

SBA

SOP 50 45 2

The Surety Bond Guarantee Program

Office of Surety Guarantees

U.S. Small Business Administration



**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

National

SUBJECT: The Surety Bond Guarantee Program	S.O.P.		REV
	SECTION 50	NO. 45	2

INTRODUCTION

1. Purpose. To establish an updated SOP for the Surety Bond Guarantee (SBG) Program; to provide requirements and guidelines for SBG Program performance; to incorporate controls; and to conform SBG Program practices with other SBA activities.
2. Personnel Concerned. All personnel in SBA Headquarters and field offices involved in Surety Bond Guarantee activities.
3. Directives Canceled. SOP 50 45 1.
4. Originator. Office of Surety Guarantees.

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SBA Form 989 (5-90) Ref: SOP 00 23

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Chapter 1

General Overview of the Surety Bond Guarantee (SBG) Program

1. What is the General Scope and Purpose of this Standard Operating Procedure (SOP)?

This SOP is a reference for all SBA personnel involved in surety bond guarantee activities. It explains the policies and procedures for the acceptance, control, and processing of applications for surety bond guarantees in the Prior Approval Program. Additionally, it clarifies the role of field personnel in default, claim, and settlement situations related to those guarantees. Participating sureties, including their agents, are required by regulation to follow the underwriting standards set forth in Chapter 7. They should also be familiar with the balance of this SOP.

2. What is a Surety?

Generally, a surety is a party that is liable to the project owner for the successful performance of the contract and to subcontractors, laborers, and suppliers for the payment of supplies, labor, materials, and equipment. By regulation, SBA also considers a surety to be an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of the surety.

3. What is a Surety Bond?

a. A surety bond is a three party agreement that ensures that the contractor will comply with the terms and conditions of a contract. The three parties to the bond are:

- (1) Surety (guarantor);
- (2) Contractor (principal); and
- (3) Project Owner (obligee).

b. The three kinds of surety bonds that SBA will guarantee are as follows.

- (1) Bid bond - A bond given by the bidder on a contract, which ensures that the bidder will furnish the required performance and payment bonds if awarded the contract.
- (2) Performance bond - A bond that ensures the contractor's successful completion of a contract.
- (3) Payment bond - A bond that ensures that the contractor will pay for subcontractors, labor, and materials used on a project.

4. When is a Surety Bond Needed?

A contractor, subcontractor or supplier will need a bond when:

- a. There is a requirement for the bond in the contract; or
- b. It is a Federal project valued at \$100,000 or more, as required by the Miller Act; or
- c. The project is in a State, county, or municipality that has a law similar to the Miller Act. These laws are commonly called "Little Miller Acts."

5. Who Needs a Surety Bond Guarantee?

Contractors who are unable to obtain necessary bonds on reasonable terms and conditions in the surety market need a surety bond guarantee. They often lack the experience and financial resources needed to get bonding through regular surety channels. SBA's bond guarantee to its participating sureties often gives contractors the added strength needed for them to compete in the construction industry.

6. What is the Purpose of the SBG Program?

The primary objective of the Surety Bond Guarantee (SBG) Program is to provide bonding assistance to the maximum number of qualified small businesses possible. By helping these small and emerging businesses, we hope that many of them can become bondable without SBA's assistance.

7. How Does the SBG Program Work?

Under the SBG Program, SBA guarantees bonds that are issued by commercial 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 Program and the Preferred Surety Bond (PSB) Program. Under the Prior Approval Program, SBA approves each surety bond guarantee individually. Under the PSB Program, participating sureties can issue, service, and monitor bonds without SBA's prior approval.

8. What Laws and Regulations Govern the SBG Program?

Authorization for the SBG Program is found in the Small Business Investment Act of 1958, Title IV, Part B, Sections 410 and 411 through 412, as amended. Program regulations are in Chapter 13 of the Code of Federal Regulations (CFR), Part 115.

9. Who Administers the SBG Program?

The Office of Surety Guarantees (OSG), located at SBA Headquarters, administers the SBG Program. SBG area offices, located throughout the country, process guarantee applications for the Prior Approval Program. The OSG staff administers the PSB Program and handles claim and recovery activities under the Prior Approval Program.

a. Responsibilities of Headquarters Staff

Headquarters is responsible for:

- (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 activities for the program and assisting SBG area offices and district offices with their marketing efforts by providing educational materials, training, and support;
- (6) Maintaining liaisons with surety companies, industry associations, Federal and State agencies as they relate to the program;
- (7) Monitoring program allotments and budget appropriations;
- (8) Reviewing surety qualifications and approving admittance of new sureties into the program, and monitoring the performance of participating sureties and imposing sanctions, if needed;
- (9) Planning, coordinating, and conducting surety and SBG area office reviews;
- (10) Preparing and/or presenting reports about the SBG Program at the request of the White House, Congress, OMB, other Federal agencies, State and local governments, and other interested parties; and
- (11) Coordinating SBG Program activities with other areas in SBA.

b. Responsibilities of SBG Area Office Staff

Within an assigned geographical area, each SBG area office is responsible for:

- (1) Processing, and approving or declining applications for surety bond guarantees;
- (2) Conducting, coordinating, and evaluating SBG activities according to rules, regulations, SOPs, and notices;
- (3) Performing marketing and outreach activities to promote and increase awareness of the program and assisting the district offices with their marketing efforts by providing educational materials, training, and support;
- (4) Monitoring assigned budget allotments and guarantee authority;
- (5) Assisting in conducting reviews of participating sureties;
- (6) Maintaining liaisons with surety companies and agents, industry associations, and Federal and State agencies within its geographical area;
- (7) Coordinating external reports about the SBG Program with OSG (these reports may be requested by the White House, Congress, other Federal agencies, State, and local governments, or other interested parties); and
- (8) Coordinating SBG program activities with other areas of SBA.

c. Responsibilities of District Office Staff

Within an assigned geographical area, each district office is responsible for:

- (1) Performing marketing and outreach activities to promote and increase awareness of the program;
- (2) Coordinating the SBG Program with other SBA programs within the district to provide full service to small business contractors;
- (3) Providing training to all district employees so that they can respond to inquiries about the SBG Program; and
- (4) Referring applicants to proper SBG area offices for assistance.

10. Who Has the Authority to Approve Surety Bond Guarantee Agreements?

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

The following SBA personnel can approve surety bond guarantees within the specified limits.

<i>Individual</i>	<i>Dollars</i>
<i>Regional Administrator</i>	<i>\$1,250,000</i>
<i>Deputy Regional Administrator</i>	<i>\$1,250,000</i>
<i>District Director and Deputy District Director for the following District Offices: Philadelphia, PA; Atlanta, GA; Denver, CO; and Seattle, WA</i>	<i>\$1,250,000</i>
<i>Assistant District Director for Capital Access for the following District Offices: Philadelphia, PA; Atlanta, GA; Denver, CO; and Seattle, WA</i>	<i>\$1,250,000</i>
<i>Supervisory Surety Bond Guarantee Specialist</i>	<i>\$1,250,000</i>
<i>Senior Surety Bond Guarantee Specialist</i>	<i>\$ 750,000</i>
<i>Surety Bond Guarantee Specialist</i>	<i>\$ 500,000</i>

b. Rule of Two

The approval or declination of a surety bond guarantee application requires the combined action of two SBA officials who hold the delegated, or re-delegated authority. An SBG professional must recommend the action and an approving official must concur with the recommendation. If the action official and the originator disagree, the application package must proceed through the chain of command until two concurring opinions are reached.

c. Oral Approvals

SBG personnel can not give oral approvals for surety bond guarantee agreements. They can advise the surety of SBA's decision if the guarantee agreement has been signed, but has not been received by the surety. If there is a conflict between the oral advice and the written form, the written form controls.

d. Prerequisite to Approval or Decline

SBG personnel must not process an application until the surety has determined that it will issue the bond with SBA's guarantee, except if the applicant or the bond is clearly ineligible for assistance.

e. SBG Claim Payments and Recovery Settlements

Field office staff do not have the authority to take final action on claim payments or recovery settlements. These actions are processed and approved by OSG personnel who hold delegated authority. If SBG field personnel have questions concerning a defaulted contractor and the related case file, they must contact OSG in Headquarters.

Chapter 2

SBA's Surety Bond Guarantee Agreement

1. What is a Guarantee Agreement?

SBA Form 990, "Surety Bond Guarantee (SBG) Agreement,," (Appendix 2) is a written contract between SBA and a surety company. Under the terms of the SBA 990, SBA reimburses a surety company for a specified percentage of losses and expenses incurred under the guaranteed bond if a contractor breaches its contract. No rights or benefits are granted to any other party under the SBA 990. Bond claimants do not have a right of action against SBA.

2. What are the Terms and Conditions?

The terms and conditions are on the back of the SBA 990. They are:

a. Responsibilities of the Surety

The surety, including its authorized representatives, should be aware of its responsibilities under the SBA 990.

b. Surety's Reaction to Problems or Disputes

If a contractor has problems or disputes on a contract, the surety may take action, as authorized by SBA and in accordance with applicable regulations. These problems may involve a potential or actual claim, a default or imminent breach situation. SBA should be advised of all such actions by the surety.

c. Requirements of the Surety

By signing the SBA 990, the surety:

(1) Represents that the application forms submitted to SBA are complete and accurate and underwritten by the surety in accordance with generally accepted surety industry practices;

(2) Will issue the required bonds if the contract price is reasonable and not more than \$1.25 million, the underwriting conditions have been met, and no adverse information arises

(3) Represents that the bonds are required by the contract, could not be reasonably obtained without SBA's guarantee, and are in accordance with industry standards for the type of contract; and

- (4) Will inform SBA within 30 days of notice of any suit or claim filed under the bond. Unless SBA notifies the surety otherwise, the surety will take charge of the suit or claim. The surety will compromise, settle, and defend it, and will take all steps necessary to mitigate the loss. The surety will not join SBA in a lawsuit, unless SBA has denied liability or has agreed to be so joined.

d. Other Conditions of the SBA 990

Other binding conditions of the SBA 990 are as follows.

- (1) No SBA employee has the authority to unilaterally waive, change, or alter the terms of the SBA 990. Both SBA and the surety must agree, in writing, to any changes.
- (2) Both the SBA and the surety must initial the SBA 990 if a minor change is made. A new SBA 990 must be completed and signed by SBA before the surety agrees to or acquiesces to any material alteration in the terms, conditions, or provisions of the bond.
- (3) If the surety becomes insolvent, SBA is liable to the trustee or receiver only for losses incurred and monies actually paid by the surety, its trustee, or receiver under SBA guaranteed bonds.
- (4) SBA regulations are controlling if there is any conflict with the terms or conditions of the SBA 990.
- (5) The SBA 990 contains a notice about false statements and/or misrepresentations, violations, and related penalties.

3. What is the Maximum Contract Amount Eligible for the Program?

The amount of the contract to be bonded cannot exceed \$1.25 million in face value at the time that the surety executes the bond. A service or supply contract that covers more than a 1-year period is eligible if the annual contract amount or bond penalty is not more than \$1.25 million at any time.

4. What are the Guarantee Percentages?

SBA's guarantee percentage is based on the following.

a. Ninety Percent (90%) Guarantee

SBA guarantees the surety 90 percent of the loss incurred and paid if:

- (1) The total contract amount at the time of the bond's execution is \$100,000 or less; or
- (2) The bond was issued on behalf of a small business owned and controlled by economically and socially disadvantaged individuals. Individuals who are members of designated socially disadvantaged groups are presumed to also be economically disadvantaged. The following criteria must be met to be considered disadvantaged.
 - (i) The firm must be at least 51 percent owned by socially and economically disadvantaged individuals. These individuals include 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).
 - (ii) The firm and its daily business operations must be managed and controlled by at least one disadvantaged individual.
 - (iii) Principals must certify to SBA information about their minority status. If they make false representations, they are subject to criminal prosecution, significant civil penalties, and denial of the bond guarantee (18 U.S.C. 1001; 13 CFR, Part 142.1).

a. Eighty Percent (80%) Guarantee

SBA guarantees to reimburse the surety for up to 80 percent of any losses it incurs and pays if:

- (1) The contract is more than of \$100,000; and
- (2) The bond is executed on behalf of a non-disadvantaged concern.

Subsequent Increases and Decreases

- (1) If the contract amount increases to more than \$100,000 after the bond is executed, the guarantee percentage decreases by one percentage point for each \$5,000 increase or part thereof. The guarantee percentage does not decrease below 80 percent. This provision does not apply to disadvantaged firms.
- (2) If the contract amount decreases to \$100,000 or less after the bond is executed, the guarantee percentage will increase to 90 percent. The surety must provide SBA with evidence to support the decrease and other requested information.

- (3) If the contract amount increases above the statutory limit of \$1.25 million after the bond is executed, SBA's guarantee percentage is reduced. SBA's share of the loss would be the percentage of the increased contract amount that the statutory limit represents, multiplied by the guarantee percentage approved by SBA. For example, if the contract amount was increased to \$1.375 million SBA's guarantee percentage would be calculated as: \$1.250 divided by \$1.375 equals 90.91 percent times 80 percent equals 72.73 percent.

5. What is the Cost to the Surety?

SBA does not charge sureties an application or bid bond fee, but does charge to guarantee final bonds.

a. Amount of Fee Charged to the Surety

SBA charges the surety 20 percent of the bond premium that the surety charges the contractor. The surety fee is rounded to the nearest dollar.

b. Basis for the 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.

c. Non-Premium Charges by the Surety to the Contractor

(1) The surety must not charge the contractor any non-premium charges unless:

- (i) The surety performs other services for the contractor, and
- (ii) The additional fee is permitted by State law, and
- (iii) The contractor agrees to the fee.

(2) SBA does not receive any portion of the non-premium charges.

b. Other Requirements by the Surety to the Contractor

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

6. What is the Cost to the Contractor?

SBA does not charge the contractor an application or bid bond fee, but does charge to guarantee final bonds.

a. Amount of Fee Charged to the Contractor

SBA charges the contractor \$6.00 per \$1,000 of the contract amount. The contractor fee is rounded to the nearest dollar.

b. Payment of Contractor's Fee

The contractor's fee check must be submitted to SBA with the application package for a final bond guarantee.

c. Unpaid Fees

If the contractor's fee is not paid, SBA will not issue additional guarantees on behalf of the contractor and is not liable under the guarantee for which payment has not been received. This includes any additional fees due from change orders or otherwise.

7. How Do Changes in the Contract/Bond Amount Affect the Fees?

a. Notification of Increases and Decreases

The surety must notify SBA of any increases or decreases in the contract or bond amount that aggregate 25 percent or \$50,000, as soon as it obtains knowledge of the changes. If a single change order increases the bond amount by at least 25 percent or \$50,000, the surety must submit a supplemental SBA 990 to SBA for prior approval and the contractor's fee for the increase.

b. Additional Fees Due as a Result of Increases

If SBA is notified of an increase as described in paragraph 7a above, additional surety, and contractor fees must be paid. The surety must pay SBA a supplemental fee of 20 percent of the additional premium charged to the contractor. The contractor must pay SBA \$6.00 per \$1,000 of the increase of the contract amount. Increases in the surety and contractor fees are not due until they aggregate at least \$40, respectively.

c. Refunds Due as a Result of Decreases

If SBA is notified of a decrease in the contract or bond amount, it will refund proportionate amounts of the surety and contractor fees. When it receives the refund from SBA, the surety must promptly pay a proportionate amount of its premium to the contractor. Refunds to the surety and contractor will not be paid by SBA until they aggregate at least \$40, respectively.

Chapter 3

Surety Eligibility and Participation Requirements

1. How Does a Surety Apply to Participate in the SBG Program?

If a surety wants to participate in the SBG Program, it should apply in writing to OSG at SBA Headquarters. OSG will consider the surety's standards and procedures for underwriting, administration, claims, and recovery.

2. What Criteria Must the Surety Meet to Participate in the SBG Program?

a. Treasury Requirements

(1) Treasury List

To participate in the SBG Program, a surety company must be acceptable to issue bonds on Federal procurement contracts under the surety acceptability requirements found in Treasury Circular Number 297, "Regulations Governing Surety Companies Doing Business With The United States" (Appendix 3). 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 Circular 570 is published annually on July 1st. Any surety additions or status changes are published in the Federal Register.

(2) Treasury Limits

The surety underwriting limitations published in Treasury Circular 570 are on a per bond basis, but this does not limit the amount of a bond that a company can write. If the bond's penal sum (face amount) exceeds the surety's underwriting limitation, the excess must be protected by either co-surety or reinsurance. (See paragraph 3-4 in this chapter.)

(3) Use of Treasury Department's Underwriting Limitations

- (i) SBA's guarantee does not increase the Treasury Department's underwriting limitation for a surety. The Treasury's limit applies despite SBA's guarantee.
- (ii) The Treasury Department changes a surety's underwriting limitation only on an annual basis.

- (iii) The Treasury Department's underwriting limit for a surety applies to all bonds, not just those for Federal projects.

b. State Licensing Requirements

To receive an SBA guarantee, a surety must be licensed in the State or other area in which it provides a bond and where the contract will be performed. The term "other area" includes United States' Territories and Possessions, the Commonwealth of Puerto Rico, and the District of Columbia. Participating sureties must comply and be in "good standing" with licensing authorities and State Insurance Departments, which have the skills, knowledge, and manpower to regulate the industry properly.

c. Certification of Surety About Debarment

The surety must certify to SBA that it is not presently debarred, suspended, proposed for debarment, or voluntarily excluded from transactions with any Federal department or agency. SBA Form 1623, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions," (Appendix 4) is used for this purpose.

3. What are the Conditions of a Surety's Participation in the SBG Program?

a. General Conditions of Participation

Participating sureties must comply with SBA policies, procedures, and regulations. They must also follow the terms and conditions of the SBA 990.

b. Surety Industry General Practices and Procedures

Participating sureties must use standards generally accepted by the surety industry in evaluating the credit, capacity, and character of a contractor. Once a contractor submits a bond application to the surety, the surety must process and underwrite the application data following the standard practices and procedures used on non-SBA guaranteed bonds. The surety then decides to:

- (1) Execute the bond without SBA's guarantee; or
- (2) Execute the bond only with SBA's guarantee; or
- (3) Decline the bond even with SBA's guarantee.

c. Powers-of-Attorney

A surety must give SBA current powers-of-attorney for each of its brokers, agents, and company personnel that has the power to obligate the surety (including its reinsurers) on bonds and on the SBA 990. Each power-of-attorney must state the dollar amount of actual authority, and the effective and expiration dates. The surety must advise SBA, in writing, of any limitations on or modifications to each power. The surety must give SBA renewals of powers-of-attorney on or before their expiration dates.

d. Transfers or Sales by Surety

The surety must not sell or transfer its files or accounts unless it has obtained SBA's prior written approval. This applies whether it occurs before or after a contractor has defaulted. This provision does not apply to the sale of an entire business division, subsidiary, or operation of the surety. If a surety violates this provision, there may be grounds to terminate it from participation in the program.

4. How Do Reinsurance and Co-Suretyship Affect a Surety's Participation?

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

The bond is issued by the surety for a prime contractor under the Miller Act where the U.S. Government is the obligee. The area office must obtain a copy of the signed Federal reinsurance form within 45 days of the issuance of the bond. In this form, 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. This form also says 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 990.

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. 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 990, with the percentage or dollar limitation of their respective

exposures stated. SBA must have a valid power-of-attorney for each attorney-in-fact signing the SBA 990 for a co-surety. The surety assuming the larger/largest share of the penal sum is the lead or primary surety. After the SBA 990 is signed, SBG personnel should communicate only with the lead or primary surety. That company is responsible for communicating with its co-surety partners.

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 estimate 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 estimated recovery amount. If the surety receives any actual recovery under the agreement or arrangement that exceeds the estimated 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. The surety must submit the recovery to SBA within 90 days of receipt. In other words, the surety cannot enter into an indemnity agreement to recover 10 percent or 20 percent exposure on any SBA-guaranteed bond unless SBA receives its pro rata share of the recovery.

5. Can SBA Limit a Surety's Program Involvement?

a. Actions That SBA Can Take to Limit a Surety's Program Involvement

The following are actions that SBA, in its sole discretion, can do to limit a surety's program involvement:

- (1) Deny, suspend, or terminate a surety's participation in the program;
- (2) Refuse to issue further guarantees to a surety;
- (3) Vary the terms and conditions of its guarantee commitments from surety to surety; or
- (4) Renegotiate the percentage of its guarantee or its charge to a surety.

b. Grounds for Action

SBA's determination to deny, limit, or control the involvement of a surety in the SBG Program depends largely on its experience with the surety. Reasons for such actions include the following:

(1) Imprudent Practices

SBA may refuse to issue further guarantees if it determines that the surety failed to adhere to prudent standards or practices, as compared to other participating sureties. This includes, but is not limited to, unacceptable actions/results in the following areas:

- (a) Underwriting of SBA-guaranteed bonds;
- (b) Efforts to minimize loss;
- (c) Claims and recovery practices;
- (d) Documentation related to any of these activities; or
- (e) Practices or standards required by SBA.

(2) Acts of Wrongdoing

SBA may refuse to issue further guarantees if the surety is involved in acts of wrongdoing. These acts include:

- (a) Fraud;
- (b) Material misrepresentation;
- (c) Breach of the Guarantee Agreement; or
- (d) Regulatory violation.

(3) Failure to Consent to an Audit

If a surety fails to consent to an audit or fails to maintain and produce records, SBA may refuse to issue further guarantees or to honor claims submitted by that surety until it does consent to an audit.

(4) Excessive Losses

SBA may require the renegotiations of the guarantee percentage or fee charged to a surety if that surety experiences excessive losses on SBA bonds, as compared to other participating sureties.

(5) Lack of Business Integrity

(a) SBA may deny, suspend, or terminate a surety's participation in the program if it determines that the surety lacks business integrity. The "surety" includes any of the following:

- (i) The surety or any of its officers, directors, partners, or other individuals that hold at least 20 percent of its voting securities; or
- (ii) Any agents, underwriters, or any individuals empowered to act on behalf of the preceding persons, such as a claims attorney.

(b) A lack of business integrity occurs if a:

- (i) Person's license to engage in surety business is revoked, canceled or suspended by the State or other authority;
- (ii) Person has been indicted or formally charged with a misdemeanor or felony that bears on that person's fitness to participate in the program;
- (iii) Final civil judgment has been entered that pertains to a breach of trust or violation of law or regulation that protects the integrity of business transactions or relationships;
- (iv) Person makes a material misrepresentation or willfully false statement in the written or oral information supplied to SBA in connection with a surety bond guarantee application or presentation of a claim;
- (v) Person breaches the guarantee agreement or makes a material violation of the regulations; and/or
- (vi) Person is debarred, suspended, voluntarily excluded from, or declared ineligible for Federal programs.

c. Actions Taken by SBA to Impose Sanctions

Decisions to suspend, terminate, deny participation in, deny reinstatement in, or limit a surety's involvement in the SBG Program are made by the Associate Administrator/Office of Surety Guarantees (AA/OSG). As an SBG employee, you can, however, make a recommendation to sanction a surety.

(1) Recommendation to Sanction a Surety

Before you initiate a recommendation to sanction a surety, you should discuss it with the AA/OSG. If you decide to submit a formal recommendation to the AA/OSG, you must prepare a memorandum and include a written report of perceived violations. The memo must go through the chain of command, following the "Rule of Two." You should include any comments from the local SBA counsel with your recommendation.

(2) Notification to Surety

The AA/OSG must inform a surety of SBA's decision to impose sanctions by written notice. The notification must state reasons for the decision and the effective date.

(3) Surety's Right to Petition for Review of Sanctions

A surety may file a petition for review of a suspension and termination with SBA's Office of Hearings and Appeals (OHA). The Administrator may suspend the participation of the surety until OHA reaches a decision.

d. Effect of Sanctions on Guarantee.

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

Chapter 4

Contractor Eligibility Requirements

1. What Certifications Does SBA Require from the Contractor?

To be eligible for SBA guarantee assistance, the contractor must certify that:

a. It Needs a Bond

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

b. A Bond is Not Available

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

c. It Will Limit its Subcontracts

The percentage of work to be subcontracted is not excessive. SBA will not guarantee bonds for contractors who are primarily brokers or who transfer control of the project to one or more subcontractors.

d. It Has Not Been Debarred

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 debarment and suspension rules.

2. What SBA Size Standards Must a Contractor Meet?

A contractor is eligible for SBG assistance if it is independently owned and operated and, together with its affiliates, qualifies as a small business under 13 CFR Part 121. The following standards apply for SBG assistance:

a. General SBG Rule

Found at 13 CFR Part 121.301(d), this rule provides that:

- (1) "Any construction (general or special trade) concern or concerns performing a contract for services is small if its average annual receipts do not exceed \$5 million."

- (2) Any concern not specified in the paragraph above must meet the size standard for the primary industry in which it, combined with its affiliates, is engaged.
- (3) Annual receipts are calculated as discussed in 13 CFR Part 121.104.

b. Rule for Minority Enterprise Development (MED) Participants

Found at 13 CFR Part 121.604, this rule provides the following.

(1) Automatic Size Eligibility

“A concern which SBA determines to be a small business for the award of a MED subcontract will be considered to have met applicable size eligibility requirements of other SBA programs where that assistance directly and primarily relates to the performance of the MED subcontract in question.”

(2) Limitations

The automatic size eligibility applies only if the SBG assistance is for an MED subcontract. It does not relate to any other contracts of the MED participant or to any contract that is more than \$1.25 million.

c. Affiliates

SBA considers a contractor’s affiliates in determining size eligibility for the SBG Program. Specific regulations about affiliations and their impact on eligibility are found at 13 CFR Part 121.103.

d. Joint Ventures

SBA considers parties to a joint venture as affiliates if any of them seeks SBA assistance for the joint venture. Specific regulations about joint ventures and their impact on eligibility are found at 13 CFR Part 121.103(f).

e. Initial Determination of Size Eligibility

Persons in the area office who are authorized to approve or decline SBG applications make the initial determinations about SBG size eligibility.

f. Request for a Formal Size Determination

- (1) The following may request a formal size determination:
 - (a) The contractor that is applying for assistance; and/or
 - (b) The SBA official with authority to take final action on the assistance requested.
- (2) The contractor must complete an SBA Form 355, "Application for Small Business Size Determination" (Appendix 5).

g. Appeal of Size Determination

Specific regulations about the appeal of size determinations are found at 13 CFR Part 121.1101.

