

# VAAR Part 819 - Small Business Program

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## **Part 819 - Small Business Program**

AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); 48 CFR 1.301-1.304; and 15 U.S.C. 637(d)(4)(E).

### **Subpart 819.1 - Size Standards**

[Deviation per [Class Deviation](#)—Authority to approve the submission of a request for a Nonmanufacturer Rule Waiver to the Small Business Administration (SBA) and use of other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127, for procurements where the SBA has issued a class waiver to the Nonmanufacturer Rule, dated February 17, 2017, to add section VAAR 819.102(f)(4) and (5). This requires the Head of the Contracting Activity (HCA) to 1) approve any request for a Nonmanufacturer Rule waiver prior to submission to the Small Business Administration (SBA) for class waivers or for a specific solicitation; and 2) the use of other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127, for procurements where SBA has issued a class waiver to the Nonmanufacturer Rule. Expires when incorporated into the VAAR or the VAAM or is otherwise rescinded.]

#### **819.102 Size Standards.**

(f)(4) A contracting officer must receive approval from the Head of Contracting Activity (HCA) prior to submitting any request for a Nonmanufacturer Rule waiver to the Small Business Administration (SBA) pursuant to 13 C.F.R. 121.1204. This authority cannot be re-delegated.

(5) Where the SBA has issued a class waiver to the Nonmanufacturer Rule, a contracting officer must receive approval from the HCA prior to utilizing other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8127. This authority cannot be redelegated.

### **Subpart 819.2 - Policies**

[Deviation per [Class Deviation](#)—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, amends implementation of the Veterans First Contracting Program in VAAR 819.201 and 819.202, to include emphasizing that attainment of the Secretary’s annual goals for SDVOSBs/VOSBs does not limit the applicability of the Veterans First Contracting Program. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

#### **819.201 General policy.**

(a) It is the Department of Veteran Affairs (VA) policy that small business concerns owned and

controlled by veterans shall have maximum practicable opportunity to participate in VA acquisitions, consistent with efficient contract performance and the priorities and preferences established under 38 U.S.C. 8127 and 8128.

(1) To carry out this policy the Secretary establishes annual goals for service-disabled veteran-owned small business (SDVOSB) and veteran-owned small business (VOSB) participation in VA contracting. The VA SDVOSB goal shall be no less than the government-wide goal for SDVOSBs.

(2) In support of these goals, each administration and staff office shall in turn establish annual goals for each subordinate contracting activity that present, for that activity, the maximum practicable opportunity for small business concerns, and particularly SDVOSBs/VOSBs, to participate in the performance of the activity's contracts and subcontracts.

(3) The attainment of these goals or the use of interagency acquisition vehicles does not limit the applicability of the Veterans First Contracting Program and priorities in subpart [819.70](#).

(b) Each Head of the Contracting Activity (HCA) shall develop, in coordination with the Office of Small and Disadvantaged Business Utilization (OSDBU), an annual small business operating plan to increase the share of contracts and purchase orders awarded under the small business programs prescribed in [FAR Part 19](#) and this part. The HCA shall also ensure that an annual procurement forecast of contracting opportunity is developed pursuant to Section 501 of Public Law 100-656.

(c) In addition to the duties and responsibilities in [FAR 19.201\(c\)](#), the OSDBU Director is also responsible for the implementation of the Veterans First Contracting Program in subpart [819.70](#).

(d) Each organization with contracting authority shall designate small business specialists/technical advisors in coordination with the OSDBU Director.

### **819.202 Specific policies.**

OSDBU is responsible for reviewing procurement strategies and making recommendations to assist contracting officers in the implementation of this part. These responsibilities shall be conducted within the VA hierarchy of small business program preferences established by 38 U.S.C. 8127(i) (see subpart [819.70](#)), which requires VA to consider preferences for verified SDVOSBs first, then preferences for verified VOSBs. The attainment of contracting goals or the use of Government-wide or multi-agency contract vehicles does not preclude the applicability of these preferences. Contracting officers shall use VA Form 2268, Small Business Program and Contract Bundling Review to document actions and recommendations. Searches and results of the Vendor Information Pages (VIP) database shall be saved and attached to the VA Form 2268 along with accompanying market research report or information.

#### **819.202-1 Encouraging small business participation in acquisitions.**

Contracting officers may negotiate payment terms of less than 30 calendar days to encourage small business participation. A period of less than 7 days may not be prescribed (see [FAR 32.908\(c\)\(2\)](#)). The contracting officer and the local fiscal officer must be in agreement on the negotiated payment terms before awarding the contract.

#### **819.202-5 Data collection and reporting requirements.**

(a) Administration heads, staff office directors, and HCAs must, in addition to the responsibilities

designated in [FAR 19.202-5](#) , cooperate with OSDBU in formulating specific small business program goals and providing other data necessary for goal assessment.

