

SBA

SOP 50 45 3

The Surety Bond Guarantee Program

**Office of Surety Guarantees
U.S. Small Business Administration**

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|--|----------------|---|------------|
|  SMALL BUSINESS ADMINISTRATION STANDARD OPERATING PROCEDURE | | | |
| SUBJECT: The Surety Bond Guarantee Program | S.O.P. | | REV |
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| INTRODUCTION 1. Purpose: To provide guidance regarding the procedures and program requirements of the Surety Bond Guarantee Program. 2. Personnel Concerned: All SBA Employees. 3. Directives Canceled: SOP 50 45 2. 4. Originator: Office of Surety Guarantees | | | |
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Chapter 1. General Overview of the Surety Bond Guarantee (SBG) Program

1.1. 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.

1.2. Mission, Objective and Purpose

The mission of the SBG Program is to provide bonding assistance, in partnership with surety companies, to qualified small businesses. 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 issued by a Surety and protects against all or part of the loss if the contractor defaults. The Miller Act requires a surety bond on any Federal contract valued at \$150,000 or more. Most state and local governments and private entities also require surety bonds.

1.3. 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 individually. Under the PSB Program, participating Sureties are delegated the authority to issue, service, and monitor bonds without SBA's prior approval.

1.4. 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 and 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 and audits and area office 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 Area Office Staff Within Assigned Geographical Area
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, SOP's 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 the Area Office's allotment of guarantee authority.
 5. Maintaining liaisons with surety companies and agents, industry associations, and Federal and state agencies.

1.5. Surety Bond Guarantee Approval Authority – Prior Approval Program

- a. Delegation of Authority for Approval of Surety Bond Guarantee Agreements
- The following SBA personnel can approve surety bond guarantees in the Prior Approval within the specified limits below.

| Position | Dollar Amount |
|--|----------------------|
| Director, OSG | \$10,000,000 |
| Deputy Director, OSG | \$10,000,000 |
| Supervisory Surety Bond Guarantee Specialist | \$6,500,000 |

- b. Rule of Two
- The approval or declination of a surety bond guarantee application requires the combined action of two SBA employees. An SBA professional must recommend the action and an approving official must concur with the recommendation. If the recommending and approving employees disagree on their decisions, the application must proceed through the chain of command until two concurring decisions are reached.

c. Oral Approvals

SBG personnel cannot give oral approvals for surety bond guarantee agreements. They can notify the surety of SBA's decision if the guarantee agreement 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 controls.

d. Defaults, Claims and Recoveries

All default, claims and recovery functions, including final action on claim payments or recovery settlements, are handled by the Claims and Recovery Division in Headquarters.

Chapter 2. SBA's Surety Bond Guarantee Agreement

2.1. Terms and Conditions of SBA's Guarantee

a. Responsibilities of SBA

Under its agreement with a surety company (see ¶¶ 2.2 and 2.3 below), SBA will reimburse the Surety for a specified percentage of losses and expenses incurred as a result 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 by the surety industry and must use the same principles and practices that it uses on unguaranteed bonds.

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.

3. Claims, Salvage and Recovery

Guidelines and procedures for claims, salvage and recovery are found in SOP 50 46, Claims and Recovery Program.

2.2. Prior Approval Guarantee Agreement (SBA Forms 990 and 990A)

The Prior Approval Agreement is a written agreement between SBA and a surety company under which SBA agrees to guarantee a specific bid or final bond. The forms that are used for this agreement are the [Surety Bond Guarantee Agreement \(SBA Form 990\)](#) or the [Quick Bond Guarantee Application and Agreement \(SBA Form 990A\)](#). See ¶¶ 6.2b(1) and 6.3. SBA Form 990A may be used only for contract amounts that do not exceed \$250,000 at the time of application. SBA must approve the Prior Approval Agreement before the Surety executes a bond, unless the bond is issued under a bonding line. (See Chapter 6 for bonding line requirements).

2.3. 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.

2.4. Maximum Contract Amount

At the time that the Surety executes the bond, the contract amount or total work order cannot exceed \$6.5 million (subject to adjustment for inflation in accordance with 41 U.S.C. 1908), or up to \$10 million if a Federal contracting officer certifies that SBA's guarantee is necessary for the small business to obtain bonding. The original contract amount at the time of bond execution must not exceed these limits.

2.5. Guarantee Percentage

a. Prior Approval Program

1. SBA's guarantee percentage is equal to 90 % if:

(a) The total contract amount at the time of the bond's 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%. This provision does not apply to the small businesses 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%. The surety must provide SBA with evidence to support the decrease and other requested information; or

(b) The bond was issued on behalf of a small business owned and controlled by economically and socially disadvantaged individuals, on behalf of a qualified HUBZone small business concern, or on behalf of a small business owned and controlled by veterans or service-disabled veterans. In order to be deemed "owned and controlled" by one or more individuals in any of these categories, the firm must be 51% owned, and its daily business operations must be managed and controlled by one or more individuals who fall within any of these categories. Individuals who are members of designated socially disadvantaged groups are presumed to also be economically disadvantaged. The following individuals are considered disadvantaged: Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, and other minorities or individuals found to be disadvantaged by SBA according to Section 8(a) of the Small Business Act (See 13 CFR, Part 124).

2. SBA's guarantee percentage may not exceed 80% for all other bonds.

b. PSB Program

SBA's guarantee percentage may not exceed 70% for all bonds.

c. Increases 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. For example, if the statutory limit is \$6.5 million and the contract amount was increased to \$6.8 million, SBA's revised guarantee percentage would be calculated as: \$6.5 divided by \$6.8 or 95.6 %, times 80%, or 76.5%.

2.6. Cost of SBA's Guarantee

a. Surety Fee

SBA does not charge an application or Bid Bond fee, but does charge a fee for Final Bonds. The fee is subject to change as announced from time to time in the Federal Register.

1. Amount of Surety Fee

SBA charges the Surety 26% of the bond premium that the Surety charges the contractor. The surety fee is rounded to the nearest dollar.

2. Timeline for Payment

(a) A Prior Approval Surety must pay its fee to SBA within 60 calendar days after SBA approves the Prior Approval Agreement.

(b) The PSB Surety must remit its fee to SBA when it submits the monthly bordereau that lists the Final Bond, as required by its PSB Agreement with SBA.

3. 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. The Surety must not require the contractor to purchase insurance or any other services from the Surety, its affiliates or its agents.

4. 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.

b. Contractor Fee

SBA does not charge an application or Bid Bond fee, but does charge a fee for Final Bonds. The fee is subject to change as announced from time to time in the Federal Register.

1. Amount of Contractor Fee

SBA charges \$7.29 per \$1,000 (.729%) of the contract amount. The contractor fee is rounded to the nearest dollar.

2. Timeline for Payment

(a) In the Prior Approval Program, the Guarantee Agreement (SBA Form 990 or 990A) is conditionally approved until the fee payment has been made through Pay.gov. (See Paragraph 2.6 d.2.). SBA's approval of the Guarantee Agreement is not deemed final until the contractor fee payment has been made.

(b) In the PSB Program, the contractor must pay the fee through Pay.gov before the Surety issues the bond. The Surety must notify SBA of the Final Bond on its monthly bordereau as required by its PSB Agreement with SBA.

3. Unpaid Fees

If the contractor's fee is not paid, SBA will not issue 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.

- c. Fee Changes

1. Notification of Increases and Decreases

The Prior Approval Surety must notify SBA of any increases or decreases in the contract or bond amount that aggregate 25% or \$100,000, whichever is less, as soon as it is aware of the changes. If a single change order increases the bond amount by at least 25% or \$100,000, whichever is less, the Surety must submit a supplemental SBA Form 990 or 990A to SBA for prior approval of the increase.

2. Additional Fees Due as a Result of Increases

(a) If the contract or bond amount is increased as described in paragraph 2.c.1., additional Surety and contractor fees are due. The Surety must pay 26% of the additional premium that it charges the contractor, and the contractor must pay SBA \$7.29 per \$1,000 (.729%) of the increase to the contract amount.

(b) 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. The Prior Approval Surety must also remit any additional Surety fees due within 60 calendar days of SBA's approval of the Guarantee Agreement. (See ¶ 2.6.d.2.)

(c) The PSB Surety must notify SBA of any increases to the contract or bond amount that aggregate 25% or \$100,000 on a monthly bordereau and pay the additional fees in accordance with its PSB Agreement with SBA.

(d) For both the Prior Approval Program and the PSB Program, additional fees are not due until the increase in the contractor's fee equals or exceeds \$40 or the increase in the Surety's fee equals or exceeds \$40.

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. 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 will not be paid by SBA until the amounts aggregate at least \$40.

d. Pay.gov

Pay.gov is a financial management transaction portal that is 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, which is accessed at <https://www.pay.gov>, through which a checking or savings account may be debited or a credit card may be used.

1. Payment Options

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

2. Payment Process for the Prior Approval Program

(a) The application for a Final Bond is submitted electronically to SBA's area office.

(b) The agent signs the Guarantee Agreement (SBA Form 990 or 990A) and sends it to the area office.

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

- (d) The contractor fee is paid through Pay.gov and the agent notifies the area office through Application Comments that the contractor fee has been paid.
- (e) The area office associates the payment in the SBG system with the correct SBG number and approves the application in the system.
- (f) The area office signs the Guarantee Agreement and sends the original to the Surety company.
- (g) SBA is not liable under the Guarantee Agreement until the contractor's fee is paid.
- (h) The Surety fee is paid through Pay.gov no later than 60 days after the Guarantee Agreement is approved by SBA.

3. Payment Process for the PSB Program

- (a) The PSB Surety inputs the final bond into the PSB system.
- (b) The contractor pays the fee through Pay.gov before the PSB Surety issues the bond.
- (c) 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.

4. Pay.gov Fee Returns

The Denver Finance Center (DFC) advises Headquarters of all Pay.gov fee returns and provides the reason for the return.

Headquarters notifies the area office or PSB Surety of the return.

The area office contacts the agent and Headquarters contacts the PSB Surety to obtain a replacement payment.

5. Refunds

Any fee refunds due to the contractor or the Surety are paid by check even if the fee payment was made using Pay.gov.

CHAPTER 3. SURETY ELIGIBILITY AND PARTICIPATION REQUIREMENTS

3.1. Eligibility Criteria

The eligibility criteria in this paragraph apply to both Prior Approval and PSB Sureties.

a. All 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 on July 1st and shows each Surety’s underwriting limitation. Any Surety additions or status changes are published in the Federal Register as they occur.

The surety underwriting limitations published in the Treasury List are on a per bond basis and apply to all bonds for which an SBA guarantee is requested in the SBG Program, and not only to bonds issued for Federal projects. If the bond’s penal sum exceeds the Surety’s underwriting limitation, the excess must be protected by either co-surety or reinsurance. (See paragraph 3.5 of this SOP). 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 a recognized authority when reviewing a Surety’s application.

4. Lack of Business Integrity

The Surety, including any officer, director, individual holding 20% 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:

(a) the State or any authority regulating insurance revokes or cancels the license required of such Person to engage in the surety business; or

(b) 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; or

(c) 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

(d) 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. PSB Sureties

In addition to the requirements cited in Paragraph 3.1.a. that apply to all Sureties, the following eligibility criteria apply to PSB Sureties.

1. The Surety must have a Treasury List underwriting limitation of at least \$2,000,000.
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.

3.2. 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 organizational 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 number 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 claim reimbursement requests to the Small Business Administration, including any applicable manuals.

b. Application Submission

The surety's application should be submitted to the Director, Office of Surety Guarantees (OSG), at the following address:

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

3.3. 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 [Standard Form 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form"](#). 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 bond producers, underwriters, and claims administration staff should attend this training.

d. Authorization for SBA's General Login System (GLS)

Prior Approval Sureties and their agents use the E-app System to submit bond guarantee applications to SBA electronically, and PSB Sureties must input bonds electronically into the SBG System. SBA's General Login System (GLS) is the single login point for all SBA services. To obtain an account, an individual must be authorized by a surety company to obligate the Surety and issue bonds on its behalf. The following steps must be followed for access to GLS:

1. The surety company must send written confirmation to OSG for each individual that it is authorizing.

2. OSG will send the individual an Electronic Data Certification, which must be signed, notarized, and returned to OSG.
3. The OSG Security Administrator will contact the individual to complete the account setup.
4. After the person's profile information has been submitted and approved, the individual will receive an email with an ID and a default password. The individual should then log into GLS and use the *Choose Function* screen to change their password.

3.4. 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 located in Subparts A and B. PSB Sureties must comply with Subparts A and C.

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.

3.5. Reinsurance and Co-Suretyship

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 reinsurance or a co-suretyship arrangement and the following conditions are met:

a. Reinsurance

If the Surety wishes to issue a bond for a prime contractor under the Miller Act where the U.S. Government is the obligee, the Surety must submit to the Area Office a copy of the signed Federal reinsurance form within 45 days of the date that the SBA Form 990, Surety Bond Guarantee Agreement, is approved. The [“Reinsurance Agreement for a Bond Statute Performance Bond \(SF 273\)”](#) is used for Miller Act bonds and the [“Reinsurance Agreement in Favor of 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 and 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.

b. Co-Suretyship

The bond is issued with two or more 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 must 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.

c. How Reinsurance Affects Recovery Due to SBA

1. 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 Part 115) 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 Part 115.

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

(between 10%-30%, as applicable) 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.

3.6. Sanctions on a Surety's Program Participation

The following summarizes the various sanctions SBA can pursue and grounds for sanctions. This summary is not intended to alter the language in 13 CFR, and in case of an inconsistency, the language in the regulation shall prevail.

a. Possible SBA Actions

SBA may take the following actions with respect to a Surety's participation in the SBG Program:

1. Deny, suspend, or terminate a Surety's participation in the program or deny a Surety's reinstatement in the program;
2. Suspend or terminate the preferred status of a PSB Surety;
3. Refuse to issue further guarantees or honor claims submitted by a Surety;
4. Vary the terms and conditions of its guarantee agreements from Surety to Surety; and/or
5. Renegotiate the guarantee percentage or fee charged.

b. Grounds for Actions

The grounds for taking the actions described above, and the action that may be taken based upon the ground, are as follows:

1. Improper surety bond guarantee practices

SBA may refuse to issue further guarantees to a Prior Approval Surety or may suspend the preferred status of a PSB Surety for the reasons described below.

(a). Imprudent Practices

SBA has determined that the Surety has failed to adhere to prudent standards or practices, as compared to other participating Sureties in its underwriting of SBA-guaranteed bonds, its efforts to minimize losses, its claims or recovery practices, and its documentation related to SBA-guaranteed bonds. Based on this ground, SBA may refuse to issue further guarantees to a Prior Approval Surety or may suspend the preferred status of a PSB Surety.

(b) Acts of Wrongdoing

SBA determines that the Surety has committed acts of wrongdoing including fraud, material misrepresentation, breach of a Prior Approval or PSB Agreement, or regulatory violations (as defined in 13 CFR 115.19(d) and 115.19(h)). Based on this ground, SBA may refuse to issue further guarantees to a Prior Approval Surety or may suspend the preferred status of a PSB Surety.