3. What Factors Determine "Good Character" of the Contractor?

To be eligible for SBG assistance, the contractor must possess good character and reputation.

a. Determination of Character

(1) Presence of Good Character

A contractor possesses good character and reputation if each owner of 20 percent or more of its equity, and each of its officers, directors, or general partners possesses good character and reputation. This includes managers that have authority to speak for or commit the company. In applying for SBG assistance, each such owner, officer, director, or manager must complete an SBA Form 912, "Statement of Personal History" (Appendix 6). Processing instructions are found in Chapter 6, "SBG Application Procedures."

(2) Absence of Good Character

The following constitute the absence of good character:

- (a) The person is under indictment for or has been convicted of a felony; or

- (b) 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
- (c) A regulatory authority has revoked, canceled, or suspended a person's license which is necessary to perform the contract; or
- (d) The person has obtained a bond guarantee by fraud or material misrepresentation; or
- (e) The contractor fails to inform the surety of unbonded contracts or of a contract bonded by another surety, as required by a bonding line commitment.

b. Illegal Activity

SBA cannot approve guarantees for firms that participate in clearly illegal pursuits or are involved with otherwise legal products that will be used in connection with an illegal activity. SBG field personnel must exercise prudent judgment when processing and reviewing an SBG application. The primary guideline to use is whether taxpayers funds should be used to finance the enterprise.

c. Probation, Parole, or Pending Criminal Charges

SBA cannot approve an application for persons:

- (1) Who are currently incarcerated, on parole, or on post-conviction probation; or
- (2) Whose probation or parole is lifted solely because it is an obstacle to obtaining SBA assistance; or
- (3) Who have criminal cases pending against them.

4. What Factors are Considered in Evaluating a Contractor's "Capacity?"

The contractor's "capacity" involves its ability to successfully perform the contract. Capacity considerations include a mixture of strengths, abilities, and relationships.

5. What Types of Organizations are Eligible?

The contractor's form of organization does not determine eligibility for SBG assistance. Proprietorships, partnerships, corporations, associations, or joint ventures can receive SBG assistance if they meet the other eligibility requirements.

6. Are Non-Profit Institutions Eligible?

The Small Business Act precludes SBA assistance to charitable institutions and nonprofit enterprises. However, surety bond guarantee assistance can be provided to a cooperative if it carries on a business activity for the purpose of obtaining monetary benefits for its members. It must otherwise be an eligible small business concern.

7. How Does Doing Business in Foreign Countries Affect Eligibility?

If a contractor indicates that some or all of its commercial activity involves dealing in or with a foreign country, SBG field personnel should refer the application to the AA/OSG for review. If necessary, SBA will confer with appropriate U.S. departments to see if there is an official position about American businesses operating in the country or countries involved. Use the following guidelines to determine the eligibility of contractors doing business in foreign countries:

a. Firms Located in U.S. Territories and Possessions

The Small Business Act defines the term "United States" as including "...the several States, the Territories and Possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands and the District of Columbia." Firms located in these areas are eligible for SBG assistance.

b. Firms Located in a Foreign Country

If a firm is located in foreign country and has no activities in the United States, it is not eligible for SBG assistance.

c. Firms Partially Outside the United States

If some or all of a domestic contractor's commercial activity involves dealing in or with foreign countries or if its operations are conducted partially within and partially outside of the United States, its contribution to the well-being of the American economy is a factor in determining eligibility. Generally, the assets and principal activities of an applicant should be located within the United States, and only its domestic operations should be considered in evaluating credit factors.

d. Businesses Owned by Resident Aliens

A business owned and controlled by a resident alien is eligible for SBG assistance. The contractor must provide resident alien status by showing issuance of registration (green card), alien registration number and date of expiration.

e. Businesses Owned by Nonresident Aliens

A business owned and controlled by a nonresident alien is not eligible for SBG assistance. The surety must determine the resident status and the ownership percentages of the alien contractor. Illegal aliens are not eligible.

8. Are Contractors Who Obtain Bonds Without an SBA Guarantee Eligible?

- a. In its application for SBG assistance, the contractor must certify that it cannot obtain a bond on reasonable terms and conditions without SBA's guarantee. If a surety is writing SBA guaranteed bonds for a contractor, then all of that client's eligible bonds must be SBA guaranteed for that contractor to remain eligible for the program. This limitation applies only to bonds and contracts that are eligible for the program. For example, if a contractor obtains a non-guaranteed bond for a contract greater than \$1.25 million, the contractor would remain eligible for the program since the contract amount exceeded SBA's statutory limit.
- b. Occasionally a contractor may obtain a non-SBA guaranteed bid bond, but applies for an SBA guarantee for the final bonds. "Post bid" application procedures are found in Chapter 7, "Underwriting Considerations."

9. How Does Graduation Affect a Contractor's Eligibility?

Although one program goal is to assist small and emerging contractors to become bondable on their own, there is no time limit for a contractor's graduation from the program. However, participating sureties should assist contractors in achieving this goal. Once a surety issues a non-SBA guaranteed bond for a

contractor, that contractor is then able to obtain bonds without needing an SBA guarantee and is no longer eligible for SBG assistance. If, in the future, the surety determines that it cannot write bonds on non-guaranteed terms for a graduated contractor, it must submit the same application package as an initial submission for a new account. SBG field personnel should review this new submission carefully, considering changes in the contractor's financial condition, and should be reasonably assured that SBA's graduation policy is not being circumvented.

10. How Does a Potential Conflict of Interest Affect a Contractor's Eligibility?

No SBG assistance will be provided if a known or possible conflict of interest exists until the situation is resolved. SBG field personnel must use care and good judgment to assure that potential conflicts of interest or the appearance of conflicts of interest involving SBA or surety personnel are identified and handled appropriately. Specific regulations about some conflicts of interest are found at 13 CFR Part 105.

a. Known Conflict of Interest

SBA will not issue a surety bond guarantee if the participating surety or any of its affiliates holds a significant (10 percent or greater) direct or indirect interest in the applicant. This prohibition also applies to ownership interests in any of the contractor's affiliates. This includes:

- (1) An associate of the surety (individual empowered to act on behalf of the surety); or
- (2) A close relative of a surety associate (e.g., father, mother, brother, sister, spouse, lineal descendent, in-law); or
- (3) A member of a surety associate'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, partner, officer, director, or shareholder with 10 percent or more interest in the contractor is:
 - (a) An appointed official or employee of the legislative or judicial branch of the Federal Government; or
 - (b) A member or employee of a Small Business Advisory Council; or
 - (c) A SCORE volunteer, or a member of the household of the official or employee; or
 - (d) 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, as an SBG field employee, you must refer the case to your 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. When you receive the determination from the district counsel, you may take appropriate action on the SBG application.

Chapter 5

Eligibility Requirements for Contracts and Bonds

1. What Types of Contracts are Eligible?

SBA guarantees contract bonds for construction, service, and supply contractors or manufacturers. A contract is a written obligation that requires the contractor to furnish services, supplies, labor, materials, machinery, equipment, or construction.

a. General Contract Requirements

To be eligible for the program, the contract must have the following.

- (1) A specific period for contract performance.
- (2) A specified contract amount stated in dollars. This amount cannot exceed \$1.25 million when the surety executes the bonds.

(a) Cost Plus Contract

For a cost-plus contract, a written estimate of the contract amount by the obligee will satisfy this requirement.

(b) Service and Supply Contract

A service or supply contract that covers more than a 1 year period is eligible if neither the annual contract amount nor the penal sum of the bond exceeds \$1.25 million at any time.

b. Bonding Requirements

To be eligible for the program, the contract specifications must include certain bonding requirements.

(1) Competed Contracts

The Invitation for Bids must specify that bid security is a requirement for a responsive bid. It must also specify that a payment and/or performance bond is required to be awarded the contract either as the prime contractor or a subcontractor.

(2) Negotiated Contracts

The contract must specify that delivery of a performance, payment, or payment and performance bond is required to serve as the prime contractor or a subcontractor.

2. What Types of Contracts are Ineligible?

A contract is ineligible if it:

- a. Prohibits the surety from performing the contract if the contractor defaults. The surety must have the option to perform the contract or to pay the penal sum of the bond.
- b. Includes a:
 - (1) Permit;
 - (2) Subdivision Contract;
 - (3) Lease;
 - (4) Land Contract;
 - (5) Evidence of Debt;
 - (6) Financial Guarantee (a contract requiring any payment by the contractor to the obligee);
 - (7) Warranty of Performance or Efficiency;
 - (8) Warranty of Fidelity; or
 - (9) Release of Lien (other than for claims under a guaranteed bond).

3. Are Indefinite Quantity Contracts (IDQ) Eligible?a. Eligibility of an IDQ Contract

Indefinite quantity contracts are eligible only if the contract amount is not more than \$1.25 million. This applies even when the minimum amount or the estimated amount of the contract range is \$1.25 million, but the maximum contract amount is more than \$1.25 million.

b. Calculation of Fees on an IDQ Contract

- (1) SBA's contractor fee is based on the minimum or estimated contract amount, whichever is greater, only if the bond requirement is of equal or lesser value.
- (2) SBA's contractor fee is based on the maximum contract amount if the bond requirement equals the maximum amount, but the estimated amount is lower.
- (3) If the original contract and/or bond amount is later increased, the contractor may be required to pay an additional fee. If the contract and/or bond amount is later decreased, the contractor may receive a refund. Refer to chapter 2 for details concerning how changes in the contract and/or bond amount affect the contractor fees.

4. Are Design-Build Contracts Eligible?

Design-build contracts are eligible if the bond and contract exclude design responsibility. If covered by the SBA guarantee, the surety or the principal must not have any obligation under the bond for any liabilities for any design obligations.

5. Are Contracts That Include Maintenance Agreements Eligible?

Contracts that contain certain types of maintenance agreements are eligible.

a. Maintenance Agreements That Do Not Require SBA's Approval

To be eligible, a contract can include a maintenance agreement of 2 years or less which covers defective workmanship and materials only.

b. Maintenance Agreements That Require SBA's Approval

SBA's written approval is needed if it includes a longer maintenance agreement covering defective workmanship or materials or if it covers something other than defective workmanship or materials. To qualify for approval, the maintenance agreement must:

- (1) Be ancillary to the contract for which SBA is guaranteeing the bond;
- (2) Be required to be performed by the same contractor; and
- (3) Be customarily required in the relevant trade or industry.

6. **How Do Multiple Bond Guarantees on a Single Project Affect the Contract Amount?**

On multiple bond guarantee requests by one contractor on a single project, the aggregate amount of the contracts must not be more than \$1.25 million in face value.

a. Meaning of “Single Project”

A “single project” is 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. This meaning applies regardless of the job title or the nature of the work to be performed.

b. Aggregation of Contract Amounts

The amounts of two or more contracts for a single project are aggregated to determine the contract amount unless:

- (1) The contracts are to be performed in phases (see paragraph 5-7 about phased projects);
- (2) The prior bond is released before the beginning of each succeeding phase (a bond can be considered released even if the warranty period that it covers has not expired); and
- (3) The contract has been completed and the principal has been completely released in writing by the obligee.

c. Determination of “Single Project”

If the aggregate contract amount of bond guarantee requests is more than \$1.25 million, SBA will, in its sole discretion, determine if they are a single project. If the surety disagrees with SBA’s determination, the surety must demonstrate that it is not a single project.

7. **What Types of Phased Projects are Eligible?**

a. Meaning of “Phased Project”

A “phased project” is a total work project that is divided into two or more parts. For each part or phase of the project, there must be a separate and identifiable contract and bond. Each phase must be completed, and the surety and SBA released in writing by the obligee before the next phase is begun. This is to avoid aggregating the contracts to determine the \$1.25 million eligibility limitation.

b. Properly Phased Projects

An example of a properly phased project is a single building project divided/phased into grading, construction of the building, and landscaping. Each phase would require a separate and identifiable contract and bond, and a definitive release from the obligee.

c. Improperly Phased Projects

An example of an improperly phased project is one that has separate contracts and bonds for walls, flooring, wiring, and plumbing, but does not require definitive releases after completion of each phase. In this example, much of the work must proceed simultaneously.

d. Instances in Which Improper Phasing Usually Occurs

Improper phasing usually occurs when:

- (1) A single contract would exceed the statutory limit; or
- (2) The surety's underwriting limitation is too low to issue a bond to cover one contract for an entire project; or
- (3) The contractor would not qualify for a bond for the entire project; or
- (4) A single contract would exceed the 80/90 percent split; or
- (5) The surety prefers not to enter into a co-suretyship agreement; or
- (6) There is an advantage to paying the surety fee on each phase's contract bond versus one larger total project.

e. Control Requirements

To safeguard SBA's interests regarding phased projects, SBG field personnel must:

- (1) Obtain and review a copy of the contract; and
- (2) Consult with the local SBA counsel if necessary; and
- (3) Contact the obligee, architect, or engineer to determine if the project is being arbitrarily phased for the benefit of the surety or contractor.

8. Which Contract Bonds are Eligible?

a. Bid and Final Bonds

Bid and final bonds are generally eligible if they:

- (1) Are issued in connection with an eligible contract and of a type listed in the “Contract Bonds” section of the Manual of Rules, Procedures, and Classifications published by the Surety Association of America (SAA).
- (2) Do not prohibit a surety from performing the contract if the contractor defaults.

b. Ancillary Bonds

Ancillary bonds are eligible if they are incidental and essential to a contract for which SBA has guaranteed a final bond.

c. Maintenance Bonds

Generally, maintenance bonds are not eligible. However, SBA can guarantee a maintenance bond as an ancillary bond if the original contract specifically requires a maintenance period of no more than 2 years, regardless of whether the contract required a separate maintenance bond. This covers defective materials and workmanship only.

d. Reclamation Bonds

A reclamation bond is eligible if it is issued:

- (1) To reclaim an abandoned mine site; and
- (2) For a project undertaken for a specific period of time.

9. Which Contract Bonds are Ineligible?

a. Ineligible Bonds Listed in the Manual of Rules, Procedures, and Classifications Published by the Surety Association of America (SAA)

Not all bonds listed in the “Contract Bonds” section of the SAA publication are eligible for SBA’s guarantee. The following is a list of some ineligible contract bonds that are included in the SAA Manual:

- (1) Advance Payment Bonds (generally);

- (2) Coal Leases;
- (3) Completion Bonds;
- (4) Efficiency Guarantees or Warranties (including reclamation work done by strip miners);
- (5) Financial Guarantees;
- (6) Forfeiture Bonds (other than bid bonds);
- (7) Gas Leases;
- (8) Grain Elevators (warehousemen);
- (9) Lease Bonds (though not lease backs);
- (10) Lien Bonds (except in default/claims situations);
- (11) Maintenance Bonds (except ancillary - see paragraph above);
- (12) Oil Leases;
- (13) Reclamation Bonds for New Mining (an indefinite period of time-see paragraph above); and
- (14) Subdivision Bonds.

b. Bonds That Do Not Comply With SBA Statutory/Regulatory Requirements

Bonds issued in the following situations are ineligible for the SBG Program due to their noncompliance with SBA statutory/regulatory requirements:

(1) Performance Bond Amount Greater Than the Contract Amount

If the performance bond amount is greater than the contract amount, it is ineligible for the SBG Program, unless the bond is for a demolition contract. SBG authorizing legislation (P.L. 91-609) and regulations found at 13 CFR 115.15 require SBA to determine that “the terms and conditions of any bond guaranteed under the authority of this part are reasonable in light of the risks involved and the extent of the surety’s participation.” A situation in which the surety and SBA have a greater liability than the obligee does not comply with the statutory language.

(3) Bonds for Contracts Requiring Surety as Signatory to the Contract and Bond

Bonds for contracts that require the surety to sign the contract and issue the bonds are ineligible for the SBG Program. This is based on the same statutory language as cited in (1) above. It is not prudent for a surety to sign the contract for which it is providing the bonds because it may create a conflict of interest. If the surety co-signs the contract between its client/contractor and the obligee, the contractor could accuse the surety of interfering in its contractual relationship with the obligee.

c. Other Situations Where Bonds are Ineligible

(1) Awarded Bid Bonds

SBA will not accept applications for bid bond guarantees after the job has been bid and the contract has been awarded.

(2) Completed Contracts

SBA will not accept applications for final bonds (payment, performance, and maintenance) if the contract has been completed.

(3) Monopoly

SBA will not approve a surety bond guarantee if the result would be to encourage a monopoly or would be inconsistent with the accepted standards of the American free enterprise system.

(4) Same Surety Bonding Both Prime and Subcontractors

(a) In accordance with generally accepted and prudent underwriting practices, most sureties do not bond both the prime and subcontractors on the same project. Generally, SBA will not knowingly guarantee bonds to the same surety covering both the prime contractor and the subcontractors on the same project. In this situation, a surety may not be able to protect its interests and resolve issues without injuring (or appearing to injure) one of the parties.

- (b) Exceptions to bonding both the prime contractor and subcontractors must be approved, in writing, by the AA/OSG. SBG field personnel must submit requests for exceptions to OSG with an explanation from the surety about why it wants to bond both parties and a description of the safeguards it would establish to avoid conflicts.

10. Are Dual Obligees Bonds Eligible?

a. Meaning of a Dual Obligees Bond

A dual obligee bond provides for payment under the bond to an entity in addition to the original obligee. Usually the co-obligee is a lender, lessor, or owner.

b. Eligible Dual Obligees Bonds

Dual obligee bonds are eligible for an SBA guarantee if the co-obligee on the bond or bond rider is bound by the contract to the principal to the same extent as the original obligee. If the surety has arranged for completion of the contract, then the co-obligee must be bound to the surety to the same extent as the original obligee. The addition of co-obligees to the bond or bond rider cannot increase the aggregate liability of the surety under the bond.

c. Savings Clause

To guarantee a dual obligee bond, the following “savings clause” must be added as a rider to the SBA 990:

“The surety shall not be liable under this bond to the obligees, or either of them, unless the said obligees, or either of them, shall make payments to the Principal or in the case where the Surety arranges for completion of the Contract, to the Surety, strictly in accordance with the terms of said Contract as to payments, and shall perform all other obligations to be performed under said Contract at the time and in the manner set forth therein; provided, however, that the aggregate liability of the Surety under said bond, to the Owner and the Co-obligee, as their interests may appear, is limited to the penal sum of said bond, and provided, further, that the surety may at its option, make any payments under said bond by check issued jointly to the Owner and the Co-obligee.”

This “savings clause” is not used if the dual obligee is a Federal department or agency.

Chapter 6

SBG Application Procedures

1. Who Can Submit an Application Package to SBA?

SBA accepts SBG applications only from those persons who are empowered and authorized in writing by the surety to execute bid, payment, or performance bonds on its behalf. The surety must give SBA powers-of-attorney for these persons, as discussed in chapter 3. SBA requires that contractors work through their authorized insurance/surety bond agents or brokers to prepare data needed by the SBA and/or the surety company. SBA does not require that the contractor employ independent packagers to prepare an SBA application package.

2. When the Surety Submits an Application Package to SBA, What Does SBA Require the Surety to Certify?

The surety must certify and represent the following.

- a. Contractor is a Small Business Concern. The surety shall represent that the contractor meets SBA's size standards.
- b. Bond Requirement. The surety shall represent that the original contract requires the bond(s), and that the bond(s) are appropriate to the contract.
- c. Terms and Conditions of the Bond. The surety shall represent that the terms and conditions of the bond(s) are appropriate, according to those generally used by the surety industry for the type of bond involved.
- d. SBG is a Prerequisite to Bonding. The surety shall affirm that without the SBA guarantee to surety, it will not issue the bond(s) to the principal.
- e. Reasonable Expectation of Successful Completion. The surety shall represent that it reasonably expects that the contractor will successfully perform the conditions of the contract.

3. How Does the Surety Order Forms from SBA for the Surety Bond Guarantee (SBG) Program?

SBA will distribute a supply of forms to participating surety companies, as needed, from the SBA warehouse. Sureties should order them in advance, from the appropriate SBG area office.

4. Where Does the Surety Send the Application Package?

The surety must send the application package to the SBG area office serving the territory in which the contractor's business is located. Only one SBG area office shall provide assistance to a given firm at any one time. In the event a contractor has facilities in two or more SBA area office territories, the location of the contractor's home office determines which SBG area office processes its applications. The surety may verify a contractor's home office through the contractor's Federal Income Tax Return.

5. What Happens When a Contractor Relocates?

If the contractor relocates to another SBG area office territory, the current SBG area office will transfer the entire case file and all relevant information to the receiving SBG area office.

6. Where Does the Contractor Send the SBA Contractor's Fee?

The contractor must give the check (made payable to SBA) for the contractor's fee to the agent/surety. The agent/surety must remit the contractor's fee check with the application package for a final bond. The SBG area office collateral cashier will hold the fee check until SBA takes final action on the application.

7. When Does SBA Process the Contractor's Fee?

When the surety sends the completed SBA 990 to SBA, SBA simultaneously processes the contractor's fee.

8. What Happens When the Contractor's Fee Has Not Been Paid?

SBA is not liable under a guarantee if the contractor's fee is not paid. However, the guarantee may be reinstated if the contractor is not in default on the project and a valid reason exists why a timely submission was not made. Additional SBA guarantees will not be issued unless all of the contractor's fees have been paid, including any additional fees generated by change orders or otherwise.

9. How are Unpaid Surety Fees Collected?

SBA's client server system generates a screen which shows a surety its outstanding surety fees payable to SBA. The surety must print a copy of this screen, attach its check for the amount due, and send it to SBA's Denver Finance Center on a monthly basis.

10. What Information Must the Surety and/or Contractor Complete in a Standard Application Package?

The SBG initial application package consists of a set of required forms, a copy of the General Indemnity Agreement, and, except for bid bond applications, the contractor's check for the guarantee fee. The contractor and/or surety must complete, sign (where indicated) and date each of the forms. The surety then submits the completed package to SBA. The following forms and information are necessary to apply for an SBA surety bond guarantee:

The contractor ordinarily submits the following information to the surety (if not already on file with the surety).

FROM THE CONTRACTOR	PURPOSE
<ul style="list-style-type: none"> • SBA Form 994, "Application for Surety Bond Guarantee Assistance, (Appendix 7) 	<p><i>This one page form provides basic information regarding the contractor/principal and the surety; gives a brief description of the contract and the work that the contractor must perform thereunder; evidences the contractor's request for SBG assistance; and contains various certifications attested to by the contractor's signature. This form must be submitted with each application for a final bond guarantee. <u>It also includes the disclosure authorization required by Section 1104(a) of the Right to Financial Privacy Act (12 U.S.C. 3404), which authorizes the surety, etc., to release information to SBA.</u></i></p>
<ul style="list-style-type: none"> • SBA Form 912, "Statement of Personal History," (Appendix 6) 	<p><i>This one page form is used to record personal information concerning principals of the company and/or those with the ability to commit the firm. The SBA 912 specifies who must complete the form. See instructions for processing later in this chapter under the paragraph 6-12, "What is a Name Check and How is it Conducted?"</i></p>
<ul style="list-style-type: none"> • SBA Form 994F, "Schedule of Uncompleted Work," (Appendix 8) 	<p><i>This form provides basic information on all uncompleted work (bonded and unbonded) that the contractor has on hand.</i></p>

FROM THE CONTRACTOR	PURPOSE
<ul style="list-style-type: none"> • SBA Form 994F, “Schedule of Uncompleted Work,” (Continued) 	<p><i>Uncompleted work should include any awarded jobs not yet started. It must be signed by an individual who has an SBA 912 on file with SBA, or included in the application package. This form should be submitted at least quarterly and may be required more frequently by the SBG area office.</i></p>
<ul style="list-style-type: none"> • SBA Temporary Form 1624, “Certification Regarding Debarment Lower Tier,” (Appendix 9) 	<p><i>This certification-type form must accompany each application for a bid bond, final bond, or bonding line. Its basic purpose is to ensure that the contractor is not debarred or otherwise ineligible to perform the covered transaction. SBA is prohibited from accepting applications that involve a debarred or suspended entity or person.</i></p>
<ul style="list-style-type: none"> • SBA Form 1261, “Statements Required By Laws and Executive Orders,” (Appendix 10) 	<p><i>This form identifies various requirements with which a recipient of SBA assistance must comply. A copy must be signed by the principal and by each indemnitor, to indicate their understanding of SBG requirements and their agreement to adhere to them.</i></p>
<ul style="list-style-type: none"> • SBA Form 413, “Personal Financial Statements,” (Appendix 11) 	<p><i>This form(or equivalent) is required from proprietors, general partners, or holders of 20 percent or more interest in the applicant company, and from any other person or entity required as a guarantor. All statements must include signatures and dates.</i></p>

FROM THE CONTRACTOR	PURPOSE
<ul style="list-style-type: none"> • Business Financial Statements (Continued) 	<p><i>The surety uses this information to evaluate a company's financial condition. The applicant should attach copies of his/her financial statements, or income tax returns to the SBA 413. All statements must include signatures and dates. Additional requirements are detailed in Chapter 7, "Underwriting Considerations."</i></p>
<ul style="list-style-type: none"> • Surety's Contractor's Questionnaire 	<p><i>The surety uses this form to obtain background information. The applicant must complete, sign, and date this form. The surety may also require a business plan and/or resume, including the contractor's past growth, forecasts of business activity, management experience, continuity provisions, training, and work history of officers, owners, partners, or key people.</i></p>
<ul style="list-style-type: none"> • Bank Letter(s) 	<p><i>The bank letter(s) should identify the existence or non-existence of a line of credit (LOC). It should reflect the checking account balance, loan position, and should include a general statement concerning the bank's relationship with the contractor. It should also specify the amount of the line, expiration date, and collateral security.</i></p>
<ul style="list-style-type: none"> • Reference Letter(s) 	<p><i>The applicant should supply the surety with reference letters from past suppliers and owners. The surety and SBA use this information to evaluate the contractor's credit history, capacity, and performance.</i></p>

FROM THE CONTRACTOR	PURPOSE
<ul style="list-style-type: none"> • General Indemnity Agreement (GIA) 	<p><i>The GIA is necessary to secure the corporate and/or personal indemnity of the applicant(s) and each holder of at least 20 percent ownership thereof, and any spouses of the personal indemnitors and/or holders.</i></p>
<ul style="list-style-type: none"> • Bid Invitation/Contract (copy) 	<p><i>Generally, SBA examines this information for the bond requirement.</i></p>

Note: Any person who knowingly makes false statements or representations are subject to criminal prosecution, significant civil penalties, and denial of the bond guarantee (18 U.S.C. 1001 and 13 CFR Part 142.1).

