

Surety Bonds

A surety bond is a three-party instrument between a surety, the contractor and the project owner. The agreement binds the contractor to comply with the terms and conditions of a contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed.

Types of Surety Bonds

The four types of contract bonds that may be covered by an SBA guarantee:

Bid: Bond which guarantees that the bidder on a contract will enter into the contract and furnish the required payment and performance bonds.

Payment: Bond which guarantees payment from the contractor of money to persons who furnish labor, materials equipment, and/or supplies for use in the performance of the contract.

Performance: Bond which guarantees that the contractor will perform the contract in accordance with its terms.

Ancillary: Bonds which are incidental and essential to the performance of the contract.

SBA's Role

The SBA Office of Surety Guarantees (OSG) administers the SBG Program as a public-private partnership between the federal government and the surety industry. The SBG program consists of the Prior Approval (Plan A) and the Preferred Surety Bond Program (PSB or Plan B) program.

Eligibility

In addition to the surety's bonding qualifications, SBA's eligibility requirements for applying for an SBA bond guarantee are:

- ◆ The contract must be \$5 million or less and must require bonds
- ◆ The contractor's business must be independently owned and operated and qualify as a small business under federal regulations

For all contracts, your company must meet the small business size standard for the North American Industry Classification System (NAICS) Code that the federal contracting officer specified for that procurement.

The SBA Guarantee

SBA reimburses a participating surety (within specified limits) for the losses incurred as a result of a contractor's default on a guaranteed bid bond, payment bond, performance bond or any bond that is

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ancillary with such a bond.

How to Apply

The SBA does not directly bond the contractor. The contractor chooses a bonding agent who represents an SBA surety participant. The contractor completes the surety application and the required SBG forms, providing the agent with the required credit, capacity and character information. The agent then underwrites the application and decides whether to execute with or without an SBA guarantee.

FAQS Regarding SBA's Surety Bond Program

Does SBA issue bonds?

No. SBA does not issue bonds. However SBA does provide a guarantee for bid, performance, and payment bonds issued by participating surety companies.

What types of businesses are eligible to participate in the program?

Generally, all small businesses, whether they are sole-proprietorships, partnerships, or corporations are eligible to participate in SBA's surety bond guarantee programs.

How do I obtain a SBA guarantee?

SBA's contractual relationship as it pertains to the guarantee, is directly with the surety company or its agent and/or managing general agents. It is the surety who issues the bond to a small business contractor. Therefore, a small contractor must first find an agent or surety company.

What is an agent and how do I find an agent?

An agent is an individual who has power of attorney (POA) to issue bonds on behalf of a surety. Many agents have POAs for several surety companies. The SBA District Offices provide current listings of agents located throughout the state, who participate or have formerly participated in SBA's bond guarantee programs.

What is the maximum contract size that can be considered for SBA's bond guarantee?

Individual contracts of \$5 million or less are eligible for SBA's bond guarantee. There is no limit to the number of bonds that can be guaranteed for any one contractor.

Can I change agents and/or surety companies?

SBA does not designate a particular agent or surety company for a small contractor. The small contractor is free to change agents or sureties at their own discretion.

My business is incorporated in one state; however, most of my work is done in another. Which SBA office would handle my application?

The SBA Area Office that services the state where the business is domiciled is where the application will be submitted.

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Do I have to be an 8(a) contractor or certified small disadvantaged business (SDB) to participate?

No. You do not have to be a participant in either 8(a) or SDB in order to participate in SBA's surety bond guarantee programs.

Can I get a SBA bond guarantee even though I'm not an U.S. citizen?

Yes. You can receive a SBA guarantee even if you are not an U.S. citizen. Nevertheless, you must be a legal alien bearing a registration card, which entitles you to work in the United States. Illegal aliens are not eligible.

Can I get an SBA guarantee even if I have been bonded before without one?

Yes. If a contractor is unable to obtain a bond on reasonable terms and conditions without an SBA guarantee, an SBA guarantee may be granted. On the other hand, a contractor must not obtain some of his bonded work without an SBA guarantee and other work with the SBA guarantee. All bonded work must be SBA guaranteed.

What are my costs associated with obtaining an SBA surety bond guarantee?

All final bond applications, and all bid bonds resulting in awards, require a processing fee of \$7.29 per thousand dollar of the contract face value. You pay the processing fee, however in the event of cancellation, or if for some reason the bond is not issued, the processing fee will be returned.

Does SBA charge the contractor for the bid bond as well as final bond guarantees?

SBA does not charge a contractor for bid bond guarantees. The contractor's fee applies to a final bond guarantee only.

How long does it take for SBA to process an application?

Generally, it takes only three to five days for an SBA Area Office to process a properly completed application for a SBA guarantee.

Can I contact SBA regarding the status of my application for a guarantee?

Since SBA's contractual relationship is with the surety, SBA does not interact directly with contractors. Therefore, you must contact your agent/surety to find out the status of your application for an SBA guarantee.

As a prime contractor, will the SBA guarantee of my bond also cover my subcontractors?

No. Your SBA guarantee bond is a tri-party agreement between you the contractor, SBA, and the surety. If your subcontractors fail to satisfactorily complete their portion of the work, and thus cause a breach in your general contract with the obligee, the obligee has recourse under your SBA guarantee bond. On the other hand, if the subcontractors have been bonded back, then you have recourse under their bonds.

How long can I participate in the program?

There is no limit on the length of time that a contractor may participate in SBA's surety bond program; however, the goal is to help contractors to become bondable without SBA assistance

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Can I use both the prior-approval and PSB programs to get an SBA guarantee?

Yes. You are free to choose from either program in order to obtain an SBA guarantee however, the guarantee percentage varies from program to program.

Taken from <http://www.sba.gov/services/financialassistance/suretybond/faqs/index.html>