Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion of this site from the NPL are available to the public in the information repositories and at www.regulations.gov.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP (40 CFR 300.425(c)) states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Illinois, has determined that the responsible parties have implemented all response actions required, and no further response action by responsible parties is appropriate.

V. Deletion Action

EPA, with concurrence from State of Illinois through the Illinois Environmental Protection Agency, has determined that all appropriate response actions under CERCLA have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective February 8, 2010 unless EPA receives adverse comments by January 7, 2010. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.


Bharat Mathur,
Acting Regional Administrator, Region 5.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:


Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing “Kerr-McGee (Reed Keppler Park)”, “West Chicago”, “IL”.

[FR Doc. E9–29081 Filed 12–7–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 802, 804, 808, 809, 810, 813, 815, 817, 819, 828, and 852

RIN 2900–AM92

VA Acquisition Regulation: Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document implements portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (the Act) and Executive Order 13360, providing opportunities for service-disabled veteran-owned small businesses (SDVOSB) to increase their Federal contracting and subcontracting. The Act and the Executive Order authorize the Department of Veterans Affairs (VA) to establish special acquisition methods for contracting with SDVOSBs and veteran-owned small businesses (VOSB). Under this final rule, a VA contracting officer may restrict competition to contracting with SDVOSBs or VOSBs under certain conditions. Likewise, sole source contracts with SDVOSBs or VOSBs are permissible under certain conditions. This final rule implements these special acquisition methods as a change to the VA Acquisition Regulation (VAAR).

This document additionally amends SDVOSB/VOSB, Small Business Status Protests, where VA provided that VA would utilize the U.S. Small Business Administration (SBA) to consider and decide SDVOSB and VOSB status protests. This requires VA and SBA to execute an interagency agreement pursuant to the Economy Act. Negotiations of this interagency agreement have not yet been finalized. Therefore, VA has amended these regulations with an interim rule to provide that VA’s Executive Director, Office of Small and Disadvantaged Business Utilization (OSDBU) shall consider and decide SDVOSB and VOSB status protests, and, provides procedures there for, until such time as the interagency agreement is executed by the agencies. VA hereby solicits comments on this regulatory amendment only.

DATES: January 7, 2010. Comment date: Comments on the amendments regarding section 819.307, only, must be received on or before January 7, 2010.

FOR FURTHER INFORMATION CONTACT: Arita Tillman, Acquisition Policy Division (001AL–P1A), Office of Acquisition and Logistics, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, telephone (202) 461–6859, or e-mail Arita.Tillman@va.gov.

SUPPLEMENTARY INFORMATION: On August 20, 2008, VA published in the Federal Register (73 FR 49141–49155) a proposed rule to revise the VAAR to implement portions of Public Law 109–461, the Veterans Benefits, Health Care and Information Technology Act of 2006, and Executive Order 13360, providing opportunities for SDVOSBs and VOSBs to increase their federal contracting and subcontracting. Comments were solicited concerning the proposal for 60 days, ending October 20, 2008. VA received 97 comments, many of which were groups of identical responses in form letters. Most commenters raised more than one issue. The issues raised in the comments are discussed below.

1. SDVOSB and VOSB Verification

Comment: Several comments were received regarding the validity of VA’s Vendor Information Pages (VIP) database registration process, expressing concern for “pass through” business relationships and the potential for other fraudulent actions.

Response: The regulations governing the verification of VOSB status, which are in 38 CFR Part 74, are not the subject of this rulemaking. Accordingly, we will not make any changes based upon the comments. In the past, vendors could register themselves in the VA vendor database and self certify the accuracy of the information provided. However, section 502 of Public Law 109–461 requires VA to maintain a database of SDVOSBs and VOSBs and that VA verify that status. Section 74.2 sets out the eligibility requirements for VIP verification, and 38 CFR 74.3 sets out the criteria for a VOSB. Further, this final rule under section 802.101, Definitions, prescribes that SDVOSBs...
and VOSBs must be listed as verified in the VIP database to participate in the Veterans First Contracting Program. The verification process is set out in 38 CFR 74.20 and requires VA Center for Veteran Enterprise officials to verify the accuracy of information vendors provide as part of the VetBiz VIP Verification application process. This verification process should alleviate some of the commenters’ concern about “pass through” business relationships since the information contained in applications is subject to review and verification. Section 804.1102 of the proposed rule requires that SDVOSBs and VOSBs must be registered in the VIP database, available at www.VetBiz.gov, in addition to being registered in the Central Contractor Registration (CCR), as required by 48 CFR subpart 4.11, to be eligible to participate in VA’s Veteran-owned Small Business prime contracting and subcontracting opportunities programs. To further address the validity of the VIP database registration process, to clarify the requirement of this section, and to allow VA time to adequately verify firms, this section is revised to state that prior to January 1, 2012, SDVOSBs and VOSBs must be listed in the VIP database and registered in CCR to receive new contract awards under this program. After December 31, 2011, SDVOSBs and VOSBs must be listed as verified in the VIP database and registered in CCR to receive new awards under this program.

2. Clarification of Section 813.106

Comment: One commenter stated that proposed section 813.106 in the SUPPLEMENTARY INFORMATION section of the Proposed Rule is confusing. Therein, it states that: “contracting officers may use other than competitive procedures to enter into a contract with a SDVOSB or VOSB when the amount is less than the simplified acquisition threshold not to exceed $5 million.”

Response: Proposed section 813.106 stated that “contracting officers may use other than competitive procedures to enter into a contract with a SDVOSB or VOSB when the amount is less than the simplified acquisition threshold.” However, as noted by the commenter, the SUPPLEMENTARY INFORMATION section in the proposed rule addressing section 813.106 describes the amount as “less than the simplified acquisition threshold not to exceed $5 million.” First, 38 U.S.C. 8127(b) provides that VA may conduct other than competitive procurements up to the simplified acquisition threshold. Next, 38 U.S.C. 8127(c) provides that a VA contracting officer may award a contract to veteran owned small business concerns using other than competitive procedures if the anticipated award price including options will exceed the simplified acquisition threshold (as defined in the section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403) but will not exceed $5 million.

In order to address the comment and provide clarification, proposed section 813.106 has been renumbered as section 813.106(a) and revised to state:

“Contracting officers may use other than competitive procedures to enter into a contract with a SDVOSB or VOSB when the amount exceeds the micro-purchase threshold up to $5 million.” This change will provide that VA contracting officers can award any procurement from the micro-purchase, which is currently $3,000 for supplies, up to $5 million using other than competitive procedures to be in accordance with both sections 8127(b) and (c). Purchases under the micro-purchase threshold are still available for award to any source, large or small, to promote administrative and economic efficiency of internal VA operations. However, section 813.202 does provide that micro-purchases shall be equitably distributed among SDVOSBs and VOSBs to the maximum extent practical.

Comment: A commenter recommended that in section 813.106, the word “may” be changed to “shall.”

Response: We disagree with the commenter and believe the regulation clearly implements the discretion provided in 38 U.S.C. 8127(c) in accordance with the statute. The statutory language states a contracting officer may award a contract to a small business concern owned and controlled by veterans using other than competitive procedures. We believe the determination whether or not to use other than competitive procedures under this section is a business decision that is left to the discretion of the contracting officer. Therefore, no change is being made to the rule based on this comment.