The **SURETY** must perform its underwriting analysis, determine that it will issue the bond only with SBA's guarantee, and forward the following information to the appropriate SBG area office upon completion.

FROM THE SURETY

All items identified under the information from the contractor, unless already on file with SBA (except those items required with each application).

SBA Form 994B, "Surety Bond Guarantee underwriting, review," (Appendix 12), or SBA Form 994C, "Surety Bond Guarantee Review Update," (Appendix 13).

SBA Form 994B – The surety must complete this form in its entirety and must provide SBA with additional information as indicated. It reflects the nature, location, duration, and extent of the contract; background information on the applicant; and the surety's underwriting analysis and determinations. A new 994B is required when the contractor's financial or other pertinent information changes and when new financial statements are submitted.

SBA Form 994C - The surety should use this form for interim periods, or for bonding lines, when an SBA 994B is already on file with SBA and no new financial statements or other pertinent information is available.

How are these "review" Forms used by SBA?

The intent of the SBA 994B and 994C is threefold:

To place the underwriting responsibility clearly upon the participating sureties;

To provide the participating sureties with a uniform format to present their underwriting data; and

To provide SBG Program personnel with a simple mechanism to satisfy legislative and administrative requirements for performing their underwriting review functions.

....FROM THE SURETY

An authorized surety representative must sign both the 994B and 994C. Either form is mandatory for all applications, but in no case must both be submitted together for the same application. If the surety fails to complete one or more items on either form, SBG field personnel should return the entire application package to the surety for completion.

- SBA Form 990, “Surety Bond Guarantee Agreement,” (Appendix 2). This form is the agreement entered into between a surety and SBA under which SBA guarantees a specific bond. As a legal document, all parties must sign this agreement (e.g., no stamped signatures), including the surety’s authorized representative. This form must be fully complete and must include the surety’s bond numbers.
- SBA Form 991, “Surety Bond Guarantee Agreement Addendum,” (Appendix 14). This form is used when work is already underway on a job. While it shouldn’t be a common occurrence (and is to be discouraged), the surety may submit an application to SBA after a job is in progress and the contracted work is already underway. SBA considers work having begun when a contractor takes any action at the job site that exposes its surety to liability under applicable laws. This would include the purchase and/or delivery of materials or actual construction. In such cases, the surety must fully support its recommendation in writing, and submit an SBA 991.

a) What are the exceptions and who has the authority to approve the SBA 991?

SBA will not issue a guarantee where the work is already underway unless the surety fully justifies the action in writing. Such actions may be authorized (following the “Rule of Two”), by an SBA official who has delegated authority to approve the SBG application in question.

b) What additional information must the surety submit with the SBA 991?

In all such situations, the surety must submit as part of the application, the following additional information.

- 1) Documentation of Bond Requirement. The contractor must provide evidence (certified copy of contract or sworn affidavit) that the original job contract requires the bond.

....FROM THE SURETY

- 2) **Basis for Lack of Surety Bond.** The contractor must provide adequate documentation to explain why a surety bond was not previously secured and is now being required.
 - 3) **Certifications and Waivers of Lien from Suppliers and/or Subcontractors.** The contractor must certify that all suppliers are paid to date, together with a listing of those suppliers and a waiver of lien from each; that all subcontractors are paid to date, together with a listing of those subcontractors and a waiver of lien from each; and that all taxes and labor costs are current.
 - 4) **Certification by Obligee.** The obligee must certify that all payments due under the contract to present status have been made and that the job has been satisfactorily completed to present status.
- **Copy of Bonds and Contract.** The surety must maintain signed copies of all bonds and contracts for which an SBA guarantee was issued. Supervisory SBG specialists and SBG specialists should request copies of the executed final performance and/or payment bond(s) and contracts as needed for eligibility and program decisions.
 - **Payment to SBA.** The surety must submit the required contractor's fee.
 - **Prior Default Status.** The surety or agent/broker who submits the application must provide the SBG area office underwriting staff with the specifics on any previous bond default(s) and/or claim(s) involving the contractor and/or principal(s), and the present status of the same.
 - **Other Information.** The surety must submit any other pertinent underwriting information to SBA with the application. It must also submit any additional information requested by SBA.
 - **Updated Information.** The surety must update SBA when the information changes or additional, pertinent information is available.

Note: Any person who knowingly makes false statements or representations are subject to criminal prosecution, significant civil penalties and denial of liability (13 CFR Part 115.19, 18 U.S.C. 1001, and 13 CFR Part 142.1).

11. How is the Minority Code Classification Documented?

As an SBG specialist, you must screen all applications from companies new to the program, and those that have experienced a change of ownership, to ensure that a proper classification code is entered. If the bond application does not identify a minority code classification in Section h.(3) on the SBA 994, or if code number (6) has been checked, or the classification code selected is questionable (e.g., illegible), you must determine the proper classification. You may accomplish this by contacting the company, agent, or by other means.

a. Where Do I Put the Documentation?

You must document the file in the format outlined in Appendix 15, "Documentation of Minority Code Classification." The individual making the determination must sign and date this form and attach the completed documentation to the SBA 994. Do not amend the SBA 994. Put this documentation in the contractor's case file and record it in the SBG information system.

b. What Happens When a Contractor is Unresponsive?

If the person you contact is unwilling or unable to disclose the necessary information, put pertinent comments on the "Documentation of Minority Code Classification" and check code number (6) (Undetermined).

c. When a Case Involves Multiple Principals, How Do I Document the Minority Code Classification?

If a case involves multiple principals, notate the appropriate information in the "Comments" section of "Documentation of Minority Code Classification," and check the appropriate classification box.

12. What is a NAME CHECK and How is it Conducted?

Use the SBA Form 912, "Statement of Personal History," (Appendix 6), to obtain background character information on the principal(s) of all surety bond guarantee applicants. Return this form for completion if it is not signed, or if required items are omitted.

a. When Does SBA Require the SBA 912?

SBA requires this form with the initial and each subsequent application, as of the current date, or written certification that the prior SBA 912 remains accurate. (See SBA Form 994 for certification statement.)

b. Who Must Submit an SBA 912?

The following individuals must submit an SBA 912:

- (1) Each individual who serves as proprietor, general partner, director, or officer; and
- (2) Each owner or limited partner who owns 20 percent or more of the applicant's voting stock; and
- (3) Any other person, including hired managers, who has authority to speak for and commit the applicant in the management of the business.

c. Does SBA Require Inactive Spouses to Complete the SBA 912?

In accordance with the Equal Credit Opportunity Act, SBA does not require spouses who are not active in the company to complete this form for the purposes of an SBA surety bond guarantee.

d. What Happens When the Applicant Indicates No Criminal Activity on the SBA 912?

If the applicant doesn't include adverse information on this form (i.e., all questions were answered in the negative) and no other adverse information is known, process the application without further advice. In such instances, it is not necessary to forward copies of the form to the Office of the Inspector General (OIG). Retain the original in the contractor's case file and discard pages 2 and 3.

e. What Happens When the Applicant Identifies Criminal Activity on the SBA 912?

In any case where an applicant answers affirmatively to question numbers 6, 7, or 8 on the SBA 912, or in any other case (at the discretion of the senior SBG area office program official, or designee), certain information will undergo the following special review process.

- (1) Fingerprint Card (Form FD 258). All individuals who report criminal activity on the SBA 912 must provide legible fingerprints that the Federal Bureau of Investigations (FBI), will accept. Supply such persons with a Fingerprint Card and advise them that it is a necessary prerequisite to applying for the guarantee. Note: Local law enforcement agencies may be helpful in preparing acceptable prints since this usually requires the assistance of a skilled technician.

- (2) Review/Distribution of the Completed Fingerprint Card. Upon receipt, review the Fingerprint Card to ensure that the appropriate information has been supplied, i.e., name, signature, sex, etc.. Enter the SBA office ID number and the name of the business applicant on the back of the card (e.g., SBA Office ID 01" "The XYZ Company, Inc."). Mail the card directly to the FBI in special envelopes for this purpose.
- (3) Distribution of the SBA 912 (Criminal Activity Identified). Send pages 2 and 3 of the SBA 912 to the Office of the Inspector General (OIG), Office of Security Operations (OIG/OSO). Retain the original in the SBG case file, containing the following notation: "Fingerprint Card forwarded to FBI on (date)."

f. What Does the SBG Area Office Do When it Receives Other Adverse Information?

Attach any other adverse information received to all copies of the SBA 912 and forward it in memo form to the OIG/OSO (see SOP 90 22).

g. Where Does the SBG Area Office Report Suspected or Bonafide False Representations?

Report to the OIG any false data (including financial information) that the applicant submits to induce approval of a guarantee.

h. What Effect Does Adverse Information Have on the Application Process?

Get special clearance before processing an application that has adverse information concerning criminal activity from the SBA 912 or otherwise.

(1) What if the case involves a single/remote incident?

As the senior SBG official or his/her designee, you can clear cases involving single minor offenses and single offenses remote in time. The deciding official must document the file with support for the clearance and must note the SBA 912: "Cleared for Processing," initial it, and forward it to OIG. He/she must also notate the SBA 912 with: "Fingerprint Card forwarded to FBI on (date)."

(2) What happens in all other instances of reported criminal activity?

Discontinue processing an application in all other instances of reported criminal activity (e.g., recent convictions, lengthy record). OIG/OSO and OSG, Headquarters must first clear all such matters.

OIG and OSG will then advise the SBG area office when processing may continue. OSG will furnish OSO with a copy of the final disposition.

Note: Clearance to proceed merely permits the SBG Area Office to process the guarantee. SBG personnel must carefully consider the information provided by the surety and oig about the applicant in reaching a decision to approve or disapprove the application. This is especially important where there are adverse indicators in the background of the applicant, such as criminal conviction(s).

i. What Information May You Divulge to an Outside Source Regarding an SBA 912 That Has Been Sent to OIG/OSO for Clearance?

Once you send an SBA 912 to OIG/OSO for clearance, do not give a statement of any kind to the contractor, contractor's representative, participating surety company, or to any person outside SBA. This includes information that SBA receives or any action(s) that SBA takes regarding the information transmitted. You will communicate only **"final decisions"** to the surety.

13. How Does SBA Process Applications for Surety Bond Guarantees?

You should give a timely "turnaround" when processing a surety bond guarantee application. To accomplish this task, the surety must submit applications to SBA that are complete in every detail. Return incomplete forms and applications to the surety. Once you determine that an application is complete, take the actions below.

- a. Prepare a new case file if it is an initial application, or retrieve the appropriate case file if it is a subsequent application.
- b. Enter the contractor's business ID number in the computer system. The system will reflect "new" if the number is being input for the first time or "modified" if the number is already established in the system.
- c. Some area offices use the SBA Form 990A, "Applicant's Control Card," (Appendix 16), to manually record a contractor's applications.
- d. The computer will assign an SBG number, including an application number (see Appendix 17, "Surety Bond Guarantee Numbers"). If a contractor has moved from one SBG area office jurisdiction to another, the new SBG area office should acquire the old file and should cross-reference both offices' card files.

- e. Process a name check on the SBA 912 (see paragraph 6-12).
- f. Compute the amount of the contractor's guarantee fee due SBA and compare it with the check amount. Request a replacement check if the amount sent is incorrect.
- g. Control the guarantee fee check by annotating it with the SBG number, putting the contractor's name on it, and inputting the check information in the computerized check register. If the application is not approved or declined on the day the check is received, the check must be held overnight. Forward the check file to the collateral cashier for safekeeping. The cashier must not send the check to the Denver Finance Center (DFC) for deposit until the SBG personnel takes final approval action.
- h. Deliver the file and application package to the SBG professional.

14. How Does SBA Review Application Packages?

As a surety bond guarantee professional, you must review the complete application package and recommend approval or declination based on the information provided by the surety. Accomplish this recommendation by performing the actions below.

- a. Underwriting Criteria. Perform a review of the application package, information submitted by the surety and the surety's underwriting determination using the steps in Chapter 7, "Underwriting Considerations."
- b. Addition of Special Conditions. In rare cases, you may require the surety's agreement to a separate writing that requires additional special conditions as a prerequisite to approval. Both the surety and SBA must agree to this separate writing and both parties must sign the document. Once the surety returns the signed document, retain the information in the SBG case file as an attachment to the SBA 990.
- c. Recommendation/Sign Off. Recommend approval or declination by signing the "Recommendation/Action" section of the SBA 994B or the SBA 994C. Those who sign the SBA 994B or 994C must document their action (approval, declination, withdrawal, or request for further information) and rationale on the form.
- d. Delivery to Approving Official. Once you make a recommendation and sign the SBA 994B or 994C, forward the application package and file to the SBA approving official(s).
- e.

SBG Approving Official. SBA policy requires the signature of two concurring officials on the SBA 994B or 994C to authorize a final approval or decline action. The person signing the SBA 990 does not necessarily have to be the second concurring signer on the SBA 994B or 994C. Paragraph 1-10, “Who has the Authority to Approve Surety Bond Guarantee Agreements?” contains details regarding this “Rule of Two” and the levels of approval authority.

Note: Proposed Change(s). If the action official proposes a change or a different recommendation, he/she should consult with the recommender before sending a case to the approving official. If the recommender concurs with a change and the action official has approval authority for the size contract involved, he/she may take the final action.

15. What Actions Does SBA Take When an Application Has Been Approved?

a. Bid Bonds

- (1) Forward the original and one copy of the SBA 990 to the surety and put one copy in the contractor’s case file.
- (2) Record the data on the control card (SBA 990A or similar PC screen).
- (3) Enter the bid bond information in the SBG information system.

Unsuccessful Bidder

Record data on the control card and terminate the application in the SBG information system.

Successful Bidder

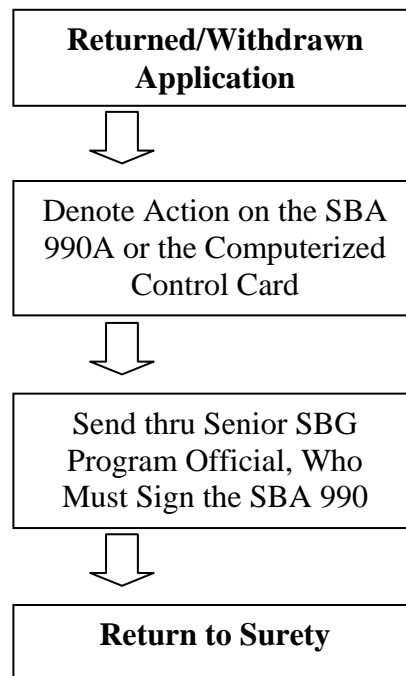
- *Verify that the surety notified SBA in a timely manner.*
- *Record the data on the control card.*
- *Annotate the front of the contractor’s guarantee fee check with the SBG number and contractor’s name.*
- *Forward the check to Denver Finance Center for deposit.*

b. Final Bonds

- (1) Record its approval on the SBA 990A or PC Screen.
- (2) Detach and forward the original and one copy of the SBA 990 to the surety and put one copy in the contractor’s case file.
- (3) Pull the contractor’s guarantee fee check from the check suspense file and annotate the SBG number and contractor’s name on the front.

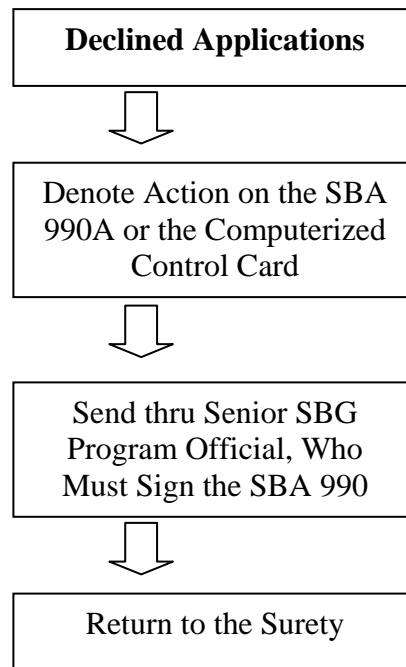
It is essential that the surety's agent or producer follow up with SBA for the Agency's surety bond guarantee to be in effect. If the contractor is the successful bidder, the surety must complete the required contract information on the SBA 990 (Sections 19 - 26), and return a completed copy with the contractor's guarantee fee check within 45 days after the later date of the award of the bonded contract, or bond execution. If the surety fails to submit such information and check in a timely manner, SBA's guarantee of the bond shall be void from its inception. SBA may reinstate it (at its discretion) upon the surety showing that the contract is not in default and a valid reason exists why they did not make a timely submission.

16. What Procedures Does the SBG Area Office Follow When an Application is Returned/Withdrawn?



“Returned” disposition indicates an incomplete submission. That is, SBA did not “decline” the application (based upon merit) or act upon it because it was not complete. When SBA marks an application “withdrawn,” it means that the surety voluntarily withdraws the application and requests its return.

17. What Procedures Does the SBG Area Office Follow When an Application is Declined?



A “decline” is when the SBG official has a complete file to review and does not extend SBA’s guarantee due to the lack of merit within the submission. The SBG official sends a decline letter along with the SBA 990 (marked “decline” to the surety. If the application is for a final performance and/or payment bond, the SBG official pulls the contractor’s guarantee fee check and returns it to the surety with the decline letter and SBA 990. The surety must inform the contractor that SBA has declined its application.

18. What Process Does the SBG Area Office Follow When the Surety Resubmits an Application That was Returned/Withdrawn?

Input the application information into the computer system again. Follow procedures for reviewing and approving/declining applications.

19. What Process Does the SBG Area Office Follow When the Surety Resubmits an Application That SBA Declined?

Treat these applications as entirely new submissions and input them into the computer system as a new application. The system will generate a new SBG number. The surety should resubmit new SBA forms and other supporting documentation, if the information previously submitted is not current.

20. What Information Must the Surety Supply to SBA When There is a Change of Surety, Agent, or Both?

Change of Surety Only 1	Change of Agent Only 2	Change of Both Surety and Agent 3
<p>If the contractor's surety changes (old agent retained), the new surety must submit:</p> <ol style="list-style-type: none"> 1) New GIA; and 2) Any additional information that SBA requests 	<p>If the contractor's agent of record changes (old surety retained), the agent must submit the following before SBA will issue any additional bond guarantees:</p> <ol style="list-style-type: none"> 1) A copy of the signed Agent of Record Letter; 2) Evidence that the new Agent has everything he/she needs to properly Underwrite the account (e.g., evidence that the new agent has current and comprehensive information in its contractor file)s and 3) Agent's Power-of – Attorney unless already on file, 	<p>In addition to the information that SBA requires under columns (1) and (2), the surety must submit the following information in a new underwriting package, before SBA will issue any additional bond guarantees:</p> <ol style="list-style-type: none"> 1) The contractor's financial statements; 2) Work on hand information; 3) Contractor's questionnaire; and 4) Other data of sufficient scope to indicate the surety's/agent's ability to perform the necessary underwriting.

21. What Information Must the Surety/Agent or Broker Submit to SBA When There is a Change in the Ownership of a Principal's Business?

- a. New SBA 912(s), personal financial statement(s) for the new owner(s), and a new GIA;
- b. A new or revised contractor's questionnaire;
- c. A newly signed SBA 1261;
- d. A new or revised business plan;
- e. A new SBA 1624; and
- f. Any other pertinent information related to the change of ownership.

22. What are the SBG Program's Data Entry Procedures?

“The Surety Bond Guarantee System Users Guides” contain the procedures for putting the necessary data entries into the computerized information system.

23. Where Can I Find Information on the Disposition of Non-Defaulted Contractor Case Files for the Surety Bond Guarantee Program?

Please see SOP 00 41, “Records and Management,” for information on that subject.

Chapter 7

Underwriting Considerations

1. What Requirements Must the Surety Adhere to in Its Underwriting of SBA-Guaranteed Bonds?

SBA requires the surety to adhere to those rules, principles, and practices published from time to time by SBA's Office of Surety Guarantees (OSG) and the criteria set forth in this chapter. In underwriting an SBA-guaranteed bond, SBA also expects the surety to follow the surety industry's general principles and practices used to evaluate the credit, capacity, and character of a principal, while considering the reason a contractor needs SBA's guarantee. In this regard, the surety must ensure, through verification and other means, that the data is accurate and complete when it submits a guarantee request. The surety must provide the required information fully and accurately and must update that information promptly whenever changes occur.

2. Does SBA Have Any Underwriting Guidelines for the Surety Bond Guarantee (SBG) Program?

SBA will not approve an application for surety bond guarantee assistance until the SBG professional and the authorized action official have reviewed the application package, and concur that the application meets program requirements and has acceptable risk factors. Their decision to approve is based upon the surety's recommendations and information that it submits. This shall include assessments of eligibility, feasibility, character, capacity, credit factors/special requirements, experience, indemnity, etc. In assessing each of these factors, SBA's first level of review should be the surety's underwriting analysis. SBA must maintain confidentiality and discretion in handling information that it obtains from the surety in the underwriting process.

a. Eligibility

- (1) SBA determines eligibility early in the review process. Eligibility determinations are based on statute, SBG program rules and regulations and information in the application package. Following the "Rule of Two," the official with authority to take final action on the guarantee request should affirm the initial eligibility recommendation. The eligibility requirements for the surety, contractor, and contract can be found in the 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. If you have any questions, consult the local SBA counsel before proceeding with the application.

- (2) In cases where an eligibility question arises during application processing, advise the surety that there may be a delay in the final decision on the bond application. Any such delays must be minimal, due to the time factor inherent in surety bond guarantee matters. Forward an eligibility matter to OSG if it cannot be resolved at the senior staff level. The senior SBG staff member shall prepare the OSG referral, which should include all pertinent facts and a clear statement of the action recommended. It should also include a copy of the legal surety bond guarantee application if determined to be ineligible.

b. Feasibility

The information that the contractor provides SBA and the surety's underwriting determinations 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. Evaluate the various factors necessary for successful completion of the contract by considering surety industry standards and principles.

c. Character

The applicant's good character is a fundamental necessity in surety bond underwriting and must be assessed by the surety. SBA relies upon the surety's assessment and gives special attention to this factor by requiring the applicant to complete the SBA 912 and by conducting a name check to determine if the applicant has had any criminal convictions. See Chapter 4, "Contractor Eligibility Requirements," and Paragraph 6-12, "What is a NAME CHECK and how is it conducted?"

d. Capacity

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

- (1) The surety must certify that it reasonably expects that the contractor will successfully perform the contract to be bonded. Based upon the information submitted by the surety and its determinations, 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) Consider the surety's recommendations and review the factors that are covered individually below and throughout the remainder of this chapter.
- (a) **BUSINESS PLAN** - Obtain a business plan (including plans for management continuity) from all relatively new contracting firms. At a minimum, a plan should include a summary of the contractor's growth to the present, its plans for business activity for the next 12 months, and a description of management experience.
 - (b) **MANAGEMENT CONTROL, LABOR, AND LOGISTICS** - Review management control, to determine if a company has strained lines of communication, logistical problems, need for new equipment, new supervisory personnel, changes in labor union conditions, subcontractors, and other situations.
 - (c) **GEOGRAPHICAL AREA** - Consider the location, distance, and accessibility of the contract site. 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.
 - (d) **ADEQUACY OF BID** - A company's estimating capability is a key factor in its ability to succeed as a contractor. Poor bid preparation/pricing leads to underbidding, which is a very frequent cause of contractor failure. It is important that you know the bid preparation process (e.g., performed by owner or estimator, depending on the level of estimating experience) and check the range of bids, i.e., the "bid spread" before recommending a final bond approval. If the bid spread is greater than 10-15 percent, you should request a justification and a cost breakdown from the surety.

• RED FLAG ALERT SIGNALS •

SBA 990

When a large bid spread exists between the applicant's bid and the next higher bid, the surety must justify the large bid spread and note any such factor that might mitigate the spread. The surety must also provide an adequate reason for proceeding.

SBA 994B

Be alert to the following "yes," "no," or "no response" on the SBA 994B. In these cases, you must obtain the appropriate follow-up documentation from the surety.

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 have bank line of credit?
- Indemnities posted?
- All work on schedule?
- Contractor have adequate equipment?
- Contractor taxes current?
- Contractor insurance coverage sufficient?

NO RESPONSE:

- How many work in “progress” obligees verified?

NO RESPONSE:

- Total number of “work in progress” obligees.
- How many “work in progress” suppliers checked?
- Total number of work in progress suppliers.

Note: Be alert to situations where the second low bid and contract amount appears to be excessive in light of the contract size. The surety should justify bid spreads in excess of 10-15 percent.

SBA 994C

Be alert to the following “yes” and/or “no” responses on the SBA 994C and obtain appropriate follow-up documentation from the surety:

YES:

- Phased project?
- Contractor started job?

NO:

- Bond required by original contract document?

Note: Be alert to situations where the second low bid and contract amount appears to be excessive in light of the contract size. The surety should justify bid spreads in excess of 10-15 percent.

e. Credit Factors/Special Requirements.

The surety must provide enough information to SBA so you can evaluate the financial condition of the firm, its 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 maintain contract performance. Make sure you 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.

- (2)

FINANCIAL ANALYSIS - 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. Your analysis should be commensurate with the size, duration, and risks of the proposed contract. You may invoke special requirements when necessary. The first level of your underwriting review should be the surety's analysis. The surety's adequate initial analysis is necessary to ensure a prompt response and fast turnaround time from SBA. Sureties representing firms that have an ongoing need for SBG assistance should provide financial information on a semi-annual basis. This provides you with increased familiarity and allows you to significantly reduce your review time.