(b) Each VA acquisition activity shall establish goals for the expenditure of funds with preferred businesses within their projected annual budget. OSDBU is responsible for Department-wide goals and accomplishments and will approve or adjust each acquisition activity's goals.

(c) A Procurement Preference Program Goals Report (Report Control Symbol 00-0427) shall be submitted annually by each acquisition activity to reach OSDBU by November 1. Each report shall contain total expenditure estimates and goals for the current fiscal year and explanations of the methods utilized to arrive at each proposed goal. Anticipated problems in the attainment of the proposed goal in any category shall also be identified. This information will be used in negotiating the Department goals with the Small Business Administration (SBA).

(d) As an addendum to the report, each acquisition activity shall provide a narrative explaining the reason(s) for any shortfall(s) in the achievement of any previous fiscal year goal category.

(e) Upon review by OSDBU of the proposed goals, each acquisition activity will be notified of the acceptance of goals as submitted, or of any deficiencies. If the goals are not acceptable, the acquisition activity will be requested to submit further written justification for the goals submitted. Based on documents submitted, OSDBU will make a final determination on the goal assignment.

(f) Accomplishment of goals will be determined by OSDBU from data reported by acquisition activities into the Federal Procurement Data System-Next Generation (FPDS-NG).

#### **819.202-70 HCA responsibilities.**

An HCA must perform the following functions in support of the small business program. These functions cannot be delegated without written approval of the Director, OSDBU:

(a) Develop, on an annual basis, a plan of operation to increase the share of contracts and purchase orders awarded to the small business programs prescribed in [FAR Part 19](#) . This plan must also include Veteran-owned and service-disabled Veteran-owned small business concerns.

(b) Promote goals for the small business programs set forth in [FAR Part 19](#) . This must also include Veteran-owned and service-disabled Veteran-owned small business concerns.

(c) Review the types and classes of items and services to be purchased to determine the applicability of individual small business set-asides.

(d) Review class set-asides, established in accordance with criteria in [FAR 19.503](#) , at least annually to determine whether items or services procured under a unilateral or joint set-aside should be modified or withdrawn.

(e) Maintain updated lists of acquisitions reserved for small business on a class basis.

(f) If the acquisition activity is assigned to an SBA Procurement Center Representative, assure that the representative is provided logistical support, cooperation, and access to all reasonably obtainable contract information directly pertinent to the SBA Procurement Center Representative's official duties.

(g) Encourage technical personnel and end-users to participate in discussions with Veteran-owned and service-disabled Veteran-owned small business concerns.

(h) Attend conferences and meetings publicizing small business programs. This responsibility may be delegated without the written approval of the Director, OSBDU.

**819.202-71 Additional contracting officer responsibilities.**

In addition to the duties designated in [FAR 19.202 through 19.202-6](#) , contracting officers must perform the following functions in support of the small business program:

- (a) Make maximum use of small business source lists.
- (b) Assure that small business firms are identified on solicitation mailing lists and bid abstracts.
- (c) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent possible.
- (d) Assist and counsel small business firms with individual problems.
- (e) Provide for counseling non-responsive or non-responsible small business bidders to help qualify them for future awards.
- (f) Submit informational copies of all small business protests and appeals to the Director, OSBDU, at the same time they are submitted to the SBA.

**819.202-72 [Reserved].**

[Deviation per [Class Deviation](#)-Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, amends implementation of the Veterans First Contracting Program by adding 819.203-70, and to include emphasizing attainment of the Secretary's annual goals for SDVOSBs/VOSBs does not limit the applicability of the Veterans First Contracting Program. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

**819.203-70 Priority for service-disabled Veteran-owned small business/Veteran-owned small business contracting preferences.**

- (a) 38 U.S.C. 8127 and 8128 require the VA to provide priority and establish special acquisition methods to increase contracting opportunities for SDVOSBs and VOSBs. These priorities and special acquisition methods are set forth in subpart [819.70](#) and shall be applied by VA contracting officers before other priorities and preferences in [FAR 19.203](#) .
- (b) When using a contracting preference under [FAR part 19](#) (for example, a women-owned small business set-aside), contracting officers shall give priority to small business concerns verified as owned and controlled by Veterans pursuant to subpart [819.70](#), if such business concern(s) also meet the requirements of that contracting preference. Contracting officers shall include the provision and clause prescribed at [815.304-71](#) in solicitations.
- (c) 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 required by subpart [819.70](#). 38 U.S.C. 8127(j) requires that 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 program of preferences and priorities for verified SDVOSBs and VOSBs.

