Subpart 819.70—The VA Veterans First Contracting Program

Parent topic: PART 819—SMALL BUSINESS PROGRAMS

819.7001 General.

(a) Sections 502 and 503 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, as amended (38 U.S.C. 8127- 8128), authorizes a VA specific program to increase contracting opportunities for eligible small business concerns owned and controlled by Veterans with service-connected disabilities and small business concerns owned and controlled by Veterans. Once ownership and control by these veterans is verified, these businesses are referred to as service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) or collectively SDVOSB/VOSB for ease of reference.

(b) The program as implemented in this subpart shall be known as the Veterans First Contracting Program. The purpose of the program is to increase contracting opportunities and provide for priority in the award of contracts and subcontracts to SDVOSBs/VOSBs so they can fully participate in the VA contracting process. Eligible SDVOSBs qualify for any VOSB preferences under this subpart.

(c) VA's program is codified at 38 U.S.C. 8127(b), (c), and (d), and provides the authority for VA contracting officers to make awards to SDVOSBs/VOSBs using restricted competition, as well as other than full and open competition (sole source), as set-forth in this subpart. Additionally, 38 U.S.C. 8128 provides the authority for VA to give SDVOSBs/VOSBs priority in the awarding of contracts and subcontracts using evaluation preferences.

(d) Contracting officers shall award contracts by restricting competition to eligible SDVOSBs/VOSBs as provided in 819.7006 and 819.7007. The contracting officer may use other preferences in this subpart as appropriate and in accordance with procuring activity guidelines.

(e) Pursuant to 38 U.S.C. 8128, contracting officers shall give priority to SDVOSBs/VOSBs if such business concern(s) also meet the requirements of that contracting preference. In carrying out this responsibility, contracting officers shall include the clauses prescribed at 808.405-570 and 815.304-71 in competitive solicitations and contracts that are not set-aside for SDVOSB/VOSB, including those under FAR part 12. The requirement in this paragraph (e) applies even when using a contracting preference under FAR part 19 (for example, a women-owned small business set-aside).

(f) The attainment of goals or the use of interagency vehicles or Governmentwide contract vehicles (*i.e.,* Federal Supply Schedules (FSS)) does not relieve the contracting officer from using SDVOSB/VOSB set-asides and other preferences as provided in subpart 819.70. Moreover, if the VA enters into a contract, agreement, or other arrangement with any governmental entity to acquire goods or services, the entity acting on behalf of the VA through such an interagency acquisition or other agreement will comply, to the maximum extent feasible, with the provisions of the Veterans First Contracting Program as set forth in this subpart.

(g) Contracting officers shall ensure awards are made using the VA hierarchy of SDVOSB/VOSB preferences in this subpart. Specifically, the contracting officer will consider preferences for eligible SDVOSBs first, then preferences for other eligible VOSBs.

(h) When an offer of an SDVOSB/VOSB prime contractor includes a proposed team of small business subcontractors and specifically identifies the first-tier subcontractor(s) in the proposal, the contracting officer must consider the capabilities, past performance, and experience of each first tier subcontractor that is part of the team as the capabilities, past performance, and experience of the small business prime contractor if the capabilities, past performance, and experience of the small business prime does not independently demonstrate capabilities and past performance necessary for award.

819.7002 Applicability.

Unless otherwise exempted by law, this subpart applies to VA contracting activities and contracts (see FAR 2.101) including BPAs and orders under FAR subpart 8.4 and acquisition of commercial products or commercial services under FAR part 12. In addition, this subpart applies to VA contractors, their subcontractors and to any Government entity that has a contract, agreement, or other arrangement with the VA to acquire goods and services on behalf of the VA (see 817.501). For applicability and VA policy regarding priorities for use of mandatory Government sources see 808.002.

819.7003 Eligibility.

(a) SDVOSB/VOSB size eligibility, challenges, and appeals are governed by the Small Business Administration (SBA) regulations at 13 CFR parts 121, 125, and 134, except where directed otherwise by this part or 38 CFR part 74.