- (3) FINANCIAL STATEMENTS - Any surety or agent requesting a bond guarantee for a small contractor, must provide a copy of that contractor's financial statements with the application. Sureties should use IRS Form 4506, "Request for Copy or Transcript of Tax Form" to verify the accuracy of the information on the contractor's financial statements. Sureties should notify the appropriate SBG area office of any suspected or apparent fraud. Area offices should contact OSG, and, if fraud is confirmed, OSG will report it to the OIG. OSG will then notify all sureties that the contractor is no longer eligible for SBG assistance. These financial statements must be current and in an acceptable format for analysis. Thus, you must be aware of the basis for the statements (cash, accrual, percentage of completion). There is an increase in the potential for future problems (e.g., underestimating of contract costs) when a firm does not maintain careful records. You should not rely on low-quality statements, especially when the guarantee request is substantial or when there are perceived problem areas. See section of this chapter on "Red Flag Alert Signals." **PLEASE NOTE: According to 13 CFR 121.104 (Effective January 31, 1996), SBA must make size determinations based on a company's Internal Revenue Service (IRS) Federal Tax Return Forms.**

- TYPES OF ACCEPTABLE FINANCIAL STATEMENTS-

Minimum Requirements

The financial data must be complete and in a form that allows the SBG professional to decide the financial merits of the cases based on substance, rather than on the type of statement and data.

Prepared by an Independent Public Accountant (AICPA)

These financial statements must be complete and include, at a minimum: a balance sheet,

income statement, statement of cash flow, appropriate footnotes, and the accountant's cover letter describing the scope of the work in preparing the statements. They should be "review" statements as defined by AICPA, or their equivalent as determined by the SBG professional.

Audited and Prepared by Independent Public Accountant

These statements must include all of the schedules identified above, as well as opinion statements (as defined by AICPA), or their equivalent as determined by the SBG professional.

Age of Financial Statements

Primarily, the surety industry uses year-end statements to conduct financial analysis, even though they often require interim data to supplement them. Financial statements shall be provided to SBA based on the following:

- Year-end - If the surety presents the application within 9 months of the firm's fiscal year-end.
 - Interim & Year-end - If the surety presents the application more than 9 months from the firm's fiscal year-end, 6-month interim statements should be provided.
-

Required Certifications

The proprietor, partner, or authorized officer (who has submitted an SBA 912) of the applicant company must sign and date all financial statements (regardless of contract size or lack of complexity), unless an outside accountant prepares them and they are properly certified. SBA does not consider "Qualified" statements properly certified.

- (4) OTHER FINANCIAL DATA - SBA may require additional or higher quality financial information in any instance. When you perceive that such data is necessary for adequate analysis (e.g., complexity, size, indications of problem areas), require additional financial information. You may also waive certain data requirements if you determine that the data at hand is sufficient for the required review. You have the option of requiring as much or as little information as you legitimately need to form a reasoned and logical decision, including the risk to the Government. On any size case, you have discretionary authority to approve the quality of statements rather than the format. You also have flexibility relating to the timing of receipt of statements (considering the date of the last statements), and their relative completeness. Note: The participating agent/surety should understand that while justification for an exception may be found from time to time, it must comply with the requirements set by SBA. If the surety cannot or will not comply, then SBA may deny applications for additional guarantees.

(5)

PERSONAL FINANCIAL STATEMENTS - Require personal financial statements from the proprietors, general partners, limited partners, or stockholders owning 20 percent or more of the business, and each guarantor/indemnitor. The SBA 413 is used for this purpose, although other forms are acceptable if they are current and provide adequate information. The aforementioned individuals must sign and date their personal financial statements.

- (6) CASH FLOW PROJECTIONS - Cash flow projections during the term of a job for both the specific contract and a firm's overall contracting activity can be most helpful. While they are not a mandatory requirement, you may request them in cases where a firm has had little or no known experience in performing the size and/or type of contract and/or work program. You must be reasonably satisfied that the contractor will have sufficient cash flow from its operations to meet all obligations as they occur. The recommending official or the approving official may require that a company provide cash flow projections on any specific case.
- (7) OTHER SBA ASSISTANCE - The file should include specifics on any other SBA assistance that the contractor has received. Use the status/condition of any such assistance in determining whether to provide SBG assistance.

f. Experience

- (1) Based on the information submitted by the surety, your review should include an accounting of the contractor's work history, type of jobs previously undertaken, largest previous jobs, etc. Also consider 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, you may request bank, obligee, architect, and/or suppliers reference letters in addition to the narrative. Except as noted below, SBA has no percentage limit on new work, as it relates to previous successfully completed jobs of a contractor. However, SBA carefully evaluates previous experience (size and type), as it is an important underwriting consideration. The Agency does a disservice to a small contractor if it guarantees bonds on jobs beyond its capacity, which may contribute to its business demise.
- (a)

First Time SBG Program Participants - The amount of the first guarantee for contractors who are first time participants in the SBG Program should be limited to 150 percent of the company's largest, previously successfully completed contract. SBG field personnel should document the SBA case file for any exceptions.

- (b) Part-Time Contractor - A part-time contractor is one who has regular, simultaneous outside employment. SBA must exercise extreme caution with these cases. The surety must provide a detailed, written justification to explain its decision to issue bonds for the part time contractor. This justification must be submitted with the initial application for guarantee.
- (2) The file must reflect the current status of all contracts awarded and in progress (bonded and unbonded) for the subject contractor, including outstanding bids. Likewise, the file must show the status of all of the contractor's previous SBG program contracts (if any), whether in default, completed, or in process. SBG field personnel must carefully consider any prior defaults of a contractor and/or any adverse information concerning a contractor. The surety should submit information to you concerning the reason(s) for and details of the default or problem situation and any other information requested by SBA. Based upon the surety's recommendation, field personnel must assess the potential impact that this information may have on a contractor's ability to perform the subject job.
 - (3) Over-extension is taking on more work than one can finance and manage. It is one of the most common causes of contractor failure. Therefore, field personnel must be fully aware of the total amount of work on hand. At a minimum, require the information contained in the SBA 994F. These work on hand schedules must include all jobs (bonded or unbonded), regardless of whether or not the work has begun on the job, as well as all outstanding bids.
- g. Indemnity
Common law may give the surety and SBA a right of action against a principal in the event of loss, an indemnity agreement gives further protection against a wider range of contingencies. The surety must obtain a written indemnity agreement that is signed by the contractor and other indemnitors and must provide SBA with a copy. If the contractor changes sureties, then a new indemnity agreement must be obtained from the new surety. SBG personnel should not base the Agency'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 applicant(s), and each holder of at least 20 percent ownership thereof, and any spouses of the personal indemnitors and/or holders.</p>	<p>The surety or SBA may, at their 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>

3. How Does SBA Handle Applications for Asbestos and Hazardous Waste Jobs?

The surety must determine and advise SBA as to whether a contract or change order(s) for demolition, rehabilitation, remodeling, or addition to existing structures includes asbestos work or involves other hazardous waste. The surety must satisfy special conditions and retain appropriate documentation after furnishing it to SBA, when the contract involves asbestos exposure or hazardous waste disposal. An exception to this occurs when the SBA-guaranteed contractor is bonded back by a treasury listed surety.

4. What Certificates and Coverage are Required on Asbestos and Hazardous Waste Jobs?

The contractor must provide SBA with the certificates of liability and workers compensation insurance in amounts and coverage required by the contract and/or appropriate to the risk involved. The insurance must be written on a pure occurrence basis (e.g., no sunset or discretionary clauses). *The certificate of insurance must include a statement that the liability insurance meets the above requirements, and covers all operations, completed operations, and contractual liability for the specific job.*

5. What Training Prerequisites are Required for Jobs Involving Asbestos Work?

All asbestos abatement contractors must have earned “Certificates of Training in Asbestos Abatement and Supervision of Asbestos Abatement Contracts” from an Environmental Protection Agency (EPA) accredited program.

6. Does SBA Require a Contractor to Meet Any Statutory and/or Regulatory Requirements for Asbestos and Hazardous Waste Jobs?

Contractors must comply with applicable local, municipal, county, and State requirements, regulations, ordinances, and laws pertaining to asbestos abatement or hazardous waste disposal.

7. Does SBA Require a Contractor to Own Specialized Equipment for Jobs Involving Asbestos and Hazardous Waste?

A contractor must have available, adequate specialized equipment necessary for successful completion of the contract.

8. What Transportation and Disposal Requirements Must a Contractor Meet for Asbestos and Hazardous Waste Jobs?

The surety must submit (when appropriate) evidence that the contractor has acquired the right to an EPA-approved disposal site, and that the method and means of transportation to the disposal site is authorized and approved. For example, “evidence” includes copies of:

- a. MUNICIPAL MANIFESTS APPROVING THE TRANSPORTATION ROUTE;
- b. CONTRACTS WITH EPA-APPROVED DUMP SITES; and
- c. VEHICLE AND CONTAINER PERMITS.

9. Are There Any Limitations to the SBA Guarantee on Asbestos Abatement Bonds?

SBA guarantees asbestos abatement bonds on non-Federal contracts only with the addition of a rider similar in intent to the one found in this SOP, (appendix 18).

10. How Does SBA Handle Change Orders to Asbestos and Hazardous Waste Contracts?

SBA considers a change order introducing asbestos work to be a substantial alteration to the original contract. As such, you must approve the change order prior to its execution. The surety must show SBA that all conditions required by the sections of this SOP on asbestos related contracts are met, or that the asbestos work is subcontracted and bonded back by a Treasury listed surety company.

11. What Special Advice Must the Surety Give SBA on Asbestos Projects?

The surety must advise SBA of the following:

- a. Any asbestos projects prematurely terminated and the reason therefore;
- b. Any penalties in the contract documents for breach of contract or noncompliance with contract specifications; and/or
- c. Any Federal, State, or local citations that the contractor receives for asbestos-related violations.

12. Does SBA Accept “Post-Bid” Applications for Final Bonds?

SBA presumes a contractor who obtains a non-SBA guaranteed bid bond to be able to obtain the final bond without SBA’s assistance. Ordinarily, the surety underwrites a bid bond with the intent of issuing the required final bond if the contractor is the successful bidder. Occasionally, however, such a contractor applies for an SBA surety bond guarantee. You should handle these cases in the following manner.

- a. PRIOR CONTACT/DOCUMENTATION - The surety should advise SBA in advance that time constraints preclude the filing of an SBG application and should explain the intent of the parties. You must document telephone comments by memoranda to the file. Retain written notification, pending further advice from the surety. This material supplements the application and allows underwriting to proceed in the ordinary course.
- b. NO PRIOR CONTACT - Occasionally, the surety intends that the bonding be SBA-guaranteed, but time precludes their advance notice to SBA. Evaluate these submissions very carefully, making no commitment on the final bond until obtaining and reviewing all relevant information. The surety must provide adequate documentation explaining why they did not provide the SBG area office with advance notice of writing the bid bond. If the contractor has had no prior SBG guarantees, you must exercise

special care in your underwriting review. If SBA approves the guarantee for the final bond, documentation to support the decision must be put in the case file.

13. Can SBA Decline to Provide a Final Bond Guarantee Even if It Provided the Bid Bond Guarantee?

SBA may guarantee a bid bond, but refuse to guarantee the required performance and/or payment bonds. This should be relatively rare, since the surety should provide all pertinent information with the application for the bid bond guarantee. SBG field personnel must mitigate the loss by comparing the potential loss of a bid bond default with a potentially much greater loss resulting from issuing the final bonds. Field personnel should discuss the facts and situation with the surety. SBA's decision to decline the final bonds should be based on the information and recommendations provided by the surety.

-EXAMPLES-

This could happen in situations where SBA doubts the contractor's ability to complete the project at the amount bid and:

- The amount of the contract price exceeds the amount authorized by SBA by more than 25 percent or \$50,000 than the original bid; or
- The actual contract price is more than 10-15 percent below the next low bidder.

-REMEDIES OF THE SURETY-

In such instances, the surety would either join SBA in refusing to issue the final bonds, or issue the final bonds without SBA's guarantee. If the surety defaults in fulfilling the bid bond, this could result in claims against the surety and SBA. If SBA did not reach a prior agreement with the surety, the surety may file claims against SBA.

Chapter 8

Bonding Lines

1. What is a Bonding Line?

A bonding line is a written commitment to a surety company by the SBA that allows the surety to issue multiple bonds to a specified eligible contractor within pre-approved terms, conditions and limitations. Since bonding lines hasten assistance to small firms and reduce SBA workloads, you are encouraged to use them. However, you must use extreme caution in issuing new lines and you must closely monitor existing lines.

2. How Long Can a Bonding Line Last?

A bonding line can last up to 1 year. However, bonding lines must expire at fiscal year end (September 30) since appropriation authority runs out on that date.

3. What Contractors are Eligible for Bonding Lines?

If the contractor is eligible for individual surety bond guarantees, the SBA may, at its discretion, issue a bonding line for that applicant with a specified surety. Eligibility is based on SBA's prior experience with the requesting surety and a satisfactory underwriting review of the contractor. Newly formed concerns or contractors new to the SBG program are not normally eligible for a bonding line.

4. How Does a Surety Apply for a Bonding Line for a Contractor?

The surety must request SBA to establish a bonding line for a specific contractor. The surety must submit an application package that includes:

- a. SBA Form 994, "Application for Surety Bond Guarantee Assistance;"
- b. Updated SBA Form 994B, "Surety Bond Guarantee Underwriting Review;"
- c. SBA Form 1624, "Certification Regarding Debarment-Lower Tier;"
- d. Current Financial Statements;
- e. Current Bank Letter if bank line of credit is available;
- f. Current SBA Form 994F, "Schedule of Uncompleted Work;"
- g. The contractor must sign and submit the following forms to SBA if they are not already on file:

- (1) SBA Form 1261, "Statements Required by Law and Executive Orders;"
 - (2) SBA Form 912, "Statement of Personal History;" and
 - (3) General Indemnity Agreement;
- h. Any Other Data That SBA Requests or That is Pertinent.

5. What Limitations and Restrictions Must the Surety Recommend?

The surety must recommend specific limitations and restrictions to be controlling during the bonding line period. These recommendations are as follows.

- a. A single contract dollar limitation.
- b. A total dollar amount and number limitation of all outstanding bids plus uncompleted work on hand that the contractor can reasonably be expected to perform at the same time. The uncompleted work on hand must include both bonded and unbonded jobs.
- c. A specific type of work that the contractor will be restricted to under the bonding line.
- d. A specific geographical area that the contractor will be restricted to under the bonding line.
- e. A restriction on high risk work. Contractors specializing in hazardous waste and other high risk work are not eligible for an SBA bonding line. This restriction does not apply to normal asbestos abatement, lead removal, and tank removal/replacement. However, these types of contracts must be carefully underwritten. (See paragraphs 7-3 through 7-11.)

6. How Do You Process a Surety's Application for a Bonding Line?

You must review the surety's proposed limitations and restrictions. You must also establish necessary requirements that include the following:

- a. The allowable period for the bonding line. Generally, the bonding line should expire within 90 days after the contractor's year-end;
- b. Limitations on the number of contracts and dollar value of contracts to be covered by the bonding line at any one time; and
- c. Any necessary credit and support requirements.

7. Who Can Approve a Bonding Line?

You can approve a bonding line if you have the delegated, or re-delegated, authority to approve the maximum single contract amount allowed under the line. The "Rule of Two" also applies. See Paragraph 1-10, entitled "Who Has the Authority to Approve Surety Bond Guarantee Agreements?"

8. How is an Approved Bonding Line Recorded?

After you approve the bonding line, you should notify the surety by letter. The letter should include SBA's authorization and specific conditions of the bonding line. You must also input the bonding line information into the computer. The following information is included in both the written notification to the surety and in the computer input:

- a. Date request is received;
- b. Effective date of the bonding line;
- c. Expiration date of the bonding line;
- d. Maximum dollar amount of any single guaranteed bonded contract;
- e. Aggregate contract dollar limitation. This is the total dollar amount of the contractor's bonded and unbonded work on hand at any time, including outstanding bids;
- f. Aggregate number of contracts limitation. This includes bonded and unbonded contracts;
- g. Geographic limitations;
- h. Work type limitations; and
- i. Other limitations.

9. When is the Surety Required to Notify SBA of Bonds Issued Under the Bonding Line?

a. Bid Bonds

The surety must notify SBA of any bid bonds issued under a bonding line within 15 business days of the bid bond execution date. The surety must submit an SBA 994C to SBA within the required time frame.

b. Final Bonds

The surety must notify SBA of any final bonds issued under a bonding line within 15 days of the final bond execution date. The surety must complete an SBA 994C and an SBA 990 and submit both forms to SBA within the required time frame. The contractor's check for the guarantee fee must be sent to SBA with these forms.

c. Lack of Notice

If the surety fails to notify SBA of bid or final bonds issued under a bonding line within the required time frames, SBA's guarantee will be void from its inception. SBA may, at its discretion, reinstate the guarantee if the surety submits adequate justification for the untimely submission and the contractor is not in default.

d. Timeliness of Bond Execution

The bond must be executed before work on the project has begun. If work has begun before the bond's execution, SBA has additional requirements. These requirements can be found in chapter 6.

10. What Must You Do if You Receive Notification of Bonds Issued Under a Bonding Line?

When you receive notification of bonds issued under a bonding line, you must check the bonding line limitations. You must be sure that each bond issued is within the limitations of the bonding line and that the surety notified SBA within required time frames. Information about the bonds issued under the line must be input into the computer.

11. Can Bonding Lines be Renewed?

- a. A bonding line can be renewed for a subsequent period if the activity and performance of both the surety and the contractor have been satisfactory under the expiring line. To request the renewal of a bonding line, the surety must submit a new application package to SBA. This application package includes the same information that was required with the initial request for a bonding line. You must review the new application submitted by the surety, as well as the existing file information, to determine approval or disapproval.
- b. If you approve the renewal of a bonding line, you must send written notification to the surety to authorize the renewal and to specify conditions of the line. Written notification must not be an extension of the old letter.

12. Can a Contractor Get a Guarantee Outside of the Bonding Line?

Yes, the contractor can get a guarantee outside of the bonding line. The surety must apply for the guarantee using regular application procedures.

13. Can a Bonding Line be Canceled?

A bonding line may be canceled at any time by the surety or by SBA by written notice to the other party.

a. Cancellation by SBA

If the surety receives any adverse information about the contractor, the surety must promptly notify SBA. SBA may then cancel the bonding line.

b. Cancellation by the Surety

If the contractor defaults on any contract, the surety must immediately cancel the bonding line and notify SBA of the cancellation. This applies to a default on contracts bonded by the same or another surety and unbonded contracts.

c. Effective Date of Cancellation

Cancellation by SBA is effective when the surety receives SBA's written notice. You must send the surety's written notice by certified mail, "Return Receipt Requested."

d. Effect of Cancellation on Outstanding Bonds

All bonds issued under the bonding line before the date of the cancellation will be guaranteed by SBA.

e. Notification to the Contractor

If the bonding line is canceled by either SBA or the surety, the surety must promptly notify the contractor in writing.

Chapter 9

Claims and Recovery Activities

1. Who is Responsible for Claims and Recovery Activities?

a. Claims and Recovery Division

The Claims and Recovery Division (CRD) in Headquarters is primarily responsible for claims and recovery activities. This division:

- (1) Monitors claims and recovery practices and procedures of participating sureties;
- (2) Authorizes the reimbursement of claims to sureties on defaulted contractors case files;
- (3) Reviews and determines concurrence or non-concurrence on recovery settlements; and
- (4) Performs other necessary claims and recovery activities.

b. Field Offices

The field offices must support CRD in its responsibilities.

2. When is the Contractor's Case File Transferred to OSG?

The contractor's case file is transferred to OSG if it is requested by CRD. Field personnel should respond to a request for files within 3 working days.

3. When is the Contractor Ineligible for Additional Guarantees?

The contractor is ineligible for additional guarantees if:

- a. The obligee has declared the contractor to be in default under a contract;
- b. Legal action against a guaranteed bond has been instituted;
- c. The surety has established a claim reserve of at least \$1,000 for a bond;
- d. The surety has requested reimbursement for loss under a bond; and
- e. The contractor has not paid the required guarantee fee.

4. Is the Contractor Eligible for Additional Guarantees if His/Her File Has Been Transferred to OSG?

The contractor is not eligible for additional guarantees if his/her file has been transferred to OSG.

5. What Should a Field Office Do if It Receives Adverse Information About a Contractor?

- a. Notify CRD of the adverse information or potential problem.
- b. Notify the surety if the adverse information was obtained from another source. The surety should not be notified of adverse information on in-house Agency actions.
- c. Notify the appropriate district office on 8(a) contractors or contractors that have loans.
- d. Re-assess contractor data in the case file. Field personnel should review financial and credit data to determine if sufficient assets exist to absorb the potential loss or mitigate losses to the surety and SBA.
- e. Consult with the surety about the contractor's and indemnitor's assets. Field personnel should contact the surety to request that the assets be closely monitored and that the surety provide SBA with updates on the situation.
- f. Document the contractor's file and the computer records about the adverse information and any action taken.

6. What Does SBA Do When It Receives Notice of an Actual Default?

When the surety notifies SBA of a bonafide contractor's default and its intent to request reimbursement from SBA, the CRD will request the case file from the respective SBG area office and put the computerized record in a default status.

7. How Does SBA Handle Inquiries from Contractors and/or Their Representatives?

CRD will communicate only with the surety on any particular claim file. Accordingly, the SBG area office staff should refer all requests from the contractors or their representatives concerning payments or other information, to the surety company representative. The SBG area office staff should not refer these inquiries to Headquarters, unless there are unusual circumstances involved or there are adverse allegations against the surety.

8. What Should the SBG Area Office Do if It Needs Information or Clarification to Answer a Contractor's Inquiry?

The SBG area office should contact Headquarters directly.

9. What are the Claims Reimbursement Processing Procedures?

Please see SOP 50 46, "Claims and Recovery Procedures," which contains detailed directions and guidelines in this area.

10. What Guidelines Must SBA Follow for Recovery and Indemnity Pursuit?

Please see SOP 50 46, "Claims and Recovery Procedures," which contains detailed directions and guidelines in this area.

11. What Happens When a Settlement Occurs?

A settlement occurs when a defaulted contractor and its surety agree upon a total amount and/or conditions which will satisfy the contractor's indebtedness to the surety, and will result in closing the loss file. The surety must pay SBA its pro rata share of such settlement. When this occurs, CRD will close the file and return it to the SBG area office if appropriate.

12. How and When Does SBA Reinstate a Contractor's File After a Default?

CRD may allow a contractor's case file to remain in the SBG area office. The SBG area office may resume issuing further bonds if CRD determines that such action will prevent or eliminate a loss to SBA. CRD may also recommend that the SBG area office consider future bonding for a contractor if he/she pays all appropriate fees and the surety fully reimburses SBA (due to imminent breach or principal's default), or if one of the following circumstances exists:

- a. The surety and principal settle the claim for a specific amount and under terms that OSG accepts;
- b. The principal contests a claim and provides collateral acceptable to the surety that has a liquidation value of not less than the amount of the claim including, related expenses;
- c. The principal receives a discharge of his/her indebtedness to the surety by operation of law as in bankruptcy or any judicial or quasi-judicial process;
or
- d. OSG and the surety determine that further bond guarantees are appropriate.

13. How Does SBA Handle Underwriting After Reinstatement?

- a. As an SBG area office professional, you must subject a post-default guarantee application to the most stringent review, including evaluating:
 - (1) Previous Default(s);
 - (2) Past Work Experience;
 - (3) Present and Future Financial and Work Capability; and
 - (4) SBA's Budgetary Constraints.

- b. While a settlement may permit reinstatement, you must be prudent in your underwriting review, and must consider all experience. If a surety with full knowledge of past experience is willing to bond the principal again, and states its belief that the principal can complete a proposed contract successfully without loss, you may carefully consider the surety's guarantee application.

Chapter 10

Preferred Surety Bond (PSB) Guarantee Program

1. **How Does SBA Administer the Preferred Surety Bond (PSB) Guarantee Program?**

SBA authorizes Preferred Sureties to commit the Agency to a guarantee, but limits any such guarantee to 70 percent of the loss on a bond. Surety companies must direct any application for admission to the PSB Program to the Associate Administrator, Office of Surety Guarantees (OSG) in Headquarters. OSG conducts eligibility determinations and underwriting review processes for purposes of uniformity and control. Authorized officials of the surety and SBA must sign a PSB Agreement. SBA will then allot a specific level of guarantee authority to the surety for them to issue guarantees during an allotment period. When an SBG area office employee receives information relative to the PSB Program or a PSB Program participant, they should promptly direct it to OSG Headquarters. SBA provides detailed guidelines for the PSB Program in “The Information Book of the Preferred Surety Bond Program.”

2. **How Does SBA Limit a Surety’s Participation?**

SBA regulations prohibit a surety company participating in the PSB Program to also participate in the Prior-Approval Surety Bond Guarantee (SBG) Program. The PSB Agreement between the surety and SBA expands this prohibition by specifically stating: “This prohibition...shall also apply to any and all sureties which are now, or hereafter may become, members of a group of companies related by affiliation, common directors or officers, or controlling, controlled by, or under common control with surety.”

Appendix 1

Index to Forms and Reports

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**Appendix 2
(Paragraph 2-1,6-10)**

Sample SBA Form 990, Surety Bond Guarantee Agreement

By the signature of its authorized representative on the reverse side of this form (Blocks 16-18), the U.S. Small Business Administration guarantees the Surety named in Item 2 against loss resulting from the breach by the Principal of the terms of the bond(s) described in Blocks 11, 12, 13, 22 and 24, pursuant and subject to 15 U.S.C. §694a and b, the regulations thereunder (13 CFR Part 115) and the conditions and representations stated below, in reliance on the declarations made on the reverse side hereof, and on the several forms submitted and signed by surety as applicable. This guaranty shall become effective upon the issuance (as defined in said regulations) of the SBA-guaranteed bond by the Surety.