## **Subpart 819.3 - Determination of Small Business Status for Small Business Programs**

### **819.307 SDVOSB/VOSB Small Business Status Protests.**

(a) All protests relating to whether an eligible VOSB or SDVOSB is a “small” business for the purposes of any Federal program are subject to 13 CFR Part 121 and must be filed in accordance with that part. For acquisitions under the authority of subpart 819.70, upon execution of an interagency agreement between VA and the SBA pursuant to the Economy Act (31 U.S.C. 1535), regarding service-disabled Veteran-owned or Veteran-owned small business status, contracting officers shall forward all status protests to the Director, Office of Government Contracting (D/GC), U.S. Small Business Administration (ATTN: VAAR Part 819 SDVOSB/VOSB Small Business Status Protests), 409 3rd Street, SW., Washington, DC 20416, for disposition. Except for ownership and control issues to be determined in accordance with 38 CFR Part 74, protests shall follow the procedures set forth in FAR 19.307 for both servicedisabled Veteran-owned and Veteranowned small business status. However, contracting officers shall be solely responsible for determining VOSB and SDVOSB compliance with VAAR [804.1102](#).

(b) If SBA sustains a service-disabled Veteran-owned or Veteran-owned small business status protest and the contract has already been awarded, then the contracting officer cannot count the award as an award to a VOSB or SDVOSB and the concern cannot submit another offer as a VOSB or SDVOSB on a future VOSB or SDVOSB procurement under this part, as applicable, unless it demonstrates to VA that it has overcome the reasons for the determination of ineligibility.

(c) Until execution of the interagency agreement referenced in subsection (a), for acquisitions under the authority of subpart 819.70, the Executive Director, VA Office of Small and Disadvantaged Business Utilization (OSDBU) shall decide all protests on service-disabled Veteran-owned or Veteran-owned small business status whether raised by the contracting officer or an offeror. Ownership and control shall be determined in accordance with 38 CFR Part 74. The Executive Director’s decision shall be final.

(1) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a service-disabled Veteran-owned or Veteran-owned small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. An offeror must deliver their protest in person, by facsimile, by express delivery service, or by the U.S. Postal Service within the applicable time period to the contracting officer.

(2) An offeror’s protest must be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Any protest received after these time limits is untimely. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(3) If the Executive Director sustains a service-disabled Veteran-owned or Veteran-owned small business status protest and the contract has already been awarded, then the contracting officer cannot count the award as an award to a VOSB or SDVOSB and the concern cannot submit another offer as a VOSB or SDVOSB on a future VOSB or SDVOSB procurement under this part, as applicable, unless it demonstrates to VA that it has overcome the reasons for the determination of ineligibility.



## **Subpart 819.5 - Set-Asides For Small Business**

[Deviation per [Class Deviation](#)-Veterans First Contracting Program (VFCP 2016) dated July 25, 2016, amends implementation of the Veterans First Contracting Program by adding 819.501-70 and 819.502-4, to include general principles for setting aside VA acquisitions and that the principles apply, as well as emphasizing that attainment of the Secretary's annual goals for SDVOSBs/VOSBs does not limit the applicability of the Veterans First Contracting Program. VAAR 819.502-4 emphasizes that subpart 819.70 applies to VA orders and BPAs under Federal Supply Schedule (FSS) and other vehicles. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

### **819.501-70 General principles for setting aside VA acquisitions.**

(a) The following principles apply to VA acquisitions under this subpart:

(1) Before setting aside or reserving an acquisition for small businesses under [FAR subpart 19.5](#), contracting officers shall refer to [819.203-70](#) and subpart [819.70](#) for VA SDVOSB/VOSB priorities and preferences.

(2) Set-asides under the Veterans First Contracting Program in subpart [819.70](#) (see [819.7005](#) and [819.7006](#)) have precedence over other small business set-asides referenced in [FAR part 19](#), both above and below the simplified acquisition threshold (SAT). SDVOSB and VOSB set-asides also satisfy the requirement to reserve actions below the SAT for small business.

(3) Set-asides for verified SDVOSB and VOSB are mandatory whenever a contracting officer has a reasonable expectation of receiving two or more competitive offers/quotes at a fair and reasonable price that offers best value to the Government. Because only verified SDVOSBs and VOSBs can participate on such set-asides, the contracting officer should start by identifying firms listed as verified in the VIP database and then determine what acquisition strategy and priorities in [808.004\(a\)](#), including FSS, is most appropriate.

(4) When a procurement requirement will not be set aside or otherwise awarded to verified SDVOSBs or VOSBs pursuant to subpart [819.70](#), the contracting officer shall document the file in accordance with OSDBU guidance and include SDVOSB/VOSB evaluation preferences in the solicitation as set forth in [815.304](#).

(b) These principles apply even when a procuring activity is meeting its goals or is planning the use of an interagency or Government-wide contract vehicle.

(c) Any reference to small business preferences/set-asides in [FAR subpart 19.5](#) is to be construed to include verified SDVOSBs and VOSBs, unless it clearly conflicts with this subpart.

### **819.502 Setting aside acquisitions.**

#### **819.502-2 Total small business set-asides.**

(a) When a total small business set-aside is made, one of the following statements, as applicable, will be included in the solicitation for bids:

(1) Notice of total small business set-aside, page \_\_\_\_\_, applies to all items in this solicitation.

