

### Subpart 19.14—Service-Disabled Veteran-Owned Small Business Procurement Program

SOURCE: 69 FR 25278, May 5, 2004, unless otherwise noted.

#### 19.1401 General.

(a) The Veterans Benefit Act of 2003 (15 U.S.C. 657f) created the procurement program for small business concerns owned and controlled by service-disabled veterans (commonly referred to as the “Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program”).

(b) The purpose of the Service-Disabled Veteran-Owned Small Business Program is to provide Federal contracting assistance to service-disabled veteran-owned small business concerns.

#### 19.1402 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

#### 19.1403 Status as a service-disabled veteran-owned small business concern.

(a) Status as a service-disabled veteran-owned small business concern is determined in accordance with 13 CFR parts 125.8 through 125.13; also see 19.307.

(b) At the time that a service-disabled veteran-owned small business concern submits its offer, it must represent to the contracting officer that it is a—

(1) Service-disabled veteran-owned small business concern; and

(2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the procurement.

(c) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the representations in paragraph (b) of this section;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b).

(d) Any service-disabled veteran-owned small business concern (non-manufacturer) must meet the requirements in 19.102(f) to receive a benefit under this program.

#### 19.1404 Exclusions.

This subpart does not apply to—

(a) Requirements that can be satisfied through award to—

(1) Federal Prison Industries, Inc. (see Subpart 8.6);

(2) Javits-Wagner-O’Day Act participating non-profit agencies for the blind or severely disabled (see Subpart 8.7);

(b) Orders under indefinite delivery contracts (see Subpart 16.5);

(c) Orders against Federal Supply Schedules (see Subpart 8.4); or

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program.

[69 FR 25278, May 5, 2004, as amended at 70 FR 14955, Mar. 23, 2005]

#### 19.1405 Service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer may set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to service-disabled veteran-owned small business concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider service-disabled veteran-owned small business set-asides before considering service-disabled veteran-owned small business sole source awards (see 19.1406).

(b) To set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more service-disabled veteran-owned small business concerns; and

(2) Award will be made at a fair market price.

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(c) If the contracting officer receives only one acceptable offer from a service-disabled veteran-owned small business concern in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from service-disabled veteran-owned small business concerns, the service-disabled veteran-owned set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see Subpart 19.5).

(d) The procedures at 19.202-1 and, except for acquisitions not exceeding the simplified acquisition threshold, at 19.402 apply to this section. When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see 19.402(a)) to set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and compelling circumstances, which significantly affect the interests of the Government, exist. Within 15 working days of SBA's notification to the contracting officer, SBA shall file its formal appeal with the head of the contracting activity, or that agency may consider the appeal withdrawn. The head of the contracting activity shall reply to SBA within 15 working days of receiving the appeal. The decision of the head of the contracting activity shall be final.

[69 FR 25278, May 5, 2004, as amended at 71 FR 36927, June 28, 2006]

### **19.1406 Sole source awards to service-disabled veteran-owned small business concerns.**

(a) A contracting officer may award contracts to service-disabled veteran-owned small business concerns on a

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sole source basis (see 19.501(d) and 6.302-5), provided—

(1) Only one service-disabled veteran-owned small business concern can satisfy the requirement;

(2) The anticipated award price of the contract (including options) will not exceed—

(i) \$5.5 million for a requirement within the NAICS codes for manufacturing; or

(ii) \$3 million for a requirement within any other NAICS code;

(3) The service-disabled veteran-owned small business concern has been determined to be a responsible contractor with respect to performance; and

(4) Award can be made at a fair and reasonable price.

(b) The SBA has the right to appeal the contracting officer's decision not to make a service-disabled veteran-owned small business sole source award.

[69 FR 25278, May 5, 2004, as amended at 71 FR 57367, Sept. 28, 2006]

### **19.1407 Contract clauses.**

The contracting officer shall insert the clause 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside, in solicitations and contracts for acquisitions under 19.1405 and 19.1406.

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