1. Surety represents that it has determined the accuracy and completeness of the information in the Forms submitted by Surety which relate to this agreement, in accordance with generally accepted surety industry underwriting practices. Said Forms are incorporated herein by this reference.
2. Surety shall, conditional on the execution of this guarantee by SBA, if the Surety determines that the Contract price is reasonable and the contract amount does not exceed \$1,250,000, become Surety on bid, performance, payment, and other ancillary and coterminous bond(s) required for the award of the Contract. Surety may withdraw its decision to issue such bond(s) if prescribed underwriting conditions are not met or if additional information comes to the attention of Surety of a nature so as to change its underwriting determination, and notice is given to SBA.
3. The terms and conditions of such bond(s) will be in accord with those generally established and accepted by the surety industry for the type of contract for which such bond(s) are required to be furnished by Principal, and Surety represents that such bonds would not be provided for Principal on this Contract without this SBA guarantee.
4. If any suit or claim is filed against Surety upon said bond(s), Surety shall inform SBA of the same within 30 days of receipt of notice thereof in the Surety's home office. Unless SBA decides otherwise, and so notifies Surety, Surety shall take charge of all suits or claims arising under said bond(s) and compromise, settle or defend such suit or claim until so notified. Surety shall take all steps necessary to mitigate any loss resulting from Principal's default. Surety shall not join SBA in any lawsuit to which Surety is a party unless SBA has denied liability or has agreed to such joinder in writing.
5. No employee of SBA has authority to waive, change or alter the terms of this Agreement, unless such alterations are separately attached hereto and both the SBA and Surety's authorized representatives have signed and dated their assent thereto.
6. This Agreement is made exclusively for the benefit of SBA and the Surety, and does not confer any rights or benefits on any other party, such as any right of action against SBA by any person claiming under SBA-guaranteed bonds or otherwise. In the event of the Surety's insolvency, SBA shall not be liable to the receiver or other representative of the surety except for any loss incurred and monies actually paid by such representative under the bonds guaranteed by SBA.
7. If any provision of this Agreement is in conflict with any SBA regulation, such regulation shall prevail in construing or applying this Agreement.
8. Any intentionally false statement or willful misrepresentation in connection with the procurement of the Guarantee or claim for payment pursuant to this Agreement is a violation of Federal law, subject to criminal and civil prosecution under 18 U.S.C. §§ 287, 371, 1001, 15 U.S.C. §645, or 31 U.S.C. §231, carrying fines up to \$10,000 and imprisonment of up to five years.

PLEASE NOTE: The estimated burden for completing this form is 10 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd St., S.W., Washington D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0007).

Appendix 3

(Paragraph 3-2)

Regulations Governing Surety Companies Doing Business With the United States

PART 223—SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

Sec.

- 223.1 Certificate of authority.
- 223.2 Application for certificate of authority.
- 223.3 Issuance of certificates of authority.
- 223.4 Deposits.
- 223.5 Business.
- 223.6 Requirements applicable to surety companies.
- 223.7 Investment of capital and assets.
- 223.8 Financial reports.
- 223.9 Valuation of assets and liabilities.
- 223.10 Limitation of risk.
- 223.11 Limitation of risk: Protective methods.
- 223.12 Recognition as reinsurer.
- 223.13 Full penalty of the obligation regarded as the liability; exceptions.
- 223.14 Schedules of single risks.
- 223.15 Paid up capital and surplus for Treasury rating purposes; how determined.
- 223.16 List of certificate holding companies.
- 223.17 Revocation.
- 223.18 Performance of agency obligations.
- 223.19 Informal hearing on agency complaints.
- 223.20 Final decisions.
- 223.21 Reinstatement.
- 223.22 Fees for services of the Treasury Department.

AUTHORITY: 80 Stat. 379; 5 U.S.C. 301; 6 U.S.C. 8.

§ 223.1 Certificate of authority.

The regulations in this part will govern the issuance by the Secretary of the Treasury of certificates of authority to bonding companies to do business with the United States as sureties on, or reinsurers of, recognizances, stipulations, bonds, and undertakings, hereinafter sometimes called obligations, under the provisions of the Act of July 30, 1947 (61 Stat. 646, as amended; 6 U.S.C. 6-13), and the acceptance of such obligations from such companies

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so long as they continue to hold said certificates of authority.

[28 FR 1039, Feb. 2, 1963, as amended at 40 FR 6499, Feb. 12, 1975; 40 FR 8335, Feb. 27, 1975]

§ 223.2 Application for certificate of authority.

Every company wishing to apply for a certificate of authority shall address the Assistant Commissioner, Comptroller, Financial Management Service, U.S. Department of Treasury, Washington, DC 20226, who will notify the company of the data which the Secretary of the Treasury determines from time to time to be necessary to make application. In accord with 6 U.S.C. 8 the data will include a copy of the applicant's charter or articles of incorporation and a statement, signed and sworn to by its president and secretary, showing its assets and liabilities. A fee shall be transmitted with the application in accordance with the provisions of § 223.22(a)(i).

[34 FR 20188, Dec. 24, 1969, as amended at 37 FR 1232, Jan. 27, 1972; 40 FR 6499, Feb. 12, 1975; 43 FR 12678, Mar. 27, 1978; 49 FR 47002, Nov. 30, 1984]

§ 223.3 Issuance of certificates of authority.

(a) If, from the evidence submitted in the manner and form herein required, subject to the guidelines referred to in § 223.9 the Secretary of the Treasury shall be satisfied that such company has authority under its charter or articles of incorporation to do the business provided for by the Act referred to in § 223.1, and if the Secretary of the Treasury shall be satisfied from such company's financial statement and from any further evidence or information he may require, and from such examination of the company, at its own expense, as he may cause to be made, that such company has a capital fully paid up in cash of not less than \$250,000, is solvent and financially and otherwise qualified to do the business provided for in said Act, and is able to keep and perform its contracts, he will, subject to the further conditions herein contained, issue a certificate of authority to such company, under the seal of the Treasury Department, to qualify as surety on obligations permitted or required by the laws of the United States

to be given with one or more sureties, for a term expiring on the last day of June next following. The certificate of authority shall be renewed annually on the first day of July, so long as the company remains qualified under the law and the regulations in this part, and transmits to the Assistant Commissioner, Comptroller by March 1 each year the fee in accordance with the provisions of § 223.22(a)(3).

(b) If a company meets the requirements for a certificate of authority as an acceptable surety on Federal bonds in all respects except that it is a United States branch of a company not incorporated under the laws of the United States or of any State, or it is limited by its articles of incorporation or corporate charter to reinsure business only, it may be issued a certificate of authority as a reinsuring company on Federal bonds. The fees for initial application and renewal of a certificate as a reinsuring company shall be the same as the fees for a certificate of authority as an acceptable surety on Federal bonds.

[33 FR 8390, June 6, 1968, as amended at 34 FR 20188, Dec. 24, 1969; 37 FR 1232, Jan. 27, 1972; 40 FR 6499 Feb. 12, 1975; 40 FR 8335, Feb. 27, 1975; 42 FR 8637, Feb. 11, 1977; 43 FR 12678, Mar. 27, 1978; 43 FR 39089, Sept. 1, 1978; 49 FR 47002, Nov. 30, 1984]

§ 223.4 Deposits.

No such company will be granted authority to do business under the provisions of the act referred to in § 223.1 unless it shall have and maintain on deposit with the Insurance Commissioner, or other proper financial officer, of the State in which it is incorporated, or of any other State of the United States, for the protection of claimants, including all its policyholders in the United States, legal investments having a current market value of not less than \$100,000.

[36 FR 9630, May 27, 1971]

§ 223.5 Business.

(a) The company must engage in the business of suretyship whether or not also making contracts in other classes of insurance, but shall not be engaged in any type or class of business not authorized by its charter or the laws of

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the State in which the company is incorporated. It must be the intention of the company to engage actively in the execution of surety bonds in favor of the United States.

(b) No bond is acceptable if it has been executed (signed and/or otherwise validated) by a company or its agent in a State where it has not obtained that State's license to do surety business. Although a company must be licensed in the State or other area in which it executes a bond, it need not be licensed in the State or other area in which the principal resides or where the contract is to be performed. The term *other area* includes the Canal Zone, District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

[40 FR 6499, Feb. 12, 1975]

§ 223.6 Requirements applicable to surety companies.

Every company now or hereafter authorized to do business under the act of Congress referred to in §223.1 shall be subject to the regulations contained in this part.

[38 FR 22779, Aug. 24, 1973]

§ 223.7 Investment of capital and assets.

The cash capital and other funds of every such company must be safely invested in accordance with the laws of the State in which it is incorporated and will be valued on the basis set forth in §223.9. The Secretary of the Treasury will periodically issue instructions for the guidance of companies with respect to investments and other matters. These guidelines may be updated from time to time to meet changing conditions in the industry.

[42 FR 8637, Feb. 11, 1977]

§ 223.8 Financial reports.

(a) Every such company will be required to file with the Assistant Commissioner, Comptroller on or before the last day of January of each year, a statement of its financial condition made up as of the close of the preceding calendar year upon the annual statement blank adopted by the National Association of Insurance Commissioners, signed and sworn to by its president and secretary.

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On or before the last days of April, July and October of each year, every such company shall file a financial statement with the Assistant Commissioner, Comptroller as of the last day of the preceding month. A form is prescribed by the Treasury for this purpose. The quarterly statement form of the National Association of Insurance Commissioners when modified to conform to the Treasury's requirements, may be substituted for the Treasury's form. *The quarterly statement will be signed and sworn to by the company's president and secretary or their authorized designees.*

(b) Every such company shall furnish such other exhibits or information, and in such manner as the Secretary of the Treasury may at any time require.

[10 FR 2348, Mar. 1, 1945, as amended at 42 FR 8637, Feb. 11, 1977; 49 FR 47002, Nov. 30, 1984]

§ 223.9 Valuation of assets and liabilities.

In determining the financial condition of every such company, its assets and liabilities will be computed in accordance with the guidelines contained in the Treasury's current Annual Letter to Executive Heads of Surety Companies. However, the Secretary of the Treasury may value the assets and liabilities of such companies in his discretion. Credit will be allowed for reinsurance in all classes of risks if the reinsuring company holds a certificate of authority from the Secretary of the Treasury, or has been recognized as an admitted reinsurer in accord with §223.12.

[42 FR 8637, Feb. 11, 1977]

§ 223.10 Limitation of risk.

Except as provided in §223.11, no company holding a certificate of authority shall underwrite any risk on any bond or policy on behalf of any individual, firm, association, or corporation, whether or not the United States is interested as a party thereto, the amount of which is greater than 10 percent of the paid-up capital and surplus of such company, as determined by the Secretary of the Treasury. That figure is hereinafter referred to as the underwriting limitation.

[34 FR 20188, Dec. 24, 1969]

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§ 223.11 Limitation of risk: Protective methods.

The limitation of risk prescribed in § 223.10 may be complied with by the following methods:

(a) *Coinsurance.* Two or more companies may underwrite a risk on any bond or policy, the amount of which does not exceed their aggregate underwriting limitations. Each company shall limit its liability upon the face of the bond or policy, to a definite specified amount which shall be within its underwriting limitation.

(b) *Reinsurance.* (1) In respect to bonds running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45 days from the date of execution and delivery of the bond with one or more companies holding a certificate of authority from the Secretary of the Treasury. Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company. Where reinsurance is contemplated, Federal agencies may accept a bond from the direct writing company in satisfaction of the total bond requirement even though it may exceed the direct writing company's underwriting limitation. Within the 45 day period, the direct writing company shall furnish to the Federal agency any necessary reinsurance agreements. However, a Federal agency may, at its discretion, require that reinsurance be obtained within a lesser period than 45 days, and may require completely executed reinsurance agreements in hand before making a final determination that any bond is acceptable. Reinsurance may protect bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 270a through 270d) covering contracts for the construction, alteration, or repair of any public building or public work of the United States, as well as other types of Federal bonds. Use of reinsurance or coinsurance to protect such bonds is at the discretion of the direct writing company. Reinsurance shall be executed on reinsurance agreement forms (Standard Form 273 for Miller Act Performance bonds (formerly form No. TFS 6317), Standard Form 274 for Miller Act Payment bonds (formerly form No. TFS 6318), and Standard Form 275 for other types of

Federal bonds (formerly form No. TFS 6319)). Federal bond-approving officers may obtain the forms by submitting a requisition in FEDSTRIP/MILSTRIP format to the General Services Administration regional office providing support to the requesting Government organization. In addition, the forms are available to authorized sureties and reinsurers from the Superintendent of Documents, Government Printing Office, Stop: SSMC, Washington, DC 20402.

(2) In respect to risks covered by bonds or policies not running to the United States, liability in excess of the underwriting limitation shall be reinsured within 45 days from the date of execution and delivery of the bond or policy with:

(i) One or more companies holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds or one or more companies holding a certificate of authority as an acceptable reinsuring company on such bonds, or

(ii) One or more companies recognized as an admitted reinsurer in accord with § 223.12, or

(iii) A pool, association, etc., to the extent that it is composed of such companies, or

(iv) An instrumentality or agency of the United States which is permitted by Federal law or regulation to execute reinsurance contracts.

(3) No certificate-holding company may cede to a reinsuring company recognized under § 223.12 any risk in excess of 10 percent of the latter company's paid-up capital and surplus.

(c) *Other methods.* In respect to all risks other than Miller Act performance and payment bonds running to the United States, which must be insured or reinsured in accord with paragraph (a) or (b)(1) of this section respectively, the excess liability may otherwise be protected:

(1) By the deposit with the company in pledge, or by conveyance to it in trust for its protection, of assets admitted by the Treasury the current market value of which is at least equal to the liability in excess of its underwriting limitation, or

(2) If such obligation was incurred on behalf of or on account of a fiduciary

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holding property in a trust capacity, by a joint control agreement which provides that the whole or a sufficient portion of the property so held may not be disposed of or pledged in any way without the consent of the insuring company.

[34 FR 20188, Dec. 24, 1969, as amended at 40 FR 6499, Feb. 12, 1975; 41 FR 18605, Mar. 12, 1976; 42 FR 8637, Feb. 11, 1977; 43 FR 39089, Sept. 1, 1978]

§ 223.12 Recognition as reinsurer.

(a) *Application by U.S. company.* Any company organized under the laws of the United States or of any State thereof, wishing to apply for recognition as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States, shall file the following data with the Assistant Comptroller for Auditing and shall transmit therewith the fee in accordance with the provisions of § 223.22(a)(2):

(1) A certified copy of its charter or articles of incorporation, and

(2) A certified copy of a license from any State in which it has been authorized to do business, and

(3) A copy of the latest available report of its examination by a State Insurance Department, and

(4) A statement of its financial condition, as of the close of the preceding calendar year, on the annual statement form of the National Association of Insurance Commissioners, signed and sworn to by two qualified officers of the company, showing that it has a capital stock paid up in cash of not less than \$250,000, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company, and

(5) Such other evidence as the Secretary of the Treasury may determine necessary to establish that it is solvent and able to keep and perform its contracts.

(b) *Application by a U.S. branch.* A U.S. branch of an alien company applying for such recognition shall file the following data with the Assistant Comptroller, Comptroller and shall transmit therewith the fee in accordance with the provisions of § 223.22(a)(2):

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(1) The submissions listed in paragraphs (a) (1) through (5) of this section, except that the financial statement of such branch shall show that it has net assets of not less than \$250,000 over and above all liabilities, and

(2) Evidence satisfactory to the Secretary of the Treasury to establish that it has on deposit in the United States not less than \$250,000 available to its policyholders and creditors in the United States.

(c) *Financial reports.* Each company recognized as an admitted reinsurer shall file with the Assistant Commissioner, Comptroller on or before the first day of March of each year its financial statement and such additional evidence as the Secretary of the Treasury determines necessary to establish that the requirements of this section are being met. A fee shall be transmitted with the foregoing data, in accordance with the provisions of § 223.22(a)(4).

[34 FR 20188, Dec. 24, 1969, as amended at 37 FR 1232, Jan. 27, 1972; 40 FR 6499, Feb. 12, 1975; 43 FR 12678, Mar. 27, 1978; 49 FR 47002, Nov. 30, 1984]

§ 223.13 Full penalty of the obligation regarded as the liability; exceptions.

In determining the limitation prescribed in this part, the full penalty of the obligation will be regarded as the liability, and no offset will be allowed on account of any estimate of risk which is less than such full penalty, except in the following cases:

(a) *Appeal bonds; in which case the liability will be regarded as the amount of the judgment appealed from, plus 10 percent of said amount to cover interest and costs.*

(b) Bonds of executors, administrators, trustees, guardians, and other fiduciaries, where the penalty of the bond or other obligation is fixed in excess of the estimated value of the estate; in which cases the estimated value of the estate, upon which the penalty of the bond was fixed, will be regarded as the liability.

(c) Credit will also be allowed for indemnifying agreements executed by sole heirs or beneficiaries of an estate releasing the surety from liability.

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(d) Contract bonds given in excess of the amount of the contract; in which cases the amount of the contract will be regarded as the liability.

(e) Bonds for banks or trust companies as principals, conditioned to repay moneys on deposit, whereby any law or decree of a court, the amount to be deposited shall be less than the penalty of the bond; in which cases the maximum amount on deposit at any one time will be regarded as the liability.

[Dept. Circ. 297, July 5, 1922]

§ 223.14 Schedules of single risks.

During the months of January, April, July, and October of each year every company will be required to report to the Secretary of the Treasury every obligation which it has assumed during the 3 months immediately preceding, the penal sum of which is greater than 10 percent of its paid up capital and surplus, together with a full statement of the facts which tend to bring it within the provisions of this part, on a form suitable for the purpose.

[Dept. Circ. 297, July 5, 1922]

§ 223.15 Paid up capital and surplus for Treasury rating purposes; how determined.

The amount of paid up capital and surplus of any such company shall be determined on an insurance accounting basis under the regulations in this part, from the company's financial statements and other information, or by such examination of the company at its own expense as the Secretary of the Treasury may deem necessary or proper.

[42 FR 8637, Feb. 11, 1977]

§ 223.16 List of certificate holding companies.

A list of qualified companies is published annually as of July 1 in Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, with information as to underwriting limitations, areas in which licensed to transact surety business and other details. If the Secretary of the Treasury shall take any exceptions to the annual financial statement submitted by a

company, he shall, before issuing Department Circular 570, give a company due notice of such exceptions. Copies of the Circular are available from the Assistant Commissioner, Comptroller upon request. Selection of a particular qualified company from among all companies holding certificates of authority is discretionary with the principal required to furnish bond.

[34 FR 20189, Dec. 24, 1969, as amended at 40 FR 6499, Feb. 12, 1975; 42 FR 8637, Feb. 11, 1977; 49 FR 47002, Nov. 30, 1984]

§ 223.17 Revocation.

Whenever it appears that a company is not complying with the requirements of 6 U.S.C. 6-13 and of the regulations in this part, the Secretary of the Treasury will:

(a) In all cases notify the company of the facts or conduct which indicate such failure, and provide opportunity to the company to respond, and

(b) In those cases where the public interest in the constant financial stability of such a company allows, also provide opportunity to the company to demonstrate or achieve compliance with those requirements. The Secretary shall revoke a company's certificate of authority with advice to it if:

(1) The company does not respond satisfactorily to his notification of noncompliance, or

(2) The company, provided an opportunity to demonstrate or achieve compliance, fails to do so.

[34 FR 20189, Dec. 24, 1969. Redesignated at 38 FR 22779, Aug. 24, 1973, as amended at 42 FR 8637, Feb. 11, 1977]

§ 223.18 Performance of agency obligations.

(a) Every company shall promptly honor its bonds naming the United States or one of its agencies or instrumentalities as obligee. If an agency's demand upon a company on behalf of the agency or laborers, materialmen, or suppliers (on payment bonds), for payment of a claim against it is not settled to the agency's satisfaction, and the agency's review of the situation thereafter establishes that the default is clear and the company's refusal to pay is not based on adequate

Appendix 3
(Paragraph 3-2)
Regulations Governing Surety Companies Doing Business With the United States

§ 223.19

grounds, the agency may make a report to the Secretary of the Treasury, including a copy of the subject bond, the basis for the claim against the company, a chronological resume of efforts to obtain payment, a statement of all reasons offered for non-payment, and a statement of the agency's views on the matter.

(b) On receipt of such report from the Federal agency the Secretary will, if the circumstances warrant, notify the company concerned that the agency report may demonstrate that the company is not keeping and performing its contracts and that, in the absence of satisfactory explanation, the company's default may preclude the renewal of the company's certificate of authority, or warrant prompt revocation of the existing certificate. This notice will provide opportunity to the company to demonstrate its qualification for a continuance of the certificate of authority.

[34 FR 20189, Dec. 24, 1969. Redesignated at 38 FR 22779, Aug. 24, 1973, as amended at 42 FR 8638, Feb. 11, 1977]

§ 223.19 Informal hearing on agency complaints.

(a) *Request for informal hearing.* If a company determines that the opportunity to make known its views, as provided for under § 223.18(b), is inadequate, it may, within 20 business days of the date of the notice required by § 223.18(b), request, in writing, that the Secretary of the Treasury convene an informal hearing.

(b) *Purpose.* As soon as possible after a written request for an informal hearing is received, the Secretary of the Treasury shall convene an informal hearing, at such time and place as he deems appropriate, for the purpose of determining whether revocation of the company's certificate of authority is justified.

(c) *Notice.* The company shall be advised, in writing, of the time and place of the informal hearing and shall be directed to bring all documents, records and other information as it may find necessary and relevant to substantiate its refusal to settle the claims made against it by the Federal agency making the report under § 223.18(a).

31 CFR Ch. II (7-1-97 Edition)

(d) *Conduct of hearings.* The hearing shall be conducted by a hearing officer appointed by the Secretary. The company may be represented by counsel and shall have a fair opportunity to present any relevant material and to examine the agency's evidence. Formal rules of evidence will not apply at the informal hearing.

(e) *Report.* Within 30 days after the informal hearing, the hearing officer shall make a written report to the Secretary setting forth his findings, the basis for his findings, and his recommendations. A copy of the report shall be sent to the company.

[38 FR 22779, Aug. 24, 1973]

§ 223.20 Final decisions.

If, after review of the case file, it is the judgment of the Secretary that the complaint was unfounded, the Secretary shall dismiss the complaint by the Federal agency concerned and shall so notify the company. If, however, it is the judgment of the Secretary that the company has not fulfilled its obligations to the complainant agency, he shall notify the company of the facts or conduct which indicate such failure and allow the company 20 business days from the date of such notification to demonstrate or achieve compliance. If no showing of compliance is made within the period allowed, the Secretary shall either preclude renewal of a company's certificate of authority or revoke it without further notice.

[38 FR 22779, Aug. 24, 1973, as amended at 42 FR 8638, Feb. 11, 1977]

§ 223.21 Reinstatement.

If, after one year from the date of the expiration or the revocation of the certificate of authority, under § 223.20 a company can show that the basis for the non-renewal or revocation has been eliminated and that it can comply with the requirements of 6 U.S.C. 6-13 and the regulations in this part, a new certificate of authority shall be issued without prejudice.

[38 FR 22779, Aug. 24, 1973, as amended at 42 FR 8638, Feb. 11, 1977]

Appendix 3
(Paragraph 3-2)
Regulations Governing Surety Companies Doing Business With the United States

Fiscal Service, Treasury

§ 223.22 Fees for services of the Treasury Department.

(a) Fees shall be imposed and collected, for the services listed in paragraphs (a) (1) through (4) of this section which are performed by the Treasury Department, regardless of whether the action requested is granted or denied. The payee of the check or other instrument shall be the Financial Management Service, Treasury Department. The amount of the fee will be based on which of the following categories of service is requested:

(1) Examination of a company's application for a certificate of authority as an acceptable surety on Federal bonds or for a certificate of authority as an acceptable reinsuring company on such bonds (see § 223.2);

(2) Examination of a company's application for recognition as an admitted reinsurer (except on excess risks running to the United States) of surety companies doing business with the United States (see § 223.12(a) and (b));

(3) Determination of a company's continuing qualifications for annual renewal of its certificate of authority (see § 223.3); or

(4) Determination of a company's continuing qualifications for annual renewal of its authority as an admitted reinsurer (see § 223.12(c)).

(b) In a given year a uniform fee will be collected from every company requesting a particular category of service, e.g., determination of a company's continuing qualifications for annual renewal of its certificate of authority. However, the Treasury Department reserves the right to redetermine the amounts of fees annually. Fees are determined in accordance with Office of Management and Budget Circular A-25, as amended.

(c) Specific fee information may be obtained from the Assistant Commissioner, Comptroller at the address shown in § 223.2. In addition, a notice of the amount of a fee referred to in § 223.22(a) (1) through (4) will be published in the *FEDERAL REGISTER* as each change in such fee is made.

[43 FR 12678, Mar. 27, 1978, as amended at 49 FR 47001 and 47002, Nov. 30, 1984]

Appendix 4
(Paragraph 3-2)
Sample SBA Form 1623, Certification Regarding Debarment,
Primary Covered Transactions



Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations are available from local offices of the U.S. Small Business Administration.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Business Name _____

Date _____

By _____
Name and Title of Authorized Representative

Signature of Authorized Representative

Appendix 4
(Paragraph 3-2)
Sample SBA Form 1623, Certification Regarding Debarment,
Primary Covered Transactions

- 2 -

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Appendix 5

(Paragraph 4-2)

Sample SBA Form 355, Application for Small Business Size Determination

**SMALL BUSINESS ADMINISTRATION
APPLICATION FOR SMALL BUSINESS SIZE DETERMINATION**

Part I. Information relating to Applicant Only:

1a. Name and address of applicant: (Street, City, State & Zip Code) _____

1b. Name and title of person authorized to provide more information: _____

Telephone No.: _____

1c. Located in _____ county. If determination is needed for a financial assistance program other than surety bond guarantee, will assistance funds be used in a labor surplus area?
 Yes No

1d. Size/Status Determination requested for purpose of receiving:
 Business Loan _____ Section 8(a) Eligibility _____
 Econ. Injury Disaster Loan _____ Section 8(a) Contract _____
 Cert. of Competency _____ Surety Bond Guarantee _____
 Gov't. Prime Contract _____ Women-Owned Status _____
 Gov't. Subcontract _____ Other (Specify) _____

1e. Date applicant's business was established or incorporated: _____
 Note: If applicant is a corporation, a copy of its latest annual report to stockholders, by-laws, and articles of incorporation must be attached to this application. If applicant is a partnership, a copy of the Partnership Agreement must be attached.

