

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

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

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

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

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

*Service-Disabled Veteran* means a veteran with a disability that is service-connected, as defined in Section 101(16) of Title 38, United States Code.

*Small Business Owned and Controlled by Service-Disabled Veterans* means:

(1) A Small Concern of which not less than 51 percent is owned by one or more Service-Disabled Veterans; or a publicly-owned Small concern of which not less than 51 percent of the stock is owned by one or more Service-Disabled Veterans; and

(2) The management and daily business operations of which are controlled by one or more Service-Disabled Veterans, or in the case of a Service-Disabled Veteran with permanent and severe disability, the spouse or permanent caregiver of such Veteran.

*Small Business Owned and Controlled by Veterans* means:

(1) A Small Concern of which not less than 51 percent is owned by one or more Veterans; or a publicly-owned Small Concern of which not less than 51 percent of the stock is owned by one or more Veterans; and

(2) The management and daily business operations of which are controlled by one or more Veterans.

*Surety* means a company which:

(1)(i) Under the terms of a Bid Bond, agrees to pay a sum of money to the

Obligee if the Principal breaches the conditions of the bond;

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

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

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

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

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**§ 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. At a minimum, each applicant must have salaried staff that is employed directly (not an agent or other individual or entity under contract with the applicant) to oversee its underwriting function and perform all claims and recovery functions other than specialized services the costs of which may be reimbursable under 13 CFR 115.16(e)(1). Final settlement authority for claims and recovery must be vested only in the applicant’s salaried claims staff. The applicant must continue to comply with SBA’s standards and procedures for underwriting, administration,

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claims, recovery, and staffing requirements while participating in SBA's Surety Bond Guarantee Programs.

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### § 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. Commercial and Fidelity bonds are not eligible for SBA guarantees. Ancillary Bonds may also be eligible for SBA's guarantee. A performance bond must not prohibit a Surety from performing the Contract upon default of the Principal.

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

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

antee 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 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 Obligeo 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