(b) At the time of submission of offers/quotes, and at the time of award of any contract, the offeror must represent to the contracting officer that it is a—

(1) SDVOSB or VOSB eligible under this subpart;

(2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the acquisition; and

(3) Listed as a verified SDVOSB/VOSB on the VA's Vendor Information Pages (VIP) at *https://www.vetbiz.va.gov/vip/*.

(c) A joint venture may be considered eligible if it meets the requirements in 13 CFR part 125; and the joint venture is listed in the VIP database.

(d) To receive a benefit under the Veterans First Contacting Program, an otherwise eligible SDVOSB/VOSB must also meet SBA requirements at 13 CFR parts 121 and 125, including the nonmanufacturer rule requirements at 13 CFR 121.406(b) and limitations on subcontracting at 13 CFR 125.6. The nonmanufacturer rule (see 13 CFR 121.406) and the limitations on subcontracting requirements apply to all SDVOSB and VOSB set-aside and sole source contracts above the micro-purchase threshold. An offeror shall submit a certification of compliance to be considered eligible for any award under this part (see 819.7004).

(e) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment from

contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business. See 809.406-270.

819.7004 Limitations on subcontracting compliance requirements.

(a) A contract awarded under this subpart is subject to the SBA limitations on subcontracting requirements in 13 CFR 125.6, provided that—

(1) Only VIP-listed SDVOSBs are considered eligible and/or “similarly situated” under an SDVOSB sole source or set-aside.

(2) A VOSB is subject to the same limitations on subcontracting that apply to an SDVOSB.

(3) Any VIP-listed SDVOSB/VOSB is considered eligible and/or “similarly situated” under a VOSB sole source or set-aside.

(b) Pursuant to the authority of 38 U.S.C. 8127(k)(2), a contracting officer may award a contract under this subpart only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirement as provided in the solicitation and which shall be included in the resultant contract (see 819.7011).

(1) The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal.

(2) The Government will not consider offers for award from offerors that do not provide the certification with their bid, quotation, or proposal, and all such responses will be deemed ineligible for evaluation and award.

(c) An otherwise eligible first tier subcontractor must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded.

(d) An SDVOSB/VOSB awarded a contract on the basis of a set-aside, sole source, or an evaluation preference is required to comply with the limitations on subcontracting either by—

(1) The end of the base term, and then by the end of each subsequent option period; or, by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(2) For an order set aside for SDVOSB/VOSB as described in 808.405 and FAR 16.505(b)(2)(i)(F), or for an order issued directly to an SDVOSB/VOSB in accordance with FAR 19.504(c)(1)(ii), by the end of the performance period for the order.

(e) The contracting officer may also, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance of the contract, and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(f) Pursuant to Public Law 116-183, the Office of the Small and Disadvantaged Business Utilization (OSDBU) and Chief Acquisition Officer (CAO), will implement a process to monitor compliance with the requirement in this section. The OSDBU and CAO shall jointly refer any violations or suspected violations to the VA Office of Inspector General. This referral obligation does not relieve contracting officers of their obligation to report suspected violations of law to the Office of the Inspector General (OIG).

(1) If the Secretary or designee determines in consultation with the Inspector General that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith with respect to the requirements described in 819.7003(d), such SDVOSB/VOSB shall be subject to any or all of the following—

(i) Referral to the VA Suspension and Debarment Committee;

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating 18 U.S.C. 1001.

(2) The Inspector General shall report to the Congress annually on the number of referred violations and suspected violations, and the disposition of such violations, including the number of small business concerns suspended or debarred from federal contracting or referred for Department of Justice prosecution.

819.7005 Contracting order of priority.

(a) In determining the acquisition strategy applicable to a procurement requirement not otherwise covered under 808.002, the contracting officer shall observe the order of contracting preferences in 38 U.S.C. 8127(h).

(b) Specifically, preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

(1) Contracts awarded to small business concerns owned and controlled by Veterans with service-connected disabilities as provided in this subpart.