1f. Overall primary business activity (including Standard Industrial Classification (SIC) Code): _____

1g. Has applicant previously been the subject of a formal SBA size determination?
 Yes No. If yes, by which SBA office?
 _____ When? _____

2. Applicant's major products or services:

Product/Services	Standard Industrial Classification (SIC) Code	Share of Sales or Receipts for most recently completed fiscal year	
		% of total sales	Dollar value
(1) _____			
(2) _____			
(3) _____			
(4) _____			
(5) _____			

3. Does applicant issue or operate under a franchise, license, or other contractual agreement with another concern?
 Yes No. If answer is yes, a copy of the agreement must be attached.

4. Name & address of owner, partners, & principal stockholders of applicant: (Street, City, State & Zip Code) (Partnerships must denote all general partners.) _____ % of voting stock or of business owned _____

5. Names & addresses of all Officers of applicant _____ Office(s) held in applicant _____

Appendix 5
(Paragraph 4-2)
Sample SBA Form 355, Application for Small Business Size Determination

Names & addresses of all Officers of applicant (Continued)	Office(s) held in applicant.								
6. Names & addresses of all Directors of applicant (if a corporation).									
7a. Are any stock options outstanding? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, identify person or concern holding option(s) on attached sheet and furnish a copy of agreement(s).									
7b. Is the stock held by a lender or other party as pledged collateral? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, attach a copy of the agreement.									
7c. Is any stock voted under a proxy agreement, a trust or voting trust? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, attach a copy of the agreement or trust, together with any explanatory material.									
8. Has applicant agreed to combine with or merge with another concern in the future by sale of stock or assets? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, furnish details and copies of applicable documents.									
9a. Is applicant or any of the persons listed in questions 4, 5 or 6 above an owner, partner, director, officer, employee or principal stockholder in any other concern(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No. If yes, complete section 9b below.									
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%; text-align: left; border-bottom: 1px solid black;">9b. Names of Individuals</th> <th style="width: 40%; text-align: left; border-bottom: 1px solid black;">Names of concerns and addresses (Street, City, State & Zip Code)</th> <th style="width: 15%; text-align: left; border-bottom: 1px solid black;">Position held</th> <th style="width: 15%; text-align: left; border-bottom: 1px solid black;">% of voting stock or of business owned</th> </tr> </thead> <tbody> <tr> <td style="height: 100px;"></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		9b. Names of Individuals	Names of concerns and addresses (Street, City, State & Zip Code)	Position held	% of voting stock or of business owned				
9b. Names of Individuals	Names of concerns and addresses (Street, City, State & Zip Code)	Position held	% of voting stock or of business owned						

Appendix 5 (Paragraph 4-2) Sample SBA Form 355, Application for Small Business Size Determination

Part II. Information relating to employee-based size standards.

10. Applicant's number of employees. (See instructions for definition of term "number of employees.") _____

Part III. Information relating to revenue-based size standards.

11. What is the applicant's fiscal year ending date? _____

12. Total sales or receipts of applicant for each of its most recently completed three fiscal years as of the date of application or offer. For the purpose of Economic Injury Disaster Loans, show the sales for the three fiscal years completed prior to the disaster.

19 _____	\$	_____
19 _____	\$	_____
19 _____	\$	_____
Total _____	\$	_____

Part IV. Information relating to alleged, acknowledged, or possible affiliates of applicant, including those firms listed under Part I, item 9b.

13. Affiliates of applicant: (domestic and foreign)
NOTE: For each concern which is a corporation, a copy of the latest annual report to the stockholders, if available, and a copy of its articles of incorporation and by-laws must be attached. For each affiliate which is a partnership, attach a copy of its partnership agreement.

13a.

Names & addresses (Street, City, State & Zip Code)	% of voting stock or ownership of concern held by applicant	% of voting stock or ownership of applicant held by concern	Major products or services of concern (include SIC code)

13b.

Names & addresses of owners, partners, officers, directors, and principal stockholders of each concern listed 13a. (Street, City, State, & Zip Code)	Position Held	% of voting stock or ownership of concern

13c. Number of employees of each concern listed in 13a. (Attach separate sheet if needed.)

1.	_____	# of employees _____
	concern	
2.	_____	# of employees _____
	concern	
3.	_____	# of employees _____
	concern	

13d. Total sales or receipts of each concern for each of its most recently completed three fiscal years as of the date of application or offer. For the purpose of Economic Injury Disaster Loans, show the sales for the three fiscal years completed prior to the disaster.

1, _____	2, _____	3, _____
concern	concern	concern
19 \$ _____	19 \$ _____	19 \$ _____
19 \$ _____	19 \$ _____	19 \$ _____
19 \$ _____	19 \$ _____	19 \$ _____
Total \$ _____	Total \$ _____	Total \$ _____

Appendix 5
(Paragraph 4-2)
Sample SBA Form 355, Application for Small Business Size Determination

14a. Are any of the persons listed in question 13b above also owners, partners, directors, officers or principal stockholders in any other company?
 Yes _____ No _____ If answer is yes, complete section 14b below.

14b. Name of Person	Name of company and its address (Street, City, State & Zip Code)	Position Held	% of voting stock or ownership of company held

Part V. Information relating to applicant and alleged, acknowledged or possible affiliates.
Note: Complete questions 15 through 22 in all cases where you are contesting an alleged affiliation. If you are not contesting an alleged affiliation, complete questions 15 through 22 only if requested by SBA. For size determinations pertaining to procurement programs, questions 23-29 must also be completed. Attach a separate explanation for any question answered "yes."

15. Have any owners, officers, directors, key employees or supervisors of applicant ever been employed by or performed similar work for any of the alleged, acknowledged or possible affiliates? _____ Yes _____ No

16. At the time of bid opening or application for assistance or at the present, have any services been performed by applicant for any of the alleged, acknowledged or possible affiliates, or vice versa? _____ Yes _____ No

17. At the time of the bid opening or application for assistance, did applicant share any facilities, equipment, or personnel with any of the alleged, acknowledged or possible affiliates? (e.g. telephone lines, office space, vehicles, receptionist, etc.) _____ Yes _____ No

18. In preparing the subject bid or application for assistance, was any assistance provided by an alleged, acknowledged or possible affiliate to the applicant or by the applicant to an alleged, acknowledged or possible affiliate? _____ Yes _____ No

19. Have there been or are there any current financial obligations between applicant and an alleged, acknowledged or possible affiliate?
 Yes _____ No _____

20. Are there any individuals who have signed or are expected to sign documents to facilitate the ability of applicant to receive indemnifications or credit guarantees, who are not owners, officers, directors, employees, partners, or principal stockholders of applicant? _____ Yes _____ No

21. Does any family member of an owner, partner, officer, director, or principal stockholder of applicant have an ownership interest in any of the alleged, acknowledged or possible affiliates? _____ Yes _____ No

22. Has SBA ever determined the applicant to be affiliated with any of the alleged, acknowledged or possible affiliates, or, to the best of your knowledge, determined any of the alleged, acknowledged or possible affiliates to be affiliated with each other? _____ Yes _____ No. If yes, attach a copy of the determination(s) if available, or describe the determination(s) made by SBA.

23. Will any of the alleged, acknowledged or possible affiliates, or any of their principals, provide an indemnity or guaranty to a surety to facilitate a contract award to applicant? _____ Yes _____ No. Has such an indemnity or guaranty been provided within the past two years?
 Yes _____ No _____

24. Have any of the alleged, acknowledged or possible affiliates assisted in arranging for any of the subcontractors needed for performance of this contract or any contract awarded to applicant within the past two years? _____ Yes _____ No

25. Have there been or are there any actual or proposed subcontracts between applicant and any of the alleged, acknowledged or possible affiliates?
 Yes _____ No _____

26. Were there any discussions as to specific terms or conditions relating to the subject contract which took place between applicant and any of the alleged, acknowledged or possible affiliates prior to bid opening? _____ Yes _____ No

27. Will any of the alleged, acknowledged or possible affiliates perform more than 25 percent of this contract? _____ Yes _____ No

28. If applicant were to be terminated for default on this or any other contract, would there be any financial impact on any of the alleged, acknowledged or possible affiliates or their principals? _____ Yes _____ No

29. Did the procuring activity mail your current bidding documents directly to any address other than applicant's current business address?
 Yes _____ No _____

**Appendix 5
(Paragraph 4-2)**

Sample SBA Form 355, Application for Small Business Size Determination

SMALL BUSINESS ACT PENALTIES FOR VIOLATIONS:

Section 16(a) of the Small Business Act, as amended, (the "Act") (15 USC 645 (a)), makes it a criminal offense punishable by fine of not more than \$5,000 or imprisonment for not more than two (2) years, or both, to make a willfully false statement or misrepresentation to the Small Business Administration (SBA) for the purpose of influencing in any way the action of the SBA for the purpose of obtaining a loan or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security thereof, or for the purpose of obtaining money, property, or anything of value.

Section 16(d) of the Act, (15 USC 645(d)), makes it a criminal offense to misrepresent in writing the status of any concern as a "small business concern" in order to obtain for oneself or another any prime contract to be awarded pursuant to section 9 or 15 of the Act, or any subcontract to be awarded pursuant to section 8(a) of the Act, or any subcontract included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d) for the Act, or any prime or subcontract to be awarded as a result or in furtherance of any other provisions of Federal law that specifically references section 8(d) of the Act a definition of program eligibility (such as the Small Disadvantaged Business contracting program). Violations of section 16(d) are punishable by a fine of not more than \$500,000 or by imprisonment for not more than ten years or both, and can result in certain administrative remedies, including suspension and debarment.

CERTIFICATION:

I hereby certify that all information contained above and in exhibits and attachments hereto is true and complete to the best knowledge and belief of the applicant and is submitted for the purpose of inducing the Small Business Administration to make a determination as to the size of the applicant, in order that the applicant may receive assistance as a small business under any of the laws administered by the Small Business Administration.

(Individual, partnership, trade name or corporation)

By _____

Title _____

Date _____

PLEASE NOTE: The estimated burden hours for the completion of this form is 4 hours per response. You will not be required to respond to this information collection if a valid OMB approval number is not displayed. If you have any questions or comments concerning this estimate or any other aspect of this information collection, please contact the U.S. Small Business Administration, Chief, Administrative Information Branch, 409 3rd St., S.W., Washington, D.C. 20416 and/or Office of Management and Budget, Clearance Officer, Paperwork Reduction Project (3245-0101), Washington, D.C. 20503.

Appendix 5
(Paragraph 4-2)
Sample SBA Form 355, Application for Small Business Size Determination



OMB Approval No. 3245-0101
 Expiration Date: 9-30-99

SBA FORM 355
APPLICATION FOR SMALL BUSINESS SIZE DETERMINATION

Carefully read these instructions and the SBA Size Regulations before completing this form.
 Applications not fully completed will not be accepted.

General Instructions

1. This application should be used by anyone seeking a size determination for the purpose of receiving assistance available to small businesses under any program administered by this Agency, except for the SBIC program which utilizes SBA Form 480. A small business is a concern which is independently owned and operated, not dominant in its field of operation, and does not exceed the size standard applicable to the procurement or program for which the business is applying.
2. SBA is authorized to make size determinations pursuant to the Small Business Act and regulations thereunder for the purpose of deciding small business protests and to determine eligibility for program assistance. SBA's size regulations are found generally at Title 13, Code of Federal Regulations, Part 121. SBA may, at its discretion, request additional relevant information not specifically identified on this form.
3. The original and one copy of SBA Form 355, with additional sheets attached as needed, should be returned to the SBA Area Government Contracting or Disaster Office closest to the applicant's principal place of business. The person signing this form must be authorized by the applicant to do so. Non-employee representatives of the applicant, such as attorneys or accountants, must provide a letter authorizing them to represent the firm for this purpose. All information requested must be supplied. Failure to do so will cause a delay in making the size or status determination.
4. All possible affiliates of the applicant, whether acknowledged or not, and whether foreign or domestic, must be included in completing this form. SBA criteria for defining affiliates should be carefully reviewed, and can be found at Part 121.103 of the Regulations. Completion of Parts IV and V of this form does not constitute an admission that the concerned entities are affiliated.
5. Where the applicable size standard involves "number of employees," a concern's average employment for the 12 months preceding the application or offer is examined, including all employees of both domestic and foreign affiliates, and including persons employed on a full-time, part-time, temporary or other basis. See Part 121.106 of the Regulations. For purposes of Economic Injury Disaster Loans, the 12 months preceding the disaster are examined.
6. Where the applicable size standard involves "annual receipts," a concern's annual receipts mean total income (or gross income in the case of a sole proprietorship) plus the cost of goods sold, as reported to the Internal Revenue Service on its Federal Income Tax Return. See Part 121.104 of the Regulations.
7. In some cases, SBA must determine the primary business activity of a concern as part of its size determination process. In making that determination, consideration is given to various criteria, such as distribution among a firm's activities of receipts, employment, and costs of doing business.
8. For purposes of this form, consider principal stockholders as those persons or concerns which own 10 or more percent of the voting stock. In cases where no individual or concern owns at least 10 percent of the voting stock, the five largest stockholders and their percentages of stock must be listed.
9. Where certain financial assistance programs are involved, applicants must include the county in which they are located, and state whether the funds to be received will be utilized in a Labor Surplus Area. Labor Surplus Areas are defined in the Department of Labor publication "Area Trends." See Part 121.301(e) of the Regulations.
10. Certain industries require special additional information. Consult the Size Standards Table and its footnotes at Part 121.201 of the Regulations. These special industries are:

Depository Institutions (SICs 6021, 6022, 6029, 6035 or 6036)
 Dredging and Surface Cleanup Activities (SIC 1629)
 Conference Management Services (SIC 8741, part)
 Petroleum Refining (SIC 2911)

Tires and Inner Tubes (SIC 3011)
 Real Estate Agents and Managers (SIC 6531)
 Travel Agencies (SIC 4724)
 Food Canning and Preserving (SIC 2033)
 Advertising (SICs 7311-19)
 Electric Services (SIC 4911)

SBA Form 355 (9-96) Previous Edition is Obsolete

This form was electronically produced by Elite Federal Forms, Inc.

Federal Recycling Program  Printed on Recycled Paper

Appendix 6

(Paragraph 4-3, 6-12)

Sample SBA Form 912, Statement of Personal History

Return Executed Copies 1, 2, and 3 to SBA

OMB APPROVAL NO.3245-0178
Expiration Date:7/31/2000

	<p>United States of America</p> <p>SMALL BUSINESS ADMINISTRATION</p> <p>STATEMENT OF PERSONAL HISTORY</p>	<p style="text-align: center;">Please Read Carefully - Print or Type</p> <p>Each member of the small business concern or the development company requesting assistance must submit this form in TRIPPLICATE for filing with the SBA application. This form must be filled out and submitted by:</p> <ol style="list-style-type: none"> 1. If a sole proprietorship by the proprietor. 2. If a partnership by each partner. 3. If a corporation or a development company, by each officer, director, and additionally by each holder of 20% or more of the voting stock. 4. Any other person including a hired manager, who has authority to speak for and commit the borrower in the management of the business.
Name and Address of Applicant (Firm Name)(Street, City, State, and ZIP Code)		SBA District/Disaster Area Office
1. Personal Statement of: (State name in full, if no middle name, state (NMN), or if initial only, indicate initial.) List all former names used, and dates each name was used. Use separate sheet if necessary.		Name and Address of participating lender or surety co. (when applicable and known)
First _____ Middle _____ Last _____		2. Date of Birth (Month, day, and year) _____
4. Give the percentage of ownership or stock owned or to be owned in the small business concern or the Development Company _____ Social Security No. _____		3. Place of Birth: (City & State or Foreign Country) _____
5. Present residence address: From: _____ To: _____ Address: _____ Home Telephone No. (Include A/C): _____ Business Telephone No. (Include A/C): _____		U.S. Citizen? <input type="checkbox"/> YES <input type="checkbox"/> NO If no, give alien registration number: _____
6. Are you presently under indictment, on parole or probation? <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, indicate date parole or probation is to expire.)		Most recent prior address (omit if over 10 years ago): From: _____ To: _____ Address: _____
<p>IT IS AGAINST SBA'S POLICY TO PROVIDE ASSISTANCE TO PERSONS NOT OF GOOD CHARACTER; THEREFORE, CONSIDERATION IS GIVEN TO A PERSON'S BEHAVIOR, INTEGRITY, CANDOR, AND DISPOSITION TOWARD CRIMINAL ACTIONS. IT IS ALSO AGAINST SBA'S POLICY TO PROVIDE ASSISTANCE NOT IN THE BEST INTEREST OF THE UNITED STATES; FOR EXAMPLE, IF THERE IS REASON TO BELIEVE THE EFFECT OF SUCH ASSISTANCE WILL BE TO ENCOURAGE OR SUPPORT, DIRECTLY OR INDIRECTLY, ACTIVITIES HARMFUL TO THE SECURITY OF THE UNITED STATES.</p> <p>THEREFORE, IT IS IMPORTANT THAT THE NEXT THREE QUESTIONS BE ANSWERED TRUTHFULLY AND COMPLETELY. AN ARREST OR CONVICTION RECORD WILL NOT NECESSARILY DISQUALIFY YOU; HOWEVER, AN UNTRUTHFUL ANSWER WILL CAUSE YOUR APPLICATION TO BE DENIED.</p> <p>IF YOU ANSWER "YES" TO 6, 7, OR 8, FURNISH DETAILS IN A SEPARATE EXHIBIT. INCLUDE DATES, LOCATION, FINES, SENTENCES, WHETHER MISDEMEANOR OR FELONY, DATES OF PAROLE/PROBATION, UNPAID FINES OR PENALTIES, NAME(S) UNDER WHICH CHARGED, AND ANY OTHER PERTINENT INFORMATION.</p>		
7. Have you ever been charged with and/or arrested for any criminal offense other than a minor motor vehicle violation? Include offenses which have been dismissed, discharged, or not prosecuted (All arrests and charges must be disclosed and explained on an attached sheet.) <input type="checkbox"/> Yes <input type="checkbox"/> No		
8. Have you ever been convicted, placed on pretrial diversion, or placed on any form of probation, including adjudication withheld pending probation, for any criminal offense other than a minor vehicle violation? <input type="checkbox"/> Yes <input type="checkbox"/> No		
9. I authorize the Small Business Administration Office of Inspector General to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.		
<p>CAUTION: Knowingly making a false statement on this form is a violation of Federal law and could result in criminal prosecution, significant civil penalties, and a denial of your loan, surety bond, or other program participation. A false statement is punishable under 18 USC 1001 by imprisonment of not more than five years and/or a fine of not more than \$10,000; under 18 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than twenty years and/or a fine of not more than \$1,000,000.</p>		
Signature _____		Title _____ Date _____
Agency Use Only 10. <input type="checkbox"/> Fingerprints Waived Date _____ Approving Authority _____ <input type="checkbox"/> Fingerprints Required Date Sent to OIG _____ Date _____ Approving Authority _____		11. <input type="checkbox"/> Cleared for Processing Date _____ Approving Authority _____ <input type="checkbox"/> Request a Character Evaluation Date _____ Approving Authority _____

PLEASE NOTE: The estimated burden for completing this form is 15 minutes per response. You will not be required to respond to this information if a valid OMB approval number is not displayed. If you have questions or comments concerning this estimate or other aspects of this information collection, please contact the U.S. Small Business Administration, Chief, Administrative Information Branch, Washington, D.C. 20416 and/or Office of Management and Budget, Clearance Officer, Paperwork Reduction Project.

8BA 912 (5-97) SOP 5010.4 Previous Edition Obsolete

This form was electronically produced by Elite Federal Forms, Inc.

Appendix 7 (Paragraph 6-10) Sample SBA Form 994, Application for Surety Bond Guarantee Assistance



**U.S. SMALL BUSINESS ADMINISTRATION
APPLICATION FOR SURETY BOND GUARANTEE ASSISTANCE**

OMB NO. 3245-0007
Exp. Date: 6/30/00
See Reverse Side for
Public Comment Information

<p>TO BE COMPLETED BY PRINCIPAL</p> <p>TRADE NAME OF PRINCIPAL _____</p> <p>PRINCIPAL'S HOME ADDRESS: STREET, CITY, STATE & ZIP _____</p> <p>PRINCIPAL'S BUSINESS ADDRESS: STREET, CITY, COUNTY, STATE & ZIP _____</p> <p>PRINCIPAL'S EMPLOYER ID NUMBER _____</p>	<p>TO BE COMPLETED BY BROKER / AGENT (Producer)</p> <p>NAME OF SURETY _____</p> <p>NAME OF BROKER / AGENT (Producer) _____</p> <p>BROKER / AGENT (Producer's) ADDRESS: Street, City, County, State and Zip _____</p> <p>BROKER / AGENT (Producer's) TELEPHONE NUMBER (Include Area Code) _____</p> <p>BROKER / AGENT (Producer's) EMPLOYER ID NUMBER _____</p>
---	---

1. Applicant hereby states and affirms the following:

a. The annual gross receipts of my business (including affiliates, as set forth in Part 121 of SBA's Rules and Regulations) as annually averaged over the past 3 fiscal years, was \$ _____ (to the nearest hundreds). If there are affiliates, attach an explanation sheet, delineating annual gross receipts of each as their interests appear. If there are stockholders, attach an explanation sheet specifying what their shares of the organization(s) are.

Type of business: Proprietorship Partnership Corporation
 Month, Date and Year Business Formed: ____/____/____ Joint Venture Yes No Number of Employees _____

b. A bid, payment or performance bond is required on the following project in order for me to serve as a primary contractor or subcontractor thereon.

c. Contractor certifies having attempted (and failed) to obtain the required bonds without the SBA's guarantee; furthermore, the contractor certifies being aware that some sureties charge higher premiums rates for bonds than others do, in accordance with premium rate schedules filed in various States.

d. (1) Brief description of this contract work: _____
 (2) Estimated time required for completion: _____ (months); Contract have liquidated damages? Yes No.
 If "yes", how much? \$ _____ per calendar or wkg. day.
 (3) Anticipated project start date: mo. ____ day ____ yr. ____ (4) Projected completion date: mo. ____ day ____ yr. ____
 (5) Project Location: _____ (6) Name of obligee or Prime Contractor: _____

e. Subcontractor involved in this job? Yes No
 If yes, Contractor certifies that Subcontractor participation in work under contract is ____%.

f. Approximate value of contract: \$ _____

g. Applicant, in consideration of assistance from the SBA, herewith agrees it will comply with the nondiscrimination requirements of Title 13, Code of Federal Regulations, Part 113 and Executive Order 11246.

h. SBA is authorized to request this information under Executive Order 11625. It will be used only for statistical purposes. You are not required to disclose this information. Failure to do so will not affect your application.

(1) Principal is a Veteran Vietnam-ERA Veteran or Non Veteran (Check one)
 (2) Principal is a Male Female
 (3) Principal is a (a) Black, (1) Puerto Rican, (2) American Indian, (3) Hispanic (other than Puerto Rican) Includes Mexican-American, Cuban, Central or South American or others of Spanish Descent, (4) Asian (Includes original peoples of the Far East, Southeast Asia, the India Subcontinent or Pacific Islands.)
 (5) Eskimos and Aleuts (6) Undetermined, (7) White (8) Multi Groups

2. The Date, time and place of the bid opening is as follows: (if applicable)

Date _____	Time _____	Place _____
------------	------------	-------------

3. I have read the "Contractor's Fee" section (reverse side) and agree to abide by this fee schedule, PROVIDED I receive the contract sought and SBA extends its bond guarantee.

4. I do not have an SBA Loan. I had a previous SBA Loan. I do have an SBA Loan through the SBA Office in _____ with a balance of \$ _____ as of (Date) _____ Loan No. _____

5. I am am not an SBA 8(a) Qualified Contractor (Approved business plan on file)

This bond application does does not pertain to an 8(a) contract

6. I do or do not request Business Development Assistance
 I have or have not previously received SBA Business Development Assistance

7. I have have not received previous SBA bond guarantee, either under this trade name or another
 If under another trade name, specify: _____
 Trade Name: _____
 City/State: _____
 When? 19____ to 19____

8. Have you ever defaulted on any previous surety bonds (SBA or other) (either under the contracting concern's trade name or any other concern's of which you have been a principal)? Yes No
 If "yes", detailed particulars are to be attached to all four (4) copies of this application form. Particulars should include at least the following: (1) Name of Surety; (2) Name of obligee; (3) SBQ No. with suffix Number, if applicable; (4) Value of Contract; (5) Date of Default; (6) Status of Default claim, i.e., amount of loss to Surety, etc.; (7) Contractor's narrative explanation as to reason for default and actions taken to meet the obligations to the Surety under term of the bond(s).

9. Have you made, or are you planning to make, any payments, except for premiums, to the Surety or Agent for whatever purpose as a condition of, or in connection with, the issuance of the bond(s) to be guaranteed by SBA? Yes No If "yes", detailed particulars are to be attached to all four (4) copies of this application form.

10. Applicant hereby authorizes any agent, broker, surety company or financial institution in possession of credit, financial or work experience information concerning the undersigned applicant and the applicant's business to release the same to SBA, in order that SBA may evaluate the same for the purpose of bond guarantee assistance. Applicant certifies that any information he submits to any agent, broker or surety company for their evaluation as to the bondability of this contractor is correct and accurate to the best of the contractor's knowledge.

11. Any intentionally false statement in this application or willful misrepresentation relative thereto is a violation of federal law, which may subject you to criminal and civil prosecution, 18 U.S.C. Sections 287, 371, 1001; 15 U.S.C. Section 645; 31 U.S.C. Section 231, carrying fines up to \$10,000 and imprisonment up to five years.

