

Small Business Administration

§ 125.7

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,

§ 125.7

13 CFR Ch. I (1-1-05 Edition)

Crawford, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Hancock, Hardin, Highland, Hocking, Holmes, Jackson, Knox, Lawrence, Licking, Logan, Madison, Marion, Meigs, Mercer, Miami, Monroe, Montgomery, Morgan, Morrow, Muskingum, Noble, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Richland, Ross, Scioto, Shelby, Union, Van Wert, Vinton, Warren, Washington, and Wyandot;

(vi) New Orleans, LA, serving Louisiana;

(vii) Detroit, MI, serving Michigan;

(viii) Philadelphia, PA, serving the State of Delaware and the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Carbon, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Perry, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York;

(ix) El Paso, TX, serving the following counties in Texas: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves, and Terrell; and

(x) Santa Ana, CA, serving the following counties in California: Orange, Riverside, and San Bernadino.

(2) The term *very small business* or *VSB* means a concern whose headquarters is located within the geographic area served by a designated SBA district and, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million. The terms *concerns*, *affiliates*, *average annual receipts*, and *employees* have the meaning given to them in §§121.105, 121.103, 121.104, and 121.106, respectively, of this chapter.

(c)(1) A contracting officer must set aside for VSB concerns each procurement that has an anticipated dollar value between \$2,500 and \$50,000 if:

(i) In the case of a procurement for manufactured or supply items:

(A) The buying activity is located within the geographical area served by a designated SBA district, and

(B) There is a reasonable expectation of obtaining offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district that are competitive in terms of market prices, quality and delivery; or

(ii) In the case of a procurement for other than manufactured or supply items:

(A) The requirement will be performed within the geographical area served by a designated SBA district, and

(B) There is a reasonable expectation of obtaining offers from two or more responsible VSB concerns headquartered within the geographical area served by that designated SBA district that are competitive in terms of market prices, quality and delivery.

(2) The geographic areas served by the SBA Los Angeles and Santa Ana District Offices will be treated as one designated SBA district for the purposes of this section.

(3) If the contracting officer determines that there is not a reasonable expectation of receiving at least two responsible offers from VSB concerns headquartered within the geographic area served by the applicable designated SBA district, he or she must include in the contract file the reason(s) for this determination, and solicit the procurement pursuant to the provisions of 48 CFR 19.502-2. SBA may appeal such determination using the same procedure described in 48 CFR 19.505.

(4) If the contracting officer receives only one acceptable offer from a responsible VSB concern in response to a VSB set-aside, the contracting officer will make an award to that firm. If the contracting officer receives no acceptable offers from responsible VSB concerns, he or she will withdraw the procurement and, if still valid, must resolicit it pursuant to the provisions of 48 CFR 19.502-2.

(d) Where a procurement is set aside for VSB concerns, only those VSB concerns whose headquarters are located within the geographic area served by the applicable designated SBA district are eligible to submit offers in response to the solicitation.

Small Business Administration

§ 125.9

(e) Nothing in this section shall be construed to alter in any way the procedures by which procuring activities award contracts under the SBA's 8(a) Business Development program (*see* 13 CFR part 124).

(f) This pilot program terminates on September 30, 2000. Any award under this program must be made on or before this date.

[63 FR 46642, Sept. 2, 1998]

Subpart A—Definitions for the Service-Disabled Veteran-Owned Small Business Concern Program

SOURCE: 69 FR 25267, May 5, 2004, unless otherwise noted.

§ 125.8 What definitions are important in the Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) Program?

(a) *Contracting Officer* has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

(b) *Interested Party* means the contracting activity's contracting officer, the SBA or any concern that submits an offer for a specific SDVO contract.

(c) *Permanent caregiver* is the spouse, or an individual, 18 years of age or older, who is legally designated, in writing, to undertake responsibility for managing the well-being of the service-disabled veteran, to include housing, health and safety. A permanent caregiver may, but does not need to, reside in the same household as the service-disabled veteran. In the case of a service-disabled veteran lacking legal capacity, the permanent caregiver shall be a parent, guardian, or person having legal custody. There may be no more than one "permanent caregiver" per service-disabled veteran.

(d) *Service-Disabled Veteran with a Permanent and Severe Disability* means a veteran with a service-connected disability that has been determined by the U.S. Department of Veterans Affairs to have a permanent and total disability for purposes of receiving disability compensation or a disability pension.

(e) *Service-Connected* has the meaning given that term in section 101(16) of Title 38, United States Code.

(f) *Service-disabled veteran* is a veteran with a disability that is service-connected.

(g) *SBC owned and controlled by service-disabled veterans* (also known as a Service-Disabled Veteran-Owned SBC) is a concern—

(1) Not less than 51% of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51% of the stock of which is owned by one or more service-disabled veterans;

(2) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran; and

(3) That is small as defined by § 125.11.

(h) *Spouse* has the meaning given the term in section 101(16) of Title 38, United States Code.

(i) *Veteran* has the meaning given the term in section 101(2) of Title 38, United States Code.

Subpart B—Eligibility Requirements for the SDVO SBC Program

SOURCE: 69 FR 25267, May 5, 2004, unless otherwise noted.

§ 125.9 Who does SBA consider to own an SDVO SBC?

A concern must be at least 51% unconditionally and directly owned by one or more service-disabled veterans. More specifically:

(a) *Ownership must be direct.* Ownership by one or more service disabled veterans must be direct ownership. A concern owned principally by another business entity that is in turn owned and controlled by one or more service-disabled veterans does not meet this requirement. Ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by service-disabled veterans where the trust is revocable, and service-disabled veterans are the grantors, trustees, and the current beneficiaries of the trust.