

## Small Business Administration

## § 125.15

any super majority voting requirements; or

(2) Service-disabled veterans comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

### § 125.11 What size standards apply to SDVO SBCs?

(a) At time of contract offer, an SDVO SBC must be small within the size standard corresponding to the NAICS code assigned to the contract.

(b) If the contracting officer is unable to verify that the SDVO SBC is small, the concern shall be referred to the responsible SBA Government Contracting Area Director for a formal size determination in accordance with part 121 of this chapter.

### § 125.12 May an SDVO SBC have affiliates?

A concern may have affiliates provided that the aggregate size of the concern and all its affiliates is small as defined in part 121 of this chapter.

### § 125.13 May 8(a) Program participants, HUBZone SBCs, Small and Disadvantaged Businesses, Very Small Businesses, or Women-Owned Small Businesses qualify as SDVO SBCs?

Yes, 8(a) Program participants, HUBZone SBCs, Small and Disadvantaged Businesses, Very Small Businesses, and Women-Owned SBCs, may also qualify as SDVO SBCs if they meet the requirements in this subject.

## Subpart C—Contracting with SDVO SBCs

SOURCE: 69 FR 25268, May 5, 2004, unless otherwise noted.

### § 125.14 What are SDVO contracts?

SDVO contracts are contracts awarded to an SDVO SBC through a sole source award or a set-aside award based on competition restricted to SDVO SBCs.

### § 125.15 What requirements must an SDVO SBC meet to submit an offer on a contract?

(a) *Representation of SDVO SBC status.* At the time an SDVO SBC submits its offer on a specific contract, it must represent to the contracting officer that:

- (1) It is an SDVO SBC;
- (2) It is small under the NAICS code assigned to the procurement;
- (3) It will meet the percentage of work requirements set forth in § 125.6;
- (4) If applicable, it is an eligible joint venture; and
- (5) If applicable, it is an eligible non-manufacturer.

(b) *Joint ventures.* An SDVO SBC may enter into a joint venture agreement with one or more other SBCs for the purpose of performing an SDVO contract.

(1) Size of concerns to an SDVO SBC joint venture.

(i) A joint venture of at least one SDVO SBC and one or more other business concerns may submit an offer as a small business for a competitive SDVO SBC procurement so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds \$10 million;

(ii) For sole source and competitive SDVO SBC procurements that do not exceed the dollar levels identified in paragraphs (b)(1)(i)(A) and (B) of this section, an SDVO SBC entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the SDVO contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAICS code assigned to the SDVO contract.

(2) Contents of joint venture agreement. Every joint venture agreement to perform an SDVO contract must contain a provision:

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(i) Setting forth the purpose of the joint venture;

(ii) Designating an SDVO SBC as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the SDVO contract;

(iii) Stating that not less than 51% of the net profits earned by the joint venture will be distributed to the SDVO SBC(s);

(iv) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the SDVO contract;

(v) Obligating all parties to the joint venture to ensure performance of the SDVO contract and to complete performance despite the withdrawal of any member;

(vi) Requiring the final original records be retained by the managing venturer upon completion of the SDVO contract performed by the joint venture;

(3) *Performance of work.* For any SDVO contract, the joint venture must perform the applicable percentage of work required by §124.510 of this chapter.

(4) *Contract execution.* The procuring activity will execute an SDVO contract in the name of the joint venture entity or SDVO SBC.

(5) *Inspection of records.* SBA may inspect the records of the joint venture without notice at any time deemed necessary.

(c) *Non-manufacturers.* An SDVO SBC which is a non-manufacturer may submit an offer on an SDVO contract for supplies if it meets the requirements of the non-manufacturer rule set forth at §121.406(b)(1) of this chapter.

### § 125.16 Does SDVO SBC status guarantee receipt of a contract?

No, SDVO SBCs should market their capabilities to appropriate procuring agencies in order to increase their prospects of having a procurement set-aside for SDVO contract award.

### § 125.17 Who decides if a contract opportunity for SDVO competition exists?

The contracting officer for the contracting activity decides if a contract

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opportunity for SDVO competition exists.

### § 125.18 What requirements are not available for SDVO contracts?

A contracting activity may not make a requirement available for a SDVO contract if:

(a) The contracting activity otherwise would fulfill that requirement through award to Federal Prison Industries, Inc. under 18 U.S.C. 4124 or 4125, or to Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled, under 41 U.S.C. 46 *et seq.*, as amended; or

(b) An 8(a) participant currently is performing that requirement or SBA has accepted that requirement for performance under the authority of the section 8(a) program, unless SBA has consented to release of the requirement from the section 8(a) program.

### § 125.19 When may a contracting officer set-aside a procurement for SDVO SBCs?

(a) The contracting officer first must review a requirement to determine whether it is excluded from SDVO contracting pursuant to §125.18.

(b) If the contracting officer determines that §125.18 does not apply, the contracting officer should consider setting aside the requirement for 8(a), HUBZone, or SDVO SBC participation before considering setting aside the requirement as a small business set-aside.

(c) If the CO decides to set-aside the requirement for competition restricted to SDVO SBCs, the CO must:

(1) Have a reasonable expectation that at least two responsible SDVO SBCs will submit offers; and

(2) Determine that award can be made at fair market price.

### § 125.20 When may a contracting officer award sole source contracts to SDVO SBCs?

A contracting officer may award a sole source contract to an SDVO SBC only when the contracting officer determines that:

(a) None of the provisions of §§125.18 or 125.19 apply;

(b) The anticipated award price of the contract, including options, will not exceed: