

§ 128.401 What requirements must a VOSB or SDVOSB meet to submit an offer on a contract?

(a) *Certification requirement.* Only certified VOSBs and SDVOSBs are eligible to submit an offer on a specific VOSB or SDVOSB requirement. The concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract and be a certified VOSB or SDVOSB at the time of initial offer or response which includes price. Any small business concern that submits a complete certification application with to SBA on or before December 31, 2023, shall be eligible to self-certify for SDVOSB sole source or set-aside contracts (other than VA contracts) until SBA declines or approves the concern's application. Any small business concern that does not submit to SBA a complete SDVOSB certification application to SBA on or before December 31, 2023, will no longer be eligible to self-certify for SDVOSB sole source or set-aside contracts effective January 1, 2024.

(b) *Joint ventures.* A joint venture may submit an offer for a VOSB or SDVOSB contract if the joint venture meets the requirements set forth in § 128.402.

(c) *Non-manufacturers.* A certified VOSB or SDVOSB that is a non-manufacturer may submit an offer on a VOSB or SDVOSB contract for supplies if it meets the requirements of the non-manufacturer rule set forth at § 121.406(b)(1) of this chapter.

(d) *Multiple Award Contracts—(1) VOSB or SDVOSB status.* With respect to Multiple Award Contracts, orders issued against a Multiple Award Contract, and Blanket Purchase Agreements issued against a Multiple Award Contract:

(i) SBA determines a VOSB or SDVOSB's eligibility for the underlying Multiple Award Contract as of the date a business concern certifies its status as a certified VOSB or SDVOSB as part of its initial offer or response which includes price, unless the firm was required to recertify under paragraph (e) of this section.

(A) *Unrestricted Multiple Award Contracts or set-aside Multiple Award Contracts for other than VOSB or SDVOSB.*

For an unrestricted Multiple Award Contract or other Multiple Award Contract not specifically set aside for VOSBs or SDVOSBs, if a business concern is a certified VOSB or SDVOSB at the time of offer and contract-level recertification for the Multiple Award Contract, it is a VOSB or SDVOSB for goaling purposes for each order issued against the contract, unless a contracting officer requests recertification as a VOSB or SDVOSB for a specific order or Blanket Purchase Agreement or a contracting officer sets aside an order exclusively for VOSBs or SDVOSBs. Except for orders and Blanket Purchase Agreements issued under any Federal Supply Schedule contract, if an order or a Blanket Purchase Agreement under an unrestricted Multiple Award Contract is set aside exclusively for VOSBs or SDVOSBs, a concern must be a certified VOSB or SDVOSB at the time it submits its initial offer or response which includes price, for the particular order or Blanket Purchase Agreement. However, where the underlying Multiple Award Contract has been awarded to a pool of concerns for which certified VOSB or SDVOSB status is required, if an order or a Blanket Purchase Agreement under that Multiple Award Contract is set aside exclusively for concerns in the certified VOSB or SDVOSB pool, concerns need not recertify their status as VOSBs or SDVOSBs (unless a contracting officer requests size certifications with respect to a specific order or Blanket Purchase Agreement).

(B) *VOSB or SDVOSB set-aside Multiple Award Contracts.* For a Multiple Award Contract that is specifically set aside for VOSBs or SDVOSBs, if a business concern is a certified VOSB or SDVOSB at the time of offer and contract-level recertification for the Multiple Award Contract, it is a VOSB or SDVOSB for each order issued against the contract, unless a contracting officer requests recertification as a VOSB or SDVOSB for a specific order or Blanket Purchase Agreement.

(ii) SBA will determine VOSB or SDVOSB status at the time of initial offer or response which includes price, for an order or an Agreement issued against a Multiple Award Contract, if the contracting officer requests a new

VOSB or SDVOSB certification for the order or Agreement.

(iii) For an indefinite delivery, indefinite quantity (IDIQ), Multiple Award Contract, where concerns are not required to submit price as part of the offer for the IDIQ contract, size will be determined as of the date of initial offer, which may not include price.

(2) *Total set-aside contracts.* The certified VOSB or SDVOSB must comply with the applicable limitations on subcontracting provisions (see §125.6 of this chapter) and the nonmanufacturer rule (see §121.406(b) of this chapter), if applicable, in the performance of a contract totally set aside for VOSBs or SDVOSBs. However, contracting officers, in their discretion, may require a concern to perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(3) *Partial set-aside contracts.* For orders awarded under a partial set-aside contract, the certified VOSB or SDVOSB must comply with the applicable limitations on subcontracting provisions (see §125.6 of this chapter) and the nonmanufacturer rule (see §121.406(b) of this chapter), if applicable, during each performance period of the contract (e.g., during the base term and then during each option period thereafter). For orders awarded under the non-set-aside portion, the VOSB or SDVOSB need not comply with any limitations on subcontracting or nonmanufacturer rule requirements. However, contracting officers, in their discretion, may require a concern to perform the applicable amount of work or comply with the nonmanufacturer rule for each order awarded under the contract.

