

Small Business Administration

§ 124.602

the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant whenever it is established that a business concern other than an 8(a) Participant willfully sought and received the award by misrepresentation.

(b) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of 8(a) status:

(1) Submission of a bid or proposal for an 8(a) sole source or competitive contract.

(2) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement, as a small disadvantaged business (SDB).

(c) *Signature Requirement.* Each offer for an 8(a) contract shall contain a certification concerning the 8(a) status of a business concern seeking the contract. An authorized official must sign the certification on the same page containing the 8(a) status claimed by the concern.

(d) *Limitation of Liability.* Paragraphs (a)-(c) of this section may be determined not to apply in the case of unintentional errors, technical malfunctions, and other similar situations that demonstrate that a misrepresentation of 8(a) status was not affirmative, intentional, willful or actionable under the False Claims Act, 31 U.S.C. 3729, et seq. A prime contractor acting in good faith should not be held liable for misrepresentations made by its subcontractors regarding the subcontractors' 8(a) status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing representation or certification as an eligible 8(a) Participant, the clarity or ambiguity of the representation or certification requirement, and the efforts made to correct an incorrect or invalid representation or certification in a timely manner. An individual or firm may not be held liable where government personnel have erroneously identified a concern as an eligible 8(a) Participant without any representation or certification having been made by the

concern and where such identification is made without the knowledge of the individual or firm.

[78 FR 38818, June 28, 2013]

MISCELLANEOUS REPORTING REQUIREMENTS

§ 124.601 What reports does SBA require concerning parties who assist Participants in obtaining federal contracts?

(a) Each Participant must submit semi-annually a written report to its assigned BOS that includes a listing of any agents, representatives, attorneys, accountants, consultants and other parties (other than employees) receiving fees, commissions, or compensation of any kind to assist such Participant in obtaining or seeking to obtain a Federal contract. The listing must indicate the amount of compensation paid and a description of the activities performed for such compensation.

(b) Failure to submit the report is good cause for the initiation of a termination proceeding pursuant to §§ 124.303 and 124.304.

[63 FR 35739, June 30, 1998, as amended at 76 FR 8264, Feb. 11, 2011]

§ 124.602 What kind of annual financial statement must a Participant submit to SBA?

(a) Except as set forth in paragraph (a)(1) of this section, Participants with gross annual receipts of more than \$10,000,000 must submit to SBA audited annual financial statements prepared by a licensed independent public accountant within 120 days after the close of the concern's fiscal year.

(1) Participants with gross annual receipts of more than \$10,000,000 which are owned by a Tribe, ANC, NHO, or CDC may elect to submit unaudited financial statements within 120 days after the close of the concern's fiscal year, provided the following additional documents are submitted simultaneously:

(i) Audited annual financial statements for the parent company owner of the Participant, prepared by a licensed independent public accountant, for the equivalent fiscal year;

(ii) Certification from the Participant's Chief Executive Officer and

Chief Financial Officer (or comparable positions) that each individual has read the unaudited financial statements, affirms that the statements do not contain any material misstatements, and certifying that the statements fairly represent the Participant's financial condition and result of operations.

(2) In the first year that a Participant's gross receipts exceed \$10,000,000, a Participant may provide an audited balance sheet, with the income and cash flow statements receiving the level of service required for the previous year (review or none, depending on sales the year before the audit is required).

(3) The servicing SBA District Director may waive the requirement for audited financial statements for good cause shown by the Participant.

(4) Circumstances where waivers of audited financial statements may be granted include, but are not limited to, the following:

(i) The concern has an unexpected increase in sales towards the end of its fiscal year that creates an unforeseen requirement for audited statements;

(ii) The concern unexpectedly experiences severe financial difficulties which would make the cost of audited financial statements a particular burden; and

(iii) The concern has been a Participant less than 12 months.

(b)(1) Participants with gross annual receipts between \$2,000,000 and \$10,000,000 must submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant within 90 days after the close of the concern's fiscal year.

(2) The servicing SBA District Director may waive the requirement for reviewed financial statements for good cause shown by the Participant.

(c) Participants with gross annual receipts of less than \$2,000,000 must submit to SBA an annual statement prepared in-house or a compilation statement prepared by a licensed independent public accountant, verified as to accuracy by an authorized officer, partner, limited liability member, or sole proprietor of the Participant, including signature and date, within 90 days after the close of the concern's fiscal year.

(d) Any audited or reviewed financial statements submitted to SBA pursuant to paragraphs (a) or (b) of this section must be prepared in accordance with Generally Accepted Accounting Principles.

(e) While financial statements need not be submitted until 90 or 120 days after the close of a Participant's fiscal year, depending on the receipts of the concern, a Participant seeking to be awarded an 8(a) contract between the close of its fiscal year and such 90 or 120-day time period must submit a final sales report signed by the CEO or President to SBA in order for SBA to determine the concern's eligibility for the 8(a) contract. This report must show a breakdown of 8(a) and non-8(a) sales.

(f) Notwithstanding the amount of a Participant's gross annual receipts, SBA may require audited or reviewed statements whenever they are needed to obtain more complete information as to a concern's assets, liabilities, income or expenses, such as when the concern's capacity to perform a specific 8(a) contract must be determined, or when they are needed to determine continued program eligibility.

(g) Participants owned by Tribes, ANCs, NHOs and CDCs may submit consolidated financial statements prepared by the parent entity that include schedules for each 8(a) Participant instead of separate audited financial statements for each individual 8(a) Participant. If one Participant must submit an audited financial statement, then the consolidated statement and the schedules for each 8(a) Participant must be audited.

[63 FR 35739, June 30, 1998, as amended at 76 FR 8264, Feb. 11, 2011]

§ 124.603 What reports regarding the continued business operations of former Participants does SBA require?

Former Participants must provide such information as SBA may request concerning the former Participant's continued business operations, contracts, and financial condition for a period of three years following the date on which the concern graduates or is terminated from the program. Failure