding line prior to the cancellation date will be guaranteed by SBA.

7. Increases, Decreases and Cancellations

a. Increases and Decreases

The Surety must request SBA's prior approval whenever the original bond amount increases as a result of a single change order of at least 25 percent or $500,000, whichever is less before issuing any new bonds, change rider or surety consents. The Surety must notify SBA and receive the approval of any increases or decreases to the contract or bond amount that aggregate 25 percent or $500,000 as soon as the surety acquires knowledge of the change. SBA Form 990 should also be used to notify SBA of the change.

(1) Bid Bond Increase

The Bid Bond increase must be submitted through eApps, and a new SBA Form 990 must be signed by the agent and submitted to SBA. The increase is signed by SBA and the approved SBA Form 990 is sent to the surety company for retention in accordance with 13 CFR § 115.21(b). A copy of the signed form is uploaded into eApps by SBA.

(2) Final Bond Increase

The Final Bond increase must be submitted through eApps, and an updated SBA Form 990 must be uploaded to the application. An obligee status report on the project must be uploaded to eApps showing satisfactory standing on the project. After SBA conditionally approves the increase in eApps, an email is sent to the agent to advise that an additional contractor fee is due. After SBA is notified that the fee has been paid and has received a new, signed SBA Form 990, SBA reviews the applicant for suitability to perform the increased amount of work, approves the increase, signs the form, and sends the executed to the Surety for retention in accordance with 13 CFR § 115.21(b). A copy of the signed form is retained in eApps by SBA. As a note, SBA is not required to approve a bond increase. SBA's support of an increase is attained by the applicant meeting SBA's underwriting requirements.

(3) Final Bond Decreases

The Final Bond decrease must be submitted through eApps, and an updated SBA Form 990 must be uploaded to the application. SBA signs the form and sends the approval form to the Surety for retention. A copy of the signed form is uploaded into the by SBA.

b. Cancellations

The Surety must request final bond guarantee cancellations. Requests from agents will not be accepted. Surety staff may email the appropriate Area Office Director a cancellation request with the name of the applicant, the SBG number and the reason for the bond cancellation. SBA will cancel the bond guarantee and the fees will be refunded. Contractor fees are returned by check from the U.S. Treasury. Surety fee refunds will be included on the surety's next monthly statement.

8. Change of Surety or Agent

a. Change of Surety

If the small business changes surety companies, the principal and indemnitors must sign a General Indemnity Agreement (GIA) with the new Surety. The new GIA information must be entered into eApps before any new applications are entered.

b. Change of Agent

If the small business changes agents, the new agent must provide SBA with a signed agent/broker of record letter from the small business. The letter must be dated and include the address of the small business and be signed by a principal owner. The agent must provide SBA with the small business's EIN. SBA transfers the account in eApps to the new agent. The agent uploads the agent of record letter into eApps.

Chapter 8. Underwriting Considerations

1. Surety Underwriting Requirements for SBA-Guaranteed Bonds

A Surety is required to apply the same underwriting process and criteria to SBA guaranteed bond applications as it applies to its other bond applications. Thorough credit, capacity and character assessments must support each bond guarantee application and must be documented by the Surety. According to § 411 of the Small Business Investment Act of 1958, 15 USC §°694b, a small business is eligible for an SBA bond guarantee provided it satisfies four conditions: (1) the person who would be principal under the bond is a small business concern; (2) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon; (3) the small business is unable to obtain a bond with reasonable terms without the SBA guarantee; and (4) there is a reasonable expectation that such principal will perform the bonded contract, and the surety has determined the terms and conditions are reasonable in the light of the risks involved. In underwriting an SBA guaranteed bond, SBA also requires that the Surety comply with rules, principles and practices that are promulgated from time to time by SBA. In this regard, the Surety must verify and ensure that all bond guarantee applications and supporting data are accurate and complete, and updated, as necessary, when changes occur.

