19.809-2 Limitations on subcontracting and nonmanufacturer rule.

(a) *Limitations on subcontracting.* To be awarded a contract or order under the 8(a) program, the 8(a) participant is required to perform—

(1) For services (except *construction*), at least 50 percent of the cost incurred for personnel with its own employees;

(2) For *supplies* or *products* (other than a *procurement* from a nonmanufacturer of such *supplies* or *products*), at least 50 percent of the cost of manufacturing the *supplies* or *products* (not including the cost of materials);

(3) For general *construction*, at least 15 percent of the cost with its own employees (not including the cost of materials); and

(4) For *construction* by special trade contractors, at least 25 percent of the cost with its own employees (not including the cost of materials).

(b) *Compliance period.* An 8(a) contractor is required to comply with the limitations on subcontracting—

(1) For a contract under the 8(a) program, either by the end of the base term and then by the end of each subsequent *option* period or by the end of the performance period for each order issued under the contract, at the *contracting officer*'s discretion; and

(2) For an order competed exclusively among contractors who are 8(a) participants or for an order issued directly to one 8(a) contractor in accordance with 19.504(c)(1)(ii), by the end of the performance period for the order.

(c) *Waiver.* The applicable SBA District Director *may* waive the provisions in paragraph (b)(1) requiring a participant to comply with the limitations on subcontracting for each period of performance or for each order. Instead, the SBA District Director *may* permit the participant to subcontract in excess of the limitations on subcontracting where the SBA District Director makes a written determination that larger amounts of subcontracting are essential during certain stages of performance.

(1) The 8(a) participant is required to provide the SBA District Director written assurance that the participant will ultimately comply with the requirements of this section prior to contract completion. The *contracting officer shall* review the written assurance and inform the 8(a) participant of their concurrence or nonconcurrence. The 8(a) participant can only submit the written assurance to the SBA District Director upon concurrence by the *contracting officer*.

(2) The *contracting officer* does not have the authority to waive the provisions of this section requiring an 8(a) participant to comply with the limitations on subcontracting for each period of performance or order, even if the agency has a Partnership Agreement with SBA.

(3) Where the 8(a) participant does not ultimately comply with the limitations on subcontracting by the end of the contract, SBA will not grant future waivers for the 8(a) participant.

(d) *Nonmanufacturer rule.* See 19.505(c) for application of the nonmanufacturer rule, inclusive of waivers and exceptions to the nonmanufacturer rule.

Parent topic: 19.809 Preaward considerations.