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on behalf of a small business with respect to a particular contract, contracting officers are required to award the contract without requiring the firm to meet any other requirement with respect to responsibility.

(n) *Effect of Denial of COC.* Denial of a COC by SBA does not preclude a contracting officer from awarding a contract to the referred firm, nor does it prevent the concern from making an offer on any other procurement.

(o) *Monitoring performance.* Once a COC has been issued and a contract awarded on that basis, SBA will monitor contractor performance.

[61 FR 3312, Jan. 31, 1996; 61 FR 7987, Mar. 1, 1996]

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

(a) In order to be awarded a full or partial small business set-aside contract, an 8(a) contract, or an unrestricted procurement where a concern has claimed a 10 percent small disadvantaged business (SDB) price evaluation preference, a small business concern must agree that:

(1) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees.

(2) In the case of a contract for supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials).

(3) In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials).

(4) In the case of a contract for construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).

(b) An SDVO SBC prime contractor can subcontract part of an SDVO contract (as defined in § 125.15) provided:

(1) In the case of a contract for services (except construction), the SDVO

SBC spends at least 50% of the cost of the contract performance incurred for personnel on the concern's employees or on the employees of other SDVO SBCs;

(2) In the case of a contract for general construction, the SDVO SBC spends at least 15% of the cost of contract performance incurred for personnel on the concern's employees or the employees of other SDVO SBCs;

(3) In the case of a contract for construction by special trade contractors, the SDVO SBC spends at least 25% of the cost of contract performance incurred for personnel on the concern's employees or the employees of other SDVO SBCs; and

(4) In the case of a contract for procurement of supplies or products (other than procurement from a non-manufacturer in such supplies or products), at least 50% of the cost of manufacturing the supplies or products (not including the costs of materials), will be performed by the SDVO SBC prime contractor or other SDVO SBCs.

(c) A qualified HUBZone SBC prime contractor can subcontract part of a HUBZone contract (as defined in § 126.600 of this chapter) provided:

(1) In the case of a contract for services (except construction), the qualified HUBZone SBC spends at least 50% of the cost of the contract performance incurred for personnel on the concern's employees or on the employees of other qualified HUBZone SBCs;

(2) In the case of a contract for general construction, the qualified HUBZone SBC spends at least 15% of the cost of contract performance incurred for personnel on the concern's employees;

(3) In the case of a contract for construction by special trade contractors, the qualified HUBZone SBC spends at least 25% of the cost of contract performance incurred for personnel on the concern's employees;

(4) In the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the qualified HUBZone SBC spends at least 50% of the manufacturing cost (excluding the cost of materials) on performing the contract in a HUBZone. One or more qualified HUBZone SBCs may combine to meet

this subcontracting percentage requirement; and

(5) In the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, the qualified HUBZone SBC may not purchase the commodity from a subcontractor if the subcontractor will supply the commodity in substantially the final form in which it is to be supplied to the Government.

(d) SBA may use different percentages if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry group. Representatives of a national trade or industry group or any interested SBC may request a change in subcontracting percentage requirements for the categories defined by six digit industry codes in the North American Industry Classification System (NAICS) pursuant to the following procedures.

(1) *Format of request.* Requests from representatives of a trade or industry group and interested SBCs should be in writing and sent or delivered to the Associate Administrator of the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. The requester must demonstrate to SBA that a change in percentage is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category, and must support its request with information including, but not limited to:

(i) Information relative to the economic conditions and structure of the entire national industry;

(ii) Market data, technical changes in the industry and industry trends;

(iii) Specific reasons and justifications for the change in the subcontracting percentage;

(iv) The effect such a change would have on the Federal procurement process; and

(v) Information demonstrating how the proposed change would promote the purposes of the small business, 8(a), SDB, woman-owned business, or HUBZone programs.

(2) *Notice to public.* Upon an adequate preliminary showing to SBA, SBA will publish in the FEDERAL REGISTER a notice of its receipt of a request that it considers a change in the subcontracting percentage requirements for a particular industry. The notice will identify the group making the request, and give the public an opportunity to submit information and arguments in both support and opposition.

(3) *Comments.* SBA will provide a period of not less than 30 days for public comment in response to the FEDERAL REGISTER notice.