(c) Failure to Consent to an Audit

The Surety fails to consent to an audit or fails to maintain and produce records, as required by SBA. Based on this ground, SBA may refuse to issue further guarantees to a Prior Approval Surety or may suspend the preferred status of a PSB Surety. Until the Surety consents to the audit, SBA may also refuse to honor claims submitted by a Prior Approval or PSB Surety.

(d) Excessive Losses

The Surety experiences excessive losses on SBA bonds as compared to other participating Sureties. Based on this ground, SBA may refuse to issue further guarantees to a Prior Approval Surety or may suspend the preferred status of a PSB Surety. SBA may also require the renegotiation of the guarantee percentage and/or SBA's charge to the Surety for bonds executed thereafter.

2. Lack of Business Integrity

SBA may deny, suspend, or terminate a Surety's participation in the Surety Bond Guarantee Programs upon the occurrence of any event described below involving the Surety or any of its officers, directors, partners, or any other individuals holding at least 20% 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 "Persons" for purposes of this provision:

(a) the State or any authority regulating insurance revokes or cancels the license required of such Person to engage in the surety business; or

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

(c) 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

(d) 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 regulations (as described in 13 CFR §115.19); or

(e) the Person is debarred, suspended, voluntarily excluded from or declared ineligible for participation in any Federal programs.

c. **SBA Process to Take Action Against a Surety's Participation in the SBG Program**

The decision to take any of the actions described in ¶ 3.6 a above is made by the Director, Office of Surety Guarantees (D/OSG).

1. **Notification to the Surety**

The D/OSG must inform the Surety of SBA's decision to take action by written notice, which states the reasons for the decision and the effective date.

2. **Surety Appeal**

With respect to suspensions or terminations of a Surety's participation in the SBG Program, the Surety may file a petition for review of the suspension or termination with SBA's Office of Hearings and Appeals (OHA) in accordance with 13 CFR, Part 134. For any of the causes listed in ¶ 3.6.b.2.(a)-(e) above, SBA's Administrator may, pending a decision pursuant to 13 CFR, Part 134, suspend the Surety's participation.

3. **Effect of Action on Guarantee**

The guarantees issued before a suspension or a termination remain in effect, but are subject to SBA's right to deny liability.

d. In addition to the sanctions and remedies discussed above, SBA may also seek criminal, civil, or administrative enforcement as appropriate.

3.7. Insolvency of a Surety

The rights and benefits of an insolvent surety under a Prior Approval or PSB Agreement accrue only to the Surety's receiver or trustee. SBA is liable only for the guaranteed portion of any losses incurred and paid by the insolvent Surety or its receiver or trustee under the guaranteed bonds.

Chapter 4. Contractor Eligibility Requirements

4.1. 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" and SBA Form 990A, "Quick Bond Application and Agreement". Form submission processes and requirements are found in Chapter 6 of this SOP. 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 on 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% or more of the small business must also provide such certifications.

4.2. 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. All parties of a joint

venture are considered as affiliates for determination of size eligibility. 13 CFR, Part 121, contains provisions related to the calculation of receipts and the impact of affiliates on size determination.

1. Service and Construction Industries

The company's average annual receipts for the last 3 years, including affiliates, are used to determine eligibility.

2. Manufacturing Industries

The average number of employees on payrolls for the last 12 months, including affiliates, is used to determine eligibility.

b. Affiliates

13 CFR Part 121 provides a detailed explanation of the term "affiliate". For example, if an applicant or any of its principals own any other companies, SBA will consider these companies affiliates in determining the primary industry in which the principal and its affiliates is engaged, and whether the principal qualifies as a small business based upon revenue or the number of employees.

c. Determination of Size Eligibility

For the Prior Approval Program, area office personnel review the application package and make the initial determination about size eligibility. They use financial statements and tax returns to verify the information submitted in the application package. Consolidated financial statements must include consolidating schedules separating the assets, liabilities, revenues and expenses of the applicant from those of its affiliates. SBA considers only the financial condition of the applicant in its working capital analysis, unless the affiliate has a negative impact on the firm.

4.3. 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% 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 912, "Statement of Personal History" with the initial application and if there are any changes in ownership. Processing instructions are found in Chapter 7 of this SOP.

b. Absence of Good Character

A Person's good character and reputation is presumed absent when:

1. The Person is under indictment for or has been convicted of a felony; or

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; or
3. A regulatory authority has revoked, canceled, or suspended a Person's license which is necessary to perform the contract; or
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. **Illegal Activity**

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

d. **Probation, Parole, or Pending Criminal Charges**

The good character of the contractor is presumed absent if any Person:

1. Is currently incarcerated, on parole, or on post-conviction probation; or
2. Has a pending criminal case.

4.4 Capacity

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.

4.5. 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.

4.6. Business Location and Resident Status

a. **Business Location**

The principal place of the contractor's business must be located 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 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. The enforcement of the General Indemnity Agreement in a foreign country must be strongly considered.

If the bonded contract involves work in a foreign country, the application must be referred to the Director/OSG. SBA may need to consult with the appropriate U.S. department or agency concerning American business operations in the foreign country.

c. Businesses Owned by Non-Citizens

A small business owned by an individual who is in the country illegally is not eligible for SBG assistance. Legal permanent residents and other non-citizens legally admitted into the country 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).

4.7. Contractor Graduation

There is no time limit for a contractor's graduation from the SBG Program, but participating Sureties should assist contractors in achieving this goal. Once a contractor is able to obtain bonds 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.

4.8. 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 close relative or member of the household of that Surety or Affiliate owns, directly or indirectly, (10% 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, 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 1 year, has any financial interest in the contractor;

(3) A member of Congress or person within the member's household is an officer, director, or shareholder with 10 percent or more interest in the contractor;

(4) A sole proprietor, officer, director or shareholder with 10 percent or more interest in the contractor is:

An appointed official or employee of the legislative or judicial branch of the Federal Government: or

A member or employee of a Small Business Advisory Council; or

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

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

(5) 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, the Area Office employee must refer the case to the district counsel, who has the delegated authority to act as an assistant standard of conduct counselor. The district 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.

4.9 Bankruptcies

Businesses and their owners, partners, or stockholders currently involved in a bankruptcy proceeding are ineligible for an SBA guaranteed bond. OSG requires a copy of the discharge order from the bankruptcy court.

4.10 Outstanding Tax Debts

Applicants with outstanding tax debts that have not been paid in full or resolved through a current payment agreement are ineligible for an SBA guarantee. All debts to the IRS and other government entities for outstanding tax obligations must be explained to SBA. A copy of a payment agreement for the outstanding debt and written evidence that the payment agreement is current must be included in the application package.

Chapter 5. Contract and Bond Eligibility Requirements

5.1. General Contract Eligibility

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

- 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 bonding.
- 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.

5.2. Contracts with Maintenance Agreements

Contracts that contain maintenance agreements of two years or less covering defective workmanship and materials are eligible and do not require SBA's prior approval. 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.

5.3. 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 and its Affiliates 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 one phase is not required to begin 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.

5.4. Indefinite Delivery and Definite/Indefinite Quantity Contracts (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. The contract amount is the total amount of the contract.

b. Indefinite Quantity Contract

This type of contract specifies both a minimum and maximum amount of supplies or services that will be ordered, and at least the minimum amount that will be ordered following contract award. The contract amount is the price of the estimated minimum quantity to be ordered under the contract. If the amount that is ordered is increased above the statutory limit after execution of the bond, SBA’s share of the loss is limited as described in Paragraph 2.5 (c) of this SOP.

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.

5.5. 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. Each option year following the initial contract year is treated as a separate obligation and requires the submission of a new guarantee application.

