819.7004 Limitations on subcontracting compliance requirements.

(a) A contract awarded under this subpart is subject to the SBA limitations on subcontracting requirements in 13 CFR 125.6, provided that—

(1) Only VIP-listed SDVOSBs are considered eligible and/or “similarly situated” under an SDVOSB sole source or set-aside.

(2) A VOSB is subject to the same limitations on subcontracting that apply to an SDVOSB.

(3) Any VIP-listed SDVOSB/VOSB is considered eligible and/or “similarly situated” under a VOSB sole source or set-aside.

(b) Pursuant to the authority of 38 U.S.C. 8127(k)(2), a contracting officer may award a contract under this subpart only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirement as provided in the solicitation and which shall be included in the resultant contract (see 819.7011).

(1) The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal.

(2) The Government will not consider offers for award from offerors that do not provide the certification with their bid, quotation, or proposal, and all such responses will be deemed ineligible for evaluation and award.

(c) An otherwise eligible first tier subcontractor must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded.

(d) An SDVOSB/VOSB awarded a contract on the basis of a set-aside, sole source, or an evaluation preference is required to comply with the limitations on subcontracting either by—

(1) 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 set aside for SDVOSB/VOSB as described in 808.405 and FAR 16.505(b)(2)(i)(F), or for an order issued directly to an SDVOSB/VOSB in accordance with FAR 19.504(c)(1)(ii), by the end of the performance period for the order.

(e) The contracting officer may also, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance of the contract, and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(f) Pursuant to Public Law 116-183, the Office of the Small and Disadvantaged Business Utilization (OSDBU) and Chief Acquisition Officer (CAO), will implement a process to monitor compliance with

the requirement in this section. The OSDBU and CAO shall jointly refer any violations or suspected violations to the VA Office of Inspector General. This referral obligation does not relieve contracting officers of their obligation to report suspected violations of law to the Office of the Inspector General (OIG).

(1) If the Secretary or designee determines in consultation with the Inspector General that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith with respect to the requirements described in 819.7003(d), such SDVOSB/VOSB shall be subject to any or all of the following—

(i) Referral to the VA Suspension and Debarment Committee;

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating 18 U.S.C. 1001.

(2) The Inspector General shall report to the Congress annually on the number of referred violations and suspected violations, and the disposition of such violations, including the number of small business concerns suspended or debarred from federal contracting or referred for Department of Justice prosecution.

Parent topic: Subpart 819.70—The VA Veterans First Contracting Program