

Small Business Administration

§ 121.405

the contractor must immediately revise all applicable Federal contract databases to reflect the new size status.

(i) A business concern that certified itself as other than small, either initially or prior to an option being exercised, may recertify itself as small for a subsequent option period if it meets the applicable size standard.

(ii) Re-certification does not change the terms and conditions of the contract. The limitations on subcontracting, non-manufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract. However, a contracting officer may require a subcontracting plan if a prime contractor's size status changes from small to other than small as a result of a size recertification.

(iii) A request for a size re-certification shall include the size standard in effect at the time of re-certification that corresponds to the NAICS code that that was initially assigned to the contract.

(iv) A contracting officer must assign a NAICS code and size standard to each order under a long-term contract. The NAICS code and size standard assigned to an order must correspond to a NAICS code and size standard assigned to the underlying long-term contract and must be assigned in accordance with §§ 121.402(b) and (c). A concern will be considered small for that order only if it certified itself as small under the same or lower size standard.

(v) Where the contracting officer explicitly requires concerns to recertify their size status in response to a solicitation for an order, SBA will determine size as of the date the concern submits its self-representation as part of its response to the solicitation for the order.

(4) The requirements in paragraphs (g)(1), (2), and (3) of this section apply to Multiple Award Contracts. However, if the Multiple Award Contract was set-aside for small businesses, partially set-aside for small businesses, or reserved for small business, then in the case of a contract novation, or merger or acquisition where no novation is required, where the resulting contractor is now other than small, the agency cannot count any new or pending or-

ders issued pursuant to the contract, from that point forward, towards its small business goals. This includes set-asides, partial set-asides, and reserves for 8(a) BD Participants, certified HUBZone small business concerns, SDVO SBCs, and ED/WOSBs.

(5) If during contract performance a subcontractor that is not a similarly situated entity performs primary and vital requirements of a contract, the contractor and its ostensible subcontractor will be treated as joint venturers. *See* § 121.103(h)(4).

(h) *Follow-on contracts.* A follow-on or renewal contract is a new contracting action. As such, size is determined as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price for the follow-on or renewal contract.

[69 FR 29205, May 21, 2004, as amended at 71 FR 19813, Apr. 18, 2006; 71 FR 66443, Nov. 15, 2006; 76 FR 5683, Feb. 2, 2011; 76 FR 8252, Feb. 11, 2011; 78 FR 42403, July 16, 2013; 78 FR 38817, June 28, 2013; 78 FR 61131, Oct. 2, 2013; 81 FR 34259, May 31, 2016; 81 FR 48578, July 25, 2016; 83 FR 12851, Mar. 26, 2018; 84 FR 65239, Nov. 26, 2019; 84 FR 65661, Nov. 29, 2019; 85 FR 66180, Oct. 16, 2020; 85 FR 72917, Nov. 16, 2020; 86 FR 2959, Jan. 14, 2021; 86 FR 10732, Feb. 23, 2021; 86 FR 38538, July 22, 2021; 87 FR 73412, Nov. 29, 2022]

§ 121.405 May a business concern self-certify its small business size status?

(a) A concern must self-certify it is small under the size standard specified in the solicitation, or as clarified, completed or supplied by SBA pursuant to § 121.402(d).

(b) A contracting officer may accept a concern's self-certification as true for the particular procurement involved in the absence of a written protest by other offerors or other credible information which causes the contracting officer or SBA to question the size of the concern.

(c) Procedures for protesting the self-certification of an offeror are set forth in §§ 121.1001 through 121.1009.