2. Underwriting Guidelines for the Surety Bond Guarantee (SBG) Program

A surety's review of a surety bond guarantee application package should include assessments of eligibility, feasibility, character, capacity, credit factors/special requirements, experience, and indemnity. SBA will not approve a Prior Approval application for surety bond guarantee assistance until SBA staff and the appropriate official with delegated authority have reviewed the electronic application and concur that the application meets program requirements and has acceptable risk factors. SBA's first consideration is the Surety's underwriting analysis and its decision to approve is based upon the Surety's recommendations and submitted information.

a. Eligibility

Eligibility determinations are based on statute, SBA rules and regulations, and the information in the application package. The eligibility requirements that apply to the Surety, the contractor, and the contract can be found in 13 CFR Part 115 and in other chapters of this SOP. Any eligibility questions should be discussed with the Director/OSG or Area Supervisor/OSG before proceeding with the application.

b. Feasibility

The information that the contractor provides in its application package, and the Surety's underwriting analysis of the case, must satisfy SBA that there is reasonable expectation that the contractor will successfully complete the contract (containing the bond requirement) according to its terms and conditions. The Surety and SBA must evaluate the various factors necessary for successful completion of the contract by considering surety industry standards and principles.

c. Character Evaluation Process

The completion of an SBA Form 994, Part V, Individual Certifications on Citizenship and Character and Other Matters by each Subject Individual is required as part of the character evaluation process on or after October 1 of each year. Every person completing an SBA Form 994 must answer each question fully giving details about any “yes” response. NOTE: A “yes” is required even when the record is allegedly sealed, expunged or otherwise unavailable. (This information is kept private and confidential.) There are no exceptions or waivers of this policy.

(1) If the SBA Form 994 is incomplete, it cannot be processed and will be returned to the Surety/agent. The Surety/agent must submit a corrected SBA Form 994 before processing continues.

(2) A Subject Individual may not reduce his or her ownership in a small business for the purpose of avoiding completion of SBA Form 994. Anyone who would have been considered a Subject Individual within six months prior to the application must complete SBA Form 994. The only exception to this six-month rule is when a Subject Individual completely divests his or her interest prior to the date of application. Complete divestiture includes a divestiture of all ownership interest and severance of any relationship with the small business (and any associated Eligible Passive Company) in any capacity, including being an employee (paid or unpaid).

(3) SBA Form 994 Part V must be dated, signed, and initialed no earlier than 90 days before Applicant's initial application for a bond guarantee and updated every federal fiscal year. Agent/Surety must retain the original SBA Form 994 Part V and the package for the life of all SBA bond guarantees plus three years beyond the date of potential claims/subrogation/claims settlement.

(4) SBA cannot provide financial assistance to businesses with Subject Individuals who are currently incarcerated, serving a sentence of imprisonment imposed upon adjudication of guilty, or under indictment for a felony.

d. Capacity

The contractor's capability to perform the contract is a primary underwriting concern.

(1) The Surety must certify that it reasonably expects the contractor to successfully complete the contract. Based upon the information submitted by the contractor, the Surety and SBA should consider the following factors when evaluating the contractor's capacity:

i. The contractor's experience and reputation;
ii. The contractor's present and projected financial condition;
iii. Reasonableness of the cost of the contract; and
iv. Feasibility of the successful completion of the contract.

(2) The Surety and SBA should consider the factors that are covered below and throughout the remainder of this chapter.

i. Management Control, Labor, and Logistics - Management controls should be reviewed to ensure sufficiency, evaluate adequacy of labor and make/buy plan, and other conditions that could impact contract performance.

ii. Geographical Area - The location, distance, and accessibility of the contract site should be considered. The tendency toward geographical expansion by a contractor is a prime factor in many surety losses. A firm can experience extremely adverse effects outside of its local and familiar geographical area due to unforeseen situations involving labor, politics, weather, laws, ground conditions, etc. Surety and SBA staff should exercise extreme caution in considering bond guarantees outside the contractor's normal geographical area.

