

122:15-1-01

EDGE Bond Guarantee Program-Definitions.

(A) "Affiliate" means an entity that has control over, or is controlled by, the principal or surety or that is controlled by a third party that also controls the principal or surety.

(B) "Ancillary bond" means a bond incidental and essential to the performance of a contract for which there is a guaranteed final bond.

(C) "Bid bond" means a bond conditioned upon the bidder on a contract entering into the contract, and furnishing the required payment and performance bonds. The term does not include a forfeiture bond.

(D) "Contract" means a written obligation of the principal requiring the furnishing of services, supplies, labor, materials, machinery, equipment, or construction. A contract must not prohibit a surety from performing the contract upon default of the principal. A contract does not include a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee, warranty of performance or efficiency, warranty of fidelity, or release of lien (other than for claims under a guaranteed bond). Contracts may include a maintenance agreement of 2 years or less which covers defective workmanship or materials only. With DOD's written approval, it can also include a longer maintenance agreement covering defective workmanship or materials, or a maintenance agreement covering something other than defective workmanship or materials. To qualify for such approval, the agreement must be ancillary to the contract for which DOD is guaranteeing a bond, must be required to be performed by the same principal, and must be customarily required in the relevant trade or industry.

(E) "DOD" means the Ohio Department of Development.

(F) "EDGE business enterprise" means a solo proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the encouraging diversity, growth, and equity program by the director of administrative services under section 123:152 of the revised code.

(G) "Final bond" means a performance bond and/or payment bond.

(H) "Forfeiture bond" means a bond that obligates the surety to pay the project owner a stated sum of money in the event the contractor fails to sign a contract or obtain a performance or payment bond.

(I) "Loss" means:

(1) In the case of a bid bond, the lesser of the penal sum or the amount which is the difference between the bonded bid and the next higher responsive bid. In either case, the loss is reduced by any amounts the surety recovers by reason of the principal's defenses against the obligee's demand for performance by the principal and any sums the surety recovers from indemnitors and other salvage; or

- (2) In the case of a payment bond, the sum necessary to pay all just and timely claims against the principal for the value of labor, materials, equipment, and supplies furnished for use in the performance of the bonded contract and other covered debts, or, at the surety's option, the penal sum of the payment bond. In either case, the loss includes interest (if any), but loss is reduced by any amounts recovered (through offset or otherwise) by reason of the principal's claims against laborers, subcontractors, suppliers, or other rightful claimants, and by any amounts recovered from indemnitors and other salvage; or
- (3) In the case of a performance bond, the sum necessary to meet the cost of fulfilling the terms of a bonded contract or, at the surety's option, the penal sum of the bond. In either case, the loss includes interest (if any), but loss is reduced by any amounts recovered (through the offset or otherwise) by reason of the principal's defenses or causes of action against the obligee, and by any amounts recovered from indemnitors and other salvage; or
- (4) In the case of an ancillary bond, the amount covered by such bond which is attributable to the contract for which guaranteed final bonds were executed.
- (5) In addition, for each type of bond described in paragraphs (1) through (4) above, loss shall include all expenses reasonably incurred by the surety in adjusting claims, in meeting bond obligations and in securing, or attempting to secure, recoveries.

(J) "Obligee" means:

- (1) In the case of a bid bond, the person requesting bids for the performance of a contract; or
- (2) In the case of a final 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.

(K) "Payment bond" means a bond that is conditioned upon the payment by the principal of money to persons who have a right of action against such bond, including those who have furnished labor materials, equipment and supplies for use in the performance of the contract. A payment bond cannot require the surety to pay an amount that exceeds the claimant's actual loss or damage.

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

(M) "Person" means a natural person or legal entity.

(N) "Premium" means the amount charged by a surety to issue bonds. The premium does

not include surcharges for extra services.

(O) "Principal means an EDGE business enterprise who in the case of a bid bond, is the business bidding for the award of a contract. In the case of final bonds and ancillary bonds, principal means the EDGE business enterprise liable to complete the contract, and the business whose performance or payment is bonded by the surety.

(P) "Surety" means a company which:

- (1) Is authorized by the department of insurance to issue bonds as surety;
- (2) Under the terms of a bid bond, agrees to pay a sum of money to the obligee if the principal breaches the conditions of the bid bond;
- (3) Under the terms of a performance bond, agrees to pay a sum of money or to incur the cost of fulfilling the terms of a contract if the principal breaches the conditions of the contract; and
- (4) Under the terms of payment or ancillary bond, agrees to make payment to all who have a right of action against such bond, including those who have furnished labor, materials, equipment and supplies in the performance of the contract.
- (5) Is listed by the U.S. Treasury as eligible to issue bonds in connection with federal procurement contract.

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