3. Applicability to Architect-Engineering (A/E) Services

Comment: Several commenters asked whether proposed subpart 819.70 applies to the award of sole source VOSB and SDVOSB contracts for A/E contracts.

Response: This rule does not apply to the procedures to procure A/E services. Pursuant to the Brooks Act (Pub. L. 92–582), A/E services cannot be awarded on a sole source basis. The Brooks Act requires Federal agencies to publicly announce all requirements for A/E services, and to negotiate contracts for A/E services on the basis of demonstrated competence and qualification for the type of professional services required at fair and reasonable prices. The sole source authority in 38 U.S.C. 8127 does not override the Brooks Act because under general principles of statutory interpretation the specific governs over general language. In this instance, A/E contracting statutes govern versus contracting in general. However, since the Small Business Competitiveness Demonstration Program in subpart 19.10 of the Federal Acquisition Regulation (FAR) includes A/E services as a designated industry group (DIG), VA contracting officers may use the provisions of 38 U.S.C. 8127 and this rule when procuring DIG requirements. Section 19.1007(b)(2) of the FAR, 48 CFR 19.1007(b)(2), establishes that Section 8(a), Historically Underutilized Business (HUB) Zone and SDVOSB set-asides, must be considered in DIG acquisitions. However, using the provisions of 38 U.S.C. 8127 and this rule, VA personnel may change the order of priority to consider SDVOSB and VOSB set-asides before Section 8(a) and HUB Zone set-asides when procuring A/E services under the Small Business Competitiveness Demonstration Program.

Comment: One commenter noted that section 852.219–10(c) indicates that for services (except construction), at least 50 percent of the personnel costs must be spent for employees of the particular concern or for employees of other eligible SDVOSB concerns. The commenter stated that because A/E type services are very similar to those in the construction field (e.g., specialty trade), which only require subcontractors to perform just 25 percent of the total work, A/E contractors should also be permitted to perform 25 percent (versus 50 percent) of the work.

Response: This rule follows guidance in the generally applicable, government-wide U.S. Small Business Administration (SBA) regulations and the Federal Acquisition Regulations that set subcontracting requirement limits for government-wide set-aside programs. See 13 CFR 125.6; 48 CFR part 19. These regulations require for a services contract (except construction) that the small business concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. In the case of a contract for supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of
manufacturing the supplies or products (not including the costs of materials). In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials). VA’s rule follows the SBA model as these percentages are commonly applied and accepted in government-wide set aside authorities. VA has no rational basis to adjust these percentages and, for administrative ease, does not want to have to enforce separate sets of subcontracting limitations for set asides with SDVOSB/VOSBs versus other socio-economic set aside programs. Further, these subcontracting limitations ensure that the services will be performed by the veteran business owner’s employees. We believe the 50 percent requirement contained in this rule is appropriate and consistent with generally accepted guidance on small business programs regarding subcontracting limitations. Therefore, no change will be made.

4. Definition of SDVOSB Concern and Succession of the Business

Comment: Several commenters suggested that the definition of SDVOSB be amended to add the following information: “The management and daily operations of the business are controlled by one or more service-disabled veteran(s) or in the case of a veteran with a permanent and severe disability, the spouse or permanent caregiver of such veteran be authorized to participate in the program on his or her behalf.”

Two commenters suggested the “SDVOSB concern” definition be expanded to include spouses who gain ownership of a business upon the death of any service-disabled veteran or a veteran regardless of the cause or the percent of disability. The SDVOSB status would last for a period of 2 years or until the spouse re-marries or sells the interest in the business.

Several commenters felt that the current succession definition is restrictive since surviving spouses of deceased veterans may only succeed the business if the veteran had a 100 percent disability.

One commenter suggested that the surviving spouse should be able to continue the business for at least 10 years regardless of the disability rating of the veteran.

Another commenter suggested that spouses of any service-disabled veteran of any level of disability or a veteran who died of any reason should have a 2-year period to “sunset” the business to protect all employees from predatory takeovers and to safeguard the value of the business concern.

Other commenters suggested that any surviving children or permanent care giver of the veteran also should be afforded the opportunity to participate in this program.

Response: The criteria for treatment of the business after the death of the veteran owner are in 38 U.S.C. 8127(h). Under current law, the surviving spouse of a veteran with a service-connected disability rating of 100 percent disabled or who died as a result of a service-connected disability would maintain the SDVOSB status. The surviving spouse would retain this status until he or she re-marries, relinquishes an ownership interest in the small business, or for 10 years after the death of the veteran, whichever occurs first. VA cannot interpret section 8127(h) as suggested by the commenters because the plain statutory language clearly prescribes the criteria for surviving spouse succession. There is no statutory authority to include participation of a spouse who is the caregiver to a living veteran owner, permanent caregiver of a disabled veteran or surviving children in the program. Furthermore, the length of participation by a surviving spouse is prescribed in section 8127(h). The commenter’s suggestion to include a 2-year participation period for the spouse of a service-disabled veteran regardless of the disability rating goes beyond the authority provided in the current law. The only succession of the business authorized for the program by Congress in section 8127(h) is to the surviving spouse of a veteran who had a service-connected disability rating of 100 percent or who died as a result of a service-connected disability. Congress has not otherwise authorized other categories of persons to maintain SDVOSB status for business succession purposes. Given that any change to the current definition would require revised statutory authority, no change may be made through this rulemaking process. The definition provided in proposed section 802.101 for SDVOSB concerns is adequate and consistent with the criteria in 38 U.S.C. 8127(h).

5. Synopsis Requirements

Comment: One commenter stated that proposed section 819.7007, requiring synopsis of prospective sole source contracts, conflicts with VA Information Letter 049–07–08. The commenter further stated that the Small Business Administration (SBA) Section 8(a) program does not require a synopsis for sole source awards.

Response: The commenter is correct that there is a difference between the synopsis requirement in VA Information Letter 049–07–08 and as proposed in this rule. The letter states that a synopsis is not required, but this final rule states a contracting officer may award contracts to SDVOSBs or VOSBs on a sole source basis provided that “the requirement is synopsized in accordance with the Federal Acquisition Regulations Part 5.” The provisions contained in this rule will supersede those contained in the letter. Further, the synopsis requirement is changed in order to ensure that all activity under VA’s Veterans First Contracting Program has full transparency for all concerns, including those of the American taxpayer. Therefore, a notice of intent to issue a sole source contract will be published prior to the award of sole source contracts. Note that VA’s Veterans First Contracting Program, unlike SBA’s Section 8(a) program, is not a business development program. The Section 8(a) program addresses small business that must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States. This socio-economic program is designed to aid fledgling small businesses controlled by such disadvantaged individuals so that they may become familiar with the federal procurement process and eventually grow in size and capability to graduate from the Section 8(a) program. VA does not consider veterans to fall into the same category as Section 8(a) individuals. While veterans’ service will entitle them to priority in many contracting opportunities with VA, VA finds that the goals of the Section 8(a) program (aiding socially disadvantaged individuals) are separate and distinct from those in this proposed regulation (priority for veteran small businesses in most procurement opportunities). As stated, VA desires transparency in SDVOSB/VOSB sole source procurements as the number of awards under this authority is likely to be significantly greater than Section 8(a) awards.