5.6. Design-Build Projects

Design-build projects are a well-established practice in both the private and public sectors, and are eligible for an SBA guarantee. Underwriting considerations include the contractor’s past performance record on design-build projects, as well as the standard financial, capability/capacity and character issues. It should be noted that design liability insurance may be available.

5.7. Timber Sale Bonds

SBA guarantees Bid and Final Bonds for timber sales contracts, which are 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.

5.8. 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 provides SBA with the necessary documentation. The Surety must ensure that the contractor has the appropriate training and certification 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. A copy of the certificate of pollution liability and workers comp insurance must be provided to SBA with all asbestos abatement or hazardous waste applications.

All applications for asbestos abatement or hazardous waste projects for non-Federal contracts must include a rider that accomplishes the same purpose as the sample form at Appendix 13. The rider must be on the surety's letterhead and must be submitted with each guarantee application.

The Surety must advise SBA of the reasons for any prematurely terminated asbestos or hazardous waste projects, any penalties in the contract for breach of contract or noncompliance with contract specifications, or any citations that the contractor receives for asbestos or hazardous waste related violations.

5.9. 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.

5.10. General Bond Eligibility

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

- a. Bid Bond: guarantees the bidder will enter into a contract and provide the required performance and payment bonds, if selected for contract award.

- 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: must be incidental and essential to a contract for which SBA has guaranteed a bond.

5.11. 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 additional 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 as the sample form at Appendix 14. The rider must be on the Surety's letterhead and must be submitted with each guarantee application that includes dual/multiple obligees

5.12. Ineligible Bonds

If the performance bond amount is greater than the contract amount, it is ineligible since the Surety and SBA would have a greater liability than the Obligee.

5.13. Other Ineligible Contracts and Bonds

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

- a. Advance Payment Bonds
- b. Bid Bonds on a Job Already Bid
- c. Completion Bonds
- d. Contract that prohibits the Surety from performing the contract if default occurs
- e. Financial Guarantee Bonds, except Timber Sales contracts
- f. Lease Bonds (Gas, Oil, Coal, etc)
- g. License and Permit Bonds
- h. Maintenance Bonds, except if ancillary to an SBA guarantee bond
- i. Reclamation Bonds for New Mining
- j. Release of Lien Bonds
- k. Subdivision Bonds
- l. Warranty of Fidelity
- m. Warranty of Performance or Efficiency

Chapter 6. Application Process for the Prior Approval Program

6.1. General Application Submission Process

The contractor must first apply for a bond with an agent who represents a participating Surety, providing all application information required by the Surety. 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 will submit an application to SBA for bond guarantee assistance, including required SBA forms and underwriting information.

All applications for SBG assistance may be submitted to SBA electronically, using the E-application (E-app) system, by an individual (agent or Surety employee) authorized by a participating Surety to submit applications and issue bonds. This individual is referred to as the 'agent'. Contractor information may also be submitted electronically by the contractor or by the agent. The "upload" module includes separate areas for "Business Docs" and "Bond Docs." Documents generally pertaining to the business should be uploaded in "Business Docs" and documents pertaining to the specific SBG number should be uploaded in "Bond Docs." Instructions for obtaining a User ID and password are found at Paragraph 3.3 of this SOP.

The E-app distributes the application to the appropriate area office for processing, based upon the contractor's business address and the area office's service territory. The area office reviews the application, contacts the agent with any questions or requests for additional information, and makes a decision on the application. The E-app system generates an email notification to the agent when the decision is reached.

There are several SBA forms that must be completed as part of the application process in addition to the E-app. These forms and paper retention requirements are discussed in detail below.

Original SBA forms for Bid Bond applications must be received in the appropriate Area Office within one week of the electronic application submission. Original SBA forms for Final Bond applications must be received in the appropriate Area Office within two (2) business days of the electronic application submission. The area office executes the required original documents and distributes them to the appropriate parties.

6.2 Standard Application Package (For Initial Contract Amounts Exceeding \$250,000)

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 E-app during the application submission process. The SBA forms are also available at <http://www.sba.gov/content/bond-guarantee-application-forms>. Other underwriting information can be uploaded into the E-app.

a. Small Business SBA Forms

The following SBA Forms are submitted by the contractor to the agent:

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, Principal 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 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 and if there are any ownership changes.

The original SBA Form 994, signed by the contractor, must be retained by the agent after uploading to Bond Docs in the E-app in PDF format. Note: Agents are not required to obtain the originally signed SBA Form 994 on unsuccessful bids.

2. [SBA Form 912 – Statement of Personal History](#)

This form is completed by each owner of 20% or more equity of the small business, and each of its officers, directors, or general partners. No substitute form is acceptable. SBA uses the information to assess eligibility of the small business. It must be submitted with the initial application and with subsequent applications if there have been any ownership changes. The form must be completed, signed, and dated by:

- The proprietor, if a sole proprietorship
- Each partner, if a partnership
- Each officer, director, and holder of 20% or more of the equity, if a corporation or limited liability company

If there are no affirmative answers, the agent retains the original SBA Form 912 after uploading to Business Docs in the E-app in PDF format. Otherwise, the original form is sent to SBA for processing, and the agent retains a copy. (See Chapter 7 of this SOP)

3. [SBA Form 991 – Surety Bond Guarantee Agreement Addendum](#)

This form must be included in the application package if work on the project has started. The “billed to date”, “paid to date”, and “lien waver” 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 to the

principal under the contract are current and the project has been satisfactorily performed as of the Obligee's signature date. Both certification signatures must be original.

The following documentation must be included with the SBA Form 991 or may be uploaded to Bond Docs in the E-app:

- (a) Evidence that the requirement for the bonds was contained in the original contract at award.
- (b) A statement explaining why the bonds were not obtained prior to commencement of the work and why they are now being required.
- (c) Copies of all lien waivers for all subcontractors and suppliers.

The original SBA Form 991 must be attached to the SBA Form 990 and sent to the appropriate Area Office. SBA signs the forms and uploads them to the E-app. Both the SBA Form 990 and SBA Form 991 are sent to the Surety for retention in accordance with 13 CFR § 115.21(b).

4. [SBA Form 994F – Schedule of Work in Process \(WIP\)](#)

Information about all of the contractor's uncompleted work, 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 must be updated every 90 days. The agent must verify the accuracy of all information on the WIP and enter the information from the form into the E-app. The original form, signed by the contractor must be uploaded into the E-app and retained by the Surety in accordance with 13 CFR § 115.21(b).

5. [SBA Form 413 – Personal Financial Statement](#)

Each principal of the company, all persons who submitted SBA Form 912's, and all persons who personally indemnify on the GIA must complete an SBA Form 413, or an equivalent form, and submit with the initial application. The information must be updated annually and entered into the E-app. 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 a specific bond. No substitute form is acceptable to SBA and no modifications are allowed except in conformity with "Terms and Conditions – Item 4". It is required for each application, unless the application is submitted under the Quick Bond Application and

Agreement. See Paragraph 6.5 of this SOP for submissions requirements related to bonding lines.

The SBA Form 990 is generated during the E-application process, signed by the agent and sent to the appropriate Area Office for completion by SBA. SBA signs the form and uploads it into the E-app. The original form is sent to the Surety for retention in accordance with 13 CFR § 115.21(b). Note: Agents are not required to obtain the originally signed SBA Form 990 on unsuccessful bids.

2. [SBA Form 994B – Surety Bond Guarantee Underwriting Review](#)

This form contains business, financial, and contract specific information, and is the Surety/agent's review of the account. It is completed electronically in the E-app with the initial application for the small business and must be updated at the start of each Federal fiscal year (October 1st).