(2) Notice of total small business set-aside, page \_\_\_\_\_, applies to items \_\_\_\_\_ through \_\_\_\_\_ in this solicitation.

(b) Contracting officers must ensure that the appropriate product or service classification and the related size standard are included in each solicitation.

### **819.502-3 Partial set-asides.**

When, in accordance with the provisions of [FAR 19.502-3](#), the contracting officer determines that a particular procurement will be partially set aside for small business participation, the solicitation for bids shall include the appropriate product or service classification and appropriate size standard, and the following statement shall be placed on the face page:

Notice of partial set-aside, page \_\_\_\_\_, applies to item \_\_\_\_\_ through item \_\_\_\_\_ in this solicitation.

[Deviation per Class Deviation— [Veterans First Contracting Program](#) (VFCP 2016), dated July 25, 2016, amends implementation of the Veterans First Contracting Program in 819.502-4 to include direction regarding orders on other agency multiple awards that emphasizes attainment of the Secretary’s annual goals for SDVOSBs/VOSBs does not limit the applicability of the Veterans First Contracting Program. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

### **819.502-4 Multiple-award contracts and small business set-asides.**

(c) The requirements in subpart [819.70](#) apply to VA orders and BPAs under Federal Supply Schedules (FSS), Government-wide Acquisition Contracts (GWACS) and Multi-Agency Contracts (MACs) awarded by another agency. A set-aside restricted to verified SDVOSBs or VOSBs pursuant to subpart [819.70](#) satisfies competition requirements in [FAR part 6](#) , as well as the fair opportunity requirements in [FAR 16.505](#) (see FAR 16.505(b)(2)(i)(F)).

## **Subpart 819.6 - Certificates of Competency and Determinations of Responsibility**

### **819.602 Procedures.**

#### **819.602-3 Resolving differences between VA and the Small Business Administration.**

The Director, OSDDBU, is the VA liaison with the SBA. Information copies of correspondence sent to the SBA seeking a certificate of competency determination must be concurrently provided to the Director, OSDDBU. Before appealing a certificate of competency, the HCA must seek concurrence from the Director, OSDDBU.

## **Subpart 819.7 - The Small Business Subcontracting Program**

### **819.704 Subcontracting plan requirements.**

(a) The contracting officer shall ensure that any subcontracting plans submitted by offerors include a goal that is at least commensurate with the annual VA SDVOSB prime contracting goal for the total value of planned subcontracts.

(b) The contracting officer shall ensure that any subcontracting plans submitted by offerors include a goal that is at least commensurate with the annual VA VOSB prime contracting goal for the total value of all planned subcontracts.



(c) VA's OSDBU shall review all prime contractor's subcontracting plan achievement reports to ensure that, in the case of a subcontract that is counted for purposes of meeting a goal in accordance with subparagraphs (a) and (b) of this section, the subcontract was actually awarded to a business concern that is eligible to be counted toward meeting the goal, as provided in [804.1102](#).

#### **819.705 Appeal of Contracting Officer Decisions.**

(a) Acquisitions not exceeding the simplified acquisition threshold (SAT) and [819.7007](#) and [819.7008](#) are excluded from this section.

(b) When an interested party intends to appeal a contracting officer's decision to not use the set-aside authority contained in subpart [819.70](#), the party shall notify the contracting officer, in writing, of its intent to challenge the decision. The contracting officer has 5 working days to reply to the challenge by either revising the strategy or indicating the rationale for not setting aside the requirement. Upon receipt of the decision, the interested party may appeal to the Head of the Contracting Activity (HCA). Such appeal shall be filed within 5 working days of receipt of the contracting officer's decision. The HCA has 5 working days to respond to the appeal. The contracting officer shall suspend action on the acquisition unless the HCA makes a written determination that urgent circumstances exist which would significantly affect the interests of the government. The decision of the HCA shall be final.

(c) Prime contractors submitting businesses declared ineligible for credit in SDVOSB and/or VOSB subcontracting plans may appeal to the Executive Director, Office of Small and Disadvantaged Business Utilization and Center for Veterans Enterprise (OOVE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, within 5 working days of receipt of information declaring their subcontractor ineligible. The Executive Director shall have 5 working days to respond. The decision of the Executive Director may be appealed to the Senior Procurement Executive (SPE) within 5 working days. The SPE shall have 15 working days to respond and that decision shall be final.

#### **819.709 Contract clause.**

The contracting officer shall insert VAAR clause [852.219-9, Small Business Subcontracting Plan Minimum Requirements](#), in solicitations and contracts that include FAR clause 52.219-9, Small Business Subcontracting Plan.

