

the Coast Guard only, has the majority of its earnings accruing directly to the socially and economically disadvantaged individuals.

(c) *Disadvantaged status.* In assessing the personal financial condition of an individual claiming economic disadvantage, his or her net worth must be less than \$750,000 after taking into account the exclusions set forth in § 124.104(c)(2).

(d) *Additional eligibility criteria.* Except for tribes, ANCs, CDCs and NHOs, each individual claiming disadvantaged status must be a citizen of the United States.

(e) *Potential for success not required.* The potential for success requirement set forth in § 124.107 does not apply as an eligibility requirement for an SDB.

(f) *Joint ventures.* Joint ventures are permitted for SDB procurement mechanisms (such as price evaluation adjustments, evaluation factors or sub-factors, monetary subcontracting incentives, or SDB set-asides), provided that the requirements set forth in this paragraph are met.

(1) The disadvantaged participant(s) to the joint venture must have:

(i) Received an SDB certification from SBA; or

(ii) Submitted an application for SDB certification to SBA or a Private Certifier, and must not have received a negative determination regarding that application.

(2) For purposes of this paragraph, the term joint venture means two or more concerns forming an association to engage in and carry out a single, specific business venture for joint profit. Two or more concerns that form an ongoing relationship to conduct business would not be considered “joint venturers” within the meaning of this paragraph, and would also not be eligible to be certified as an SDB. The entity created by such a relationship would not be owned and controlled by one or more socially and economically disadvantaged individuals. Each contract for which a joint venture submits an offer will be evaluated on a case by case basis.

(3) Except as set forth in 13 CFR 121.103(f)(3), a concern that is owned and controlled by one or more socially and economically disadvantaged indi-

viduals entering into a joint venture agreement with one or more other business concerns is considered to be affiliated with such other concern(s) for size purposes. If the exception does not apply, the combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract.

(4) An SDB must be the managing venturer of the joint venture, and an employee of the managing venturer must be the project manager responsible for performance of the contract.

(5) The joint venture must perform any applicable percentage of work required of SDB offerors, and the SDB joint venturer(s) must perform a significant portion of the contract.

(g) *Ownership restrictions for non-disadvantaged individuals.* The ownership restrictions set forth in § 124.105 (g) and (h) for non-disadvantaged individuals and concerns do not apply for purposes of determining SDB eligibility.

§ 124.1003 What is a Private Certifier?

A Private Certifier is an organization or business concern approved by SBA to determine whether firms are owned and controlled by one or more individuals claiming disadvantaged status. SBA may elect to arrange for one or more Private Certifiers to perform certain functions in the SDB Certification process. When that election is made, the provisions of §§ 124.1004 through 124.1007 will apply. SBA will establish more detailed standards regarding qualifications, monitoring, procedures and use, if any, of Private Certifiers in specific contracts or agreements between SBA and the Private Certifiers.

§ 124.1004 How does an organization or business concern become a Private Certifier?

(a) SBA may execute contracts or agreements with organizations or business concerns seeking to become Private Certifiers. Any such contract or agreement will include provisions for the oversight, monitoring, and evaluation of all certification activities by SBA.

(b) The organization or business concern must demonstrate a knowledge of

SBA's regulations regarding ownership and control, as well as business organizations and the legal principles affecting their ownership and control generally, including stock issuances, voting rights, convertability of debt to equity, options, and powers and responsibilities of officers and directors, general and limited partners, and limited liability members.

(c) The organization or concern must also, along with its principals, demonstrate good character. Good character does not exist for these purposes if the organization or concern or any of its principals:

(1) Is debarred or suspended under any Federal procurement or non-procurement debarment and suspension regulations; or

(2) Has been indicted or convicted for any criminal offense or suffered a civil judgment indicating a lack of business integrity.

(d) As a condition of approval, SBA may require that appropriate officers and/or key employees of the concern attend a training session on SBA's rules and requirements.

(e) An organization or concern seeking to become a Private Certifier must agree to provide access to SBA of its books and records when requested, including records pertaining to its certification activities. Once SBA approves the organization or concern to be a Private Certifier, SBA may review this information, as well as the decisions of the Private Certifier, in determining whether it will renew or extend the term of the Private Certifier, or terminate the Private Certifier for cause.

(f) SBA will include in any contract or agreement document authorizing an entity to act as a Private Certifier appropriate conditions to prohibit conflicts of interests between the Private Certifier and the firms for which it processes SDB applications and to protect the integrity of the decision-making process.

§ 124.1005 Can a fee be charged to a firm to process the firm's application for SDB certification?

(a) With SBA's approval, a Private Certifier may charge a reasonable fee to a firm in order to screen the firm's

application for completeness and to process a determination of ownership and control. The fee must be for actual services rendered and must not be related to whether or not the business concern is found to be owned and controlled by one or more individuals or entities claiming disadvantaged status.

(b) Where SBA makes the determination of ownership and control, SBA may collect a fee comparable to that which would be charged by a Private Certifier. From time to time, SBA will publish a Notice in the FEDERAL REGISTER identifying any fee that SBA will charge to process a firm's determination of ownership and control. SBA will promptly remit any funds received pursuant to this section to the Treasury of the United States as miscellaneous receipts.

§ 124.1006 Is there a list of Private Certifiers?

SBA will maintain a list of approved Private Certifiers on SBA's Home Page on the Internet. Any interested person may also obtain a copy of the list from the local SBA district office.

§ 124.1007 How long may an organization or business concern be a Private Certifier?

(a) SBA's approval document will specify how long the organization or concern may be a Private Certifier. The initial contract or agreement will have a base period of one year, and may include option years or renewal provisions.

(b) SBA may terminate a contract or agreement with an organization or business concern which is a Private Certifier for the convenience of the Government at any time, and may terminate the contract or agreement for default where appropriate. Specific grounds for termination for default include, but are not limited to:

(1) Charging improper, unreasonable or contingent fees in violation of § 124.1005;

(2) Engaging in prohibited business transactions with the firms for which it processes SDB applications in violation of § 124.1004(f); or

(3) A demonstrated record of ownership and control determinations that