

§ 115.11

13 CFR Ch. I (1–1–10 Edition)

have furnished labor, materials, equipment and supplies in the performance of the Contract.

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

Veteran has the meaning given the term in Section 101(2) of Title 38, United States Code.

[61 FR 3271, Jan. 31, 1996, as amended at 61 FR 7985, Mar. 1, 1996; 72 FR 34599, June 25, 2007; 72 FR 50038, Aug. 30, 2007; 74 FR 36109, July 22, 2009]

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

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

§ 115.12 General program policies and provisions.

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

(b) *Eligibility of bonds.* Bid Bonds and Final Bonds are eligible for an SBA guarantee if they are executed in connection with an eligible Contract, as defined in § 115.10, Definitions, and are of a type listed in the "Contract Bonds" section of the most recent Manual of Rules, Procedures, Classifications of the Surety Association of America. Ancillary Bonds may also be eligible for SBA's guarantee. A per-

formance bond must not prohibit a Surety from performing the Contract upon default of the Principal.

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

(d) *Guarantee agreement.* The terms and conditions of SBA's bond guarantee agreements, including the guarantee percentage, may vary from Surety to Surety, depending on past experience with SBA. If the guarantee percentage is not fixed by the Investment Act, it is determined by OSG after considering, among other things, the rating or ranking assigned to the Surety by recognized authority, and the Surety's Loss rate, average Contract amount, average bond penalty per guaranteed bond, and ratio of Bid Bonds to Final Bonds, all in comparison with other Sureties participating in the same SBA Surety Bond Guarantee Program (Prior Approval or PSB) to a comparable degree. Any guarantee agreement under this part is made exclusively for the benefit of SBA and the Surety, and does not confer any rights (such as a right of action against SBA) or benefits on any other party.

(e) *Amount of Contract—(1) Determination of Amount of Contract.* For a fixed price Contract, the amount of the Contract is the price excluding any options. For a requirements Contract, the amount of the Contract is the price of the total estimated quantity to be ordered under the Contract. For an indefinite quantity Contract, the amount of the Contract is the price of the specified minimum quantity to be ordered under the Contract and, for each Order issued under such Contract, the price of each such Order. The amount of the Contract or Order to be bonded must not exceed the Applicable Statutory Limit as of the date:

(i) SBA approves a Prior Approval Surety's request for a Bid Bond guarantee;

(ii) A Preferred Surety Executes a Bid Bond; or

(iii) The date Final Bonds (and any Ancillary Bonds) unrelated to an SBA-guaranteed Bid Bond are Executed by a

Small Business Administration

§ 115.13

Preferred Surety or by a Prior Approval Surety following SBA's approval of its request for a guarantee of Final Bonds.

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

(ii) The amounts of two or more Contracts or Orders for supplies and services awarded to the same Principal or its Affiliates are aggregated to determine the Contract or Order amount if SBA determines, after discussion with the contracting official responsible for the award of the contract, that award of a single Contract or Order could reasonably have satisfied the supply or service requirement at the time of issuance.

(3) *Contracts or Orders in excess of \$2,000,000.* SBA is not authorized to guarantee bonds on Contracts or Orders in excess of \$2,000,000 if the statement of work involves, directly or indirectly, construction, operation, renovation or improvement of a casino or other gambling establishment, aquarium, zoo, golf course or swimming pool, or the Contract Obligee has one of the following NAICS codes:

- (i) 713210—"Casinos (Except Casino Hotels)";
- (ii) 721120—"Casino Hotels";
- (iii) 713290—"Other Gambling Industries";
- (iv) 713910—"Golf Courses and Country Clubs";
- (v) 712130—"Zoos and Botanical Gardens"; or
- (vi) 713940—"Fitness and Recreational Sports Centers" if SBA determines the business is a swimming pool.

(4) *Federal Contracts or Orders in excess of \$5,000,000.* Through September 30, 2010, SBA is authorized to guarantee bonds on Federal Contracts or Orders greater than \$5,000,000, and up to \$10,000,000, upon a signed certification of a Federal contracting officer. The contracting officer's certification must include a statement that the small business is experiencing difficulty obtaining a bond and that an SBA bond guarantee would be in the best interests of the Government. The certification must be express mailed to SBA, Office of Surety Guarantees, 409 Third Street, SW., Suite 8600, Washington, DC 20416, or faxed to the Office of Surety Guarantees at 202-481-0390, with a copy provided to the small business, and must include the following additional information:

- (i) Name, address and telephone number of the small business;
- (ii) Offer or Contract number and brief description of the contract; and
- (iii) Estimated Contract value and date of anticipated award determination.

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

[61 FR 3271, Jan. 31, 1996, as amended at 66 FR 30804, June 8, 2001; 74 FR 36109, July 22, 2009]

§ 115.13 Eligibility of Principal.

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

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

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