

official must sign the certification on the same page containing the SDVOSB status claimed by the concern.

(d) *Limitation of liability.* Paragraphs (a) through (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 VOSB or SDVOSB 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' VOSB or SDVOSB status. Relevant factors to consider in making this determination may include the firm's internal management procedures governing VOSB or SDVOSB status representations or certifications, 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 a VOSB or SDVOSB 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.

(e) *Penalties for misrepresentation—(1) Suspension or debarment.* The SBA suspension and debarment official or the agency suspension and debarment official may suspend or debar a person or concern for misrepresenting a firm's status as a VOSB or SDVOSB pursuant to the procedures set forth in 48 CFR part 9, subpart 9.4.

(2) *Civil penalties.* Persons or concerns are subject to severe penalties under the False Claims Act, 31 U.S.C. 3729–3733, the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, and any other applicable laws or regulations, including part 142 of this chapter.

(3) *Criminal penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the VOSB or SDVOSB status of a concern in connection with procurement programs pursuant to section 16(d) of the Small Business Act, 15

U.S.C. 645(d), as amended, 18 U.S.C. 1001, 18 U.S.C. 287, and any other applicable laws. Persons or concerns are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

Subpart G—Surplus Personal Property for Veteran-Owned Small Business Programs

§ 128.700 How does a VOSB obtain Federal surplus personal property?

(a) *General.* (1) Pursuant to 15 U.S.C. 657b(g), eligible small business concerns owned and controlled by veterans may receive surplus Federal Government property from State Agencies for Surplus Property (SASPs). The procedures set forth in 41 CFR part 102–37 and this section will be used to transfer surplus personal property to such concerns.

(2) The surplus personal property which may be transferred to SASPs for further transfer to eligible small business concerns owned and controlled by veterans includes all surplus personal property which has become available for donation pursuant to 41 CFR 102–37.30.

(b) *Eligibility to receive Federal surplus personal property.* To be eligible to receive Federal surplus personal property, on the date of transfer a concern must:

(1) Be a small business concern owned and controlled by veterans, that has been certified by SBA under this part;

(2) Not be debarred, suspended, or declared ineligible under title 2 or title 48 of the CFR; and

(3) Be engaged or expect to be engaged in business activities making the item useful to it.

(c) *Use of acquired surplus personal property.* (1) Eligible concerns may acquire Federal surplus personal property from the SASP in the state(s) where the concern is located and operates, provided the concern represents and agrees in writing:

(i) As to what the intended use of the surplus personal property is to be;

(ii) That it will use the surplus personal property to be acquired in the normal conduct of its business activities or be liable for the fair rental value from the date of its receipt;

(iii) That it will not sell or transfer the surplus personal property to be acquired to any party other than the Federal Government as required by General Services Administration (GSA) and SASP requirements and guidelines;

(iv) That, at its own expense, it will return the surplus personal property to a SASP if directed to do so by SBA, including where the concern has not used the property as intended within one year of receipt;

(v) That, should it breach its agreement not to sell or transfer the surplus personal property, it will be liable to the Federal Government for the established fair market value or the sale price, whichever is greater, of the property sold or transferred; and

(vi) That it will give GSA and the SASP access to inspect the surplus personal property and all records pertaining to it.

(2) A concern receiving surplus personal property pursuant to this section assumes all liability associated with or stemming from the use of the property, and all costs associated with the use and maintenance of the property.

(d) *Costs.* Concerns acquiring surplus personal property from a SASP may be required to pay a service fee to the SASP in accordance with 41 CFR 102–37.280. In no instance will any SASP charge a concern more for any service than their established fees charged to other transferees.

(e) *Title.* Upon execution of the SASP distribution document, the firm receiving the property has only conditional title to the property during the applicable period of restriction. Full title to the property will vest in the recipient concern only after the recipient concern has met all of the requirements of this part and the requirements of GSA and the SASP that it received the property from.

PART 129—CONTRACTS FOR SMALL BUSINESSES LOCATED IN DISASTER AREAS, AND SURPLUS PERSONAL PROPERTY FOR SMALL BUSINESSES LOCATED IN DISASTER AREAS, PUERTO RICO, AND COVERED TERRITORY BUSINESSES

Subpart A—Contracts for Small Businesses Located in Disaster Areas

Sec.

129.100 What definitions are important in this part?

129.101 What contracting preferences are available for small business concerns located in disaster areas?

129.102 What small business goaling credit do agencies receive for awarding an emergency response contract to a small business concern under this part?

129.103 What are the applicable performance requirements?

129.104 What are the penalties of misrepresentation of size or status?

Subpart B—Surplus Personal Property For Small Businesses Located in Disaster Areas

129.200 What definitions are important in this subpart?

129.201 How does a small business concern located in a disaster area obtain Federal surplus personal property?

Subpart C—Surplus Personal Property for Small Businesses Located in Puerto Rico and for Covered Territory Businesses

129.300 What definitions are important in this subpart?

129.301 How does a covered territory business or small business concern located in Puerto Rico obtain Federal surplus personal property?

AUTHORITY: 15 U.S.C. 636(j)(13)(F)(ii), (iii), 644(f).

SOURCE: 84 FR 65665, Nov. 29, 2019, unless otherwise noted.

Subpart A—Contracts for Small Businesses Located in Disaster Areas

§ 129.100 What definitions are important in this part?

For the purposes of this part:

Concern located in a disaster area is a firm that during the last twelve months—