

(C) The concern's technical capabilities; plant, facilities and equipment; production or assembly line processes; packaging and boxing operations; labeling of products; and product warranties.

(ii) Firms that provide computer and other information technology equipment primarily consisting of component parts (such as motherboards, video cards, network cards, memory, power supplies, storage devices, and similar items) who install components totaling less than 50% of the value of the end item are generally not considered the manufacturer of the end item.

(3) The Administrator or designee may waive the requirement set forth in paragraph (b)(1)(iii) of this section under the following two circumstances:

(i) The contracting officer has determined that no small business manufacturer or processor reasonably can be expected to offer a product meeting the specifications (including period for performance) required by a particular solicitation and SBA reviews and accepts that determination; or

(ii) SBA determines that no small business manufacturer or processor of the product or class of products is available to participate in the Federal procurement market.

(4) The two waiver possibilities identified in paragraph (b)(3) of this section are called "individual" and "class" waivers respectively, and the procedures for them are contained in §121.1204.

(5) Any SBA waiver of the nonmanufacturer rule has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act.

(c) *Kit assemblers.* (1) Where the manufactured item being acquired is a kit of supplies or other goods provided by an offeror for a special purpose, the offeror cannot exceed 500 employees, and 50 percent of the total value of the components of the kit must be manufactured by business concerns in the United States which are small under the size standards for the NAICS codes of the components being assembled. The offeror need not itself be the manufacturer of any of the items assembled.

(2) Where the Government has specified an item for the kit which is not produced by U.S. small business concerns, such item shall be excluded from the calculation of total value in paragraph (c)(1) of this section.

(d) *Simplified Acquisition Procedures.* Where the procurement of a manufactured item is processed under Simplified Acquisition Procedures, as defined in §13.101 of the Federal Acquisition Regulation (FAR) (48 CFR 13.101), and where the anticipated cost of the procurement will not exceed \$25,000, the offeror need not supply the end product of a small business concern as long as the product acquired is manufactured or produced in the United States, and the offeror does not exceed 500 employees. The offeror need not itself be the manufacturer of any of the items acquired.

(e) These requirements do not apply to small business concern subcontractors.

[61 FR 3286, Jan. 31, 1996; 61 FR 7986, Mar. 1, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004]

#### **§ 121.407 What are the size procedures for multiple item procurements?**

If a procurement calls for two or more specific end items or types of services with different size standards and the offeror may submit an offer on any or all end items or types of services, the offeror must meet the size standard for each end item or service item for which it submits an offer. If the procurement calls for more than one specific end item or type of service and an offeror is required to submit an offer on all items, the offeror may qualify as a small business for the procurement if it meets the size standard of the item which accounts for the greatest percentage of the total contract value.

#### **§ 121.408 What are the size procedures for SBA's Certificate of Competency Program?**

(a) A firm which applies for a COC must file an "Application for Small Business Size Determination" (SBA Form 355). If the initial review of SBA Form 355 indicates the applicant, including its affiliates, is small for purposes of the COC program, SBA will

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process the application for COC. If the review indicates the applicant, including its affiliates, is other than small, SBA will initiate a formal size determination as set forth in §121.1009. In such a case, SBA will not further process the COC application until a formal size determination is made.

(b) A concern is ineligible for a COC if a formal SBA size determination finds the concern other than small.

**§ 121.409 What size standard applies in an unrestricted procurement for Certificate of Competency purposes?**

For the purpose of receiving a Certificate of Competency in an unrestricted procurement, the applicable size standard is that corresponding to the NAICS code set forth in the solicitation. For a manufactured product, a concern must also furnish a domestically produced or manufactured product, regardless of the size status of the product manufacturer. The offeror need not be the manufacturer of any of the items acquired.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000]

**§ 121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?**

For subcontracting purposes pursuant to sections 8(d) of the Small Business Act, a concern is small for subcontracts which relate to Government procurements if it does not exceed the size standard for the NAICS code that the prime contractor believes best describes the product or service being acquired by the subcontract. However, subcontracts for engineering services awarded under the National Energy Policy Act of 1992 have the same size standard as Military and Aerospace Equipment and Military Weapons under NAICS code 541330.

[61 FR 3286, Jan. 31, 1996, as amended at 65 FR 30863, May 15, 2000; 69 FR 29205, May 21, 2004; 74 FR 46313, Sept. 9, 2009]

**§ 121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?**

(a) Prime contractors may rely on the information contained in the Central Contractor Registration (CCR), or

equivalent data base maintained or sanctioned by SBA, as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. Even though a concern is on a small business source list, it must still qualify and self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor.

(b) Upon determination of the successful subcontract offeror for a competitive subcontract, but prior to award, the prime contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror.

(c) The self-certification of a concern subcontracting or proposing to subcontract under section 8(d) of the Small Business Act may be protested by the contracting officer, the prime contractor, the appropriate SBA official or any other interested party.

[61 FR 3286, Jan. 31, 1996, as amended at 69 FR 29205, May 21, 2004]

**§ 121.412 What are the size procedures for partial small business set-asides?**

A firm is required to meet size standard requirements only for the small business set-aside portion of a procurement, and is not required to qualify as a small business for the unrestricted portion.

**§ 121.413 [Reserved]**

**SIZE ELIGIBILITY REQUIREMENTS FOR SALES OR LEASE OF GOVERNMENT PROPERTY**

**§ 121.501 What programs for sales or leases of Government property are subject to size determinations?**

Sections 121.501 through 121.512 apply to small business size determinations for the purpose of the sale or lease of Government property, including the Timber Sales Program, the Special Salvage Timber Sales Program, and the sale of Government petroleum, coal and uranium.

**§ 121.502 What size standards are applicable to programs for sales or leases of Government property?**

(a) Unless otherwise specified in this part—