(4) *Orders.* The certified VOSB or SDVOSB must comply with the applicable limitations on subcontracting provisions (see §125.6 of this chapter) and the nonmanufacturer rule (see §121.406(b) of this chapter), if applicable, in the performance of each individual order that has been set aside for VOSBs or SDVOSBs.

(5) *Reserves.* The certified VOSB or SDVOSB must comply with the applicable limitations on subcontracting provisions (see §125.6 of this chapter) and the nonmanufacturer rule (see

§121.406(b) of this chapter), if applicable, in the performance of an order that is set aside for VOSBs or SDVOSBs. However, the VOSB or SDVOSB will not have to comply with the limitations on subcontracting provisions and the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed among VOSBs or SDVOSBs, and other-than-small business concerns.

(e) *Recertification.* (1) A Participant that qualifies as a VOSB or SDVOSB at the time of initial offer response which includes price, including a Multiple Award Contract, is generally considered to be a VOSB or SDVOSB throughout the life of that contract. This means that if a VOSB or SDVOSB is certified at the time of initial offer for a Multiple Award Contract, then it will be considered a VOSB or SDVOSB for each order issued against the contract, unless a contracting officer requests a new VOSB or SDVOSB eligibility review in connection with a specific order. Where a concern is later decertified from the Veteran-Owned Small Business Contracting Program, the procuring agency may exercise options and still count the award as an award to a VOSB or SDVOSB. For a Multiple Award Contract, a concern that has been decertified from the Veteran-Owned Small Business Contracting Program may still be issued orders as a VOSB or SDVOSB unless the contracting officer requests recertification of VOSB or SDVOSB status in connection with the order. However, the following exceptions apply to this paragraph (e)(1):

(i) Where a contract is novated to another business concern, the concern that will continue performance on the contract must recertify its status as a VOSB or SDVOSB to the procuring agency or inform the procuring agency that it does not qualify as a VOSB or SDVOSB within 30 calendar days of the novation approval. If the concern is not a VOSB or SDVOSB, the agency can no longer count the options or orders issued pursuant to the contract from that point forward towards its VOSB or SDVOSB goals.

(ii) Where a concern that is performing a contract acquires, is acquired by, or merges with another concern and contract novation is not required, the concern must, within 30 days of the transaction becoming final, recertify its VOSB or SDVOSB status to the procuring agency or inform the procuring agency that it no longer qualifies as a VOSB or SDVOSB. If the contractor is not a VOSB or SDVOSB, the agency can no longer count the options or orders issued pursuant to the contract from that point forward towards its VOSB or SDVOSB goals. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new status.

(iii) Where there has been a VOSB or SDVOSB status protest on the solicitation or contract, part 134 of this chapter describes the effect of the status determination on the contract award.

(2) For the purposes of VOSB or SDVOSB contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its VOSB or SDVOSB status no more than 120 calendar days prior to the end of the fifth year of the contract, and no more than 120 calendar days prior to exercising any option. If the business is unable to recertify its status as a certified VOSB or SDVOSB, the procuring agency may no longer be able to count the options or orders issued pursuant to the contract, from that point forward, towards its VOSB or SDVOSB goals.

(i) A business concern that did not certify itself as a VOSB or SDVOSB, either initially or prior to an option being exercised, may recertify itself as a VOSB or SDVOSB for a subsequent option period if it meets the eligibility requirements in this part at that time.

(ii) Recertification does not change the terms and conditions of the contract. The limitations on subcontracting (see §125.6 of this chapter), nonmanufacturer (see §121.406(b) of this chapter), and subcontracting plan requirements (see §125.3(a) of this chapter) in effect at the time of contract award remain in effect throughout the life of the contract. However, a concern

that initially self-certified as an SDVOSB for the award of an SDVOSB contract may recertify as an SDVOSB only if it is currently a certified SDVOSB.

(iii) Where the contracting officer explicitly requires concerns to recertify their status in response to a solicitation for an order, SBA will determine eligibility as of the date the concern submits its response to the solicitation for the order.