In addition, section 813.106(b) has been added to the final rule to include a synopsis requirement for contracting actions estimated to exceed $25,000, which are performed under the purview of section 813.106(a). This synopsis requirement will likewise provide for greater transparency within the Veterans First Contracting Program with regard to non-competitive procurements under this section.
6. Priorities of SDVOSB Contractors

Comment: One commenter stated that the rule's implementation is critically important to people who are blind or severely disabled. This commenter suggests that the criteria for priority for SDVOSBs and VOSBs should be revised to give preference to SDVOSBs and VOSBs owned by veterans, with a particular focus on severely disabled veterans and veterans who are blind.

Response: This comment reflects the language contained in the rule, which provides that veterans who are severely disabled be eligible to receive set-asides. However, several commenters suggested that veteran organizations with the needed capacity and capability to fully use the authority contained in this rule. These commenters suggested that veteran organizations working with AbilityOne NPs as subcontractors be given a preference status. Some commenters suggested that VA revise the purchase priorities in section 808.603 to reflect the following order: SDVOSBs, VOSBs, then SDVOSBs or VOSBs partnering with qualified subcontractors to AbilityOne NPs.

Response: This rule adopts the SBA's Joint Venture regulations, which provide that a joint venture may enter into a joint venture agreement with one or more other small businesses who are blind or severely disabled. This rulemaking does not alter AbilityOne’s status in the ordering preference for current or future items on the AbilityOne procurement list.

Comment: Many commenters stated that the language in the rule does not offer sufficient protection for current AbilityOne program procurement list projects. The commenters request that VA modify section 819.7003(c) be further stated that once a project is on the procurement list, the item should remain on the list unless VA receives consent to take the item out of the AbilityOne program.

Response: We appreciate the comments; however, AbilityOne’s priority status has not been changed as a result of this rule. Further, this rule does not impact items currently on the AbilityOne procurement list or items that may be added to the procurement list in the future.

10. AbilityOne Opportunities for Partnership

Comment: Several commenters stated that this is an opportunity for VOSBs and SDVOSBs to partner with AbilityOne to increase VA procurement opportunities for these socioeconomic groups. Several commenters requested that VA modify section 819.7003(c) to be modified to include AbilityOne-qualified Non-Profit Agencies (NPAs) who represent people who are blind or severely disabled be eligible to participate in a joint venture under VA’s Veterans First Contracting Program. Several other commenters suggested that VA may have difficulty locating veteran organizations with the needed capacity and capability to fully use the authority contained in this rule. These commenters suggested that veteran organizations working with AbilityOne NPs as subcontractors be given a preference status. Some commenters suggested that VA revise the purchase priorities in section 808.603 to reflect the following order: SDVOSBs, VOSBs, then SDVOSBs or VOSBs partnering with qualified subcontractors to AbilityOne NPs.

Response: We appreciate the comments; however, AbilityOne’s priority status has not been changed as a result of this rule. Further, this rule does not impact items currently on the AbilityOne procurement list or items that may be added to the procurement list in the future.

7. Change to Federal Acquisition Regulation (FAR)

Comment: One commenter questioned why this is a change to the VA Acquisition Regulations (VAAR) and not the FAR. Another commenter stated he would like to see the same wording in the FAR or a Federal Acquisition Circular.

Response: Sections 8127 and 8128 of title 38, U.S.C., contain provisions that authorize VA to create a VA-specific procurement program to provide contracting preference to SDVOSBs and VOSBs. VA is required to give priority in contracting to small businesses owned and controlled by veterans, but the program is not intended to have government-wide applicability under the FAR. Congress has not authorized a similar procurement program applicable to all federal agency contracting. Accordingly, this rulemaking is limited to VA and therefore, can only be implemented in VA’s FAR supplement, the VAAR. This specific rule is a logical extension of VA’s mission to care for and assist veterans in returning to private life. It provides VA with the new contracting flexibilities to assist veterans in doing business with VA. SDVOSBs and VOSBs will obtain valuable experience through this VA program that can be useful in obtaining contracts and subcontracts with other government agencies as well.

8. Equitable Distribution of Small Business Opportunities

Comment: One commenter stated concern over the equitable distribution of procurement opportunities available to small businesses. As a small business owner, the commenter sees few opportunities for a small construction company to work with VA given the recent legislation authorizing set-aside and negotiated procurements for veterans, HUBZone contractors, woman-owned, and Section 8(a) firms. The commenter also stated VA is paying a premium for construction contracts that are awarded as small business set-asides.

Response: VA is required to adhere to a strict order of priority as prescribed in 38 U.S.C. 8127(i). Further, in accordance with both the Federal Acquisition Regulations (FAR) and VA Acquisition Regulations, contracting officers are required to conduct a thorough cost and/or price analysis to ensure that the government is receiving a fair and reasonable price. However, because the Small Business Competitiveness Demonstration Program in FAR subpart 19.10 includes construction as a designated industry group (DIG), VA contracting officers may use the provisions of 38 U.S.C. 8127 and this rule when procuring DIG requirements. FAR 19.1007(b)(2) establishes that Section 8(a), HUB Zone and SDVOSB set-asides must be considered. However, using the provisions of 38 U.S.C. 8127, as implemented in this rule, VA personnel may change the order of priority to consider SDVOSB and VOSB set-asides before Section 8(a) and HUB Zone set-asides when procuring construction contracts under the Small Business Competitiveness Demonstration Program. Due to this statutorily prescribed contracting preference for SDVOSBs and VOSBs in VA acquisitions, other small-business owners may be disadvantaged by this rule in securing contracts with VA. Nevertheless, VA is obligated to implement the public policy set forth in statute that favors SDVOSBs and VOSBs over other small business concerns.

9. AbilityOne Program Procurement List Protection

Comment: A comment was received stating the AbilityOne Network is the largest source of employment for people who are blind or have severe disabilities, including service-disabled veterans. The commenter stated that not all veterans are interested in owning a business as many prefer employment support, which is available through AbilityOne. One commenter expressed concern that this rule may adversely affect future AbilityOne contracts, which may result in fewer employment opportunities for veterans. The commenter stated the set-asides do not offer protection for disabled veterans who cannot or do not want to own their own businesses.

Response: This rule will not negatively impact AbilityOne and its ability to continue to provide employment to disabled veterans. This rulemaking does not alter AbilityOne’s status in the ordering preference for current or future items on the AbilityOne procurement list.
concerns for the purpose of performing a service disabled veteran owned contract. See 13 CFR 125.15(b)(1)(i). A joint venture of at least one SDVOSB concern and one or more other business concerns may submit an offer as a small business for a competitive service disabled veteran owned contract procurement so long as each concern is under the size standard corresponding to the North American Industrial Classification System (NAICS) code assigned to the contract. All companies must qualify under the SBA guidelines to be considered under section 819.7003. By definition, a small business must be a for profit entity. AbilityOne NPA’s are non-profit agencies, therefore, no change can be made to create a blanket joint venture relationship authority between AbilityOne NPA's and SDVOSBs or VOSBs. At present, there is no statutory authority to create an order of priority for AbilityOne contractors working as subcontractors to SDVOSBs or VOSBs.