### **Subpart 819.8 - Contracting with the Small Business Administration (The 8(a) Program)**

#### **819.800 General.**

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of VA are appropriate for inclusion in this program, the contracting officer will make this fact known to proper officials of the SBA regional office servicing his/her area. However, when projects funded from minor construction appropriation (between \$400,000 and \$2 million) are proposed for 8(a) acquisition, the Director, OSDBU (00SB), shall be contacted by telephone or notified in writing in order to afford the OSDBU an opportunity to identify possible 8(a) sources prior to apprising SBA officials. If the certification required by paragraph (a) of this section is received, the VA contracting officer will secure from SBA the name(s)

and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to VA, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between VA and SBA and will be administered by VA.

## **Subpart 819.70 - Veteran-Owned and Operated Small Businesses**

[Deviation per [Class Deviation](#)-Veterans First Contracting Program (VFCP 2016), dated July 25, 2016, revises VAAR subpart 819.70 in its entirety to fully implement the Veterans First Contracting Program to comply with 38 U.S.C. 8127 and 8128 and the U.S. Supreme Court decision. This deviation is effective until incorporated into the VAAR or the VAAM or is otherwise rescinded.]

### **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) directs a VA specific acquisition program for small business concerns owned and controlled by service-disabled Veterans and those owned and controlled by Veterans.

(b) The purpose of the program is to provide contracting assistance to verified SDVOSBs and VOSBs, so they can fully participate in the VA contracting process. The program as implemented in this subpart shall be referred to as the Veterans First Contracting Program.

(c) 38 U.S.C. 8127 (b), (c) and (d) provide the authority for VA contracting officers to make awards to verified SDVOSBs/VOSBs using set-asides, as well as other than full and open competition (sole source), when certain conditions are met.

(d) Contracting officers shall award contracts on the basis of competition restricted to small business concerns owned and controlled by Veterans (see [819.7005](#) and [819.7006](#)), to the maximum extent practicable. The contracting officer may also use other SDVOSB/VOSB preferences in this subpart as appropriate.

### **819.7002 Applicability.**

This subpart applies to VA contracting activities and to all contracts (see [FAR 2.101](#) , Definitions), including BPAs and orders, under [FAR subpart 8.4](#) and [FAR part 12](#) that are not otherwise excluded by law. In addition, this subpart applies 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 in accordance with [817.502](#).

### **819.7003 Eligibility.**

(a) Size eligibility of SDVOSBs/VOSBs continues to be governed by the Small Business Administration (SBA) regulations, 13 CFR subparts 125.8 through 125.13, as well as [FAR part 19](#) , except where expressly directed otherwise by this part, and 38 CFR 74 verification regulations for SDVOSBs /VOSBs.

(b) At the time of submission of offers/quotes, and prior to award of any contracts, 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) SDVOSB/VOSB listed as verified in VIP database at: <https://www.vip.vetbiz.gov>.

(c) A joint venture may be considered an SDVOSB/VOSB concern if-

(1) At least one member of the joint venture is a verified SDVOSB or VOSB 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 size standard explanation of affiliates in [FAR 19.101](#) ; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b), modified to include VOSBs where this CFR section refers to SDVOSBs.

(d) Any SDVOSB/VOSB (non-manufacturer) must meet the requirements in [FAR 19.102\(f\)](#) to receive a benefit under this program.

(e) In some instances, SDVOSB eligibility may be extended to businesses owned and operated by surviving spouses, as set forth in [802.101](#);

(f) Pursuant to 38 USC 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented its SDVOSB/VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This debarment includes all principals in the business. See [809.406](#), Debarment.

#### **819.7004 Contracting order of priority.**

In determining the acquisition strategy applicable to a procurement requirement the contracting officer shall consider, in the following order of priority, contracting preferences prescribed in this part for awarding VA contracts to:

(a) Eligible small business concerns owned and controlled by service-disabled Veterans;

(b) Eligible small business concerns owned and controlled by Veterans that are not covered by paragraph (a);

(c) Small business concerns using priorities and preferences in [819.203-70](#) and this subpart.

#### **819.7005 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 [813.106](#), [819.7007](#) and [819.7008](#), the contracting officer shall set-aside an acquisition for competition restricted to verified SDVOSB concerns upon a reasonable expectation based on market research that:

(1) Offers/quotes will be received from two or more eligible SDVOSB; 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) Businesses are registered and verified as eligible in the VIP database at the time of submission of offers/quotes, and prior to making an award; and

(2) Offerors affirmatively represent their 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\(b\)](#) and/or [\(c\)](#).

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

#### **819.7006 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 [813.106](#), [819.7007](#) and [819.7008](#), the contracting officer shall set aside an acquisition for competition restricted to SDVOSBs or VOSBs upon a reasonable expectation, based on market research, that:

(1) Offers/quotes will be received from two or more eligible SDVOSBs or VOSBs; and

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

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

(1) Businesses are listed as verified in the VIP database at the time of submission of offers/quotes and prior to making an award; and

(2) Offerors affirmatively represent their SDVOSB/VOSB 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\(b\)](#) and/or [\(c\)](#).