(2) Contracts to small business concerns owned and controlled by Veterans that are not covered by paragraph (b)(1) of this section as provided in this subpart.

(3) Contracts awarded pursuant to—

(i) Section 8(a) of the Small Business Act (15 U.S.C. 637(a) as provided in FAR subpart 19.8; or

(ii) Section 31 of the Small Business Act (15 U.S.C. 657a) as provided in FAR subpart 19.13.

(4) Contracts awarded pursuant to any other small business set aside contracting preference, with due deference to the priority for awarding to women-owned small businesses as provided in FAR 19.203(b) through (e) and FAR subpart 19.15.

819.7006 VA service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 808.002, 813.106, 819.7007, and 819.7008, the contracting officer shall set-aside a contract action exceeding the micro-purchase threshold for competition restricted to VIP-listed SDVOSB upon a reasonable expectation based on market research that—

(1) Offers/quotations will be received from two or more eligible VIP-listed SDVOSBs; and

(2) Award can be made at a fair and reasonable price that offers the best value to the Government.

(b) When conducting SDVOSB set-asides, the contracting officer shall ensure that—

(1) Offerors are registered and verified as eligible in the VIP database at the time of submission of offers and at time of award; and

(2) Offerors affirmatively represent their SDVOSB and small business status based on the size standard corresponding to the North American Industrial Classification System (NAICS) code assigned to the solicitation/contract, as set forth in 819.7003(b) or (c).

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible VIP-listed SDVOSB, the contracting officer may make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition if warranted or otherwise procured using the most appropriate strategy based on the results of market research.

819.7007 VA veteran-owned small business set-aside procedures.

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 808.002, 813.106, 819.7007, and 819.7008, the contracting officer shall set aside a contract action exceeding the micro-purchase threshold for competition restricted to VIP-listed VOSBs upon a reasonable expectation based on market research that—

(1) Offers/quotations will be received from two or more VIP-listed VOSBs; and

(2) Award can be made at a fair and reasonable price that offers the best value to the Government.

(b) When conducting VOSB set-asides, the contracting officer shall ensure that—

(1) Offerors are registered and verified as eligible in the VIP database at the time of submission of offers and at time of award; and

(2) Offerors affirmatively represent their SDVOSB/VOSB and small business status based on the size standard corresponding to the NAICS code assigned to the solicitation/contract (see 819.7003(b) and (c)).

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an

eligible VIP-listed VOSB in response to a VOSB set-aside, the contracting officer may make an award to that concern. If the contracting officer decides not to make an award to the single acceptable offer received, or if the contracting officer receives no acceptable offers from eligible VOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs in accordance with 819.7005 or otherwise procured using the most appropriate strategy based on the results of market research.

819.7008 Sole source awards to verified service-disabled veteran-owned small businesses.

(a) A contracting officer may award a contract to a VIP-listed service-disabled veteran-owned small business (SDVOSB) using other than competitive procedures provided—

(1) The anticipated award price of the contract (including options) will not exceed $5 million;

(2) The requirement is synopsized and the required justification pursuant to FAR 6.302-5(c)(2)(ii) is posted in accordance with FAR part 5;

(3) The SDVOSB has been determined to be a responsible contractor with respect to performance; and

(4) In the estimation of the contracting officer contract award can be made at a fair and reasonable price that offers best value to the Government.

(b) The contracting officer's determination to make a sole source award is a business decision wholly within the discretion of the contracting officer. To ensure that opportunities are available to the broadest number of SDVOSBs, this authority is to be used only when in the best interest of the Government.

(c) A determination that only one SDVOSB can meet the requirement is not required. However, in accordance with FAR 6.302-5(c)(2)(ii), contracts awarded using this authority shall be supported by a written justification and approval described in FAR 6.303 and 6.304, as applicable.

(d) When conducting a SDVOSB sole source acquisition, the contracting officer shall ensure the business meets eligibility requirements in 819.7003.

(e) A procurement requirement estimated to exceed the legislative threshold of $5 million shall not be split or subdivided to permit the use of this SDVOSB sole source authority.