11. Request for a Specific Order of Preference

Comment: One commenter suggested revising proposed section 808.603 to specifically define the purchase priority hierarchy for use by VA contracting personnel.

Response: We disagree with the commenter and believe that this rule clearly implements the priority purchasing preference for SDVOSB and VOSB in accordance with the statute. Under section 8128(a), VA must give priority to small business concerns owned and controlled by veterans, if the business concern meets the requirements of that contracting preference. In this rule, VA will provide discretion to its contracting officers to override certain statutory priority preferences, such as Federal Prison Industries and Government Printing Office. Under section 8128, VA is implementing priority for SDVOSBs and VOSBs to the extent authorized by the law. Otherwise, if VA’s proposed VAAR change does not address other priority preferences as set forth in the FAR, then the FAR will govern. On this basis, VA has determined that including a specific hierarchy of priority is not required and no such change will be made to the rule based upon the comment.

12. Conversion of Commercial Activities to Private Sector

Comment: One commenter stated that the proposed rule does not address converting commercial activities to the private sector. The commenter noted that the proposed rule lacks provisions that address a situation where an SDVOSB makes an unsolicited proposal to a VA facility, for example, for housekeeping services.

Response: OMB Circular No. A–76 sets the policies and procedures that federal agencies must use in identifying commercial-type activities and determining whether these activities are best provided by the private sector, by government employees, or by another agency through a fee-for-service agreement. The determination of whether services should be performed by the private sector or government employees is outside the purview of the Veterans First Contracting Program. The term “unsolicited proposal” is defined in Federal Acquisition Regulation (FAR) 2.101, as a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the government, and is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program. VA continues to adhere to the procedures in FAR 15.6 and VA Acquisition Regulation section 815.6 as adequate procedures to address the evaluation of unsolicited proposals. The comment is outside the purview of the proposed rule and VA will make no changes to the procedures for evaluating unsolicited proposals.

13. Non-Manufacturers Rule

Comment: Several commenters questioned whether VA would achieve its SDVOSB goals if the non-manufacturer rule is not waived. One commenter stated most small businesses, especially SDVOSBs, are distributors and not manufacturers.

Response: VA did not propose to make any changes to the Federal Acquisition Regulation (FAR) requirements for other set-aside programs is 13 CFR 125.6. The regulation requires (except construction) that the small business concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. In the case of a contract for supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials). In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials). The Federal Acquisition Regulation (FAR) clauses, which implement these
subcontracting limitation requirements, include FAR 52.219–4, 52.219–14, and 52.219–27. The language included in this rule is consistent with these current limitations on subcontracting requirements typical to all manner of small business set-asides. Also, requiring SDVOSBs and VOSBs to perform 50 percent of the labor costs furthers the intent of this rule, which is to promote SDVOSBs and VOSBs. Therefore, no change will be made to the rule based on this comment.

16. Mentor-Protégé Program

Comment: One commenter stated the SDVOSB goal to perform 50 percent of the cost of the contract should be removed if VA is to achieve its SDVOSB goal.

Response: The VA Mentor-Protégé Program is designed to encourage mentors to provide assistance to SDVOSB and VOSB protégés to enhance their capabilities to successfully perform contracts and subcontracts for VA. The program is designed to foster long term business relationships between SDVOSBs, VOSBs and prime contractors. We believe the goal to perform 50 percent of the work is consistent with other government-wide Mentor-Protégé Programs. The rationale for the requirement that the SDVOSB or VOSB perform 50 percent of the cost of the contract relates to the limitation on subcontracting requirements previously discussed in response to comment 15. Therefore, no change will be made to the rule based on this comment.

Comment: One commenter stated that proposed sections 815.304 and 852.215–70 should be revised to delete participation in the VA Mentor-Protégé Program as an evaluation factor when competitively negotiating the award of contracts, tasks, or delivery orders. The commenter stated that finding a mentor is difficult and time consuming task that is of little value for startup SDVOSBs. The commenter also stated that using a mentor-protégé program does not provide additional competitive advantage any more than any other teaming arrangement, joint venture, or prime/subcontractor relationship.

Finally, the commenter stated that the rule would give large businesses a back door into negotiations intended for small business through their protégé.

Response: We believe the use of participation in VA’s Mentor-Protégé Program as an evaluation factor is consistent with the government-wide practice used in similar programs. Large business participation in the program is encouraged by SDVOSB and VOSBs in successfully performing VA contracts and subcontracts and increasing their business. VA finds that the likelihood of any abuse of the program by large businesses is minimal. As addressed above, in small business set-asides conducted under this rule, the SDVOSB or VOSB must perform defined percentages of work. Therefore, for example, a large business subcontractor mentor cannot control the performance or management of a VA contract awarded under this rule. In unrestricted acquisitions where a large business mentor may be a prime contractor, VA has included evaluation criteria in solicitations to provide extra evaluation credit to the large business mentor to encourage support for VOSBs and SDVOSBs. Proposed section 815.304–70(a)(4) prescribed that VA contracting officers shall “consider participation in VA’s Mentor-Protégé Program as an evaluation factor when competitively negotiating the award of contracts or task orders or delivery orders.” Because VA intended in the proposed rule that “consider” be mandatory, in this final rule the word “consider” is changed to “use,” which requires contracting officers to actively use a contractor’s participation in the Mentor-Protégé Program as an evaluation factor and creates consistency with subsections (a)(2) and (a)(3) of this section. Also, the rule requires that VA ensure the large business actually utilizes the SDVOSB or VOSB that it proposes to use to ensure the integrity of the program.

17. Applicability to GSA Federal Supply Schedule (FSS) Procurements

Comment: VA received a comment stating that the proposed rule was unclear whether it was intended to be applicable to task and delivery orders under the Federal Supply Schedule (FSS). The commenter indicated that although GSA has delegated to VA the authority to administer certain schedules, the delegation does not extend to policy implementation. The commenter recommended a revision stating that SDVOSB and VOSB set-asides and sole source provisions do not apply at the FSS order level.

Response: We disagree with the commenter and reject the suggestion because this rule does not apply to FSS task or delivery orders. VA does not believe a change to the regulation is needed, and 48 CFR part 8 procedures in the FAR will continue to apply to VA FSS task/delivery orders. Further, VA will continue to follow GSA guidance regarding applicability of 48 CFR part 19 of the FAR. Small Business Programs, which states that set-asides do not apply to FAR part 8 FSS acquisitions.

Comment: Many commenters stated that the proposed rule should apply to FSS orders since VA purchases approximately 60 percent of its goods and services through the FSS. The commenters believed that to have the greatest impact, any policy designed to maximize the participation of SDVOSBs and VOSBs in VA’s purchasing process should apply to purchases made pursuant to the FSS program. The commenters stated 48 CFR subpart 8.4 governs FSS contracts. Federal Acquisition Regulation (FAR) 8.404 states that 48 CFR parts 13, 14, 15, and 19 do not apply to blanket purchase agreements or orders placed against FSS contracts. The commenters stated that failure to apply the rule to orders made under FSS contracts would severely limit the rule’s effectiveness.