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from a verified SDVOSB/VOSB in response to a SDVOSB or VOSB set-aside, the contracting officer should make an award to that SDVOSB or VOSB. If the contracting officer receives no acceptable offers/quotes from verified SDVOSBs or VOSBs, the SDVOSB or VOSB set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs or otherwise procured using the most appropriate strategy based on the results of market research.

**819.7007 Sole source awards to a verified service-disabled Veteran-owned small business.**

(a) A contracting officer may award a contract to a verified SDVOSB concern using procedures other than competitive procedures provided-

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

(2) The justification prepared pursuant to [FAR 6.302-5\(c\)\(2\)\(ii\)](#) is posted in accordance with [FAR subpart 5.301\(d\)](#) ;

(3) The SDVOSB concern has been determined to be a responsible source 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 verified SDVOSBs, this authority is to be used judiciously and 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 [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.

**819.7008 Sole source awards to a verified Veteran-owned small business.**

(a) A contracting officers may award a contract to a verified VOSB concern using procedures other than competitive procedures provided-

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

(2) The justification prepared pursuant to [FAR 6.302-5\(c\)\(2\)\(ii\)](#) is posted in accordance with [FAR 5.301\(d\)](#) ;

(3) The VOSB concern has been determined to be a responsible source 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 concern has been identified.

(b) The contracting officer's determination whether 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 verified SDVOSB/VOSBs, this authority is to be used judiciously and 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 [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.

### **819.7009 Contract clauses.**

The contracting officer shall insert clause [852.219-10](#), VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside or clause [852.219-11](#), VA Notice of Total Veteran-Owned Small Business Set-Aside as applicable, in open market solicitations and contracts for acquisitions set-aside under this subpart.

## **Subpart 819.71 - VA Mentor-Protégé Program**

### **819.7101 Purpose.**

The VA Mentor-Protégé Program is designed to assist service-disabled Veteran-owned small businesses (SDVOSBs) and Veteran-owned small businesses (VOSBs) in enhancing their capabilities to perform contracts and subcontracts for VA. The Mentor-Protégé Program is also designed to improve the performance of VA contractors and subcontractors by providing developmental assistance to protégé entities, fostering the establishment of long-term business relationships between SDVOSBs, VOSBs and prime contractors, and increasing the overall number of SDVOSBs and VOSBs that receive VA contract and subcontract awards. A firm's status as a protégé under a VA contract shall not have an effect on the firm's eligibility to seek other prime contracts or subcontracts.

### **819.7102 Definitions.**

(a) A *Mentor* is a contractor that elects to promote and develop SDVOSBs and/or VOSBs by providing developmental assistance designed to enhance the business success of the protégé. A mentor may be a large or small business concern.

(b) *OSDBU* is the Office of Small and Disadvantaged Business Utilization. This is the VA office responsible for administering, implementing and coordinating the Department's small business programs, including the Mentor-Protégé Program.

(c) *Program* refers to the VA Mentor-Protégé Program as described in this Subpart.

(d) Protégé means a SDVOSB or VOSB, as defined in 802.101, which meets federal small business size standards in its primary NAICS code and which is the recipient of developmental assistance pursuant to a Mentor-Protégé agreement.

### **819.7103 Non-affiliation.**



A Protégé firm will not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance from the mentor firm under VA's Mentor-Protégé Program. The determination of affiliation is a function of the SBA.

#### **819.7104 General policy.**

(a) To be eligible, mentors and protégés must not be listed on the Excluded Parties List System, located at <http://www.epls.gov>. Mentors will provide appropriate developmental assistance to enhance the capabilities of protégés to perform as prime contractors and/or subcontractors.

(b) VA reserves the right to limit the number of participants in the program in order to ensure its effective management of the Mentor-Protégé Program.

#### **819.7105 Incentives for prime contractor participation.**

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(e), VA is authorized to provide appropriate incentives to encourage subcontracting opportunities for small business consistent with the efficient and economical performance of the contract. This authority is limited to negotiated procurements. FAR 19.202-1 provides additional guidance.

(b) Costs incurred by a mentor to provide developmental assistance, as described in [819.7110](#) to fulfill the terms of their agreement(s) with a protégé firm(s), are not reimbursable as a direct cost under a VA contract. If VA is the mentor's responsible audit agency under [FAR 42.703-1](#), VA will consider these costs in determining indirect cost rates. If VA is not the responsible audit agency, mentors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates.

(c) In addition to subparagraph (b) of this section, contracting officers shall give mentors evaluation credit under 852.219-52, Evaluation Factor for Participation in the VA Mentor-Protégé Program, considerations for subcontracts awarded pursuant to their Mentor-Protégé Agreements and their subcontracting plans. Therefore:

(1) Contracting officers may evaluate subcontracting plans containing mentorprotégé arrangements more favorably than subcontracting plans without Mentor-Protégé Agreements.

(2) Contracting officers may assess the prime contractor's compliance with the subcontracting plans submitted in previous contracts as a factor in evaluating past performance under [FAR 15.305\(a\)\(2\)\(v\)](#) and determining contractor responsibility [19.705-5\(a\)\(1\)](#).