This form is also submitted with the agent's original signature for Bid and Final Bonds submitted under a bonding line. (See Paragraph 6.5 of this SOP.) Original forms submitted to report bonding line applications are executed by SBA and sent to the Surety for retention in accordance with 13 CFR § 115.21 (b).

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% ownership interest in the contractor, and any spouses. 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.

The GIA information is entered into the E-app and the original form must be retained by the Surety in accordance with 13 CFR § 115.21 (b).

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.

The BLOC information is entered into the E-app and the bank reference letter must be retained by the agent.

3. Business Financial Statements

(a) Reporting Requirements

The contractor must submit the following financial information: The most recent 12-month fiscal year-end financial statement and a 6-month interim financial statement are required for each small business.. All financial statement information must be entered and uploaded into the E-app within 120 days of the statement date. All new applicants must submit their last three fiscal year-end statements and the most current financial statement in accordance with the quality and size requirements below. Copies of Federal tax returns may be substituted for prior year-end statements. All tax returns must be signed or include evidence of electronic filing.

(b) Contract Size and Type of Financial Statement

Depending on the size of the contract, the financial statements must be of the following type:

- (1) **Audit** – A CPA audited year-end financial statement is preferred for contracts from \$6,500,001 - \$10,000,000. The corresponding 6 month interim financial statement should be either a CPA compiled or an In-House Plus financial statement.
- (2) **Review** – A CPA reviewed year-end financial statement is required for contracts from \$1,000,001 - \$6,500,000. The corresponding 6-month interim financial statement must be a CPA compiled or an In-House Plus financial statement.
- (3) **Compiled or In-House Plus** – a CPA compiled or an In-House Plus year-end financial statement is required for contracts between \$500,001 and \$1,000,000. The corresponding 6-month interim financial statement must be an Internally Prepared financial statement or higher. An In-House Plus financial statement is defined as a high quality, computer generated year-end financial statement. It must include aged schedules of accounts receivable and accounts payable, accuracy in accumulated depreciation and current portion of long term debt, with a broken down equity section that tracks with previous financial statements.
- (4) **Internally Prepared** – An Internally Prepared computer generated financial statement is required for contracts up to \$500,000. The corresponding 6-month interim financial statement may be an Internally Prepared financial statement or higher. This is the minimal quality financial statement accepted by SBA.

4. Contract and Bond Documents

All bid bond applications must include a copy of the bid solicitation, and all final bond applications must include copies of the relevant parts of the contract and 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 the E-app.

6.3 Quick Bond Application & Agreement (For Initial Contract Amounts Up To \$250,000)

a. The Quick Bond Application and Agreement (Quick Bond) is a single form that is used by the small business to apply for SBG assistance and as the guarantee agreement between the Surety and SBA. It can be used for a contract that does not exceed \$250,000 at the time of application. If the contract amount later increases above or decreases below \$250,000, the Quick Bond will be used to submit the contract amount changes to SBA. If a contractor revises its bid and the revised bid increases above the \$250,000 Quick Bond limit, SBA requires cancellation of the approved Quick Bond and submission of a standard prior approval bid application. A successful bid with a contract amount exceeding the Quick Bond App limit requires submission of a standard prior approval final application.

b. Exclusions

The Quick Bond 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 \$1,000 per day.
- 5) Contract involves asbestos abatement, removal of hazardous waste or other regulated materials that are considered harmful to the environment, demolition, or timber sales.
- 6) Bond would be issued under a bonding line.

c. Required Forms and Application Process

The SBA forms can be printed from the E-app during the application process or they are available at <http://www.sba.gov/content/bond-guarantee-application-forms>. The forms required with the Quick Bond include the following:

1. [SBA Form 990A - Quick Bond Guarantee Application and Agreement](#)

The SBA Form 990A is completed and signed by the small business, the Surety, and SBA. Below are the application processes for each party:

Small Business:

- a. Completes Parts A, I (Business Information) and II (Contract Information), and Part E (Certifications for Statements Required by Law and Executive Order) for initial application for SBG assistance.
- b. Completes Part A, II (Contract Information), for subsequent applications.
- c. Signs and dates SBA Form 990A and sends to the agent. Pages 1-3 are required for all applications. Page 4 is required with the small business's initial application and for subsequent applications if there have been any ownership changes.

Surety/Agent:

- a. Completes Part B, I, for bid bond.
- b. Completes Part B, II, for final bond.
- c. Completes Part B, III, for contract/bond amount changes.
- d. Inputs application into E-app.
- e. Signs and dates SBA Form 990A and sends to area office.
- f. Facsimile Principal signature on Page 2 is acceptable with original attorney-in-fact signature in order to accelerate the application and SBA review processes. However, the agent must obtain the Principal's original signed SBA Form 990A and retain it in accordance with 13 CFR § 115.21(b) . Note: Agents are not required to obtain the originally signed SBA Form 990A on unsuccessful bids.

SBA:

- a. Reviews application information and makes decision in E-app.
- b. SBA review includes, but is not limited to: size eligibility; contract size compared to the largest completed in last 5 years; similarity of contract to those previously performed; project start and completion dates.
- c. Signs SBA Form 990A, uploads it into the E-app, and sends to the Surety for retention in accordance with 13 CFR § 115.21(b).

2. SBA Form 912 – Statement of Personal History

This form is completed by each owner of 20% or more equity of the small business, and each of its officers, directors, or general partners. No substitute form is acceptable. SBA uses the information to assess eligibility of the small business. It must be submitted with the initial application and with subsequent applications if there have been any ownership changes. The form must be completed, signed, and dated by:

The proprietor, if a sole proprietorship
 Each partner, if a partnership

Each officer, director, and holder of 20% or more of the equity if a corporation or limited liability company

If there are no affirmative answers, the agent retains the original SBA Form 912 after uploading to Business Docs in the E-app in PDF format.. Otherwise, the form is sent to SBA for processing. (See Chapter 7 of this SOP)

3. General Indemnity Agreement

An executed GIA on the Surety's form is required prior to submission of an application for an SBA guarantee. It must include the contractor's signature, must be secured by such collateral as the Surety and SBA finds appropriate, and must include the personal indemnification of the contractor, each holder of at least 20% ownership interest in the contractor, and any spouses. 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.

The GIA information is entered into the E-app and the original form must be retained by the Surety.

4. Bond and Contract Documents

All bid bond applications must include a copy of the bid solicitation, and all final bond applications must include copies of the relevant parts of the contract and 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 the E-app.

6.4. SBA Application Review and Decision

a. The area office reviews the application package, considering the underwriting factors discussed in Chapter 7 of this SOP. The decision on the application requires the concurrence of two people – see the Rule of Two at Paragraph 1.5.b. of this SOP.

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

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 in accordance with Paragraph 2.6. Bid applications may be conditionally recommended for approval for various reasons. Conditional approvals should be limited and the agent should be advised to remedy the situation prior to any further submissions.

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

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

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

b. After the decision is inputted into the E-app, the decision official must complete, sign, and date the SBA Form 990, 990A or 994B (for an application under a bonding line) and send the original form to the surety company for retention in accordance with 13 CFR § 115.21(b). A copy of the form is uploaded into the E-app. A separate SBA Form 990 or SBA Form 990A is required for the bid and the final in a bid-to-final situation.

6.5. Bonding Lines

A bonding line is a commitment from SBA to a Prior Approval Surety that allows the agent/surety to issue bonds to a pre-approved small business within authorized terms, limits and conditions. The agent must notify SBA immediately if there are any material changes to the underwriting information upon which the bonding line is based.

A bonding line can be issued for 1 year. However, bonding lines must expire at fiscal year end (September 30), since appropriation authority expires on that date.