Response: We disagree with these commenters. FSS contracts are governed by policy developed by GSA, which has determined that set-asides do not apply to FSS orders. VA has no authority to include set-aside procedures for FSS orders under this rule. However, VA has provided evaluation preferences for SDVOSBs and VOSBs in the proposed rule as follows. GSA Acquisition Letter V–05–12, dated June 6, 2005, and FAR 8.405–1(c) provide guidance on evaluation factors that may be included in FSS orders when price is not the sole consideration for award. Socioeconomic status (meaning the type of small business) may be an evaluation factor for competitive delivery or task orders under the FSS. The rule requires inclusion of SDVOSB status as an evaluation factor when competitively negotiating the award of contracts or task/delivery orders under the FSS when price is not the sole basis for award. We are revising the rule to add section 808.405–2, Ordering procedures for services requiring a statement of work, which provides that when developing the statement of work and any evaluation criteria in addition to price the Government shall adhere to and apply the evaluation factor commitments in section 815.304–70.

18. Applicability to Interagency Agreements

Comment: One commenter stated the rule should apply to other government entities that award contracting vehicles for VA. The commenter stated acquisition personnel may circumvent this rule by having interagency agreements done outside of VA.

Response: We agree with this comment. The criteria for the applicability of this interagency agreements are written in statute at 38 U.S.C. 8127(j). Under current law, any
contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods and services, shall include in the contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, as implemented in the VA Acquisition Regulations, when acquiring such goods or services. We are revising the rule to add a provision in section 817.502, which requires other governmental agencies performing purchases on behalf VA to comply with 38 U.S.C. 8127 and 8128 to the maximum extent feasible. The inclusion of this provision holds other agencies accountable to VA’s order of priority for SDVOSBs and VOSBs when procuring services and supplies for VA pursuant to an interagency agreement.

19. Site Visits in the Verification Process

Response: VA agrees with the commenter that there are other means by which VA can effectively implement 38 U.S.C. 8128. Therefore, VA will delete section 808.803. In the alternative, VA will negotiate a memorandum of agreement with GPO to foster greater business opportunities for and stronger outreach efforts to SDVOSBs and VOSBs, including, but not necessarily limited to, the following. First, VA shall seek to enhance its ability under GPO’s Simplified Purchase Agreement (SPA) authority whereby, for publishing and information products and services up to $10,000, upon executing a SPA agreement with GPO, VA may solicit quotations from a database of all contractors who have been certified to participate in the SPA program and what type of products that they produce. VA may select qualified SDVOSBs and VOSBs or include criteria providing a preference for such firms in these acquisitions. Based on recent information from GPO, acquisitions under $10,000 amount to nearly 40 percent of VA’s business with GPO. In addition, VA will work with GPO to enhance its outreach efforts to SDVOSBs and VOSBs by assisting GPO in modifying its internal policy directive(s) to add these socio-economic categories to the list of small businesses with whom GPO encourages contracting. Finally, VA will provide GPO with information about its Vendor Information Page at vetbiz.gov where VA maintains a list of veteran small businesses for research purposes. GPO will provide information regarding qualification requirements for contracting with GPO that VA may publish or link to on VA’s small business website.


Response: VOSBs and SDVOSBs are not precluded from using their past performance records while under contract with another agency. VA evaluates past performance in accordance with Federal Acquisition Regulation 15.305(a)(2)(ii)–(iv). VA contracting officers are required to evaluate past performance information regarding an offeror’s past or current contracts with Federal, State, or local governments for efforts similar to VA’s advertised requirement. Further, VA contracting officers may consider past performance information associated with predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the current acquisition. If an offeror does not have a record of relevant past performance or if there is no past performance information available, the offeror may not be evaluated favorably or unfavorably on past performance. See 48 CFR 15.305(a)(2)(iv). Based on the foregoing, we disagree with the commenter’s concern that VA’s consideration of past performance may prejudice veterans that lack a proven past performance record. No change will be made to the rule because we do not believe the provision unduly affects competition between contractors on the basis of past performance.

22. Subcontracting Goals

Response: VOSBs and SDVOSBs are not precluded from using their past performance records while under contract with another agency. VA evaluates past performance in accordance with Federal Acquisition Regulation 15.305(a)(2)(ii)–(iv). VA contracting officers are required to evaluate past performance information regarding an offeror’s past or current contracts with Federal, State, or local governments for efforts similar to VA’s advertised requirement. Further, VA contracting officers may consider past performance information associated with predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the current acquisition. If an offeror does not have a record of relevant past performance or if there is no past performance information available, the offeror may not be evaluated favorably or unfavorably on past performance. See 48 CFR 15.305(a)(2)(iv). Based on the foregoing, we disagree with the commenter’s concern that VA’s consideration of past performance may prejudice veterans that lack a proven past performance record. No change will be made to the rule because we do not believe the provision unduly affects competition between contractors on the basis of past performance.

Response: VA agrees with the commenter that there are other means by which VA can effectively implement 38 U.S.C. 8128. Therefore, VA will delete section 808.803. In the alternative, VA will negotiate a memorandum of agreement with GPO to foster greater business opportunities for and stronger outreach efforts to SDVOSBs and VOSBs, including, but not necessarily limited to, the following. First, VA shall seek to enhance its ability under GPO’s Simplified Purchase Agreement (SPA) authority whereby, for publishing and information products and services up to $10,000, upon executing a SPA agreement with GPO, VA may solicit quotations from a database of all contractors who have been certified to participate in the SPA program and what type of products that they produce. VA may select qualified SDVOSBs and VOSBs or include criteria providing a preference for such firms in these acquisitions. Based on recent information from GPO, acquisitions under $10,000 amount to nearly 40 percent of VA’s business with GPO. In addition, VA will work with GPO to enhance its outreach efforts to SDVOSBs and VOSBs by assisting GPO in modifying its internal policy directive(s) to add these socio-economic categories to the list of small businesses with whom GPO encourages contracting. Finally, VA will provide GPO with information about its Vendor Information Page at vetbiz.gov where VA maintains a list of veteran small businesses for research purposes. GPO will provide information regarding qualification requirements for contracting with GPO that VA may publish or link to on VA’s small business website.

21. Past Performance Is an Evaluation Factor

Comment: One commenter recommended that any reference to past performance as an evaluation factor as indicated in section 815.304–70, not include specific past performance regarding the required services or goods for the agency issuing the solicitation. The commenter is concerned that if a contractor does not have a proven track record with the procuring agency, the contractor cannot effectively compete. The commenter suggests that if a SDVOSB or VOSB has experience with another government entity, then they should be allowed to compete. Further, the commenter expressed concern about solicitations being written in a manner to award projects to a known entity that has worked with the agency. The commenter stated this is an unfair and deceptive procurement practice.