(d) OSDBU Mentoring Award. A nonmonetary award will be presented annually to the mentoring firm providing the most effective developmental support to a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the OSDBU Director.

(e) OSDBU Mentor-Protégé Annual Conference. At the conclusion of each year in the Mentor-Protégé Program, mentor firms will be invited to brief contracting officers, program leaders, office directors and other guests on program progress.

#### **819.7106 Eligibility of Mentor and Protégé firms.**

Eligible business entities approved as mentors may enter into agreements (hereafter referred to as "Mentor-Protégé Agreement" or "Agreement" and explained in [819.7108](#)) with eligible protégés.

Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors and/or subcontractors. Eligible small business entities capable of providing developmental assistance may be approved as mentors. Protégés may participate in the program in pursuit of a prime contract or as subcontractors under the mentor's prime contract with VA, but are not required to be a subcontractor to a VA prime contractor or be a VA prime contractor.

(a) Eligibility. A Mentor:

- (1) May be either a large or small business entity and either a prime contractor or subcontractor;
- (2) Must be able to provide developmental assistance that will enhance the ability of Protégés to perform as prime contractors or subcontractors; and
- (3) Will be encouraged to enter into arrangements with entities with which it has established business relationships.

(b) Eligibility. A Protégé:

- (1) Must be a SDVOSB or VOSB as defined in [802.101](#);
- (2) Must meet the size standard corresponding to the NAICS code that the Mentor prime contractor believes best describes the product or service being acquired by the subcontract; and

(c) Protégés may have multiple mentors. Protégés participating in mentor-protégé programs in addition to VA's Program should maintain a system for preparing separate reports of mentoring activity so that results of VA's Program can be reported separately from any other agency program.

(d) A protégé firm shall self-represent to a mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors shall confirm eligibility by documenting the verified status of the protégé in the [VetBiz.gov](#) VIP database. Protégés must maintain verified status throughout the term of the Mentor-Protégé Agreement. Failure to do so shall result in cancellation of the Agreement.

#### **819.7107 Selection of Protégé firms.**

(a) Mentor firms will be solely responsible for selecting protégé firms. Mentors are encouraged to select from a broad base of SDVOSB or VOSB firms whose core competencies support VA's mission; and choose SDVOSB and/or VOSB protégés in addition to firms with whom they have established business relationships.

(b) Mentors may have multiple protégés. However, to preserve the integrity of the Program and assure the quality of developmental assistance provided to protégés, VA reserves the right to limit the total number of protégés participating under each mentor firm for the Mentor-Protégé Program.

(c) The selection of protégé firms by mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a mentor shall be handled in accordance with the FAR and SBA regulations.

#### **819.7108 Application process.**

(a) Firms interested in becoming approved mentor-protégé participants must submit a joint written VA Mentor-Protégé Agreement to the VA OSDBU for review and approval. The proposed Mentor-Protégé Agreement will be evaluated on the extent to which the mentor plans to provide developmental assistance. Evaluations will consider the nature and extent of technical and managerial support as well as any proposed financial assistance in the form of equity investment, loans, joint-venture, and traditional subcontracting support.

(b) The Mentor-Protégé Agreement must contain:

(1) Names, addresses, phone numbers, and e-mail addresses (if available) of the mentor and protégé firm(s) and a point of contact for both mentor and protégé who will oversee the agreement;

(2) A statement from the protégé firm that the firm is currently eligible as a SDVOSB or VOSB to participate in VA's Mentor-Protégé Program;

(3) A description of the mentor's ability to provide developmental assistance to the protégé and the type of developmental assistance that will be provided, to include a description of the types and dollar amounts of subcontract work, if any, that may be awarded to the protégé firm;

(4) Duration of the Agreement, including rights and responsibilities of both parties (mentor and protégé), with bi-annual reviews;

(5) Termination procedures, including procedures for the parties' voluntary withdrawal from the Program. The Agreement shall require the mentor or the protégé to notify the other firm and VA OSDBU in writing at least 30 days in advance of its intent to voluntarily terminate the Agreement;

(6) A schedule with milestones for providing assistance;

(7) Criteria for evaluation of the protégé's developmental success;

(8) A plan addressing how the mentor will increase the quality of the protégé firm's technical capabilities and contracting and subcontracting opportunities;

(9) An estimate of the total cost of the planned mentoring assistance to be provided to the Protégé;

(10) An agreement by both parties to comply with the reporting requirements of [819.7113](#);

(11) A plan for accomplishing unfinished work should the Agreement be voluntarily cancelled;

(12) Other terms and conditions, as appropriate; and

(13) Signatures and date(s).

(c) The Agreement defines the relationship between the mentor and the protégé firms only. The Agreement does not create any privity of contract between the mentor and VA or the protégé and VA.

