



# SBA FINAL RULE

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# Size and Status Integrity 13 CFR 121.411

- Presumption of loss based on total contract value for misrepresentation 121.411(d)
- Certifications Deemed *Affirmative, Willful and Intentional* 121.411(e)
  - Proposal or bid submission for contracts/subcontracts reserved, set aside, intended for or classified as SB award
  - Registration on Federal electronic database as SB

# Size and Status Integrity 13 CFR 121.411

- Signature Requirement: Authorized official must sign certification on same page containing size status 121.411(f)
- Limitation of Liability: Primes acting in good faith not be held liable for sub misrepresentation 121.411(g)
- Penalties for Misrepresentation: Suspension or debarment; civil and criminal penalties 121.411(h)

# MAC – NAICS Codes 13 CFR 121.402

- NAICS codes must be assigned to all MACs and orders issued thereunder.
  - A single NAICS code must be designated for each order issued under the MAC.
  - If no single NAICS code applies, CO can apply multiple codes only if it can be divided into discrete categories (i.e. CLIN, SIN). CO must assign a NAICS code to each discrete category. Orders placed against each category are assigned the same NAICS code.
  - Agency will receive SB credit only if SB receiving order is small under NAICS code assigned to order.

# MAC – Size Determinations 13 CFR 121.404

- SB must certify size status in accordance with NAICS codes assigned to MAC.
- For MAC, self-certification is at time of initial offer including price.
- For agreements such as BPAs, BAs, BOAs, size is determined *at time of response to solicitation for agreement*. Because agreements are not contracts under FAR, SB credit is applied only if SB qualifies as small *at time of order*.
- For BPAs issued against GSA MAS contracts, size is determined at time of offer on contract.
- Recertification requirements apply if SB acquires another business or is acquired, or is part of a JV involved in M&A.

# Subcontracting 13 CFR 125.3

## General

- Credit cannot be taken for lower-tier subcontract awards.
- Exclusions from the subk base:
  - Purchases from affiliates (Note: Subcontracts by first-tier affiliates should be included.)
  - Internally-generated costs, utilities and charitable contributions
- CO may establish *additional* subk goals as percentage of total contract dollars.
- History of *unjustified* untimely or reduced payments – *three* incidents in a *12* month period.

# Subcontracting 13 CFR 125.3

## Prime Contractors' Responsibilities

- Prime may not prohibit sub from discussing any payment or utilization issues with CO.
- SSRs must include indirect costs on a prorated basis.
- Prime must assign each subcontract the NAICS code and size standard.
- Prime may rely on SAM *IF* subcontract contains a clause (similar to FAR 52.204-8(d)). However, primes may not require the use of SAM.
- When ISR or SSR is rejected by CO, prime is required to revise report within 30 days.

# Subcontracting 13 CFR 125.3

## Prime Contractors' Responsibilities

- Prime must represent that it will make a good faith effort to utilize the SB subs in the same *scope, amount or quality* used in preparing bid or proposal.
- Prime must notify CO in writing whenever the prime contractor does not utilize a SB sub in the same *scope, amount or quality* used in preparing its proposal prior to final invoice submission or contract close-out. (Section 1322 of the SB Jobs Act)

# Subcontracting 13 CFR 125.3

## Prime Contractors' Responsibilities

- Offeror used a SB in preparing bid or proposal if:
  - 1) SB was referenced in bid or proposal or subk plan;
  - 2) Subcontract or agreement in principle to subcontract with SB to perform contract; or
  - 3) SB drafted bid or proposal or its pricing or technical information was used in preparing bid or proposal, with written evidence of intent or understanding that SB would perform related work if offeror receives award.
- Responding to RFQ does not constitute use in preparing bid or offer.

# Subcontracting 13 CFR 125.3

## Prime Contractors' Responsibilities

- Prime is required to notify CO in writing of any reduced or late (90 days past due) payments to a SB subcontractor. (Section 1334 of the SB Jobs Act)
- Prime must provide CO with explanation for goal shortfalls at contract completion.

# Subcontracting 13 CFR 125.3

## CO's Responsibilities

- CO is responsible for reviewing all ISRs and SSRs in eSRS within 60 days after reporting period ends.
- CO must evaluate whether prime has made a GFE to comply with SB subk plan.
- CO is responsible for evaluating prime's written explanation concerning its failure to utilize a SB sub for past performance purposes.
- CO must record identity of prime with history of unjustified untimely or reduced payments in FAPIIS.

# Subcontracting 13 CFR 125.3

## CO's Responsibilities

- CO has discretion to request an updated subk plan in connection with an option.
- CO must require prime to submit a subk plan if mod causes contract value to exceed \$650K. (except for commercial plan holders).
- CO has discretion to request a subk plan if prime's size status changes to other than small as a result of size recertification.
- CO may include offeror's subcontracting or timely payment history as an evaluation factor in solicitation.

# Subcontracting 13 CFR 125.3

## Subk Consideration in Source Selection

- CO may include evaluation factor in solicitation to consider:
  - Prime's subk plan compliance (either part of past performance factor or stand-alone evaluation factor)
  - Prime's commitment to pay SB subs within specific number of days after payment receipt from Gov't
- May apply to solicitations for orders against MAS contracts, GWACs, or MACs, BPAs or BOAs.

# Subcontracting 13 CFR 125.3 MAC Reporting

- Ordering agency should receive credit towards its SB subk goals for orders awarded under another agency's contract.
- Contracting agency will still be responsible for subk plan for underlying IDIQ contract.
- Contractors are required to submit subk reports for individual orders to funding agency. (eSRS and FAR will have to be revised.)
- Funding agency may establish SB subk goals for individual orders, BPAs and BOAs.

# CMR – Your Great Resource!

- Amy Kim (Covering MD and DC primes)
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- Other CMRs (Geographic Coverage):  
<http://www.sba.gov/content/government-contracting-field-staff-directory>