Response: VA disagrees with the commenter’s concern that VA’s consideration of past performance may prejudice veterans that lack a proven past performance record. No change will be made to the rule because we do not believe the provision unduly affects competition between contractors on the basis of past performance.

Comment: One commenter suggested that contracting officials should ensure that any subcontracting plans include a goal that is at least commensurate with the annual SDVOSB prime contracting goal for the total value of planned subcontract awards. Another commenter suggested that subcontracting goals should be set based on the nature of the requirement. The subcontracting goals should be set based on the nature of the requirement. It may be unrealistic to set mandatory goals applicable to all types of requirements. Furthermore, the goals for all other socio-economic programs are set by statute and cannot be amended through this rulemaking process.
23. Eligibility for Participants in VA Mentor-Protégé Program

Comment: One commenter stated the rule should clarify the eligibility of mentors and protégés pursuant to the VA Mentor-Protégé Program. It is unclear whether a participating Mentor must be a prime contractor to its protégé. In proposed section 819.7102, a mentor is defined as a prime contractor that elects to promote and develop SDVOSB and/or VOSB subcontractors by providing developmental assistance designed to enhance the business success of the protégé. As defined in section 802.101, a protégé is defined as a SDVOSB or VOSB, which meets federal small business size standards in its primary NAICS code and is the recipient of developmental assistance pursuant to a mentor-protégé agreement. These definitions indicate the mentor must be the prime contractor and the protégé must be the subcontractor in an eligible mentor-protégé relationship. However, proposed section 819.7106 stated that protégés may participate in the program in pursuit of a prime contract or as a subcontractor 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. The commenter states that the proposed rule should clarify that eligible mentors are not limited to act as prime contractors and eligible protégés are not limited to act as subcontractors.

Response: We concur with these comments and have made changes to clarify this matter. The word “prime” has been deleted from the definition of mentor in sections 819.7102 and 852.219–71(b)(1). In section 819.7102, “SDVOSB and/or VOSB subcontractors” is revised to indicate “SDVOSBs and/or VOSBs.” Section 819.7106(a), Eligibility, has been revised to state that a mentor may be either a large or small business entity or either a prime contractor or subcontractor.

24. Mentor-Protégé Agreement Approval

Comment: One commenter stated that VA’s Office of Small and Disadvantaged Business Utilization (OSDBU) should have the approval authority for VA Mentor-Protégé Agreements. The commenter stated that OSDBU is genuinely suited to meet this initiative.

Response: We agree with this comment and note that section 819.7108 clearly indicates that VA Mentor-Protégé Agreements must be submitted to VA OSDBU for review and approval.

25. Training and Guidance to VA Contracting Officers

Comment: Several commenters suggested that VA contracting officers receive training and specific guidance regarding implementation of VA’s Veterans First Contracting Program to ensure it is implemented effectively. Some commenters wanted to ensure that contracting officers at the local level are accountable for implementing the rule. Others voiced concern about the use of the Prime Vendor Program instead of SDVOSBs and VOSBs.

Response: VA provides extensive training to acquisition professionals, program managers/officials, and purchase card holders. In addition, VA’s OSDBU enhances this training by serving as expert advisors for any questions about the process and expends significant effort to market the statutory changes to VA contracting officers as well as VA’s industry partners. VA will continue to provide ongoing training to its acquisition professionals to ensure VA’s Veterans First Contracting Program is fully understood. No change to the rule is required based on this comment.

26. Determination of Affiliation

Comment: One commenter stated that unless specified, SBA may classify participants in a Mentor-Protégé Program as a joint venture. The commenter notes that SBA states on its website that it excludes its Section 8(a) program from joint ventures. The commenter stated that if the affiliation definition is not clarified, VA’s Veterans First Contracting Program would be negatively impacted.

Response: We do not believe that this needs to be addressed any further in the rule. Section 819.7103 states that a protégé firm is not considered an affiliate of a mentor firm based solely on the fact the protégé firm is receiving developmental assistance from the mentor firm under the VA Mentor-Protégé Program. The determination of affiliation is a SBA function; therefore, no clarification will be made to the rule.

27. Mentor Protégé Relationships Subject to Joint Venture Restrictions

Comment: One commenter stated given the SBA’s definition of joint venture, it could be argued that participants in the Mentor-Protégé Program that are classified as a joint venture, either by their own agreement or by the SBA, would fall into the joint venture restrictions such as three bids in 2 years and a maximum of 5 years debarment. VA has taken a more lenient view and is required to follow SBA’s joint venture restrictions. The commenter stated further that it is not the intent of the Mentor-Protégé Program to be restricted by the joint venture guidelines.

Response: A joint venture is an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. 38 CFR 74.1. First, section 819.7003 provides that a protégé firm will not be considered an affiliate of the mentor solely on the basis that the protégé is receiving assistance from the mentor under VA’s Mentor-Protégé program. Further, SBA regulations on mentor-protégé arrangements also provide that a protégé firm is not an affiliate of a mentor firm solely because the protégé firm receives assistance from the mentor firm under other Federal Mentor-Protégé programs. See 13 CFR 121.103(b)(6).

Affiliation is an important issue because it means that the size status of the two or more businesses included in the joint venture arrangement are combined to determine small business size status of the vendor. Since section 819.7003 provides that mentor-protégé participants will not be subject to a size status determination that combines the joint ventures’ size solely on the basis of the mentor-protégé relationship they have established, the commenter’s concern is unfounded. No change will be made to the final rule based on this comment. VA has noted that on October 26, 2009, SBA published in the Federal Register a proposed rule to amend § 121.103(b)(6) to limit the exclusion from affiliation to “a Federal Mentor-Protégé program where an exception to affiliation is specifically authorized by statute or by SBA under procedures set forth in § 121.903.” 74 FR 55694.

28. Debarment Time Limits

Comment: One commenter recommended a minimum of 2 years and a maximum of 5 years debarment for any business that willfully or deliberately misrepresents ownership and control of the business for purposes of registering in the VetBiz.gov Vendor Information Pages database or other Federal databases.

Response: Debarment time periods are inherently discretionary in nature. In accordance with guidance in Federal Acquisition Regulation 9.406, debarment shall be for a period commensurate with the seriousness of the cause(s) but generally not to exceed 5 years. VA has taken a more lenient view in this proposed rule. For example, misrepresenting veteran small business
status could result in debarment for up to a maximum of 5 years. However, we believe imposing a mandatory minimum debarment period in this rule would diminish VA’s discretion because the period of debarment should be commensurate with the violation based upon findings in administrative proceedings required for debarment actions. Therefore, no change will be made to the rule based on the comment.

29. Causes for Debarment
Comment: Several comments recommended adding to proposed section 809.406–2, Causes for Debarment, misrepresentation of status as an SDVOSB/VOSB, debarment of large businesses that are used as a subcontractor that actually do more than 50 percent of the labor, including supervision of the project, as well as any SDVOSB that is a party to such action.

Response: We appreciate the comments and believe that expansion of the proposed debarment actions for violating subcontracting limitations is viable. Accordingly, we will revise the rule to add that violations of the limitation on subcontracting requirements under subpart 819.70 may result in the debarment of any large business concern and SDVOSB or VOSB concern that deliberately violates the small business subcontracting clause.