#### **819.7109 VA review of application.**

(a) VA OSDBU will review the information to establish the mentor and protégé eligibility and to ensure that the information that is in VAAR [819.7108](#) is included. If the application relates to a specific contract, then OSDBU will consult with the responsible contracting officer on the adequacy

of the proposed Agreement, as appropriate. OSDBU will complete its review no later than 30 calendar days after receipt of the application or after consultation with the contracting officer, whichever is later. There is no charge to apply for the Mentor-Protégé Program.

(b) After OSDBU completes its review and provides written approval, the mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. OSDBU will post a copy of the Mentor-Protégé Agreements to a VA Web site to be accessible to VA contracting officers for review for any VA contracts affected by the Agreement.

(c) If the application is disapproved, the mentor may provide additional information for reconsideration. OSDBU will complete review of any supplemental material no later than 30 days after its receipt. Upon finding deficiencies that VA considers correctable, OSDBU will notify the mentor and protégé and request correction of deficiencies to be provided within 15 days.

#### **819.7110 Developmental assistance.**

The forms of developmental assistance a mentor can provide to a protégé include, but are not limited to, the following:

(a) Guidance relating to—

- (1) Financial management;
- (2) Organizational management;
- (3) Overall business management/planning;
- (4) Business development; and
- (5) Technical assistance.

(b) Loans.

(c) Rent-free use of facilities and/or equipment.

(d) Property.

(e) Temporary assignment of personnel to a Protégé for training.

(f) Any other types of permissible, mutually beneficial assistance.

#### **819.7111 Obligations under the Mentor-Protégé Program.**

(a) A mentor or protégé may voluntarily withdraw from the Program. However, in no event shall such withdrawal impact the contractual requirements under any prime contract with VA.

(b) Mentors and protégés shall submit reports to VA OSDBU in accordance with [819.7113](#).

#### **819.7112 Internal controls.**

(a) OSDBU will oversee the Program and will work cooperatively with relevant contracting officers to achieve Program objectives. OSDBU will establish internal controls as checks and balances

applicable to the Program. These controls will include:

- (1) Reviewing and evaluating mentor applications for validity of the provided information;
- (2) Reviewing bi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the plan submitted in the approved Agreement;
- (3) Reviewing and evaluating financial reports and invoices submitted by the mentor to verify that VA is not charged by the mentor for providing developmental assistance to the protégé; and
- (4) Limiting the number of participants in the Mentor-Protégé Program within a reporting period, in order to insure the effective management of the Program.

(b) VA may rescind approval of an existing Mentor-Protégé Agreement if it determines that such action is in VA's best interest. The rescission shall be in writing and sent to the mentor and protégé after approval by the OSDBU Director. Rescission of an Agreement does not change the terms of any subcontract between the mentor and the protégé.

#### **819.7113 Reports.**

(a) Mentor and protégé entities shall submit to VA's OSDBU bi-annual reports on progress under the Mentor-Protégé Agreement. VA will evaluate reports by considering the following:

- (1) Specific actions taken by the mentor during the evaluation period to increase the participation of their protégé(s) as suppliers to VA, other government agencies and to commercial entities;
- (2) Specific actions taken by the mentor during the evaluation period to develop technical and administrative expertise of a protégé as defined in the Agreement;
- (3) The extent to which the protégé has met the developmental objectives in the Agreement;
- (4) The extent to which the mentor's participation in the Mentor-Protégé Program impacted the protégé's ability to receive contract(s) and subcontract(s) from private firms and federal agencies other than VA; and, if deemed necessary;
- (5) Input from the protégé on the nature of the developmental assistance provided by the mentor.

(b) OSDBU will submit annual reports to the relevant contracting officer regarding participating prime contractor(s) performance in the Program.

(c) In addition to the written progress report in paragraph (a) of this section, at the mid-term point in the Mentor-Protégé Agreement, the mentor and the protégé shall formally brief the VA OSDBU regarding program accomplishments as pertains to the approved agreement.

(d) Mentor and protégé firms shall submit an evaluation to OSDBU at the conclusion of the mutually agreed upon Program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Program, whichever comes first.

#### **819.7114 Measurement of program success.**

The overall success of the VA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the quality of the technical capabilities of the protégé firm.

(b) An increase in the number and dollar value of contract and subcontract awards to protégé firms since the time of their entry into the program attributable to the mentor-protégé relationship (under VA contracts, contracts awarded by other Federal agencies and under commercial contracts.)

**819.7115 Solicitation provisions.**

(a) Insert [852.219-71, VA Mentor-Protégé Program](#), in solicitations that include FAR clause 52.219-9, Small Business Subcontracting Plan.

(b) Insert [852.219-72, Evaluation Factor for Participation in the VA Mentor-Protégé Program](#), in solicitations that include an evaluation factor for participation in VA's Mentor-Protégé Program in accordance with [819.7105](#) and that also include [FAR clause 52.219-9, Small Business Subcontracting Plan](#).