12. Certification: I hereby certify that all information presented herein is complete and accurate to the best of my knowledge and that the previously submitted "Statement of Personal History" (SBA Form 912) remains complete and accurate or a revised SBA Form 912 has been submitted.

13. Certification: I hereby certify that I am currently not delinquent on any Federal Debt or Federally Guaranteed Debt.

Signature (Applicant) _____ Date _____

Title: _____

<p>TO BE COMPLETED BY SBA</p> <p>DATE REC'D BY SBA _____</p> <p>BY: (NAME) _____</p> <p>SBQ NO. _____</p>
--

WHITE COPY—SBA REGIONAL OFFICE PINK COPY—SURETY
 YELLOW COPY—SBA DISTRICT OFFICE GOLDENROD COPY—PRODUCER (AGENT BROKER)

SBA FORM 994 (8-85) USE 10-88 EDITION UNTIL EXHAUSTED

Appendix 7
(Paragraph 6-10)
Sample SBA Form 994, Application for Surety Bond Guarantee Assistance

SURETY BOND GUARANTY APPLICATION PROCEDURES

1. Applicant contacts a surety, or its representative, which participates in SBA's Surety Bond Guarantee Program. The nearest SBA Regional Office may refer applicant to these sureties.
2. Surety will provide applicant with:
 - a. SBA Form 912 (Statement of Personal History)
 - b. SBA Form 1261 (Statements Required by Laws and Executive Orders)
 - c. SBA Form 994 (Application for Surety Bond Guarantee Assistance)
 - d. SBA Form 994F (Schedule of Uncompleted Work)
 - e. Documents relating to credit information and business history which are standard to the surety industry.

Applicant completes these documents and returns them to the surety.
3. If the applicant is for final (performance and/or payment) bonds, it must be accompanied by the Contractor Fee. The check is payable to SBA (or Small Business Administration).
4. Upon completion of favorable underwriting, surety forwards all required documents, including SBA Form 990 (Guarantee Agreement) and SBA Form 991 (Surety Bond Guarantee Agreement Addendum), to the appropriate SBA Regional Office.
5. The SBA Surety Bond Guarantee staff reviews the application, makes the final determination, and notifies surety of its decision. SBA returns the countersigned Guarantee Agreement to the surety. Where SBA declines to issue the guarantee, the check for the Contractor Fee is also returned to the surety.
6. If any adverse information develops subsequent to SBA's approval to the guarantee, surety may decline to issue the bonds.

PLEASE NOTE: The estimated burden for completing this form is 5 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd St., S.W., Washington, D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0007).

Appendix 8
(Paragraph 6-10)
Sample SBA Form 994F, Schedule of Uncompleted Work

OMB APPROVAL NO. 3245-0047
 EXPIRATION DATE 6/30/00
 SEE REVERSE SIDE FOR
 PUBLIC COMMENT INFORMATION

SMALL BUSINESS ADMINISTRATION										
SCHEDULE OF UNCOMPLETED WORK (ALL WORK—BONDED & UNBONDED—IF COST PLUS PLEASE INDICATE)										
NAME OF CONTRACTOR	DATE AS OF	DESCRIPTION OF JOB	STARTING DATE	COMPLETION DATE	Bonded <input checked="" type="checkbox"/>	CONTRACT PRICE (Including Approved Change Orders)	Contractor Est. Cost When Bid (Including Cost of Approved Change Orders)	Total Billed to Date (Including Retainages (Explain Any Dispute Items))	TOTAL COST TO DATE	TOTAL REVISED ESTIMATED COST TO COMPLETE
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
TOTALS										
TOTAL UNCOMPLETED WORK:										
TOTAL UNCOMPLETED WORK BY SUBCONTRACTOR:										
BONDED:										
UNBONDED:										
										SIGNATURE
										TITLE
										REMARKS

SBA FORM 894F (12-82) REF SOP 50 45 PREVIOUS EDITIONS ARE OBSOLETE

Appendix 9
(Paragraph 6-10)
Sample SBA Form 1624, Certification Regarding Debarment, Lower Tier



**Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Business Name _____

Date _____

By _____
Name and Title of Authorized Representative

Signature of Authorized Representative

Appendix 9
(Paragraph 6-10)
Sample SBA Form 1624, Certification Regarding Debarment, Lower Tier

-2-

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntary excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Appendix 10
(Paragraph 6-10)
Sample SBA Form 1261, Statements Required by Law and Executive Orders
Statements Required by Laws
and Executive Orders

Federal executive agencies, including the Small Business Administration (SBA), are required to withhold or limit financial assistance, to impose special conditions on approved loans, to provide special notices to applicants or borrowers and to require special reports and data from borrowers in order to comply with legislation passed by the Congress and Executive Orders issued by the President and by the provisions of various inter-agency agreements. SBA has issued regulations and procedures that implement these laws and executive orders, and they are contained in Parts 112, 113, 116, and 117, Title 13, Code of Federal Regulations Chapter 1, or Standard Operating Procedures.

This form contains a brief summary of the various laws and executive orders that affect SBA's business loan programs and gives applicants and borrowers the notices required by law or otherwise. The signatures required on the last page provide evidence that SBA has given the necessary notices.

Freedom of Information Act

(5 U.S.C. 552)

This law provides, with some exceptions, that SBA must supply information reflected in agency files and records to a person requesting it. Information about approved loans that will be automatically released includes, among other things, statistics on our loan programs (individual borrowers are not identified in the statistics) and other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. All requests under this Act are to be addressed to the nearest SBA office and be identified as a Freedom of Information request.

Right to Financial Privacy Act of 1978

(12 U.S.C. 3401)

This is notice to you as required by the Right to Financial Privacy Act of 1978, of SBA's access rights to financial records held by financial institutions that are or have been doing business with you or your business, including any financial institutions participating in a loan or loan guarantee. The law provides that SBA shall have a right of access to your financial records in connection with its consideration or administration of assistance to you in the form of a Government loan or loan guaranty agreement. SBA is required to provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records, after which no further certification is required for subsequent accesses. The law also provides that SBA's access rights continue for the term of any approved loan or loan guaranty agreement. No further notice to you of SBA's access rights is required during the term of any such agreement.

The law also authorizes SBA to transfer to another Government authority any financial records included in an application for a loan, or concerning an approved loan or loan guarantee, as necessary to process, service or foreclose on a loan or loan guarantee or to collect on a defaulted loan or loan guarantee. No other transfer of your financial records to another Government authority will be permitted by SBA except as required or permitted by law.

SBA FORM 1261 (2-91) REF: SOP 50 10 USE 4-89 Edition until Exhausted

**Appendix 10
(Paragraph 6-10)**

Sample SBA Form 1261, Statements Required by Law and Executive Orders

Flood Disaster Protection Act

(42 U.S.C. 4011)

Regulations have been issued by the Federal Insurance Administration (FIA) and by SBA implementing this Act and its amendments. These regulations prohibit SBA from making certain loans in an FIA designated floodplain unless Federal flood insurance is purchased as a condition of the loan. Failure to maintain the required level of flood insurance makes the applicant ineligible for any future financial assistance from SBA under any program, including disaster assistance.

Executive Orders -- Floodplain Management and Wetland Protection

(42 F.R. 26951 and 42 F.R. 26961)

The SBA discourages any settlement in or development of a floodplain or a wetland. This statement is to notify all SBA loan applicants that such actions are hazardous to both life and property and should be avoided. The additional cost of flood preventive construction must be considered in addition to the possible loss of all assets and investments in future floods.

Lead-Based Paint Poisoning Prevention Act

(42 U.S.C 4821 et seq.)

Borrowers using SBA funds for the construction or rehabilitation of a residential structure are prohibited from using lead-based paint (as defined in SBA regulations) on all interior surfaces, whether accessible or not, and exterior surfaces, such as stairs, decks, porches, railings, windows and doors, which are readily accessible to children under 7 years of age. A "residential structure" is any home, apartment, hotel, motel, orphanage, boarding school, dormitory, day care center, extended care facility, college or other school housing, hospital, group practice or community facility and all other residential or institutional structures where persons reside.

Equal Credit Opportunity Act

(15 U.S.C. 1691)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Civil Rights Legislation

All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to the public, on the basis of categories cited in 13 C.F.R., Parts 112, 113 and 117 of SBA Regulations. This includes making their goods and services available to handicapped clients or customers. All business borrowers will be required to display the "Equal Employment Opportunity Poster" prescribed by SBA.

**Appendix 10
(Paragraph 6-10)**

Sample SBA Form 1261, Statements Required by Law and Executive Orders

Executive Order 11738 -- Environmental Protection

(38 F.R. 25161)

The Executive Order charges SBA with administering its loan programs in a manner that will result in effective enforcement of the Clean Air Act, the Federal Water Pollution Act and other environmental protection legislation. SBA must, therefore, impose conditions on some loans. By acknowledging receipt of this form and presenting the application, the principals of all small businesses borrowing \$100,000 or more in direct funds stipulate to the following:

1. That any facility used, or to be used, by the subject firm is not cited on the EPA list of Violating Facilities.
2. That subject firm will comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in Section 114 and Section 308 of the respective Acts, and all regulations and guidelines issued thereunder.
3. That subject firm will notify SBA of the receipt of any communication from the Director of the Environmental Protection Agency indicating that a facility utilized, or to be utilized, by subject firm is under consideration to be listed on the EPA List of Violating Facilities.

Occupational Safety and Health Act

(15 U.S.C. 651 et seq.)

This legislation authorizes the Occupational Safety and Health Administration in the Department of Labor to require businesses to modify facilities and procedures to protect employees or pay penalty fees. In some instances the business can be forced to cease operations or be prevented from starting operations in a new facility. Therefore, in some instances SBA may require additional information from an applicant to determine whether the business will be in compliance with OSHA regulations and allowed to operate its facility after the loan is approved and disbursed.

Signing this form as borrower is a certification that the OSA requirements that apply to the borrower's business have been determined and the borrower to the best of its knowledge is in compliance.

Debt Collection Act of 1982 Deficit Reduction Act of 1984

(31 U.S.C. 3701 et seq. and other titles)

These laws require SBA to aggressively collect any loan payments which become delinquent. SBA must obtain your taxpayer identification number when you apply for a loan. If you receive a loan, and do not make payments as they come due, SBA may take one or more of the following actions:

- Report the status of your loan(s) to credit bureaus
- Hire a collection agency to collect your loan
- Offset your income tax refund or other amounts due to you from the Federal Government
- Suspend or debar you or your company from doing business with the Federal Government
- Refer your loan to the Department of Justice or other attorneys for litigation
- Foreclose on collateral or take other action permitted in the loan instruments.

**Appendix 10
(Paragraph 6-10)**

Sample SBA Form 1261, Statements Required by Law and Executive Orders

**Immigration Reform and Control Act of 1986
(Pub. L. 99-603)**

If you are an alien who was in this country illegally since before January 1, 1982, you may have been granted lawful temporary resident status by the *United States Immigration and Naturalization Service* pursuant to the Immigration Reform and Control Act of 1986 (Pub. L. 99-603). For five years from the date you are granted such status, you are not eligible for financial assistance from the SBA in the form of a loan or guaranty under section 7(a) of the Small Business Act unless you are disabled or a Cuban or Haitian entrant. When you sign this document, you are making the certification that the Immigration Reform and Control Act of 1986 does not apply to you, or if it does apply, more than five years have elapsed since you have been granted lawful temporary resident status pursuant to such 1986 legislation.

Applicant's Acknowledgement

My signature acknowledges receipt of this form, that I have read it and that I have a copy for my files. My signature represents my agreement to comply with the requirements the Small Business Administration makes in connection with the approval of my loan request and to comply, whenever applicable, with the hazard insurance, lead-based paint, civil rights or other limitations in this notice.

Business Name _____

_____ By _____
Date Signature and Title

The Proprietor, each General Partner (or Limited Partner owning 20% or more), each Guarantor, each Corporate Officer, each Director, each Stockholder owning 20% or more, and where appropriate, the spouses of each of these, must sign. The person signing on behalf of the business must also sign individually.

_____ Signature
Date

_____ Signature
Date

_____ Signature
Date

_____ Signature
Date


SBA FORM 1261 (2-91) REF: SOP 50 10 USE 4-89 Edition until Exhausted

*U.S. Government Printing Office: 1992 — 312-62462837

Appendix 11

(Paragraph 6-10)

Sample SBA Form 413, Personal Financial Statement


		PERSONAL FINANCIAL STATEMENT			
U.S. SMALL BUSINESS ADMINISTRATION		As of _____, 19 ____			
Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.					
Name		Business Phone			
Residence Address		Residence Phone			
City, State, & Zip Code					
Business Name of Applicant/Borrower					
ASSETS (Omit Cents)		LIABILITIES (Omit Cents)			
Cash on hands & in Banks	\$ _____	Accounts Payable	\$ _____		
Savings Accounts	\$ _____	Notes Payable to Banks and Others	\$ _____		
IRA or Other Retirement Account	\$ _____	(Describe in Section 2)			
Accounts & Notes Receivable	\$ _____	Installment Account (Auto)	\$ _____		
Life Insurance-Cash Surrender Value Only	\$ _____	Mo. Payments \$ _____			
(Complete Section 8)		Installment Account (Other)	\$ _____		
Stocks and Bonds	\$ _____	Mo. Payments \$ _____			
(Describe in Section 3)		Loan on Life Insurance	\$ _____		
Real Estate	\$ _____	Mortgages on Real Estate	\$ _____		
(Describe in Section 4)		(Describe in Section 4)			
Automobile-Present Value	\$ _____	Unpaid Taxes	\$ _____		
Other Personal Property	\$ _____	(Describe in Section 6)			
(Describe in Section 5)		Other Liabilities	\$ _____		
Other Assets	\$ _____	(Describe in Section 7)			
(Describe in Section 5)		Total Liabilities	\$ _____		
Total	\$ _____	Net Worth	\$ _____		
Total		Total			
Section 1. Source of Income		Contingent Liabilities			
Salary	\$ _____	As Endorser or Co-Maker	\$ _____		
Net Investment Income	\$ _____	Legal Claims & Judgments	\$ _____		
Real Estate Income	\$ _____	Provision for Federal Income Tax	\$ _____		
Other Income (Describe below)*	\$ _____	Other Special Debt	\$ _____		
Description of Other Income in Section 1.					
*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.					
(Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)					
Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

SBA Form 413 (2-94) Use 5-91 Edition until stock is exhausted. Ref. SOP 50-10 and 50-30
 This form was electronically produced by Elite Federal Forms, Inc. (turnble)

**Appendix 11
(Paragraph 6-10)
Sample SBA Form 413, Personal Financial Statement**

Section 3.					
Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value
Section 4. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)					
	Property A	Property B	Property C		
Type of Property					
Address					
Date Purchased					
Original Cost					
Present Market Value					
Name & Address of Mortgage Holder					
Mortgage Account Number					
Mortgage Balance					
Amount of Payment per Month/Year					
Status of Mortgage					
Section 5. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)					
Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)					
Section 7. Other Liabilities. (Describe in detail.)					
Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)					
I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).					
Signature:		Date:		Social Security Number:	
Signature:		Date:		Social Security Number:	
PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503.					

Appendix 12 (Paragraph 6-10) Sample SBA Form 994B, Surety Bond Guarantee Underwriting Review

	U.S. SMALL BUSINESS ADMINISTRATION SURETY BOND GUARANTEE UNDERWRITING REVIEW	OMB APPROVAL No. 3245-0007 Exp. Date 6/30/2000 SBG No. with Suffix
PART I SURETY'S REVIEW		
SURETY COMPANY NOTE: Items 1-17 are to be completed on each guarantee submission to SBA including the initial and all subsequent submissions.	CONTRACTORS TRADE NAME & ADDRESS (inc. County & Zip)	
THIS FORM IS MANDATORY. NO SURETY SUBSTITUTE WILL BE ACCEPTABLE BY SBA.		
1(a). JOB DESCRIPTION AND LOCATION (including obligee):		
SUBCATEGORY CODE(S) OF CONTRACT TYPE _____ (SOP 5045)		
1(b). CONTRACTOR IS ON SUB-THIS PRIME OR CONTRACTOR JOB	1(c). TYPE OF CONTRACT <input type="checkbox"/> CONSTRUCTION <input type="checkbox"/> SERVICE <input type="checkbox"/> SUPPLY <input type="checkbox"/> OTHER (Specify)	
2(a). CONTRACT AMOUNT \$	2(b). <input type="checkbox"/> NEGOTIATED <input type="checkbox"/> BID	2(c). IF BID WHAT IS 2ND LOW BID? \$ % <input type="checkbox"/> N/A
3(a). BOND AMOUNT (Bid) \$	PERFORMANCE \$	PAYMENT \$
3(b). IF LIQUIDATED DAMAGES AMT / WORKING OR CALENDAR DAY	4. PRESENT PROJECT SIMILAR TO PREVIOUS WORK PERFORMED? <input type="checkbox"/> YES <input type="checkbox"/> NO	5. BOND REQUIRED BY ORIGINAL CONTRACT DOCUMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO
6(a). SCHEDULED STARTING DATE	6(b). SCHEDULED COMPLETION DATE	6(c). CONTRACTOR STARTED JOB YET? IF "YES" DATE STARTED <input type="checkbox"/> YES <input type="checkbox"/> NO
7. WORK IN PROGRESS		
7(a). WORK IN PROGRESS STATUS REPORT ATTACHED IF NO, REVIEW YOUR FILE AND ATTACH YOUR REPORT OR SBA FORM 994F <input type="checkbox"/> YES <input type="checkbox"/> NO	7(b). VERIFIED BY OBLIGEE'S? <input type="checkbox"/> YES <input type="checkbox"/> NO	7(c). HOW MANY?
7(d). OF HOW MANY?	7(e). HAS SURETY CHECKED W/SUPPLIERS? <input type="checkbox"/> YES <input type="checkbox"/> NO	7(f). HOW MANY?
7(g). OF HOW MANY?	7(h). PAYABLES CURRENT? IF NO PROVIDE SPECIFICS	
8. FINANCIAL STATEMENT		
COPY OF CURRENT FINANCIAL STATEMENTS (Company & personal) <input type="checkbox"/> ATTACHED OR <input type="checkbox"/> ALREADY ON FILE W/SBA		
NOTE: THESE STATEMENTS MUST BE SIGNED AND DATED BY PRINCIPALS		
8(a). DATE OF FINANCIAL STATEMENT	8(b). FISCAL YEAR ENDS	8(c). FINANCIAL STATEMENT PREPARED BY WHOM?
8(d). F/S SHOW DISCLAIMER? <input type="checkbox"/> YES <input type="checkbox"/> NO	8(e). TYPE OF FINANCIAL STATEMENT <input type="checkbox"/> CASH <input type="checkbox"/> SIMPLE ACCRUAL <input type="checkbox"/> COMPLETED CONTRACT <input type="checkbox"/> % OF COMPLETION <input type="checkbox"/> OTHER (Specify)	
8(f). NET WORTH \$ COMPANY \$ PERSONAL \$	8(g). NET QUICK ASSETS \$ COMPANY \$	8(h). WORKING CAPITAL \$ COMPANY \$
8(i). WORKING CAPITAL SUFFICIENT? <input type="checkbox"/> YES <input type="checkbox"/> NO IF "NO" HOW MUCH IS NEEDED? SOURCE?		
9(a). SCHEDULE OF AGED PAYABLES & RECEIVABLES ATTACHED? <input type="checkbox"/> YES <input type="checkbox"/> NO	9(b). VERIFICATION OF PAYABLES? <input type="checkbox"/> YES <input type="checkbox"/> NO % OVER 90 DAYS	9(c). VERIFICATION OF RECEIVABLES? <input type="checkbox"/> YES <input type="checkbox"/> NO % OVER 90 DAYS
10. BANK RELATIONS		
10(a). SURETY VERIFIED BANK BALANCE? <input type="checkbox"/> YES <input type="checkbox"/> NO	10(b). AVERAGE BANK BALANCE \$	10(c). CONTRACTOR HAVE BANK LINE OF CREDIT? <input type="checkbox"/> YES <input type="checkbox"/> NO
10(d). HOW MUCH? (Gross) \$	10(e). WITH WHOM?	10(f). SECURED? <input type="checkbox"/> YES <input type="checkbox"/> NO
10(g). TERMS	10(h). HOW MUCH PRESENTLY OWING \$	10(i). HOW MUCH L/C PRESENTLY UNUSED? \$
11. BONDING AVAILABILITY?		
11(a). CONTRACTOR HAVE SURETY BONDING LINE? <input type="checkbox"/> YES <input type="checkbox"/> NO	11(b). IF YES WHAT AMOUNT? \$	11(c). SURETY BONDING LINE WITH?
11(d). INDEMNITIES POSTED? (Company and personal) <input type="checkbox"/> YES <input type="checkbox"/> NO IF "NO" ATTACH EXPLANATION IF "YES" ATTACH COPIES OF INDEMNITY AGREEMENTS AND PERSONAL FINANCIAL STATEMENTS ON ALL INDEMNITORS (including those of third parties unless previously submitted to SBA)		
12. HAS SURETY REQUIRED EXTRA SECURITY <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, WHAT TYPE INSTRUMENT AMOUNT \$		
13(a). SUBCONTRACTORS INVOLVED IN THIS JOB? <input type="checkbox"/> YES <input type="checkbox"/> NO	13(b). IF YES, SUBCONTRACTOR PARTICIPATION IN WORK UNDER CONTRACT %.	13(c). PRINCIPAL SUBCONTRACTOR BONDED? IF YES, AND BY YOUR COMPANY THROUGH THE SBG PROGRAM, ATTACH SPECIFICS <input type="checkbox"/> YES <input type="checkbox"/> NO

SBA FORM 994B (10-98) REF. SOP 50 45

PREVIOUS EDITIONS OBSOLETE



Appendix 12 (Paragraph 6-10) Sample SBA Form 994B, Surety Bond Guarantee Underwriting Review

14. DOES SURETY RECOMMEND FINANCIAL / MANAGEMENT / TECHNICAL ASSISTANCE BY SBA? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, WHAT TYPE & WHY			
15. CHECKLIST OF REQUIRED ITEMS			
CONTRACTOR APPLICATION FEE <input type="checkbox"/>		CONTRACTOR PROCESSING FEE <input type="checkbox"/>	
SBA FORM 994 <input type="checkbox"/>		SBA FORM 880 <input type="checkbox"/>	
SBA FORM 812 <input type="checkbox"/>		SBA FORM 994F OR SUBSTITUTE <input type="checkbox"/>	
COPIES OF BONDS IF SPECIAL CONDITIONS <input type="checkbox"/>		GENERAL INDEMNITY AGREEMENT <input type="checkbox"/>	
16. CONTINUATION SHEETS ATTACHED? <input type="checkbox"/> YES <input type="checkbox"/> NO		17. RESUME(S) OF OFFICERS, OWNERS AND/OR KEY EMPLOYEES ATTACHED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
18. CONTRACTOR'S QUESTIONNAIRE ATTACHED? <input type="checkbox"/> YES <input type="checkbox"/> NO		19. BUSINESS PLAN ATTACHED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
20. TYPE OF CONTRACTUAL WORK THIS FORM HAS DONE PREVIOUSLY			
21(a). LARGEST PREVIOUS CONTRACT UNDERTAKEN? \$	21(b). LARGEST PREVIOUS WORK PROGRAM UNDERTAKEN? \$ # OF JOBS	22(a). ANY DISPUTES? <input type="checkbox"/> YES <input type="checkbox"/> NO IF "YES" ATTACH DETAILS	22(b). ON SCHEDULE? <input type="checkbox"/> YES <input type="checkbox"/> NO IF "NO" ATTACH DETAILS
23(a). CONTRACTOR EVER FAILED TO COMPLETE JOB? <input type="checkbox"/> YES <input type="checkbox"/> NO IF "YES" ATTACH SPECIFICS		23(b). HAS CONTRACTOR EVER DEFAULTED ON A CONTRACT FORCING A SURETY TO SUFFER A LOSS? <input type="checkbox"/> YES <input type="checkbox"/> NO IF "YES" ATTACH SPECIFICS	
24(a). CONTRACTOR HAVE ADEQUATE EQUIPMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	24(b). OWNED? <input type="checkbox"/> YES <input type="checkbox"/> NO	24(c). LEASED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
25. CONTRACTOR TAXES CURRENT? <input type="checkbox"/> YES <input type="checkbox"/> NO IF "NO" ATTACH SPECIFICS	26. CONTRACTOR INSURANCE COVERAGE SUFFICIENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	27(a). CONTRACTOR PREVIOUSLY BONDED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
27(b). LARGEST AMOUNT BONDED? \$ JOB: \$ WORK PROGRAM	27(c). WITH WHOM?		
27(d). IF CHANGE OF SURETY, WHY?			
28. ATTACHED RESUME(S) OF OFFICERS, OWNERS AND/OR KEY EMPLOYEES <input type="checkbox"/> YES <input type="checkbox"/> NO			
29(a). MANAGING AGENCY OF SURETY (if applicable)		29(b). MANAGING AGENCY'S EMPLOYER (INC. LD.)	
30. REMARKS/CONCLUSIONS. INCLUDE OVERALL FINANCIAL CONDITION, COMPARATIVE TRENDS AND JUSTIFICATION FOR SBA ASSISTANCE.			
IN OUR OPINION THE PRINCIPAL APPEARS TO HAVE THE FINANCIAL/MANAGEMENT/TECHNICAL ABILITIES TO SUCCESSFULLY COMPLETE THIS CONTRACT. HOWEVER, WE FEEL THIS SUBCONTRACTOR FALLS BELOW THE NORMAL UNDERWRITING STANDARD OF OUR COMPANY, AND WE WILL NOT ISSUE BONDS TO THIS CONTRACTOR WITHOUT THE SBA GUARANTEE.			
SIGNATURE OF UNDERWRITER		DATE	
TYPED NAME		TELEPHONE NO. (inc. Area Code)	
TITLE OF UNDERWRITER		AGENCY NAME (if applicable)	
ADDRESS OF UNDERWRITER		CITY	STATE ZIP
DATE RECEIVED BY SBA		BY: (initials)	

SBA Form 994B (10-88)

Appendix 12 (Paragraph 6-10) Sample SBA Form 994B, Surety Bond Guarantee Underwriting Review

TO BE COMPLETED BY SBA				
1. MEETS SBBG SIZE STANDARDS <input type="checkbox"/> YES <input type="checkbox"/> NO		2. FINANCIAL / MANAGEMENT / TECHNICAL ASSISTANCE REQUESTED OR RECOMMENDED <input type="checkbox"/> YES <input type="checkbox"/> NO		
2(a). BY WHOM?		2(b). WHAT TYPE?		
2(c). SBA ACTION TAKEN				
3(a). IF NECESSARY ASSISTANCE IS NOT READILY AVAILABLE IN GOVERNMENT HAVE YOU REFERRED APPLICANT TO FUNDED ASSISTANCE PROGRAMS, i.e. MINORITY CONTRACTORS ASSISTANCE PROJECT (MCAF), ETC.? <input type="checkbox"/> YES <input type="checkbox"/> NO				
3(b). IF YES NAME THE PROGRAM(S):				
4. BASED ON THE UNDERWRITING DATA SUBMITTED:				
4(a). THERE <input type="checkbox"/> IS <input type="checkbox"/> IS NOT		4(b). THE COSTS <input type="checkbox"/> DO NOT <input type="checkbox"/> DO		
REASON TO EXPECT SUCCESSFUL COMPLETION OF THE CONTRACT		APPEAR TO BE REASONABLE IN ACCORDANCE WITH STD. SURETY INDUSTRY PRACTICES		
5. IT HAS BEEN DETERMINED THAT THE REQUESTED BOND(S) <input type="checkbox"/> IS <input type="checkbox"/> IS NOT NECESSARY, REQUIRED BY THE CONTRACT DOCUMENT'S TERMS, AND THE SURETY HAS INDICATED THAT IT WILL NOT ISSUE THE BOND(S) WITHOUT THE SBA GUARANTEE. FURTHERMORE, NO ADVERSE DATA CONCERNING THE SURETY'S PREMIUM/FEE SCHEDULE WAS REVEALED IN THE CONTRACTOR'S APPLICATION (SBA Form 994)				
6. ATTACHMENTS (Check Appropriate Boxes)				
CONTINUATION SHEETS	INDEMNITY AGREEMENT(S)	CONTRACTOR'S QUESTIONNAIRE	SBA FORM 991	
CONTRACTOR'S CURRENT BUSINESS FINANCIAL STATEMENT	PERSONAL FINANCIAL STATEMENT(S)	SBA FORM 912	SBA FORM 990	
RESUMES OF PRINCIPAL(S), OWNER(S) AND/OR KEY EMPLOYEES	CONTRACTOR'S BUSINESS PLAN	SBA FORM 994F		
7. REMARKS/CONCLUSIONS				
8. PRINCIPAL'S TRADE NAME				
9. RECOMMENDATION/ACTION				
APPROVE	DISAPPROVE	SIGNATURE	TITLE	DATE

SBA FORM 994B (10-89)

PLEASE NOTE: The estimated burden for completing this form is 5 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd St., S.W., Washington, D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0007).