iii. Adequacy of Bid - A contractor's ability to estimate is a key factor in its ability to succeed. Poor bid preparation and pricing leads to underbidding, which is a frequent cause of contractor failure. It is important that the Surety and SBA know the bid preparation process (e.g., performed by owner or estimator depending on the level of estimating experience) and the bid spread. SBA requires a justification and cost breakdown for bid spreads greater than 15 percent.

e. Credit Factors/Special Requirements

The Prior Approval Surety must provide sufficient information to SBA to permit an evaluation of the financial condition of the firm, cash flow needs during the period of the contract (ability to cope with the demands of the proposed contract as well as its other work outstanding), and the availability of monies necessary to continue contract performance. SBA personnel should evaluate the following factors and requirements.

(1) Evidence Of Bank Line of Credit - This includes the name of the contractor's bank, outstanding debt, amount of available credit, collateral endorsement requirements, etc., as needed.

(2) Financial Analysis – SBA personnel analyze the contractor's financial statements and the Surety's underwriting of the contractor's financial condition, as well as other aspects of the case. The analysis is commensurate with the size, duration, and risks of the proposed contract.

(3) Financial Statements – Agents submitting a bond guarantee application for a small contractor must follow the requirements in Paragraph 6.2.c. of this SOP for providing the contractor's financial statements. These financial statements must be current, in an acceptable format for analysis, and be high-quality statements, especially when the requested guarantee amount is substantial or when there are perceived problem areas.

f. Experience

(1) Based on the information provided in the application, SBA review encompasses the contractor's work history, type of jobs previously undertaken, largest previous jobs, etc. It also includes the contractor's years in business, its work specialty, and the related prior experience of the firm's principals. SBA personnel may request reference letters to support first time applicants or larger projects. Bond guarantees are generally limited to a size of twice the contractor's largest successfully completed project. SBA personnel documents the SBA case file for any exceptions.

(2) Over-extension is taking on more work than one can finance and manage and is one of the most common causes of contractor failure. SBA personnel carefully consider the contractor's total workload by reviewing the Work in Process provided through SBA Form 994F or equivalent in eApps. Work in Process schedules must include all jobs (bonded and unbonded), regardless of whether work has started, including all awarded contracts.

g. Indemnity

Common law may give the Surety and SBA a right of action against a principal of the contractor in the event of loss, but an indemnity agreement gives further protection against a wider range of contingencies. The Surety must obtain a General Indemnity Agreement (GIA) that is signed by the contractor and other indemnitors. If the contractor changes Sureties, a new GIA must be executed with the new Surety. A new GIA must also be executed if the business name, ownership, or corporate structure changes. SBA personnel do not base SBA's guarantee solely on the strength of the indemnity furnished.

(1) **Usual Indemnitors**: The Surety shall obtain the corporate indemnity of the applicant and its affiliates and the personal indemnity of each holder of 20 percent or more ownership interest of the small business. The personal indemnity of spouses is also required if collective ownership exceeds 20 percent or more of the small business. The Surety must be satisfied that the individual signing has the authority to sign the GIA when taking corporate indemnity.

(2) **Other Indemnitors**: The Surety or SBA may, at its discretion, require additional indemnity, such as the personal indemnities of key personnel, or others who may act officially on behalf of the applicant, regardless of stock ownership.

3. Types of Financial Statements Acceptable to SBA

a. Contract Size and Type of Financial Statement Depending on the size of the contract, the financial statements must be of the following type:

(1) **Up to $2,000,000** – An internally prepared, computer-generated financial statement is required for contracts up to $2,000,000. This is the lowest quality financial statement accepted by SBA.

(2) **More than $2,000,000 to $3,000,000** – A CPA-compiled or an In-House Plus year-end financial statement is required for contracts more than $2,000,000 to $3,000,000. An inhouse plus financial statement is defined as a high quality, computer generated financial statement. To qualify as in-house plus quality, a financial statement must include aged schedules of accounts receivable and accounts payable, current portion of long-term debt, and a correctly structured balance sheet with no negative liabilities.

