

(4) such other provisions, not inconsistent with the purposes of this section as the Administrator may in his discretion require.

(e) Any guarantee issued under this section may be assigned with the permission of the Administration by the person to whom the payments under qualified contracts are due.

(f) Section 402 shall apply to the administration of this section.

Sec. 405. FUND

There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purpose of section 404. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 404 shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under section 404 shall be paid from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations or, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested.

PART B -- SURETY BOND GUARANTEES

Sec. 410. DEFINITIONS

As used in this part—

(1) the term "bid bond" means a bond conditioned upon the bidder on a contract entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond.

(2) the term "payment bond" means a bond conditioned upon the payment by the principal of money to persons under contract with him.

(3) the term "performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

(4) the term "surety" means the person who, (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment, or (D) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

(5) the term "obligee" means (A) in the case of a bid bond, the person requesting bids for the performance of a contract, or (B) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond.

(6) the term "principal" means (A) in the case of a bid bond, a person bidding for the award of a contract, or (B) the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

(7) the term "prime contractor" means the person with whom the obligee has contracted to perform the contract.

(8) the term "subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract.

(9) Notwithstanding any other provision of law or any rule, regulation, or order of the Administration, for purposes of sections 410, 411, and 412 the term "small business concern" means a business concern that meets the size standard for the primary industry in which such business concern, and the affiliates of such business concern, is engaged, as determined by the Administrator in accordance with the North American Industry Classification System.

Sec. 411. AUTHORITY OF THE ADMINISTRATION

(a) (1) (A) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed \$6,500,000, as adjusted for inflation in accordance with section 1908 of title 41, United States Code.

(B) The Administrator may guarantee a surety under subparagraph (A) for a total work order or contract amount that does not exceed \$10,000,000, if a contracting officer of a Federal agency certifies that such a guarantee is necessary.

(2) The terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administrator's experience with the particular surety.

(3) The Administration may authorize any surety, without further Administration approval, to issue, monitor, and service such bonds subject to the Administrator's guarantee.

(4) No such guarantee may be issued, unless—

(A) the person who would be principal under the bond is a small business concern;

(B) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon;

(C) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section; and

(D) there is a reasonable expectation that such principal will perform the covenants and conditions of the contract with respect to which such bond is required, and the terms and conditions of such bond are reasonable in the light of the risks involved and the extent of the surety's participation.

(5) (A) The Administration shall promptly act upon an application from a surety to participate in the Preferred Surety Bond Guarantee Program, authorized by paragraph (3), in accordance with criteria and procedures established in regulations pursuant to subsection (d).

(B) The Administration is authorized to reduce the allotment of bond guarantee authority or terminate the participation of a surety in the Preferred Surety Program [sic] Guarantee Program based on the rate of participation of such surety during the 4 most recent fiscal year quarters compared to the median rate of participation by the other sureties in the program.

(b) Subject to the provisions of this section, in connection with the issuance by the Administration of a guarantee to a surety as provided by subsection (a), the Administration may agree to indemnify such surety against a loss sustained by such surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administration pursuant to subsection (a): Provided, however—

(1) prior to making any payment under this subsection, the Administration shall first determine that a breach of the terms of such bond was imminent;

(2) a surety must obtain approval from the Administration prior to making any payments pursuant to this subsection unless the surety is participating under the authority of subsection (a)(3); and

(3) no payment by the Administration pursuant to this subsection shall exceed 10 per centum of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the surety's loss sustained in avoiding or attempting to avoid such breach was necessary and reasonable.

In no event shall the Administration pay a surety pursuant to this subsection an amount exceeding the guaranteed share of the bond available to such surety pursuant to subsection (a).

SMALL BUSINESS INVESTMENT ACT OF 1958

- (c) Any guarantee or agreement to indemnify under this section shall obligate the Administration to pay to the surety a sum—
- (1) not to exceed 70 per centum of the loss incurred and paid by a surety authorized to issue bonds subject to the Administrator's guarantee under subsection (a)(3);
 - (2) not to exceed 90 per centum of the loss incurred and paid in the case of a surety requiring the Administrator's specific approval for the issuance of such bond, but in no event may the Administrator make any duplicate payment pursuant to subsection (b) or any other subsection;
 - (3) equal to 90 per centum of the loss incurred and paid in the case of a surety requiring the Administrator's specific approval for the issuance of a bond, if—
 - (A) the total amount of the contract at the time of execution of the bond or bonds is \$100,000 or less, or
 - (B) the bond was issued to a small business concern owned and controlled by socially and economically disadvantaged individuals as defined by section 8(d) of the Small Business Act or to a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act; or
 - (4) determined pursuant to subsection (b), if applicable.
 - (d) The Administration may establish and periodically review regulations for participating sureties which shall require such sureties to meet Administration standards for underwriting, claim practices, and loss ratios.
 - (e) REIMBURSEMENT OF SURETY; CONDITIONS.—Pursuant to any such guarantee or agreement, the Administrator shall reimburse the surety, as provided in subsection (c) of this section, except that the Administrator shall be relieved of all liability (in whole or in part within the discretion of the Administrator) if—
 - (1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation,
 - (2) the total contract amount at the time of execution of the bond or bonds exceeds \$6,500,000,
 - (3) the surety has breached a material term or condition of such guarantee agreement, or
 - (4) the surety has substantially violated the regulations promulgated by the Administration pursuant to subsection (d).

(f) The Administration may, upon such terms and conditions as it may prescribe, adopt a procedure for reimbursing a surety for its paid losses billed each month, based upon prior monthly payments to such surety, with subsequent adjustments after such disbursement.

(g) (1) Each participating surety shall make reports to the Administration at such times and in such form as the Administration may require.

(2) The Administration may at all reasonable times audit, in the offices of a participating surety, all documents, files, books, records, and other material relevant to the Administrator's guarantee, commitments to guarantee, or agreements to indemnify any surety pursuant to this section.

(3) Each surety participating under the authority of paragraph (3) of subsection (a) shall be audited at least once every three years by examiners selected and approved by the Administration.

(h) The Administration shall administer this Part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration.

(i) The provisions of section 402 shall apply in the administration of this section.

(j) For bonds made or executed with the prior approval of the Administration, the Administration shall not deny liability to a surety based upon material information that was provided as part of the guarantee application.

Sec. 412. FUND

(a) There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under this part shall be paid from the fund.

(b) Such sums as may be appropriated to the Fund to carry out the programs authorized by this part shall be without fiscal year limitation.

TITLE V -- LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

Sec. 501. STATE DEVELOPMENT COMPANIES.

(a) The Congress hereby finds and declares that the purpose of this title is to foster economic development and to create or preserve job opportunities in both urban and rural areas