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, after SBG approval of the applicant's first guarantee, but should be very carefully underwritten.

b. Limits and Conditions

When applying for a bonding line, the Surety must recommend limits and conditions which must be approved by SBA. Generally, these conditions include:

1. A single contract dollar limitation.
2. A total dollar amount and number limitation of all outstanding bids plus uncompleted work 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. Restrictions on high risk work. 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

The contractor completes, signs and dates SBA Form 994 to request a bonding line. The agent enters the request for a bonding line into the E-app and uploads a PDF of the executed SBA Form 994 to Business Docs. After SBA inputs a decision in the E-app, an email is sent to the agent indicating the decision. The agent is required to retain the original SBA Form 994 and upload a copy into the E-app.

2. Bid Bond

SBA Form 994B – Surety Bond Guarantee Underwriting Review (Part III) – must be input into the E-app, signed by the agent and immediately sent to SBA. SBA signs, uploads into the E-app, and sends the original to the Surety for retention in accordance with 13 CFR § 115.21(b).

3. Bid to Final Bond

SBA Form 990 – Surety Bond Guarantee Agreement – must be input into the E-app, signed by the agent and sent to SBA within 2 days. SBA signs, uploads into the E-app, and sends the original to the Surety for retention in accordance with 13 CFR § 115.21(b). The contractor and surety fees must be paid in accordance with Paragraph 2.6 of this SOP.

4. Final Bond (No Bid Bond)

SBA Form 990 – Surety Bond Guarantee Agreement – and SBA Form 994B – Surety Bond Guarantee Underwriting Review (Part III) – must be input into the E-app, signed by the agent/Surety and sent to SBA within 2 days. SBA signs and sends the original forms to the Surety for retention in accordance with 13 CFR § 115.21(b). The contractor and surety fees must be paid in accordance with Paragraph 2.6 of 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, the area office should 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.

6.6. Increases, Decreases and Cancellations

a. Increases and Decreases

The Prior Approval 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% or \$100,000, whichever is less. The Surety must notify SBA of any increases or decreases to the contract or bond amount that aggregate 25% or \$100,000, as soon as the surety acquires knowledge of the change. The same form (SBA Form 990 or SBA Form 990A) that was used for the original application should also be used to notify SBA of the change.

1. Bid Bond Increase

The Bid Bond increase must be input into the E-app and a new SBA Form 990 or SBA Form 990A must be signed by the agent and submitted to SBA. The original form is signed by SBA and sent to the surety company for retention in accordance with 13 CFR § 115.21(b). A copy of the signed form is uploaded into the E-apps by the area office.

2. Final Bond Increase

The Final Bond increase must be input into the E-app, and copies of all underlying change orders and an obligee completed status report on the project must be uploaded into the E-app. After SBA conditionally approves the increase in the electronic system, 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 or SBA Form 990A, the area office approves the increase, signs the form and sends the original to the Surety for retention in accordance with 13 CFR § 115.21(b). A copy of the signed form is uploaded into the E-app by the area office.

3. Final Bond Decreases

The Final Bond decrease must be input into the E-app, and a new, signed SBA Form 990 or SBA Form 990A must be sent to SBA. The area office signs the form and sends the original to the Surety for retention in accordance with 13 CFR § 115.21(b). A copy of the signed form is uploaded into the E-app by the area office.

b. Cancellations

To request a cancellation, the agent must send the original SBA Form 990 or SBA Form 990A, marked "Canceled" with a letter of explanation for the cancellation to the area office. The area office will cancel the bond in the E-app.

6.7. 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 input into the E-app by the Agent before any new applications are entered. The Surety must retain the GIA.

New SBA Form 912's must be submitted with the new Surety's name listed on the forms. (See Paragraph 7.2.c of this SOP.)

b. Change of Agent

If the small business changes agents, the agent must provide SBA with a signed agent/broker of record letter from the small business. The letter must be dated and include the EIN of the small business. The area office must input the change of agent and upload the agent of record letter into the E-app.

Chapter 7. Underwriting Considerations

7.1. 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. By statute, a small business is eligible for an SBA bond guarantee provided it satisfies four conditions: (1) the business is a small business concern (see 13 CFR, Part 121, Small Business Size Regulations); (2) the bond is required as a condition of bidding on or receiving a contract; (3) the small business is unable to obtain a bond without the SBA guarantee, and (4) there is a reasonable likelihood that the small business will successfully perform the contract. 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 application and supporting data are accurate and complete, and updated, as necessary, when changes occur.

7.2. 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 the SBG Specialist and the appropriate official with delegated authority have reviewed the electronic application (E-app), 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 information that it submits. SBA must maintain confidentiality and discretion in handling information that it obtains from the Surety in the underwriting process.

a. Eligibility

Eligibility determinations are based on statute, SBG program rules and regulations and 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 (program regulations) and in other chapters of this SOP. Specific requirements are fully detailed in chapters 3, 4, and 5, respectively. Any eligibility questions should be discussed with the Director/OSG or Deputy Director/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 (SBA Form 912 Process)

The applicant's good character is a fundamental necessity in surety bond underwriting and must be assessed by the Surety. In making this assessment, SBA requires that each owner of 20% or more equity of the small business, and each of its officers, directors, or general partners ("Subject Individual") must be of good character.

1. The completion of an SBA Form 912, Statement of Personal History, by each Subject Individual is required as part of the character evaluation process. Every person completing an SBA Form 912 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.
2. There is a presumption that SBA will not guarantee a surety bond to businesses with Subject Individuals who are currently incarcerated, on probation, on parole who have been indicted for a felony or a crime of moral turpitude, or who are presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction.
3. An application can be accepted for processing if the Subject Individual indicates an arrest record, but was acquitted or the indictment was dismissed and the individual is not currently incarcerated, on probation or on parole for any offense.
4. A Subject Individual with a deferred prosecution is treated as if the individual is on probation or parole. Such an application is presumed to not be eligible.
5. If every Subject Individual answers questions 7, 8, and 9 as "no", the processing of the application may proceed.
6. If a Subject Individual answers "yes" to question 7, then there is a presumption that the applicant is not eligible.
7. If a Subject Individual's response to question 9 reveals that he or she is currently on parole or probation, then there is a presumption that the applicant is not eligible.
8. If a Subject Individual answers "yes" to question 8 or 9, then that individual must go through a background check and character determination unless the charge resulting in a "yes" answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor's office must be attached to the SBA Form 912 and maintained in the Surety/agent file. If the individual pled guilty to the charges or to lesser charges, the background check and character determination must be conducted. Currently, SBA conducts two types of background checks:
 - (a) A Name Check, which requires a search of available records based on a person's name and social security number, and
 - (b) A Fingerprint Check, which searches available records based on the person's name and social security number plus a complete and legibly

written FD-258 Fingerprint Card or an Electronic Fingerprint Submission.

“Electronic Fingerprint Submission” means fingerprints taken and reproduced in a machine-readable format by a fingerprint capture system that complies with the Federal Bureau of Investigation’s Electronic Biometric Transmission Specifications. An Electronic Fingerprint Submission must be compatible with the Federal Bureau of Investigation’s Automated Fingerprint Identification System, or any successor system in place for biometric identification. The Electronic Fingerprint Submission will generally be a piece of paper produced by the fingerprint capture system, which an individual may attach to SBA Form 912 to expedite character check procedures. Where an Electronic Fingerprint Submission is not locally available, paper and ink fingerprint cards may still be used.

