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(i) Submitting and negotiating before award an acceptable subcontracting plan that reflects maximum practicable opportunities for small businesses in the performance of the contract as subcontractors or suppliers. A prime contractor may submit a commercial plan, described in paragraph (c)(2) of this section, instead of an individual subcontracting plan, when the product or service being furnished to the Government meets the definition of a commercial item under 48 CFR 2.101;

(ii) Making a good-faith effort to achieve the dollar and percentage goals and other elements in its subcontracting plan;

(iii) Submitting a timely, accurate, and complete SF-294, Subcontracting Report for Individual Contract, and SF-295, Summary Subcontract Report; or entering the same information into an electronic database approved by SBA;

(iv) Cooperating in the reviews of subcontracting plan compliance, including providing requested information and supporting documentation reflecting actual achievements and good-faith efforts to meet the goals and other elements in the subcontracting plan;

(v) Providing pre-award written notification to unsuccessful small business offerors on all subcontracts over \$100,000 for which a small business concern received a preference. The written notification must include the name and location of the apparent successful offeror and if the successful offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business; and

(vi) As a best practice, providing the pre-award written notification cited in paragraph (c)(1)(v) of this section to unsuccessful and small business offerors on subcontracts at or below \$100,000 whenever it is practical to do so.

(2) A commercial plan, also referred to as an annual plan or company-wide plan, is the preferred type of subcontracting plan for contractors furnishing commercial items. A commercial plan covers the offeror's fiscal year and applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line). Once approved, the plan remains in effect during the contractor's fiscal year for all Federal government contracts in effect during that period. The contracting officer of the agency that originally approved the commercial plan will exercise the functions of the contracting officer on behalf of all agencies that award contracts covered by the plan.

(3) The additional prime contractor responsibilities described in paragraph (c)(1) of this section do not apply if:

(i) The prime contractor is a small business concern;

(ii) The prime contract or contract modification is a personal services contract; or

(iii) The prime contract or contract modification will be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(d) Determination of good-faith efforts. Evidence that a large business prime contractor has made a good-faith effort to comply with its subcontracting plan or other subcontracting responsibilities includes supporting documentation that:

(1) The contractor performed one or more of the actions described in paragraph (b) of this section, as appropriate for the procurement;

(2) Although the contractor may have failed to achieve its goal in



























more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent

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caregiver of such veteran) must serve as general partners, with control over all partnership decisions.

(d) Control over a limited liability company. In the case of a limited liability company, one or more service-disabled veterans (or in the case of a veteran with permanent or severe disability, the spouse or permanent caregiver of such veteran) must serve as managing members, with control over all decisions of the limited liability company.

(e) Control over a corporation. One or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran) must control the Board of Directors of the concern. Service-disabled veterans are considered to control the Board of Directors when either:

(1) One or more service-disabled veterans own at least 51% of all voting stock of the concern, are on the Board of Directors and have the percentage of voting stock necessary to overcome any super majority voting requirements; or

(2) Service-disabled veterans comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

Sec. 125.11 What size standards apply to SDVO SBCs?

(a) At time of contract offer, an SDVO SBC must be small within the size standard corresponding to the NAICS code assigned to the contract.

(b) If the contracting officer is unable to verify that the SDVO SBC is small, the concern shall be referred to the responsible SBA Government Contracting Area Director for a formal size determination in accordance with part 121 of this chapter.

Sec. 125.12 May an SDVO SBC have affiliates?

A concern may have affiliates provided that the aggregate size of the concern and all its affiliates is small as defined in part 121 of this chapter.

Sec. 125.13 May 8(a) Program participants, HUBZone SBCs, Small and Disadvantaged Businesses, or Women-Owned Small Businesses qualify as SDVO SBCs?

Yes, 8(a) Program participants, HUBZone SBCs, Small and Disadvantaged Businesses, and Women-Owned SBCs, may also qualify as SDVO SBCs if they meet the requirements in this subject.

[70 FR 56814, Sept. 29, 2005]

Subpart C\_Contracting with SDVO SBCs

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