30. Market Research
Comment: One commenter stated that proposed section 810.001 should be revised to require VA contracting teams to use the VIP database as their first means of performing market research, in addition to other sources of information.

Response: We believe the existing language in proposed section 810.001 satisfies the commenter’s suggestion and makes clear that VA contracting teams will utilize the VIP database, as well as other sources of information. Therefore, no change will be made to the rule.

31. Requirement for Mentors To Submit Subcontracting Plan
Comment: One commenter was concerned that under the Mentor-Protégé Program, mentors would be excused from the requirement to submit subcontracting plans for its largest federal procurement opportunities with VA or other agencies, citing the VA Mentor Protégé Program as its reason for noncompliance.

Response: We believe that the existing language in section 819.7105 indicates that mentors must continue to file subcontracting plans. No change will be made to the rule based on the comment.

32. SDVOSB/VOSB Small Business Status Protests
At section 819.307 of the proposed rule, VA included a provision that VA would utilize SBA to consider and decide SDVOSB and VOSB status protests. This requires VA and SBA to execute an interagency agreement pursuant to the Economy Act, 31 U.S.C. 1535. Negotiations of this interagency agreement have not yet been finalized. Therefore, VA has amended section 819.307 with an interim rule to provide that VA’s Executive Director, OSDBU shall consider and decide SDVOSB and VOSB status protests, and provides procedures there for, until such time as the interagency agreement is executed by the agencies. VA hereby solicits comments on this regulatory amendment only. Furthermore, 819.307 is also revised to clarify that VA regulations at 38 CFR Part 74, regarding the issues of ownership and control of SDVOSB and VOSBs, shall apply to status protests for procurements under Subpart 819.70 and that, otherwise, the procedures of FAR Part 19.307 shall apply to both VOSB and SDVOSB status protests; however, VA contracting officers shall be solely responsible for ensuring SDVOSB and VOSB compliance with the requirement to be listed on the Vendor Information Pages at VetBiz.gov in accordance with section 804.1102. Lastly, 819.307 is clarified to explain that if a SDVOSB or VOSB status protest is granted, if contract award has already been made, VA will not be required to terminate the award but will not be able to count that award towards its small business accomplishments, which is consistent with current Government Accountability Office protest decisions on similar matters.

Administrative Procedure Act
This document additionally revises section 819.307, SDVOSB/VOSB Small Business Status Protests, of the proposed rule, where VA provided that VA would utilize the SBA to consider and decide SDVOSB and VOSB status protests. This requires VA and SBA to execute an interagency agreement pursuant to the Economy Act, 31 U.S.C. 1535. Negotiations of this interagency agreement have not yet been finalized. Therefore, VA has amended section 819.307 with an interim rule to provide that VA’s Executive Director, OSDBU shall consider and decide SDVOSB and VOSB status protests, and provides procedures there for, until such time as the interagency agreement is executed by the agencies. Good cause exists for the agency to include this change as an interim rule because it is essential for this contracting program to function. Without a SDVOSB/VOSB status protest resolution process in place for acquisitions under this authority, performance of any contract award so challenged would be suspended thus depriving VA and veterans of necessary services and/or supplies. VA hereby solicits comments on this regulatory amendment only.

Other Non-Substantive Changes
The changes below serve to clarify particular items from the proposed rule in this final rule.

Section 802.101 has been revised to state that the term “small business concern” has the same meaning as in Federal Acquisition Regulation 2.101.

The proposed rule contained a provision at sections 819.7007(b) and 819.7008(b) indicating no protest is authorized in connection with the issuance or proposed issuance of a contract under this section. On the basis that more than one SDVOSB or VOSB, respectively, is available to meet the requirement. In the proposed rule, VA sought to remove this question as an issue subject to protest. Upon further consideration, VA has determined that it is not legally proper to affect protest jurisdiction established by 31 U.S.C. 3551 et seq. or 28 U.S.C. 1491 by this rule. In addition, these provisions are being removed in the final rule to provide the added benefit of transparency of the procurement process.

In the proposed rule it was stated in section 819.7109(b) that OSBDU would forward copies of approved Mentor-Protégé Agreements to the VA contracting officer for any VA contracts affected by that Agreement. Section 819.7109(b) is revised in the final rule to state that approved Mentor-Protégé Agreements will be posted on a VA Web site, which will be accessible to VA contracting officers for their review. This change is being made to more efficiently use the resources that are available and to increase the transparency of VA’s procurement process. Electronic posting of agreements obviates the need to forward paper copies of the agreements to VA contracting officers and makes the agreements more accessible to contracting officers.

Regulatory Flexibility Act
VA has determined that this rule establishing priority to small business concerns owned and controlled by veterans may have a significant economic impact on a substantial number of small entities within the
meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, et seq. According to VA, V. prepared an Initial Regulatory Flexibility Analysis (IRFA) addressing the impact of the proposed rule in accordance with 5 U.S.C. 603. The IRFA examined the objectives and legal basis for the proposed rule; the kind and number of small entities that may be affected; the projected recordkeeping, reporting, and other requirements; whether there were any federal rules that may duplicate, overlap, or conflict with the proposed rule; and whether there were any significant alternatives to the proposed rule.

VA’s Final Regulatory Flexibility Analysis (IRFA) is set forth below:

1. What are the reasons for, and objectives of, this final rule?

Sections 502 and 503 of Public Law 109–461 require VA to create a unique acquisition program among Federal agencies that permits preferences for SDVOSBs and VOSBs. This final rule will permit VA contracting officers to conduct acquisition actions with preferences for SDVOSBs or VOSBs. Specifically, this final rule will allow VA contracting officers to:

a. Under certain conditions, permit other than competitive procedures under the simplified acquisition threshold with SDVOSBs or VOSBs;

b. Require set-asides for SDVOSBs or VOSBs above the simplified acquisition threshold when the contracting officer has a reasonable expectation that two or more eligible SDVOSBs or VOSBs will submit offers and that the award can be made at a fair and reasonable price that offers the best value to the United States;

c. Under certain conditions, permit other than competitive sourcing for SDVOSBs or VOSBs above the simplified acquisition threshold when the contracting officer determines that a fair and reasonable price will be obtained as a result of negotiations for requirements not to exceed $5 million;

d. Include evaluation factors in negotiated acquisitions and FSS acquisitions that give preference to SDVOSBs and VOSBs and preference to offerors who propose to include such businesses as subcontractors;

e. Require offerors who propose to use SDVOSBs or VOSBs as subcontractors to use eligible businesses;

f. Require VOSBs participating in the Department’s acquisitions to register in the VetBiz.gov VIP database and VA verify that the business meets eligibility requirements;

g. Establish a VA Mentor-Protégé Program and give large businesses that participate in the program a preference in the award of VA prime contracts;

h. Encourage prime contractors and mentors to assist SDVOSBs and VOSBs in obtaining bonding when required;

i. Recommend debarment of any business that misrepresents ownership and control of the business for purposes of registering in the VetBiz.gov VIP database or other Federal databases; and

j. Under certain conditions, acquire supplies and services from SDVOSBs and VOSBs in lieu of FPI.

