

## § 124.511

task order because it would still have performed 50% of the total personnel costs at the end of the six-month period (\$100,000 out of \$200,000).

(2) Where there is a guaranteed minimum condition in an indefinite quantity 8(a) award, the required performance of work percentage need not be met on task orders issued during the first six months of the contract. In such a case, however, the percentage of work that a Participant may further contract to other concerns during the first six months of the contract may not exceed 50 percent of the total guaranteed minimum dollar value to be provided by the contract. Once the guaranteed minimum amount is met, the general rule for indefinite quantity contracts set forth in paragraph (c)(1) of this section applies.

*Example to paragraph (c)(2).* Where a contract guarantees a minimum of \$100,000 in professional services and the first task order is for \$60,000 in such services, the Participant may perform as little as \$10,000 of the personnel costs for that order. In such a case, however, the Participant must perform all of the next task order(s) up to \$40,000 to ensure that it performs 50% of the \$100,000 guaranteed minimum ( $\$10,000 + \$40,000 = \$50,000$  or 50% of the \$100,000).

(3) The applicable SBA District Director may waive the provisions in paragraphs (c)(1) and (c)(2) of this section requiring a Participant to meet the applicable performance of work requirement at the end of any six-month period where he or she makes a written determination that larger amounts of subcontracting are essential during certain stages of performance, provided that there are written assurances from both the Participant and the procuring activity that the contract will ultimately comply with the requirements of this section. Where SBA authorizes a Participant to exceed the subcontracting limitations and the Participant does not ultimately comply with the performance of work requirements by the end of the contract, SBA will not grant future waivers for the Participant.

## 13 CFR Ch. I (1-1-07 Edition)

### § 124.511 How is fair market price determined for an 8(a) contract?

(a) The procuring activity determines what constitutes a “fair market price” for an 8(a) contract.

(1) The procuring activity must derive the estimate of a current fair market price for a new requirement, or a requirement that does not have a satisfactory procurement history, from a price or cost analysis. This analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. The analysis must also consider any cost or pricing data that is timely submitted by SBA.

(2) The procuring activity must base the estimate of a current fair market price for a requirement that has a satisfactory procurement history on recent award prices adjusted to ensure comparability. Adjustments will take into account differences in quantities, performance, times, plans, specifications, transportation costs, packaging and packing costs, labor and material costs, overhead costs, and any other additional costs which may be appropriate.

(b) Upon the request of SBA, a procuring activity will provide to SBA a written statement detailing the method it has used to estimate the current fair market price for the 8(a) requirement. This statement must be submitted within 10 working days of SBA’s request. The procuring activity must identify the information, studies, analyses, and other data it used in making its estimate.

(c) The procuring activity’s estimate of fair market price and any supporting data may not be disclosed by SBA to any Participant or potential contractor.

(d) The concern selected to perform an 8(a) contract may request SBA to protest the procuring activity’s estimate of current fair market price to the Secretary of the Department or head of the agency in accordance with § 124.505.