

LIMITATIONS ON SUBCONTRACTING (Sep 2021)

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) **Definition. "Similarly situated entity"**, as used in this clause, means a second-tier subcontractor, including an independent contractor, that—
- (1) Has the same small business program status as that which qualified the Seller, or first-tier subcontractor, for the award (e.g., for a small business set aside subcontract, any small business concern, without regard to its socioeconomic status); and
 - (2) Is considered small for the size standard under the North American Industry Classification System (NAICS) code the Seller, or first-tier subcontractor, assigned to the subcontract.
- (c) **Limitations on Subcontracting.** By submission of an offer and execution of a subcontract, the Seller agrees that in performance of a subcontract assigned a NAICS code for—
- (1) Services (except construction), Seller will not pay more than 50 percent of the amount paid by the Company for subcontract performance to second-tier subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the first-tier subcontractor's 50 percent subcontract amount that cannot be exceeded. When a subcontract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the subcontract;
 - (2) Supplies (other than procurement from a nonmanufacturer of such supplies), Seller will not pay more than 50 percent of the amount paid by the Company for subcontract performance, excluding the cost of materials, to second-tier subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the first-tier subcontractor's 50 percent subcontract amount that cannot be exceeded. When a subcontract includes both supplies and services, the 50 percent limitation shall apply only to the supply portion of the subcontract;
 - (3) General construction, Seller will not pay more than 85 percent of the amount paid by the Company for subcontract performance, excluding the cost of materials, to second-tier subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the first-tier subcontractor's 85 percent subcontract amount that cannot be exceeded; or
 - (4) Construction by special trade subcontractors, Seller will not pay more than 75 percent of the amount paid by the Company for subcontract performance, excluding the cost of materials, to second-tier subcontractors that are not similarly situated entities. Any work that a similarly situated entity further subcontracts will count towards the first-tier subcontractor's 75 percent subcontract amount that cannot be exceeded.
- (d) A joint venture agrees that, in the performance of the subcontract, the applicable percentage specified in paragraph (c) of this clause will be performed by the aggregate of the joint venture participants.