819.7009 Sole source awards to verified veteran-owned small businesses.

(a) A contracting officer may award a contract to a VIP-listed veteran-owned small business (VOSB) using other than competitive procedures provided—

(1) The anticipated award price of the contract (including options) will not exceed $5 million;

(2) The requirement is synopsized and the required justification pursuant to FAR 6.302-5(c)(2)(ii) is

posted in accordance with FAR part 5;

(3) The VOSB has been determined to be a responsible contractor with respect to performance;

(4) In the estimation of the contracting officer contract award can be made at a fair and reasonable price that offers best value to the Government; and

(5) No responsible SDVOSB has been identified.

(b) The contracting officer's determination to make a sole source award is a business decision wholly within the discretion of the contracting officer. To ensure that opportunities are available to the broadest number of VOSBs, this authority is to be used only when in the best interest of the Government.

(c) A determination that only one VOSB can meet the requirement is not required. However, in accordance with FAR 6.302-5(c)(2)(ii), contracts awarded using this authority shall be supported by a written justification and approval described in FAR 6.303 and 6.304, as applicable.

(d) When conducting a VOSB sole source acquisition, the contracting officer shall ensure the business meets eligibility requirements in 819.7003.

(e) A procurement requirement estimated to exceed the legislative threshold of $5 million shall not be split or subdivided to permit the use of this VOSB sole source authority.

819.7010 Tiered set-aside evaluation.

(a) Pursuant to the authority of 38 U.S.C. 8127 and under limited circumstances as set forth in this section, contracting officers may consider using a tiered set-aside evaluation approach to minimize delays in the re-solicitation process.

(b) Tiered evaluation of offers is a procedure that may be used in competitive negotiated acquisitions, including construction and acquisitions for commercial products and commercial services when the VA Rule of Two (see 802.101) determination indicates a set-aside is required, but other circumstances preclude a confident conclusion that an award can be made at the SDVOSB or VOSB tier. The contracting officer—

(1) Solicits and receives offers from targeted tiers of small business groups, with SDVOSB as the first tier and VOSB as the second tier;

(2) Establishes a tiered order of priority for evaluating offers that is specified in the solicitation; and

(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

(c) Market research, which shall be conducted and documented in advance of issuing the solicitation, will inform which of the following types of tiers will be included in the solicitation:

(1) Tiered evaluations limited to SDVOSBs or VOSBs;

(2) Tiered evaluations including 8(a) and HUBZone small businesses; or

(3) Tiered evaluations including all other small business concerns.

(d) The tiered order of priority shall be consistent with 819.7005. Consideration shall be given to HUBZone and 8(a) small business concerns before evaluating offers from other small business concerns.

819.7011 Contract clauses.

(a) The contracting officer shall insert clause 852.219-73, VA Notice of Total Set-Aside for Verified Service-Disabled Veteran-Owned Small Businesses, or clause 852.219-74, VA Notice of Total Set-Aside for Verified Veteran-Owned Small Businesses, as applicable, in solicitations, orders and contracts that are set-aside, reserved, evaluated or awarded under this subpart. This includes sole source awards as well as multiple-award contracts when orders may be set aside for SDVOSBs/VOSBs as described in 808.405 and FAR 19.504(c)(1)(ii).

(b) The contracting officer shall insert the clause at 852.219-75, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction, in solicitations and contracts for services and construction, including BPAs, BOAs, and orders, for acquisitions that are evaluated, set-aside, or awarded on a sole source basis under this subpart. This includes orders awarded under multiple-award contracts to SDVOSBs/VOSBs.

(c) The contracting officer shall insert the clause at 852.219-76, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products, in solicitations and contracts for supplies or products, including BPAs, BOAs, and orders, for acquisitions that are to be awarded on the basis of an SDVOSB/VOSB set-aside, sole source, or an evaluation preference under this subpart. This includes orders awarded under multiple-award contracts to SDVOSBs/VOSBs. The contracting officer shall tailor clause 852.219-76, and paragraph (a)(2)(iii) of the clause, as appropriate.