

is a similarly situated entity shall not be considered subcontracted for purposes of determining whether the covered small business concern has violated a requirement established under subsection (a) or (d).

(c) Modifications of percentages

The Administrator may change, by rule (after providing notice and an opportunity for public comment), a percentage specified in paragraphs (1) through (4) of subsection (a) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(d) Other contracts

(1) In general

With respect to a category of contracts to which a requirement under subsection (a) does not apply, the Administrator is authorized to establish, by rule (after providing notice and an opportunity for public comment), a requirement that a covered small business concern may not expend on subcontractors more than a specified percentage of the amount paid to the concern under a contract in that category.

(2) Uniformity

A requirement established under paragraph (1) shall apply to all covered small business concerns.

(3) Construction projects

The Administrator shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (1).

(e) Definitions

In this section, the following definitions apply:

(1) Covered small business concern

The term “covered small business concern” means a business concern that—

(A) with respect to a contract awarded under section 637(a) of this title, is a small business concern eligible to receive contracts under that section;

(B) with respect to a contract awarded under section 637(m) of this title—

(i) is a small business concern owned and controlled by women (as defined in that section); or

(ii) is a small business concern owned and controlled by women (as defined in that section) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(C) with respect to a contract awarded under section 644(a) of this title, is a small business concern;

(D) with respect to a contract awarded under section 657a of this title, is a qualified HUBZone small business concern; or

(E) with respect to a contract awarded under section 657f of this title, is a small business concern owned and controlled by service-disabled veterans.

(2) Similarly situated entity

The term “similarly situated entity” means a subcontractor that—

(A) if a subcontractor for a small business concern, is a small business concern;

(B) if a subcontractor for a small business concern eligible to receive contracts under section 637(a) of this title, is such a concern;

(C) if a subcontractor for a small business concern owned and controlled by women (as defined in section 637(m) of this title), is such a concern;

(D) if a subcontractor for a small business concern owned and controlled by women (as defined in section 637(m) of this title) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law), is such a concern;

(E) if a subcontractor for a qualified HUBZone small business concern, is such a concern; or

(F) if a subcontractor for a small business concern owned and controlled by service-disabled veterans, is such a concern.

(Pub. L. 85-536, §2[46], as added Pub. L. 112-239, div. A, title XVI, §1651, Jan. 2, 2013, 126 Stat. 2079; amended Pub. L. 114-92, div. A, title VIII, §864(b), Nov. 25, 2015, 129 Stat. 927.)

AMENDMENTS

2015—Subsec. (a)(4). Pub. L. 114-92 substituted “which is principally for supplies from a regular dealer in such supplies, and which is not a contract principally for services or construction” for “for supplies from a regular dealer in such supplies” in introductory provisions.

INAPPLICABILITY OF REQUIREMENT TO REVIEW AND JUSTIFY CERTAIN CONTRACTS

Pub. L. 113-66, div. A, title XVI, §1615, Dec. 26, 2013, 127 Stat. 950, provided that: “In the case of a contract to which the provisions of section 46 of the Small Business Act (15 U.S.C. 657s) apply, the requirements under section 802 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1824; 10 U.S.C. 2304 note) do not apply.”

CHAPTER 14B—SMALL BUSINESS INVESTMENT PROGRAM

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