(3) **More than $3,000,000 to $14,000,000** – A CPA-reviewed year-end financial statement is required for contracts more than $3,000,000 to $14,000,000.

(4) **Interim requirement**: The six-month interim financial statement may be an internally prepared financial statement or higher.

(5) **Case-based requirements**: SBA may require higher financial statement quality than outlined above due to case-based concerns.

b. Interim Financial Statements

Interim financial statements are required at six months from the contractor's year-end and submitted to SBA with the first application for a new applicant, if due, or within 120 days of the most recent financial statement date for existing participants. Internally Prepared financial statements are acceptable for all project sizes and contractors.

c. Tax Returns in Lieu of Financial Statements/Affiliate Tax Returns

All tax returns must be signed or include evidence of electronic filing. All tax returns must show revenues for the year, which might be on Form 8825, Schedules C or E.

d. New Applicants

Three full years of year-end financial statements, or tax returns if substituted for prior year financials, must be entered so that all required financial statements are displayed on the Business Financial Statement screen in eApps. If the contractor has been in business for less than three years, financial statements must be provided for the number of years in business. SBG staff complete the SBA adjustments for the most current financial statement and all financial statements going forward. A current financial statement meeting OSG requirements must be provided for all new accounts. Annual receipts of a concern which has been in business for less than three complete fiscal years are annualized using the incomplete year's financial statement. Annualized calculation is the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52. Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts mean the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52.

e. Financial Statement Exceptions:

The current financial statement date, type and working capital amount in the Business Financial Statements module must match the date, type and amount used in SBA's analysis of total available working capital included in underwriting remarks for each bond guarantee application. Depending on the situation and underwriting evaluation, a one-time exception may be provided for insufficient financial statement quality based on the job size. SBA monitor the exception for compliance on future applications. Consideration of exceptions requires supervisory approval.

f. Financial Statement Adjustments:

Adjustments should be made by SBA only to current assets, current liabilities and some long-term liabilities as deemed necessary to achieve an accurate working capital analysis. All adjustments to financial statements must be detailed in a remark at the bottom of the financial statement screen. SBG staff must ensure that information is fully entered and verified on the financial statement screen for both the balance sheet and income statement even if no adjustments are made. If no adjustments are needed, it should be noted.

Routine adjustments made by SBAs are as follows:

(1) Asset Adjustments

i. ***Restricted Cash/CD Pledged as Security*** *– SBA cannot consider as a current asset. SBA personnel will reclassify as a long-term asset or discount fully if carried as a current asset.*

ii. ***Accounts Receivable*** *– SBA discounts all receivables over 90 days unless determined to be collectible or retainage.*

iii. ***Accounts Receivable Other*** *– SBA discounts fully unless details are provided for reconsideration.*

iv. *Employee, Affiliate & Shareholder Receivable/Note – SBA discounts fully.*

v. ***Marketable Securities*** *– SBA verifies value stability over consecutive months. If confirmed, SBA discounts most recent face value of stocks and mutual funds by 70 percent and accept 100 percent face value of municipal bonds.*

vi. ***Prepaid Expenses*** *– SBA discounts fully.*

vii. ***Deferred Taxes*** *– SBA discounts fully.*

viii. ***Tax Refund*** *– SBA allows if financial statement is a CPA review or audit, and tax refund is listed as an asset.*

ix. ***Inventory*** *– SBA discounts 50 percent for each account routinely and discounts fully if inventory consists of real estate, livestock, other non-inventory assets or if the figure remains the same between financial statements. 100 percent of inventory may be allowed if inventory turns at least once fully during the year per CPA notes to financial statements.*

x. ***Other Current Assets*** *– SBA discounts fully unless notes or identifying information will allow inclusion based on GAAP current asset definition.*