9. If there is a “yes” response, the Surety/agent may take the following actions:
 - (a) The Surety/agent must obtain a complete understanding of the reason(s) for the “yes” response and when necessary for clarification, the Surety/agent must obtain additional written explanation from the Subject Individual to include the following:
 - (i) Original signed SBA Form 912,
 - (ii) Date of the offense(s), including – month, day and year,
 - (iii) City and State, county or State, or City and Country, if in a foreign country where the offense(s) occurred,
 - (iv) The specific charges (e.g. assault, robbery, DUI) and the level of the charge (e.g. misdemeanor or felony),
 - (v) All pertinent court documents, such as the charge document, disposition document, probation release, etc. The disposition of the charge(s) may include but not be limited to any fines imposed,; any class or workshop to be attended; any jail time served, if applicable; the terms of probation (including evidence and dates of successful conclusion of the probation); or any other court conditions (such as registration as a sex offender,
 - (vi) Any specific court conditions or requirements. If the court’s conditions have been met, the applicant should state in the explanation that all conditions of the court have been satisfied and provide documentation showing these conditions were met; and
 - (vii) The Subject Individual’s dated signature on the explanation.
 - (b) When a Subject Individual discloses a felony arrest, a Fingerprint Check is always required and Fingerprint Card (FD 258) or an Electronic Fingerprint Submission must be completed. Where an Electronic Fingerprint Submission is not locally available, paper and ink fingerprint cards may still be used. Local law enforcement agencies will usually assist the individual with the fingerprinting, and Sureties/agents may

- obtain the FD 258 form their local field office.
- (c) When a Subject Individual discloses a past offense(s) that was classified as a misdemeanor, the background check may either be a Name Check or a Fingerprint Check.
 - (d) Regardless of whether the past offense was a felony or misdemeanor, the Surety/agent must submit the complete SBA Form 912 package to the Area Office before the application can proceed. SBA recommends that the Surety/agent submit the SBA Form 912 package as soon as possible.
 - (e) The Area Office will send the complete SBA Form 912 package to the Office of Inspector General/Office of Security Operations (OIG/OSO) at SBA Headquarters. When an SBA FORM 912 with a “yes” response is forwarded to the OIG/OSO, the Surety/agent must not make any statement to anyone outside the SBA about action being taken regarding the SBA Form 912 information submitted. Exceptions are only permitted when in compliance with provisions of the Privacy Act (See SOP 40 04).
10. Decisions Available to SBA When Processing an SBA Form 912 with a “yes” response:
- (a) Clear the SBA Form 912 to permit processing and approval. A note regarding the disposition of a positive SBA Form 912 must be entered into the E-apps Business Summary and the executed form and supporting documentation must be uploaded into the Business Docs. Internally cleared SBA Form 912s are held by each Area Office in a central file:
 - (i) SBA will clear a positive SBA Form 912 for processing and waive the fingerprint requirement only when the reason for the “yes” response meets the following criteria:
 - (A) A single minor (misdemeanor) offense or arrest; or
 - (B) Up to three minor offenses (arrests and /or convictions at one time or separately) concluded more than 10 years prior to the date of the SBA application; or
 - (C) A prior offense cleared by SBA on a previous application and no additional offenses have occurred since the previous application was cleared by. This clearance is only valid for six months from date of issuance. NOTE: Only may authorize the Area Office or Surety/agent to process and approve a guarantee when the SBA Form 912 is not cleared.
 - (ii) The Area Office cannot clear felony arrests or convictions for application processing.
 - (iii) When the Area Office receives the completed SBA Form 912 package and decides to clear it for processing, it will notify the Surety/agent that the application has been cleared for processing and will submit the SBA Form 912 package to the OIG/OSO for a Name Check.
 - (iv) When the Area Office clears the SBA Form 912 and the Name Check corroborates the information on the SBA Form 912, OIG/OSO will advise the Area Office.

- (v) When the Name Check results contradict the disclosure on the SBA Form 912, or the disclosed criminal history raises a question about the character of the individual, OIG/OSO will refer the matter to the D/OSG.
 - (vi) The D/OSG or designee can overrule the clearance by the Area Office.
- (b) Place the processing of the application on hold for further investigation:
- (i) The Surety/agent must obtain from the Subject Individual a Form FD 258, SBA Fingerprint Card or an Electronic Fingerprint Submission, and submit it to the Area Office to forward to OIG/OSO for a Fingerprint Check. The processing of the application will remain on hold until the results of a Fingerprint Check are received at which time the application will either proceed or be declined.
 - (ii) If additional criminal activity is revealed, information pertaining to the additional criminal activity will be referred to the D/OSG or designee who will notify the Area Office that an adverse condition exists.
- (c) Decline the application because the information supplied on the Subject Individual shows the offense is open and has not been adjudicated or the Subject Individual is on probation or parole.
11. SBA Form 912 Decision Appeals
- (a) SBA will consider a request submitted by a Subject Individual for a reconsideration of a determination of lack of good character. Factors that contribute to a favorable reconsideration include:
- (i) Additional information provided by the Subject Individual that satisfactorily explains the circumstances of the prior offense(s);
 - (ii) A statement from the Subject Individual indicating that he or she understands the significance of the previous offense(s); or
 - (iii) The passage of time between the date of the prior offense(s) and the date of application, during which the Subject Individual has not committed additional offenses and has generally led a responsible life and made a contribution to the community.
- (b) The Subject Individual should send a written request for reconsideration through the Surety/agent to : Director, Office of Surety Bond Guarantees, U.S. Small Business Administration, Office of Surety Guarantees, 409 3rd Street, SW, Washington, DC 20416.
12. SBA Form 912 Procedures for PSB Sureties
- (a) With respect to applications processed by PSB Sureties, if a Subject Individual answers question 8 or 9 with “yes”, then that individual must go through a background check and character determination unless the charge resulting in a “yes” answer was a single misdemeanor that was subsequently dropped without prosecution. (Documentation from the appropriate court or prosecutor’s office must be attached to the SBA

- Form 912 and maintained in the Surety's file. If the individual pled guilty to the charges or to lesser charges, the background check and character determination must be conducted. The application may be processed by the PSB Surety after the PSB Surety has requested and received written clearance of the character issue(s) from OSG.
- (b) To request clearance from OSG, the PSB Surety must submit a cover letter with the Surety's contact information, a brief description of the small business along with SBA Form 912 and any required attachments.
13. If the SBA Form 912 is incomplete, it cannot be processed and will be returned to the Surety/agent. The Surety/agent must submit a corrected SBA Form 912 before processing continues.
14. **Reducing Ownership to Avoid Submitted SBA Form 912**
 A Subject Individual may not reduce his or her ownership in a small business for the purpose of avoiding completion of SBA Form 912. Anyone who would have been considered a Subject Individual within 6 months prior to the application must complete SBA Form 912. The only exception to this 6-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).

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:

- (a). The contractor's experience and reputation;
- (b) The contractor's present and projected financial condition;
- (c) Reasonableness of the cost of the contract; and
- (d) 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.

(a) **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.

(b) **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. Use extreme caution in approving bond guarantees outside the contractor's normal area.

(c) ADEQUACY OF BID - A company's ability to estimate is a key factor in its ability to succeed as a contractor. Poor bid preparation and pricing leads to underbidding, which is a very 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 range of bids, i.e., the "bid spread" before making a decision on a final bond application. Bid spreads greater than 15 percent should include a justification and a cost breakdown..

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. Area office personnel should evaluate the following credit factors and special requirements.

1. EVIDENCE OF BANK CREDIT - This includes the name and address of the company's bank, the bank officer involved, outstanding debt, amount of available credit, collateral endorsement requirements, etc., as needed.

2. FINANCIAL ANALYSIS – Area office personnel should analyze the applicant's financial statements and the Surety's underwriting of the contractor's financial condition, as well as other aspects of the case. The analysis should be commensurate with the size, duration, and risks of the proposed contract. Sureties representing firms that have an ongoing need for SBG assistance must provide financial information semi-annually.

