

§ 125.10

unexercised stock options or similar agreements held by service-disabled veterans. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-service-disabled veterans will be treated as exercised, except for any ownership interests which are held by investment companies licensed under the Small Business Investment Act of 1958.

(f) *Change of ownership.* A concern may change its ownership or business structure so long as one or more service-disabled veterans own and control it after the change.

§ 125.10 Who does SBA consider to control an SDVO SBC?

(a) *General.* To be an eligible SDVO SBC, the management and daily business operations of the concern must be controlled by 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). Control by one or more service-disabled veterans means that both the long-term decisions making and the day-to-day management and administration of the business operations must be conducted by 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).

(b) *Managerial position and experience.* A service-disabled veteran (or in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran) must hold the highest officer position in the concern (usually President or Chief Executive Officer) and must have managerial experience of the extent and complexity needed to run the concern. The service-disabled veteran manager (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran) need not have the technical expertise or possess the required license to be found to control the concern if the service-disabled veteran can demonstrate that he or she has ultimate managerial and supervisory control over those who possess

13 CFR Ch. I (1-1-12 Edition)

the required licenses or technical expertise.

(c) *Control over a partnership.* In the case of a partnership, 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 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.

§ 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.

§ 125.12 May an SDVO SBC have affiliates?

A concern may have affiliates provided that the aggregate size of the

Small Business Administration

§ 125.15

concern and all its affiliates is small as defined in part 121 of this chapter.

§ 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

SOURCE: 69 FR 25268, May 5, 2004, unless otherwise noted.

§ 125.14 What are SDVO contracts?

SDVO contracts are contracts awarded to an SDVO SBC through a sole source award or a set-aside award based on competition restricted to SDVO SBCs.

§ 125.15 What requirements must an SDVO SBC meet to submit an offer on a contract?

(a) *Representation of SDVO SBC status.* An SDVO SBC must submit the following representations with its initial offer (which includes price) on a specific contract:

- (1) It is an SDVO SBC;
- (2) It is small under the NAICS code assigned to the procurement;
- (3) It will meet the percentage of work requirements set forth in § 125.6;
- (4) If applicable, it is an eligible joint venture; and
- (5) If applicable, it is an eligible non-manufacturer.

(b) *Joint ventures.* An SDVO SBC may enter into a joint venture agreement with one or more other SBCs for the purpose of performing an SDVO contract.

(1) Size of concerns to an SDVO SBC joint venture.

- (i) A joint venture of at least one SDVO SBC and one or more other business concerns may submit an offer as a small business for a competitive SDVO SBC procurement so long as each concern is small under the size standard

corresponding to the NAICS code assigned to the contract, provided:

(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds \$10 million;

(ii) For sole source and competitive SDVO SBC procurements that do not exceed the dollar levels identified in paragraphs (b)(1)(i)(A) and (B) of this section, an SDVO SBC entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the SDVO contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAICS code assigned to the SDVO contract.

(2) Contents of joint venture agreement. Every joint venture agreement to perform an SDVO contract must contain a provision:

- (i) Setting forth the purpose of the joint venture;
- (ii) Designating an SDVO SBC as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the SDVO contract;

(iii) Stating that not less than 51% of the net profits earned by the joint venture will be distributed to the SDVO SBC(s);

(iv) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the SDVO contract;

(v) Obligating all parties to the joint venture to ensure performance of the SDVO contract and to complete performance despite the withdrawal of any member;

(vi) Requiring the final original records be retained by the managing venturer upon completion of the SDVO contract performed by the joint venture;

(3) *Performance of work.* For any SDVO contract, the joint venture must perform the applicable percentage of work required by § 124.510 of this chapter.