Appendix 13 (Paragraph 6-10) Sample SBA Form 994C, Surety Bond Guarantee Review Update



**U.S. Small Business Administration
SURETY BOND GUARANTEE REVIEW UPDATE**

OMB Approval No. 3245-007
Exp. Date: 4-30-97

SURETY'S REVIEW	CONTRACTORS TRADE NAME & ADDRESS (City, County & Zip)
All items are to be completed for each submission. Except: Form 994B will be completed entirely when new financial statements or pertinent information is received. Place re- marks on reverse.	
THIS FORM IS MANDATORY. NO SURETY SUBSTITUTE WILL BE ACCEPTED BY SBA	

1(a). JOB DESCRIPTION AND LOCATION (including obligee):

SUBCATEGORY CODE(S) OF CONTRACT TYPE (SQP5045)

1(d). CONTRACTOR IS ON THIS JOB		1(c). TYPE OF CONTRACT		1(d). PHASED PROJECT	
<input type="checkbox"/> PRIME	<input type="checkbox"/> SUBCONTRACTOR	<input type="checkbox"/> CONSTRUCTION	<input type="checkbox"/> SERVICE	<input type="checkbox"/> SUPPLY	<input type="checkbox"/> OTHER (Specify)
2(a). CONTRACT AMOUNT		2(b). IF BID, BID AMOUNT	2(c). IF BID WHAT IS 2ND LOW BID	2(d). BID, DATE & TIME	
\$	<input type="checkbox"/> NEGOTIATED <input type="checkbox"/> BID	\$	\$		
3(a). BID BOND AMOUNT	3(b). PERFORMANCE AMOUNT	3(c). PAYMENT AMOUNT	3(d). MAINTENANCE BOND <input type="checkbox"/> YES <input type="checkbox"/> NO	4. WORK ON HAND	
\$	\$	\$	NO. YEARS:	BONDED \$	UNBONDED \$
5. LIQUIDATED DAMAGES	<input type="checkbox"/> YES <input type="checkbox"/> NO	6. SUBCONTRACTORS INVOLVED		7. BOND REQUIRED BY ORIGINAL CONTRACT DOCUMENT	
AMOUNT \$	(CALENDAR/WORKING DAY)	<input type="checkbox"/> YES <input type="checkbox"/> NO	PERCENT %	<input type="checkbox"/> YES <input type="checkbox"/> NO	
8(a). SCHEDULED STARTING DATE	8(b). SCHEDULED COMPLETION DATE	8(c). CONTRACTOR STARTED JOB IF "YES" DATE STARTED		IF "YES" SBA FORM 991 MUST BE COMPLETED IN ITS ENTIRETY AND SUBMITTED TO SBA BEFORE THE GUARANTEE AGREEMENT CAN BE	
		<input type="checkbox"/> YES <input type="checkbox"/> NO			
9. CHANGE OF SURETY <input type="checkbox"/> YES <input type="checkbox"/> NO		10. DATE OF LAST FINANCIAL STATEMENT			
		EXPLAIN ON REVERSE SIDE			

IN OUR OPINION THE PRINCIPAL APPEALS TO HAVE THE FINANCIAL / MANAGEMENT / TECHNICAL ABILITIES TO SUCCESSFULLY COMPLETE THIS CONTRACT, HOWEVER, WE FEEL THIS CONTRACTOR FALLS BELOW THE NORMAL UNDERWRITING STANDARD OF OUR COMPANY, AND WE WILL NOT ISSUE BONDS TO THIS CONTRACTOR WITHOUT THE SBA GUARANTEE.

SIGNATURE OF UNDERWRITER		DATE	
TYPE NAME		TELEPHONE NO. (Include Area Code)	
TITLE OF UNDERWRITER		AGENCY NAME (if applicable)	
ADDRESS OF UNDERWRITER		CITY	STATE
		ZIP	
DATE RECEIVED BY SBA		BY: (Initials)	

BASE ON THE UNDERWRITING DATA SUBMITTED: - TO BE COMPLETED BY SBA -

1. <input type="checkbox"/> THERE IS <input type="checkbox"/> IS NOT REASON TO EXPECT SUCCESSFUL COMPLETION OF THE CONTRACT	2. THE COSTS <input type="checkbox"/> DO <input type="checkbox"/> DO NOT APPEAR TO BE REASONABLE IN ACCORDANCE WITH STD. SURETY INDUSTRY PRACTICES
3. IT HAS BEEN DETERMINED THAT THE REQUESTED BOND(S) <input type="checkbox"/> IS <input type="checkbox"/> IS NOT REQUIRED BY THE CONTRACT DOCUMENT'S TERMS, AND THE SURETY HAS INDICATED THAT WILL NOT ISSUE THE BOND(S) WITHOUT THE SBA GUARANTEE. FURTHERMORE, NO ADVERSE DATA CONCERNING THE SURETY'S PREMIUM/FEE SCHEDULE WAS REVEALED IN THE CONTRACTOR'S APPLICATION (SBA Form 994).	
4. REMARKS/CONCLUSIONS	

5. PRINCIPALS TRADE NAME	6. SBG NUMBER
--------------------------	---------------

7. RECOMMENDATION/ACTION				
APPROVE	DISAPPROVE	SIGNATURE	TITLE	DATE

SBA FORM 994C (10-98) This form was electronically produced by Elite Federal Forms, Inc.

PLEASE NOTE: The public reporting burden for this collection of information, is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Chief, Administrative Information Branch, William A. Clire, Room 200 U.S. Small Business Administration, 1441 L St., NW Washington, DC 20416; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Appendix 15
(Paragraph 6-11)
Documentation of Minority Code Classification

Documentation of Minority Code Classification

Company contacted: _____

Individual contacted: _____

Minority Code Classification (disclosed by individual contacted): Principal is a :
(0) __ Black; (1) __ Puerto Rican; (2) __ American Indian; (3) __ Hispanic (other than Puerto Rican) includes Mexican-American, Cuban, Central or South American or others of Spanish Descent; (4) __ Asian (includes original peoples of the Far East, Southeast Asia, the India Subcontinent or Pacific Islands); (5) __ Eskimos, Aleuts and Native Hawaiians; (6) __ Undetermined; (7) __ White; (8) __ Multi Groups

Comments: _____

SBA Signature

Date

Instructions for Use

SBG Specialist shall screen for minority code classification, all new account applications and applications from companies wherein a change of ownership has occurred. In the event item 1h(3) of SBA Form 994 has not been completed or code number (6) "Undetermined" has been checked, contact should be made to the company, agent, or some other way, to determine the proper classification. If the person contacted is unable or unwilling to disclose subject information, so notate in "Comments" above and check item (6). If disclosure is made, check the appropriate block.

If multiple principals are involved, notate the appropriate information in "Comments" above and check appropriate classification box. The SBA Form 994 shall not be amended. This document shall be attached to the Form 994 and forwarded to the SBG clerk for input in the SBG Data System.

Appendix 17
(Paragraph 6-13)
Surety Bond Numbers
(Reserved)

Appendix 18
(Paragraph 7-9)
Sample Asbestos Rider
(Not an Official Form)

SAMPLE ASBESTOS RIDER

(Not An Official Form. Shown
Only to Illustrate Intent)

This bond is executed on the following express conditions which are precedent to any recovery hereunder:

FIRST: That no claim, suit or other action can be brought against this bond because of any insurance requirement contained in the related contract, including but not limited to the lack of any insurance coverage or inadequate insurance coverage.

SECOND: That no claim, suit or other action can be brought against this bond by anyone other than the named obligee and those expressly allowed by the statutes applicable to this bond.

DATED: _____ 19 _____

Attorney-in-Fact _____

Appendix 19

Glossary

The terms listed below are frequently used in SBA's Surety Bond Guarantee Program. The definitions are quoted or paraphrased from published definitions, and reflect common usage and connotation within the program. (See list of references at the end of this chapter.)

Ad Damnum: In pleading, "To the damage." The technical name of that clause of the writ, declaration, or, more commonly, the complaint, which contains a statement of the plaintiff's money loss, or the damages which he claims. The "ad damnum" in the complaint is more than \$100,000.

Amicable Demand: Agreed or assented to by parties having conflicting interests or a dispute; as opposed to hostile or adversary.

Attorney-In-Fact: Any person who is authorized by another to act in his/her place, either in a particular matter or generally. The authorization is embodied in a document known as a "letter of attorney" while the authority itself is known as "power of attorney."

Balance Sheet: A statement of financial position of any economic unit disclosing its assets, at cost, depreciated cost, or other indicated value, its liabilities, and the equity of the owners in conformity with generally accepted accounting principles.

Bankruptcy: The state or condition of being unable to meet one's financial obligation; the legal procedure under which the affairs of an insolvent person's business are turned over to a receiver or trustee for the administration and payment of debts.

- a) **Voluntary Bankruptcy:** When a person or business cannot pay its debts, it voluntarily petitions the court to declare it bankrupt.
- b) **Involuntary Bankruptcy:** The creditors of a person or business file the petition for bankruptcy against the debtor.

Types of
Bankruptcies:

Chapter 7: A Chapter 7 bankruptcy is known as a liquidation. Generally, the debtor has few, if any, assets. What assets a debtor may have are sold and the money distributed to its creditors. Again, those assets are in the vast majority of cases, non-existent. Chapter 7 is available to individuals. The court will, however, allow a corporation to change from a Chapter 11 bankruptcy to a Chapter 7 bankruptcy.

Chapter 11: A Chapter 11 bankruptcy is known as a reorganization. It is available to both corporations and individuals. Under a Chapter 11 bankruptcy, the debtor usually possesses sufficient assets, or has the capacity to obtain them, to satisfy at least a portion of the creditors' claims. In the case of a corporation,

the debtor will remain in business and the future income is used to pay the creditors. An individual who files a Chapter 11 usually is a person that is capable of earning a good living but does not have a regular wage, such as to allow him to file a Chapter 13. In a Chapter 11, the payoff may be in any amount, from 1 cent on the dollar through 100 cents on the dollar.

Chapter 13: A Chapter 13 bankruptcy is known as the wage earners' bankruptcy. To qualify, an individual must have a steady source of income, though not necessarily wages. The court determines the "disposable" amount of the debtor's income. Again, a prepayment schedule is worked out which allows for partial or full reimbursement of all creditors.

Bid Bond: A bond given by a bidder for a supply, service, or construction contract to guarantee that the bidder, if awarded such a contract within the time stipulated, will enter into the contract and furnish the prescribed performance bond. Default will ordinarily result in liability of the principal and the surety for the difference between the amount of the principal's bid and of the next low bidder who can qualify for the contract.

Bond: An agreement whereby one party, called the surety, obligates itself to a second party called the obligee, to guarantee the successful performance of a contract by a third party, called the principal.

Bond Penalty: The amount by which a surety must respond for loss under the terms of the given bond, i.e., the face amount of the bond.

Bonding Line: A commitment to a surety company by the SBA that allows the surety to issue bid, payment, and performance bonds to a specified small contractor within pre-approved terms, conditions, and limitations.

Bordereau: A report listing a number of transactions regarding a surety bond guarantee under the Preferred Surety Bond (PSB) Guarantee Program (plural is "bordereaux"). Such reports are furnished to SBA by PSB sureties to report and remit monies for fees, as well as to request claims reimbursements.

Cede: To pass on to another insurer (the reinsurer) all or part of the insurance written by an insurer (the ceding insurer) with the object of reducing the possible liability of the latter.

Ceding Company: An insurer which has bought reinsurance protection as distinguished from the reinsurer which has issued the reinsurance protection.

Cession: 1) The unit of insurance passed to a reinsurer by a primary company which issued a policy to the original insured. A cession may accordingly be the whole or a portion of single risks, defined policies, or defined divisions of business, as agreed to in the reinsurance contract. 2) The act of ceding where such an act is necessary to invoke the reinsurance protection.

Claim: A party's demand for something believed due from another party.

Collateral: Personal or business possessions assigned by the principal as a pledge of repayment to the surety in the event of default by the principal. **Collateral Document:** A legal document securing the item pledged as collateral, i.e., promissory notes, mortgages, assignments, etc.

Collection Agency: A private firm hired by the surety to locate the principal and indemnitors in an effort to collect the debt owed to the surety. Generally, they work on a contingency basis so there is no cost to the surety or SBA unless monies are recovered.

Contract Funds: Funds that are paid to the principal for the completion of the project. These progress payments are usually cash and made monthly, based upon estimates of work completed and materials used. These funds are also usually escrowed in a bank by the obligee, and have a direct effect on the principal's financing of the job and his working capital.

Contract Price: The whole sum of money which passes from the obligee to the principal when final settlement is made between the two under the contract. It is the basis of the premium charge on most types of construction bonds.

Co-Surety: One of two or more surety companies participating directly in a bond. Their obligation to the obligee (owner) is joint and several, but sometimes a limit of liability for each surety is stated between themselves. An authorized representative of each co-surety must sign the guarantee agreement (SBA Form 990) and the lead or primary surety must be designated. If a default occurs, claim payments are made to the lead surety only.

Current Assets: Items of ownership of a person or business that will be converted into cash in the normal operation of business at an early date, usually within 1 year. These are also referred to as "short term" assets.

Discharge of Debtor: The debtor is legally released from the obligation of all his or her debts which were or might be proved in the bankruptcy proceedings so that he or she may thereafter engage in business and acquire property without its being liable for the satisfaction of such former debts.

Dun and Bradstreet: Dun and Bradstreet is a private firm which gathers financial information about individuals and firms and prepares a report describing the financial condition of the subject. Dun and Bradstreet deals only with its subscribers and in no way assumes any of the subscriber's risk.

Equifax: A claim investigative firm whose services are available to the general public. The types of reports available include a Current Assets and Income Report, a Skip-Trace Locate Report, and the Recovery and Subrogation Report.

Estimated Loss: An estimate of the amount that a surety expects to pay for reported and unreported claims under the terms of the bond.

Faculative Reinsurance: Reinsurance in which specific coverage is arranged individually for each exposure. This is contrasted with treaty reinsurance, under which each

Financial Reports: Reports which describe the financial condition of a business or individual at a specific period of time.

Foreclosure: The action or legal proceeding brought by the creditor against a debtor under which the debtor is required to pay the debt in total or forfeit his right of redemption of the property put up as security. The creditor, upon gaining full possession of the property may keep it or sell it in a foreclosure sale, depending upon State laws.

Garnishment: A statutory proceeding whereby a person's property, money, or credits in possession or under control of, or owing by another, are applied to payment of former's debt to third person by proper statutory process against debtor and garnishee. Usually the defendant is required to surrender a percentage of his future wages in order to satisfy an outstanding debt.

General Indemnity Agreement: A written contract between the surety and the indemnitor whereby the indemnitors undertake and agree to reimburse the surety for monetary loss suffered by the surety as a result of a default by the principal. It may be signed by individual or corporate indemnitors, which determines which assets are liable for the loss.

Guaranty: An undertaking or contract to assume the liability for a debt, to perform a duty upon the default of another, or in general to give assurance that a thing will be done, or an obligation filled as promised. It provides that the guarantor will be liable for the failure to perform.

Homestead Exemption Laws: Laws passed in most of the States allowing a household or head of a family to designate a house and land as his or her homestead, and exempting the same homestead from execution for his or her general debts.

Improvement: A change in the condition of the property in real estate, often the addition of a building to a vacant lot.

Incurred Loss: The total of actual surety payouts plus outstanding reserve less recovery received, contract funds anticipated, and collateral (e.g. cash, certificates of deposit, and irrevocable letters of credit).

Indemnitor: A person or company which agrees with a surety to hold that surety harmless from any loss or exposure incurred on a bond that it issues.

Indemnity: A collateral contract or assurance by which one person engages to secure

another against an anticipated loss; this term pertains to liability for loss shifted from one person held legally responsible to another person.

Insolvency: The condition in which one's total assets, if realized, would not be sufficient to cover one's total liabilities; the inability of a borrower to meet financial obligations as they mature; or having insufficient assets to pay legal debts.

Judgment: The final decree, ruling, or sentence handed down by a court after hearing all of the evidence in a trial or other proceeding.

Consent Judgment: A judgment given in the progress of a cause upon some plea, proceeding, or default, which is only intermediate and does not finally determine or complete the suit.

Default Judgment: A judgment rendered in consequence of the non-appearance of the defendant.

Interlocutory Judgment: A judgment given in the progress of cause upon some plea, proceeding, or default, which is only intermediate and does not finally determine or complete the suit.

Judgment Creditor: One who has obtained a judgment against his or her debtor, under which he or she can enforce execution.

Judgment Debtor: A person against whom judgment has been recovered and which remains unsatisfied.

Judgment Lien: A lien binding the real estate of a judgment debtor, in favor of the holder of the judgment and giving the latter a right to levy on the land for the satisfaction of his judgment.

Lien: The right or claim which a creditor has against the property of a debtor, under which he may detain or seize the property pending the payment of a debt.

Liquidation: The disposal of the collateral securing a loan; conversion of assets into cash.

Liquidated Damages: The term is applicable when the amount of the damages has been ascertained by the judgment in the action, or when a specific sum of money has been expressly stipulated by the parties to a bond or other contract as the amount of damages to be recovered by either party for a breach of the agreement by the other.

Lis Pendens: A pending suit. Jurisdiction, power, or control which courts acquire over property in suit pending action and until final judgment. **Notice of Lis Pendens:** A notice filed on public record for the purpose of warning all persons that the title to certain property is in litigation, and that they are in danger of being bound by an adverse judgment. The notice is for the purpose of preserving rights pending litigation.

Litigation: Contest in a court of law for the purpose of enforcing a right or seeking a remedy; the practice of taking legal action through the judicial process.

Long Arm Statute: Various State legislative acts which provide for personal jurisdiction, via substituted service of process over persons or corporations which are nonresidents of the State, and which voluntarily go into the State. This may be directly, by agent, or by communication with persons in the State, for limited purposes in actions which concern claims relating to the performance or execution of those purposes.

Maintenance: In general, the work of keeping up property or equipment in good sound condition or the cost of doing so; the upkeep or preservation of the condition of property.

Material Misrepresentation: Any statement of alleged fact which is untrue or partly untrue or which is so stated as to lead to false conclusions and which has an important or critical effect on the outcome.

Miller Act: Federal statute which requires the posting of performance and payment bonds before an award may be made for a contract beyond a certain amount for construction, alteration, or repair of a public building or public work of the U.S. Government.

Net Worth: The total assets of a person or business less the total liabilities (amounts due to creditors).

Non-Recoverable Expenses: Expenses incurred but not legally recoverable from the borrower.

Novation: Substitution of a new contract debt, or obligation for an existing one, between the same or different parties. The substitution by mutual agreement of one debtor for another or of one creditor for another, whereby the old debt is extinguished. The requisites of a novation are a previous valid obligation, an agreement of all the parties to a new contract, the extinguishment of the old obligation, and the validity of the new one.

Obligee: (Also called "owner") the party to whom someone else is obligated under a contract; the party protected by the bond against loss; an obligee may be a person, firm, corporation, government, or an agency of a government.

Payback: A plan which specifies the gross sum of recovery money to be paid to the surety by the principal and/or indemnitors and specifies a time schedule to be adhered to for reimbursement; it also applies to a payment schedule which will be utilized for reimbursement from the surety to SBA.

Payment Bond: A bond given for the labor and material used in the work which the principal is obligated to pay under the contract. This liability may be contained in the performance bond, in which case a separate labor and material bond (payment bond) is not given.

Penal Sum of the Bond: Also called "penalty" and "bond penalty," is the maximum amount for which a surety company may normally be held liable under the bond.

Performance Bond: A bond which indemnifies the owner against loss resulting from the failure of the contractor to complete the work in accordance with the plans and specifications; performance bonds frequently incorporate payment bond liability.

Power of Attorney: An instrument authorizing another to act as one's agent or attorney to the extent set forth in the instrument creating the power.

Prime Contractor: Person with whom the obligee has contracted to perform the contract.

Principal: The one who is primarily responsible for fulfilling the obligation set forth on the contract and for whom the bond is issued. The principal is usually the contractor or subcontractor for whom SBA's surety bond guarantee is written.

Quota Share Reinsurance: A form of pro rata reinsurance (proportional) in which the reinsurer assumes an agreed percentage of each insurance policy being insured and shares all premiums and losses accordingly with the reinsured.

Recovery: Reimbursement received by a surety from subrogation, indemnitors, or from salvage following a loss.

Refund: The amount returned to SBA as a result of SBA's inadvertent overpayment to a surety company ("Claims Refunded" items are found in SBG Report 322, "Itemized List of Defaults").

Reimbursement: Amount which is repaid for the loss incurred.

Reinsurance: The shifting of risk by a primary insurer (known as the reinsurer).

Retained Funds: A reserve which is usually held by the obligee from the contract funds until the work has been completed and paid to the principal after the lien period has expired.

Retention: The portion of a risk kept by an insurer for its own account while ceding the balance to a reinsurer; also refers to that portion of a risk retained by a corporation for its own account, the balance being transferred to a commercial insurer.

Risk: The element of uncertainty regarding economic loss.

Rumble: A situation where a claim has been made against a bond, but the surety expects the claim to be satisfied with no loss or expense.

Salvage: Property which is recovered from the principal or indemnitors which is liquidated to offset, in whole or in part, the loss and expense incurred by a surety in satisfying obligations it has sustained under a bond.

Settlement: An agreement by which parties having disputed matters between them determine what is coming from one to the other; any agreement for the adjustment, liquidation, or disposal of obligation; satisfaction of a claim or demand between parties.

Specialty Surety: A surety company which specializes in writing surety bonds for business which cannot ordinarily obtain bonding through the standard bond market.

Standard Surety: A surety company which charges the standard premium rates for contract bonds; usually is a well-known company which adheres to a more conservative underwriting philosophy.

Subrogation: The right of one who has paid to be indemnified by the other; the legal right of the surety to recover losses it paid to the obligee.

Subcontract: A contract award made by a prime contractor to any contractor for a portion of the work received by the prime contractor.

Subcontractor: A person who has contracted with a prime contractor or with another subcontractor to perform a contract.

Surety Bond: A written agreement wherein one party (the surety) obligates itself to a second party (the obligee or beneficiary) to answer for the default of a third party (the principal) in failing to perform specified acts within a stated time. Such obligations include payment of debts and responsibility for defaults.

Surety Company: Usually a corporation listed on the Department of the Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds," and as otherwise qualified by the Small Business Administration, which guarantees to the

Treaty: A contract or arrangement under which risks are shared by agreement between insurers, usually through a process of reinsurance.

Treaty Reinsurance: A reinsurance agreement between an insurance company and a reinsurer, usually for 1 year or longer, which may be divided into two broad classifications: a) the participating type, which provides for sharing of risks between the ceding company and the reinsurer; and b) the excess type, which provides for indemnity by the reinsurer for losses which exceed some specified, predetermined amount.

Trust Account: Where money or property is deposited to be kept intact and not commingled with other funds or property of the bank, and is to be returned in kind to the depositor or devoted to the particular purpose or requirement of depositor payment of particular debts or obligations.