(iv) A concern's status may be determined at the time of a response to a solicitation for an Agreement and each order issued pursuant to the Agreement.

(f) *Limitations on subcontracting.* A business concern seeking a VOSB or SDVOSB contract must meet the applicable limitations on subcontracting requirements set forth in §125.6 of this chapter.

(g) *Ostensible subcontractor.* Where a subcontractor that is not a certified VOSB or SDVOSB will perform the primary and vital requirements of a VOSB or SDVOSB contract, or where a VOSB or SDVOSB prime contractor is unduly reliant on one or more small businesses that are not certified VOSBs or SDVOSBs to perform the VOSB or SDVOSB contract, the prime contractor is not eligible for award of that VOSB or SDVOSB contract.

(1) When the subcontractor qualifies as small for the size standard assigned to the procurement, this issue may be grounds for a VOSB or SDVOSB status protest, as described in §134.1003(c) of this chapter. When the subcontractor is alleged to be other than small for the size standard assigned to the procurement, this issue may be grounds for a size protest under the ostensible subcontractor rule, as described at §121.103(h)(2) of this chapter.

(2) In the case of a contract or order for services, specialty trade construction or supplies, SBA will find that a prime VOSB or SDVOSB contractor is performing the primary and vital requirements of the contract or order, and is not unduly reliant on one or more subcontractors that are not certified VOSBs or SDVOSBs, where the prime contractor can demonstrate that it, together with any subcontractors that are certified VOSBs or SDVOSBs,

will meet the limitations on subcontracting provisions set forth in §125.6 of this chapter.

(3) In a general construction contract, the primary and vital requirements of the contract are the management, supervision and oversight of the project, including coordinating the work of various subcontractors, not the actual construction work performed.

(h) *Two-step procurements.* For purposes of architect-engineering, design-build or two-step sealed bidding procurements, a concern must be certified as a VOSB or SDVOSB as of the date that it submits its initial bid or proposal (which may or may not include price) during phase one.

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EFFECTIVE DATE NOTE: Amendments to §128.401 were published at 89 FR 102509, Dec. 17, 2024, effective Jan. 16, 2025.

§ 128.402 When may a joint venture submit an offer on a VOSB or SDVOSB contract?

(a) *General.* A certified VOSB or SDVOSB may enter into a joint venture agreement with one or more other small business concerns, or with an approved mentor authorized by §125.9 of this chapter, for the purpose of submitting an offer for a VOSB or SDVOSB contract. The joint venture itself need not be a certified VOSB or SDVOSB. Where this section references the requirements of a VOSB or SDVOSB joint venture partner, the VOSB or SDVOSB status of that joint venture partner must correspond with the type of award (*e.g.*, to be eligible for a SDVOSB contract, a SDVOSB joint venture partner must be the managing venturer of the joint venture).

(1) The VOSB or SDVOSB joint venture partner must be certified in accordance with this part;

(2) The joint venture agreement must comply with the requirements set forth in this part; and

(3) A VOSB or SDVOSB cannot be a joint venture partner on more than one joint venture that submits an offer for a specific contract or order set-aside or reserved for VOSBs or SDVOSBs.

(b) *Size.* (1) A joint venture of at least one certified VOSB or SDVOSB and one or more other business concerns may submit an offer as a small business for a competitive VOSB or SDVOSB procurement or sale, or be awarded a sole source VOSB or SDVOSB contract, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement or sale.

(2) A joint venture between a protégé firm certified as a VOSB or SDVOSB and its SBA-approved mentor (*see* §125.9 of this chapter) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the VOSB or SDVOSB procurement or sale.

(c) *Contents of joint venture agreement.* Every joint venture agreement to perform a VOSB or SDVOSB contract, including those between a protégé firm certified as a VOSB or SDVOSB and its SBA-approved mentor authorized by §125.9 of this chapter, must contain a provision:

(1) Setting forth the purpose of the joint venture;

(2) Designating a certified VOSB or SDVOSB as the managing venturer of the joint venture and designating a named employee of the certified VOSB or SDVOSB managing venturer as the manager with ultimate responsibility for performance of the contract (the “Responsible Manager”);

(i) The managing venturer is responsible for controlling the day-to-day management and administration of the contractual performance of the joint venture, but other partners to the joint venture may participate in all corporate governance activities and decisions of the joint venture as is commercially customary;

(ii) The individual identified as the Responsible Manager of the joint venture need not be an employee of the certified VOSB or SDVOSB at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the certified VOSB or SDVOSB if the joint venture is the successful offeror. The individual identified as the Responsible Manager cannot be employed by the