

(c) The limitations on subcontracting (performance of work) requirements, the ostensible subcontracting rule, and the nonmanufacturer rule do not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold (as both terms are defined in the FAR at 48 CFR 2.101).

(d) *Multiple item acquisitions.* (1) If at least 50% of the estimated contract value is composed of items that are manufactured by small business concerns, then a waiver of the nonmanufacturer rule is not required. There is no requirement that each and every item acquired in a multiple-item procurement be manufactured by a small business.

(2) If more than 50% of the estimated contract value is composed of items manufactured by other than small concerns, then a waiver is required. SBA may grant a contract specific waiver for one or more items in order to ensure that at least 50% of the value of the products to be supplied by the nonmanufacturer comes from domestic small business manufacturers or are subject to a waiver.

(3) If a small business is both a manufacturer of item(s) and a nonmanufacturer of other item(s), the manufacturer size standard should be applied.

(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; 76 FR 8252, Feb. 11, 2011; 78 FR 61132, Oct. 2, 2013; 81 FR 4469, Jan. 26, 2016; 81 FR 34259, May 31, 2016; 81 FR 48579, July 25, 2016; 83 FR 12851, Mar. 26, 2018; 84 FR 65661, Nov. 29, 2019; 85 FR 66182, Oct. 16, 2020; 88 FR 26201, Apr. 27, 2023]

§ 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 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 §121.1001(b)(3)(ii). 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.

[61 FR 3286, Jan. 31, 1996, as amended at 81 FR 34259, May 31, 2016]

§ 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. 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; 81 FR 34259, May 31, 2016]

§ 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

§ 121.411

13 CFR Ch. I (1–1–24 Edition)

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 System for Award Management (SAM) (or any successor system or equivalent database 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.

(b) Even if 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. Prime contractors (or subcontractors) may accept paper self-certifications as to size and socioeconomic status or a subcontractor's electronic self-certification as to size or socioeconomic status, if the solicitation for the subcontract contains a clause which provides that the subcontractor verifies by submission of the offer that the size or socioeconomic representations and certifications are accurate and complete. Electronic submission may include any method acceptable to the prime contractor (or subcontractor) including, but not limited to, size representations and certifications made in SAM (or any successor system) and electronic conveyance of subcontractor certifications in prime contractor systems in connection with an offer for a subcontract. Prime contractors or subcontractors may not require the use of SAM (or any successor system) for purposes of representing size or socioeconomic status in connection with a subcontract.

(c) Upon determination of the successful subcontract offeror for a competitive subcontract over the simplified acquisition threshold, 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.

(d) 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.

(e) *Presumption of Loss Based on the Total Amount Expended.* In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on 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 a small business concern willfully sought and received the award by misrepresentation.

(f) *Deemed Certifications.* The following actions shall be deemed affirmative, willful and intentional certifications of small business size and status:

(1) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(2) Submission of a bid, proposal, application or offer for a Federal grant, contract, subcontract, cooperative agreement or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(3) 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 business concern.