3. FINANCIAL STATEMENTS - An agent requesting a bond guarantee for a small contractor must follow the requirements in Paragraph 6.2.c. of this SOP for inputting and uploading the contractor's financial statements. These financial statements must be current, in an acceptable format for analysis, and should not be low-quality statements, especially when the guarantee request is substantial or when there are perceived problem areas.

f. Experience

1. Based on the information uploaded by the agent, the Area Office's review should encompass the contractor's work history, type of jobs previously undertaken, largest previous jobs, etc. It should also include the firm's length of time in business, its specialty area, and the related prior experience of the firm's principals. If not already submitted by the Surety, Area Office personnel may request reference letters to support

the decision.

First Time SBG Program Participants - The amount of the first guarantee for first time SBG Program participants should generally be limited to 200 percent of the company’s largest, successfully completed contract. SBG Area Office personnel should document 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. Therefore, field personnel must carefully consider the contractor’s total amount of work on hand by reviewing the information contained in the SBA 994F (or equivalent form). These work on hand schedules must include all jobs (bonded or unbonded), regardless of whether or not the work was started by the contractor, including all outstanding bids.

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 or corporate structure changes. SBG Area Office personnel should not base SBA’s guarantee solely on the strength of the indemnity furnished.

INDEMNITY

| <u>USUAL INDEMNITORS</u> | <u>OTHER INDEMNITORS</u> | <u>CORPORATE INDEMNITIES</u> |
|--|---|---|
| <p>The Surety shall obtain the corporate indemnity and/or personal indemnity of the contractor, and each holder of 20% or more ownership interest of the small business, and any spouses of the personal indemnitors and/or holders.</p> | <p>The Surety or SBA may, at its discretion, require personal indemnities of key personnel, or others who may act officially on behalf of the applicant, regardless of his/her stock ownership. The need for additional indemnitors may be due to insufficient personal resources on the part of the principal, the need for additional commitment or control, or any other needs of the case as perceived by the underwriting officials.</p> | <p>When taking a corporate indemnity, the Surety must be satisfied that the individual signing has the authority to sign.</p> |

7.3. 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:

Audit – A CPA audited year-end financial statement is preferred for contracts from \$6,500,001 - \$10,000,000. The corresponding 6 month interim financial statement should be either a CPA compiled or an In-House Plus financial statement.

Review – A CPA reviewed year-end financial statement is required for contracts from \$1,000,001 - \$6,500,000. The corresponding 6-month interim financial statement must be a CPA compiled or an In-House Plus financial statement.

Compiled or In-House Plus – a CPA compiled or an In-House Plus year-end financial statement is required for contracts between \$500,001 and \$1,000,000. The corresponding 6-month interim financial statement must be an Internally Prepared financial statement or higher. An In-House Plus financial statement is defined as a high quality, computer generated year-end financial statement. It must include aged schedules of accounts receivable and accounts payable, accuracy in accumulated depreciation and current portion of long term debt, with a broken down equity section that tracks with previous financial statements.

Internally Prepared – An Internally Prepared computer generated financial statement is required for contracts up to \$500,000. The corresponding 6-month interim financial statement may be an Internally Prepared financial statement or higher. This is the minimal quality financial statement accepted by SBA.

b. Tax Returns in Lieu of Financial Statements/Affiliate Tax Returns: All tax returns must be signed or include evidence of electronic filing. Tax returns substituted for FYE financial statements must be entered and adjusted in the financial statement module of the eApp in order to ensure that all required financial statements have been provided. Balance sheet figures may be left at zero if no balance sheet was included with the tax return. All tax returns must show revenues for the year, which might be on Form 8825, Schedules C or E.

c. New Accounts: Three full years of FYE financial statements, or tax returns if substituted for financials, must be entered so that all required financial statements are displayed on the Financial Statement screen in the eApp. SBG Specialists need only complete the SBA adjusted (right) side for the most current financial statement and all financial statements going forward. Prior year financial statements must be entered, but need not be adjusted. A current financial statement meeting OSG requirements must be provided for all new accounts.

d. Financial Statement Exceptions: The current financial statement date, type and working capital amount in the E-app Business Financial Statements module must match the date,

type and amount used in the analysis of total available working capital shown in underwriting remarks. Depending on the situation and underwriting evaluation, a one-time exception may be provided for insufficient financial statement quality based on the job size. Note the exception in Business Summary for compliance on future applications.

Example: No further apps over \$1 million will be considered until the 12/31/14 compiled f/s is replaced with the required CPA review; one time exception granted for #15-0004

e. 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 Specialists must ensure that information is fully entered and verified in both the agent entered (left) and SBA adjusted (right) column 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 to be made by area offices are as follows:

1. Asset Adjustments

Restricted Cash/CD Pledged as Security – cannot be considered a current asset; reclassify as a long-term asset or discount fully if carried as a current asset

Accounts Receivable – discount all over 90 days unless determined to be collectible or retainage

Accounts Receivable Other – discount fully

Employee, Affiliate & Shareholder Receivable/Note – discount fully if current asset

Prepaid Expenses – discount fully

Deferred Taxes – discount fully

Tax Refund – allow if in CPA prepared statement and deemed reasonable

Cost & Estimated Earnings in Excess of Billings/WIP/Underbillings/Retainage – allow all

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

financial statements.

Other Current Assets – discount fully unless notes or identifying information will allow inclusion based on GAAP current asset definition

Cash Value of Life Insurance – allow as a current asset (reclassify 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

Goodwill/Intangible Assets – discount fully

2. Liability Adjustments

Bank Line of Credit – reclassify as a current liability (12 months of payments or less) if incorrectly carried as a long-term liability

Current Portion of Long-Term Debt - calculate 25% of long-term debt and add to current liabilities when no current portion of long-term debt is provided

Shareholder/Owner Loan – may be reclassified from a current liability to a long-term liability with uploaded copy of a signed surety subordination agreement

f. Personal Financial Statements: The SBA Form 413, Personal Financial Statement or equivalent form, must be submitted with the initial application and must be updated annually. The annual update is due 120 days from the last financial statement date or within 120 days of the FYE date for the business, whichever is later.

7.4. RED FLAG ALERT SIGNALS

SBA 990

When a large bid spread exists between the applicant's bid and the next higher bid, the contractor must submit a written justification for the large bid spread and must note any factors that might mitigate the spread. The Agent must also provide an adequate reason for proceeding with the application and must upload the contractor's written justification into the E-app.

SBA 994B

SBG Specialists should be alert to the following “yes,” or “no,” responses on the SBA 994B. In these cases, appropriate follow-up documentation must be obtained from the Agent. A blank response to any item is unacceptable.

YES:

- Contractor started job yet?
- Financial statement show disclaimer?

- Any disputes?
- Contractor ever failed to complete job?
- Has contractor ever defaulted on a contract forcing a surety to suffer a loss?

NO:

- Present project similar to previous work performed?
- Bond required by original contract document?
- Work in progress verified by obligees?
- Has surety checked with suppliers?
- Payables current?
- Working capital sufficient?
- Schedule of aged payables & receivables attached?
- Verification of payables?
- Verification of receivables?
- Surety verified bank balance?
- Contractor has bank line of credit?
- Indemnities posted?
- All work on schedule?
- Contractor has adequate equipment?
- Contractor taxes current?
- Contractor insurance coverage sufficient?

Chapter 8. Office of Inspector General (OIG) Referrals

8.1. Matters That Should be Referred to the 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 criminal record;
- 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.

8.2. Referral Process

A referral to the OIG can be made by:

- a. Calling the toll –free OIG Hotline at 1-800-767-0385;
- b. Completing the on-line OIG Complaint Submission Form at http://web.sba.gov/oigcss/client/dsp_welcome.cfm 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

8.3. 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.

8.3. 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.