

Small Business Administration

§ 115.21

(i) The bond was Executed prior to the date of SBA's guarantee; or

(ii) The bond was Executed (or approved, if the Surety is legally bound by such approval) after the work under the Contract had begun, unless SBA executes a "Surety Bond Guarantee Agreement Addendum" (SBA Form 991) after receiving all of the following from the Surety:

(A) Satisfactory evidence, including a certified copy of the Contract (or a sworn affidavit from the Principal), showing that the bond requirement was contained in the original Contract, or other documentation satisfactory to SBA, showing why a bond was not previously obtained and is now being required;

(B) Certification by the Principal that all taxes and labor costs are current, and listing all suppliers and subcontractors, indicating that they are all paid to date, and attaching a waiver of lien from each; or an explanation satisfactory to SBA why such documentation cannot be produced; and

(C) Certification by the Obligor that all payments due under the Contract to date have been made and that the job has been satisfactorily completed to date.

(2)(i) For purposes of paragraph (f)(1)(ii) of this section, work under a Contract is considered to have begun when a Principal takes any action at the job site which would have exposed its Surety to liability under applicable law had a bond been Executed (or approved, if the Surety is legally bound by such approval) at the time.

(ii) For purposes of this paragraph (f), the Surety must maintain a contemporaneous record of the Execution and approval of each bond.

(g) *Delinquent fees.* The Surety has not remitted to SBA the Principal's payment for the full amount of the guarantee fee within the time period required under §115.30(d) for Prior Approval Sureties or §115.66 for PSB Sureties, or has not made timely payment of the Surety's fee within the time period required by §115.32(c). SBA may reinstate the guarantee upon showing that the contract is not in default and that a valid reason exists why a timely remittance or payment was not made.

(h) *Other regulatory violations.* The occurrence of any of the following:

(1) The Principal on the bonded Contract is not a small business;

(2) The bond was not required under the bid solicitation or the original Contract;

(3) The bond was not eligible for guarantee by SBA because the bonded contract was not a Contract as defined in §115.10;

(4) The loss occurred under a bond that was not guaranteed by SBA;

(5) The loss incurred by the Surety was not a Loss as determined under §115.16; or

(6) The Surety's loss under a Performance Bond did not result from the Principal's breach or Imminent Breach of the Contract.

[61 FR 3271, Jan. 31, 1996, as amended at 66 FR 30804, June 8, 2001; 72 FR 34599, July 25, 2007; 74 FR 36110, July 22, 2009; 79 FR 2087, Jan. 13, 2014; 82 FR 39501, Aug. 21, 2017]

§ 115.20 Insolvency of Surety.

(a) *Successor in interest.* If a Surety becomes insolvent, all rights or benefits conferred on the Surety under a valid and binding Prior Approval or PSB Agreement will accrue only to the trustee or receiver of the Surety. SBA will not be liable to the trustee or receiver of the insolvent Surety except for the guaranteed portion of any Loss incurred and actually paid by such Surety or its trustee or receiver under the guaranteed bonds.

(b) *Filing requirement.* The trustee or receiver must submit to SBA quarterly status reports accounting for all funds received and all settlements being considered.

§ 115.21 Audits and investigations.

(a) *Audits—(1) Scope of audit.* SBA may audit in the office of a Prior Approval or PSB Surety, the Surety's attorneys or consultants, or the Principal or its subcontractors, all documents, files, books, records, tapes, disks and other material relevant to SBA's guarantee, commitments to guarantee a surety bond, or agreements to indemnify the Prior Approval or PSB Surety. See §115.18(a)(3) for consequences of failure to comply with this section.

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(2) *Frequency of PSB audits.* Each PSB Surety is subject to an audit at least once every 3 years by examiners selected and approved by SBA.

(b) *Records.* The Surety must maintain the records listed in this paragraph (b) for the term of each bond, plus any additional time required to settle any claims of the Surety for reimbursement from SBA and to attempt salvage or other recovery, plus an additional 3 years. If there are any unresolved audit findings in relation to a particular bond, the Surety must maintain the related records until the findings are resolved. The records to be maintained include the following:

- (1) A copy of the bond;
- (2) A copy of the bonded Contract;
- (3) All documentation submitted by the Principal in applying for the bond;
- (4) All information gathered by the Surety in reviewing the Principal's application;
- (5) All documentation of any of the events set forth in §115.35(a) or §115.65(c)(2);
- (6) All records of any transaction for which the Surety makes payment under or in connection with the bond, including but not limited to claims, bills (including lawyers' and consultants' bills), judgments, settlement agreements and court or arbitration decisions, consultants' reports, Contracts and receipts;
- (7) All documentation relating to efforts to mitigate Losses, including documentation required by §115.34(a) or §115.69 concerning Imminent Breach;
- (8) All records of any accounts into which fees and funds obtained in mitigation of Losses were paid and from which payments were made under the bond, and any other trust accounts, and any reconciliations of such accounts;
- (9) Job status reports received from Obligees and documentation of each unanswered request for a job status report; and
- (10) All documentation relating to any collateral held by or available to the Surety.

(c) *Purpose of audit.* SBA's audit will determine, but not be limited to:

- (1) The adequacy and sufficiency of the Surety's underwriting and credit analysis, its documentation of claims

and claims settlement procedures and activities, and its recovery procedures and practices;

(2) The Surety's minimization of Loss, including the exercise of bond options upon Contract default; and

(3) The Surety's loss ratio in comparison with other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree.

(d) *Investigations.* SBA may conduct investigations to inquire into the possible violation by any Person of the Small Business Act or the Investment Act, or of any rule or regulation under those Acts, or of any order issued under those Acts, or of any Federal law relating to programs and operations of SBA.

[61 FR 3271, Jan. 31, 1996, as amended at 72 FR 34599, June 25, 2007]

§ 115.22 Quarterly Contract Completion Report.

The Surety must submit a Quarterly Contract Completion Report within 45 days after the close of each fiscal year quarter ending December 31, March 31, June 30, and September 30, that identifies each contract successfully completed during the quarter. The report shall include:

- (a) The SBA Surety Bond Guarantee Number,
- (b) Name of the Principal,
- (c) The original Contract Dollar Amount,
- (d) The revised Contract Dollar Amount (if applicable),
- (e) The date of Contract completion, and
- (f) A summary specifying the fee amounts paid to SBA by the Surety and Principal, the fee amounts due to SBA as a result of any increases in the Contract amount, and the fee amounts to be refunded to the Principal or rebated to the Surety as a result of any decreases in the Contract amount.

[82 FR 39501, Aug. 21, 2017]

Subpart B—Guarantees Subject to Prior Approval

§ 115.30 Submission of Surety's guarantee application.

- (a) *Legal effect of application.* By submitting an application to SBA for a