19.1405 Set-aside procedures.

(a) The *contracting officer*-

(1) *Shall* comply with 19.203 before deciding to set aside an *acquisition* under the SDVOSB Program;

(2) *May* set-aside *acquisitions* exceeding the *micro-purchase threshold* for competition restricted to SDVOSB *concerns* when the requirements of paragraph (b) of this section can be satisfied; and

(3) *Shall* consider SDVOSB set-asides before considering SDVOSB sole source awards (see 19.1406) or small business set-asides (see subpart 19.5).

(b) A *contracting officer may* restrict competition to SDVOSB *concerns* eligible under the SDVOSB Program if there is a reasonable expectation based on *market research* that—

(1) Two or more SDVOSB *concerns* eligible under the SDVOSB Program will submit *offers*; and

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

(c) Effective January 1, 2024, the *contracting officer shall*—

(1) Verify that *offers* received are eligible for consideration for award by checking if the *offeror*—

(i) Is designated in SAM as an SDVOSB *concern* certified by SBA; or

(ii) Has represented that it is an SDVOSB *concern* in SAM and submitted an application for certification to SBA on or before December 31, 2023. Pending applications for certification are in the SBA Veteran Small Business Certification database at https://veterans.certify.sba.gov;

(2) Proceed with the *offer* evaluation, if the *offeror* meets the criteria in paragraph (c)(1)(i) or (ii) of this section; or

(3) Remove the *offeror* from consideration, if the *offeror* does not meet the criteria in paragraph (c)(1)(i) or (ii) of this section, as the *offeror* is not eligible for award.

(d) If the *contracting officer* receives only one acceptable *offer* from an SDVOSB *concern* eligible under the SDVOSB Program 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no acceptable *offers* from SDVOSB *concerns* eligible under the SDVOSB Program, the SDVOSB set-aside *shall* be withdrawn and the requirement, if still valid, set aside for small business *concerns*, as appropriate (see 19.203).

(e) 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 SDVOSB *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.

Parent topic: Subpart 19.14 - Service-Disabled Veteran-Owned Small Business Program