

## 9.104-3 Application of standards.

(a) *Ability to obtain resources.* Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the *contracting officer shall* require acceptable evidence of the prospective contractor's ability to obtain required resources (see [9.104-1\(a\)](#), (e), and (f)). Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel. Consideration of a prime contractor's compliance with limitations on subcontracting *shall* take into account the time period covered by the contract base period or quantities plus *option* periods or quantities, if such *options* are considered when evaluating *offers* for award.

(b) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance *shall* be presumed to be nonresponsible, unless the *contracting officer* determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The *contracting officer shall* consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to [subpart 19.7](#), The Small Business Subcontracting Program, the *contracting officer shall* also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

(c)

(1) *Affiliated concerns.* Affiliated concerns (see "Concern" in [19.001](#) and "Small business concern" in [2.101](#) ) are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the *contracting officer shall* consider the affiliate's *past performance* and integrity when they *may* adversely affect the prospective contractor's responsibility.

(2) *Joint ventures.* For a prospective contractor that is a joint venture, the *contracting officer shall* consider the *past performance* of the joint venture. If the joint venture does not demonstrate past performance for award, the *contracting officer shall* consider the *past performance* of each party to the joint venture.

(d)

(1) *Small business concerns.* Upon making a determination of nonresponsibility with regard to a small business concern, the *contracting officer shall* refer the matter to the Small Business Administration, which will decide whether to issue a Certificate of Competency (see [subpart 19.6](#)).

(2) *Limitations on subcontracting.* A small business that is unable to comply with the limitations on subcontracting *may* be considered nonresponsible (see [52.219-3](#), Notice of HUBZone Set-Aside or Sole Source Award; [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns; [52.219-14](#), Limitations on Subcontracting; [52.219-27](#), Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible

Under the SDVOSB Program; [52.219-29](#), Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged *Women-Owned Small Business Concerns*; and [52.219-30](#), Notice of Set-Aside for, or Sole Source Award to, *Women-Owned Small Business Concerns* Eligible Under the Women-Owned Small Business Program). A small business that has not agreed to comply with the limitations on subcontracting *may* be considered nonresponsive.

**Parent topic:** [9.104 Standards](#).