xi. ***Cash Value of Life Insurance*** *– SBA allows as a current asset, reclassifying, if necessary, if verified to be the actual cash value of a policy owned by the small business and not the policy limit or owned personally.*

xii. *Goodwill/Intangible Assets – SBA discounts fully.*

(2) Liability Adjustments

i. ***Bank Line of Credit*** *– SBA reclassifies as a current liability if expiration date is within 12 months of the financial statement date.*

ii. ***Current Portion of Long-Term Debt*** *– SBA calculates 25 percent of long-term debt and reclassifies it as a current liability when no current portion of long-term debt is provided in internal, in-house plus and CPA compiled financial statements. SBA may reduce the reclassified amount if Surety provides acceptable rationale for doing so.*

iii. ***Shareholder/Owner Loan*** *– SBA may reclassify from a current liability to a long-term liability with a signed surety subordination agreement and copy of the note.*

g. Personal Financial Statements:

Principals' personal net worth from SBA Form 413 Personal Financial Statement, or equivalent, must be entered in eApps Principals Financial Statement module with the initial application and updated annually. The annual update is due 120 days from the last personal financial statement date.

4. Unacceptable Responses and Responses of Concern

a. SBA Form 990

When a large bid spread exists between the contractor's bid and the next higher bid, the contractor must submit a written justification for the large bid spread and note any factors that might mitigate the spread. SBA will consider the contractor's justification and the Surety's justification for supporting the bond.

b. SBA Form 994 (Application for Surety Bond Assistance) and SBA Form 994B (Annual Surety Review)

SBA personnel should be alert to the following "yes," or "no," responses on the following questions on SBA forms and in eApps. Appropriate documentation must be obtained from the Surety in these cases. A blank response to any item is unacceptable.

YES:

(1) Has contractor ever defaulted on any previous surety bonds? (SBA Form 994)

(2) Suppliers show past due 90 days or more.

NO:

(1) Present project similar to previous work performed? (SBA Form 994)

(2) Receivables 90 days current?

(3) Payables 90 days current?

(4) Surety verified bank balance?

(5) Indemnities posted?

Chapter 9. Surety Oversight and Accountability

SBA performs ongoing monitoring of Surety Bond Guarantee (SBG) program performance for all participating Sureties to identify unacceptable risk profiles and, if appropriate, enforce SBG program requirements through corrective actions (this is separate from SBA's audit procedures). SBA is responsible for ensuring that program utilization aligns with its mission. As outlined in 13 CFR § 115.21 and SOP 50 45, SBA reviews the adequacy and sufficiency of SBA-guaranteed surety bonds supported by participating Sureties. The program shares this information with Surety participants to increase transparency and to facilitate discussion and remediation of identified concerns.

1. Monitoring and Reporting Measurements

SBA continually monitors Sureties' respective performance with a look-back period of up to five (5) fiscal years (dependent on length of participation). In general, SBA will provide Sureties a copy of SBA's findings at intervals and thresholds determined by SBA.

SBA considers several factors when evaluating participating Surety risk profiles. These include (but are not limited to):

a. Portfolio performance relative to the overall program

b. Regulatory compliance

c. Standard operating procedure compliance

d. Form submission compliance

e. Risk and claims management

f. Other qualitative factors as deemed necessary

2. Possible SBA Actions

When a Surety's risk profile is determined to be unacceptable, as outlined in 13 CFR § 115.18 and SOP 50 45, SBA may require corrective actions to address identified concerns. SBA may take other actions including, but not limited to or in any particular order, any combination of the following:

a. Require a Surety-submitted corrective actions plan;

b. Require additional supporting documentation for application submission, user-specific or program-wide;

c. Further investigation, up to completion of an audit;

d. Reduce access to program guarantees;

e. Renegotiate SBA's guarantee percentage;

f. Renegotiate SBA's charge to the Surety for bonds executed thereafter; or

g. Suspend or terminate Surety's program participation.

