**Section 2000.4545 Small Business**

a) Set-Aside

The CPO for DCMS may determine categories of supplies or service procurements that will be set aside for small business located in Illinois. The SPO may contact DCMS to determine whether a particular procurement has been set aside for small business, and, if so, the SOS may honor the set aside to the extent practicable.

b) Small Business List

The SOS may refer to the list of responsible vendors that meet the criteria of small business. A business that fits the definition of small on the day of bid or proposal opening will be considered small for the duration of the contract.

c) Required Use

If a Procurement Officer wishes to make a procurement covered by a set-aside designation, the solicitation must note responses are limited to those from responsible small businesses. Bids or proposals received from large businesses will be rejected as nonresponsive.

d) Withdrawal of Set-Aside

If the Procurement Officer determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the Procurement Officer shall reject all bids or proposals and withdraw the designation of small business set-aside for the procurement in question. When a small business set-aside is withdrawn, notification shall be published in the Bulletin with an explanation. After withdrawal of the small business set-aside, the procurement shall be conducted in accordance with the limitations of the Code and this Part.

e) Criteria for Small Business

Unless the CPO provides a definition for a particular procurement that reflects industrial characteristics, a small business is one:

1) Independently owned and operated.

2) Not dominant in its field of operations. This means the business does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining dominance, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

3) With annual sales for most recently ended fiscal year no greater than:

A) $10,000,000 for wholesale business;

B) $10,000,000 for construction business; or

C) $6,000,000 for retail business.

4) With no more than 250 employees if a manufacturing business.

A) A manufacturing business shall calculate how many people it employs by determining its average full-time equivalent employment, based on the number of persons employed on a full-time, part-time, temporary or other basis, for its most recently ended fiscal year.

B) If a manufacturing business has been in existence for less than a full fiscal year, its average employment should be calculated for the period through one month prior to the bid or proposal due date.

5) If the business is any combination of retailer, wholesaler, or construction business, then the annual sales for each component may not exceed the amounts shown in subsection (e)(3). For example, a business that is both a retailer and a wholesaler may not have total sales exceeding $16,000,000, and the retail component may not exceed $6,000,000 and the wholesale component may not exceed $10,000,000. If the business is also a manufacturer, in addition to meeting the annual sales requirement, the number of manufacturing employees may not exceed the number shown in subsection (e)(4).

6) When computing the size status of a vendor, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates shall be included. Concerns are affiliates when either one directly or indirectly controls or has the power to control the other, or when a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether affiliation exists, consideration shall be given to all appropriate factors, including use of common facilities, common ownership and management and contractual arrangements. However, a franchise relationship shall not affect small business status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

(Source: Amended at 43 Ill. Reg. 6185, effective May 9, 2019)