**Section 1.4545 Small Business**

a) Set-Aside

The CPO-GS may determine categories of construction, supplies or service procurements that will be set aside for small businesses in Illinois. A set-aside designation shall be for a stated period of time. An SPO may determine to set aside for small business individual contracts not in a set-aside category.

b) Small Business List

The CPO-GS may develop his or her own list, or may use a list maintained by another State agency, of vendors that meet the criteria of small business. Vendors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses shall submit information as specified verifying that the vendor qualifies as a small business under this Part. A business that fits the definition of small on the day of bid, offer, or proposal opening will be considered small at the time of award and may have the resulting contract and any renewals, even if the business no longer qualifies as a small business. When utilizing vendor lists for soliciting small business vendors, all vendors shall be solicited under the commodity codes representing the supplies or services being solicited.

c) Required Use

Any procurement proposed for set aside for small businesses shall be so identified in the Bulletin notice and the solicitation documents. Bids or proposals received from large businesses will be rejected as nonresponsive.

d) Withdrawal of Set-Aside

If the SPO determines that acceptance of the best bid or proposal will result in the payment of an unreasonable price, the SPO may 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 When a small business set-aside is withdrawn, notification shall be published in the Bulletin with an explanation.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 this Part but without the small business designation.

e) Criteria for Small Business

1) Unless the CPO-GS provides a definition for a particular procurement that reflects industrial characteristics, a small business is a business that is independently owned and operated and is not dominant in its field of operation.

A) A wholesale business is a small business if its annual sales for its most recently completed fiscal year do not exceed $13,000,000.

B) A retail business or business selling services is a small business if its annual sales and receipts for its most recently completed fiscal year do not exceed $8,000,000.

C) A manufacturing business is a small business if it employs no more than 250 persons. 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. If a manufacturing business has been in existence for less than a full fiscal year, its average employment shall be calculated for the period through one month prior to the bid or proposal due date.

D) A construction business is a small business if its annual sales and receipts for its most recently completed fiscal year do not exceed $14,000,000.

E) If a business is any combination of retailer, wholesaler or construction business, then the annual sales for each component may not exceed the higher of $13,000,000 for a wholesaler, $8,000,000 for a retailer, $14,000,000 for a construction business, or the amounts shown in Section 45-45 of the Code. For example, a business that is both a retailer and a wholesaler may not have total sales exceeding $21,000,000 and the retail component may not exceed $8,000,000 and the wholesale component may not exceed $13,000,000.

2) A small business in Illinois is defined as an entity whose business is headquartered in Illinois, that meets the criteria in subsection (e)(1), and is a:

A) sole proprietor whose primary residence is in Illinois;

B) business incorporated or organized as a domestic corporation under the Business Corporation Act of 1983 [805 ILCS 5/1.80];

C) business organized as a domestic partnership under the Uniform Partnership Act of 1997 [805 ILCS 206];

D) business organized as a domestic limited partnership under the Uniform Limited Partnership Act of 2001 [805 ILCS 215];

E) business organized under the Limited Liability Company Act [805 ILCS 180]; or

F) business organized under the Professional Limited Liability Company Act [805 ILCS 185].

3) A small business that is 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.

4) Businesses artificially divided to qualify as a small business will be disallowed. When computing the size status of a vendor and whether the vendor qualifies as a small business, the number of employees and annual sales and receipts, as applicable, of the vendor and all affiliates, concerns and related entities shall be included. Concerns and related entities are affiliates of each other when 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. It does not matter whether control is exercised, so long as the power to control exists. In determining whether concerns and related entities 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, identity of interest (substantially identical business or economic interests such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) and contractual arrangements. In determining whether affiliation exists, the CPO-GS will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation. 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.

f) Small Business Specialist

The CPO-GS shall designate a small business specialist who shall have the duties set forth in Section 45-45(e) of the Code and who shall also act as coordinator of small business. The designated small business specialist shall compile statistics provided by the State agency needed to make the small business annual report to the General Assembly required under Section 45-45(f) of the Code.

g) Subcontracting

1) A small business awarded a contract procured as a small business set-aside may subcontract a portion of that contract to another small business meeting the criteria in subsection (e).

2) A small business awarded a contract procured as a small business set-aside may subcontract no more than 49% of the value of the contract to a business that does not meet the criteria in subsection (e).

(Source: Amended at 46 Ill. Reg. 10208, effective June 2, 2022)