(4) *Decision.* SBA will render its decision after the close of the comment period. If SBA decides against a change, SBA will publish notice of its decision in the FEDERAL REGISTER. Concurrent with the notice, SBA will advise the requester of its decision in writing. If SBA decides in favor of a change, SBA will propose an appropriate change to this part.

(e) *Definitions.* The following definitions apply to this section:

(1) *Cost of the contract.* All allowable direct and indirect costs allocable to the contract, excluding profit or fees.

(2) *Cost of contract performance incurred for personnel.* Direct labor costs and any overhead which has only direct labor as its base, plus the concern's General and Administrative rate multiplied by the labor cost.

(3) *Cost of manufacturing.* Those costs incurred by the firm in the production of the end item being acquired. These are costs associated with the manufacturing process, including the direct costs of fabrication, assembly, or other production activities, and indirect costs which are allocable and allowable. The cost of materials, as well as the profit or fee from the contract, are excluded.

(4) *Cost of materials.* Includes costs of the items purchased, handling and associated shipping costs for the purchased items (which includes raw materials), off-the-shelf items (and similar proportionately high-cost common supply items requiring additional manufacturing or incorporation to become end items), special tooling, special testing equipment, and construction equipment purchased for and required to perform on the contract. In the case

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of a supply contract, the acquisition of services or products from outside sources following normal commercial practices within the industry are also included.

(5) *Off-the-shelf item.* An item produced and placed in stock by a manufacturer, or stocked by a distributor, before orders or contracts are received for its sale. The item may be commercial or may be produced to military or Federal specifications or description. Off-the-shelf items are also known as Nondevelopmental Items (NDI).

(6) *Personnel.* Individuals who are “employees” under §121.106 of this chapter.

(7) *Subcontracting.* That portion of the contract performed by a firm, other than the concern awarded the contract, under a second contract, purchase order, or agreement for any parts, supplies, components, or subassemblies which are not available off-the-shelf, and which are manufactured in accordance with drawings, specifications, or designs furnished by the contractor, or by the government as a portion of the solicitation. Raw castings, forgings, and moldings are considered as materials, not as subcontracting costs. Where the prime contractor has been directed by the Government to use any specific source for parts, supplies, components subassemblies or services, the costs associated with those purchases will be considered as part of the cost of materials, not subcontracting costs.

(f) Compliance will be considered an element of responsibility and not a component of size eligibility.

(g) The period of time used to determine compliance will be the period of performance which the evaluating agency uses to evaluate the proposal or bid. If the evaluating agency fails to articulate in its solicitation the period of performance it will use to evaluate the proposal or bid, the base contract period, excluding options, will be used to determine compliance. In indefinite quantity contracts, performance over the guaranteed minimum will be used to determine compliance unless the evaluating agency articulates a different period of performance which it will use to evaluate the proposal or bid in its solicitation.

(h) Work to be performed by subsidiaries or other affiliates of a concern is not counted as being performed by the concern for purposes of determining whether the concern will perform the required percentage of work.

(i) Where an offeror is exempt from affiliation under §121.103(h)(3) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the joint venture, not its individual members.

(j) Where an offeror is exempt from affiliation under §121.103(f)(3) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the team or joint venture, not its individual members.

[61 FR 3312, Jan. 31, 1996; 61 FR 39305, July 20, 1996; as amended at 64 FR 57372, Oct. 25, 1999; 65 FR 45835, July 26, 2000; 69 FR 25266, May 5, 2004; 69 FR 29208, May 21, 2004; 69 FR 29420, May 24, 2004]

§ 125.7 What is the Very Small Business program?

(a) The Very Small Business (VSB) program is an extension of the small business set-aside program, administered by SBA as a pilot to increase opportunities for VSB concerns. Procurement requirements, including construction requirements, estimated to be between \$2,500 and \$50,000 must be reserved for eligible VSB concerns if the criteria in paragraph (c) of this section are met.

(b) *Definitions.* (1) The term *designated SBA district* means the geographic area served by any of the following SBA district offices:

(i) Albuquerque, NM, serving New Mexico;

(ii) Los Angeles, CA, serving the following counties in California: Los Angeles, Santa Barbara, and Ventura;

(iii) Boston, MA, serving Massachusetts;

(iv) Louisville, KY, serving Kentucky;

(v) Columbus, OH, serving the following counties in Ohio: Adams, Allen, Ashland, Athens, Auglaize, Belmont, Brown, Butler, Champaign, Clark, Clermont, Clinton, Coshocton,