3. SBA Process to Require Corrective Action

The decision to require corrective actions be taken by a Surety is made by the Director, Office of Surety Guarantees (D/OSG). While a corrective action is pending, SBA may suspend program participation until the Surety satisfactorily meets all conditions set by SBA for resumption of support.

If notified of a required corrective action by SBA, a Surety must respond in writing according to the response timeframe indicated by SBA. The response must include acknowledgement of the required corrective action and a statement of intent to comply.

If prompted for a corrective action plan by SBA, a Surety must respond in writing within 45 business days of email receipt of such notice unless SBA notifies the Surety of a different timeframe. The response must include a corrective action plan with details on actions the Surety will take to address each finding and corrective action required.

A Surety must implement all corrective actions within 90 calendar days of the date of email receipt of the notice unless SBA provides written notice of another timeframe. After receiving Participant’s response, SBA generally will assess the plan and notify the Surety of whether its plan/actions are satisfactory, not satisfactory, or SBA requires additional information.

SBA may conduct a targeted review to confirm the Surety has implemented its corrective action(s). The corrective action process is a key tool for bringing Sureties into compliance and limiting agency and Surety risk. Decisions to suspend, terminate, deny participation in, or deny reinstatement in the Surety Bond Guarantee program are made by the program's Director. A Surety may file a petition for review of suspensions and terminations with the SBA Office of Hearings and Appeals (OHA) under 13 CFR 134.

Chapter 10. Office of Inspector General (OIG) Referrals

1. Matters That Should be Referred to OIG

All SBA officials, Sureties and other program participants should be on the lookout for fraud and must report any known or suspected irregularities involving SBA programs, program participants, or personnel to the OIG. (13 CFR § 120.197) Whether acting alone or in collusion with others, surety bond guarantee applicants, Sureties or other Obligors may intentionally provide false information to SBA. Examples of irregularities that must be referred include:

a. Overstating income;

b. Understating or failing to disclose liabilities and debts;

c. Overvaluing collateral;

d. Failing to disclose incarceration or felony indictment status;

e. Making false claims of U.S. citizenship;

f. Failing to disclose true ownership of the business;

g. Using false Social Security numbers to conceal poor credit history;

h. Submitting altered tax returns;

i. Creating false work histories;

j. Actions by corrupt Surety agents who orchestrate, facilitate, or otherwise support any of the illegal acts committed by SBG applicants; or

k. Misconduct by a Surety, Surety agent or representative, or SBA official such as the solicitation, offer or acceptance of a bribe to approve a surety bond guarantee.

2. Referral process

A referral to the OIG can be made by:

a. Calling the toll–free OIG Hotline at 1-800-767-0385, or

b. Completing the on-line OIG Complaint Submission Form at https://www.sba.gov/about-sba/oversight-advocacy/office-inspector-general/office-inspector-general-hotline and submitting the referral via the Internet, or

c. Mailing the referral to:

U.S. Small Business Administration

Office of Inspector General Investigations Division,

Mail Code 4113 409 Third Street, SW

Washington, DC 20416

3. Information That Should be Included in the Referral

An OIG referral should include as much information as possible in response to the following questions:

a. Who is involved? (Name, occupation, address, contact information, etc.)

b. What occurred and how is SBA involved?

c. When and where did, or will, the activity take place?

d. Why does the activity appear to be illegal or improper?

e. What dollar amount is involved?

f. Who can confirm the allegation and how can that person be contacted?

g. Who can provide more information?

When applicable, copies of supporting documentation to the questions above should be submitted as part of the referral.

4. Post-Referral Responsibility

After referring a matter to the OIG, the person who made the referral must:

a. Report any new or additional information discovered about the matter to the OIG.

b. Not disclose or discuss the existence of the OIG referral or investigation to any person other than SBA officials on a need-to-know basis.

c. Coordinate any activities related to the surety bond guarantee with the OIG in order to avoid taking any action that could be detrimental to an investigation or subsequent prosecution.