2. Summary of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Summary of the Assessment of the Agency of Such Issues, and a Statement of any Changes Made as a Result of Such Comments

VA has set forth an analysis of the public comments on the Proposed Rule in the supplementary information section of this final rule. VA received one comment in response to the IRFA. The commenter, an SDVOSB owner, urged VA to maintain the economic categories and keep constant the number of contracts awarded to certified HUBZone, 8(a), and woman-owned small business (WOSB) concerns. The commenter stated that the increase of contracts to SDVOSB/VOSBs under the Veterans First rule should come at the expense of large businesses and not the 35-percent for small businesses. The Veterans First rule does provide a priority for SDVOSB/VOSBs over other small business concerns and implements a new small business set-aside authority for SDVOSB/VOSBs. The underlying statutory authority for this rule does not authorize VA to provide that all awards to SDVOSB/VOSBs come solely at the expense of large businesses. Therefore, VA believes that the IRFA analysis was accurate.

3. What is VA’s description and estimate of the number of small entities to which the rule will apply?

The RFA directs agencies to provide a description, and where feasible, an estimate of the number of small business concerns that may be affected by the rule. It is difficult to estimate the number of concerns that will participate in this program because there is insufficient data on SDVOSBs or VOSBs that are ready and able to perform on VA requirements. To establish the likely number of SDVOSBs or VOSBs that may benefit from VA’s unique procurement authority, there are two principal data sources: VA’s VetBiz.gov VIP database and the Central Contractor Registration (CCR) database. VA maintains a list of veteran small businesses in its VetBiz.gov VIP database. A VIP query returned 15,904 VOSBs, including 9,020 SDVOSBs. The VIP database requires that businesses answer eligibility questions before they are permitted to register their business. VA finds that these searches reasonably represent the number of SDVOSBs and VOSBs that may be affected by the rule.

The CCR is a self-representation database where small businesses are responsible for identifying their size and socio-economic status. A CCR Dynamic Small Business Search query conducted on March 6, 2009, returned 43,273 VOSBs, including 14,093 SDVOSBs. Under this final rule, VA contracting teams will be required to give priority consideration to SDVOSBs and VOSBs when using other contracting programs, like set-asides for the Historically Underutilized Business (HUB) Zone Program or the Section 8(a) Business Development Program reserved actions or the Small Business Set-aside Program. A CCR Dynamic Small Business Search conducted on March 6, 2009, returned 10,697 active HUBZone firms. Of this population, 1,961, or 18 percent, are also VOSBs. A search of active Section 8(a) businesses identified 9,385 current firms, which includes 1,267 VOSBs, or 13.5 percent of the total population. There are 69,865 woman-owned small businesses (WOSBs) in the CCR, of which 4,419 appear to also be VOSBs. VA notes that SBA is in the process of establishing a WOSB Set-aside Program, making the percentage of WOSBs who are also VOSBs eligible of interest to the Department.

Based on this unique procurement authority, VA believes the final rule will be small business neutral and that teams will organize with different lead parties. VA has a long tradition of performing well with small business programs. In July 2008, SBA certified the performance data for fiscal year (FY) 2007. In a report which appears on SBA’s Web site, “FY 2007 Small Business Goaling Report,” VA reported the following actions, dollars and percentages of total procurement with small business programs:

- Small Business Actions: 2,506,303; Small Business Dollars: $3,854,687,943.57; Percentage of Total Procurement: 32.85.

- VOSB Actions: 399,541; VOSB Dollars: $1,216,580,370.73; Percentage of Total Procurement: 10.37.

- SDVVOSB Actions: 51,304; SDVVOSB Dollars: $831,811,813.84; Percentage of Total Procurement: 7.09.

- Small Disadvantaged Business (SDB) Actions: 89,797; SDB Dollars: $1,029,410,495.34; Percentage of Total Procurement: 8.77.
48 CFR Parts 802, 804, 808, 809, 810, 813, 815, and 817

Government procurement, Reporting and recordkeeping requirements, Utilities.

48 CFR Part 819

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small business, Veterans.

48 CFR Part 828

Government procurement, Insurance, Surety bonds.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.


John R. Gingrich,
Chief of Staff, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 48 CFR Chapter 8 as follows:

CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS

Subchapter A—General

PART 802—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for part 802 is revised to read as follows:

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 1211(c) and (d); and 48 CFR 1.301–1.304.

2. Amend section 802.101 by adding in alphabetical order the following terms:

802.101 Definitions.

Service-disabled veteran-owned small business concern (SDVOSB) has the same meaning as defined in the Federal Acquisition Regulation (FAR) part 2.101, except for acquisitions authorized by 813.106 and subpart 819.70. These businesses must then be listed as verified on the Vendor Information Pages (VIP) database at http://www.vetbiz.gov. In addition, some businesses may be owned and controlled by a surviving spouse.

Small business concern has the same meaning as defined in FAR 2.101.

Surviving spouse means an individual who has been listed in the Department of Veterans Affairs' (VA) Veterans...
Benefits Administration (VBA) database of veterans and family members. To be eligible for inclusion in the VetBiz.gov VIP database, the following conditions must apply:

1. If the death of the veteran causes the small business concern to be less than 51 percent owned by one or more service-disabled veterans, the surviving spouse of such veteran who acquires ownership rights in such small business shall, for the period described below, be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a service-disabled veteran-owned small business.

2. The period referred to above is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:
   - The date on which the surviving spouse remarries;
   - The date on which the surviving spouse relinquishes an ownership interest in the small business concern;
   - The date that is 10 years after the date of the veteran’s death;
   - The date on which the business concern is no longer small under federal small business size standards.

3. The veteran must have had a 100 percent service-connected disability rating or the veteran died as a direct result of a service-connected disability.

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

5. The authority citation for part 808 is revised to read as follows:

   Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

6. Section 808.405–2 is added to read as follows:

   **808.405–2 Ordering procedure for services requiring a statement of work.**

   When placing an order or establishing a BPA for supplies or services requiring a statement of work, the ordering activity, when developing the statement of work and any evaluation criteria in addition to price, shall adhere to and apply the evaluation factor commitments at 815.304–70.

7. Add subpart 808.6 consisting of section 808.603 to read as follows:

   **Subpart 808.6—Acquisition From Federal Prison Industries, Inc. (FPI)**

   **808.603 Purchase Priorities**

   Contracting officers may purchase supplies and services produced or provided by FPI from eligible service-disabled veteran-owned small businesses and veteran-owned small businesses, in accordance with procedures set forth in subpart 819.70, without seeking a waiver from FPI, in accordance with 38 U.S.C. 8128, Small business concerns owned and controlled by veterans; Contracting priority.

PART 809—CONTRACTOR QUALIFICATIONS

8. The authority citation for part 809 is revised to read as follows:

   Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

9. Add section 809.406–2 to read as follows:

   **809.406–2 Cause for debarment.**

   (a) Misrepresentation of VOSB or SDVOSB eligibility may result in action taken by VA officials to debar the business concern for a period not to exceed 5 years from contracting with VA as a prime contractor or a subcontractor.

   (b) Any deliberate violation of the limitation on subcontracting clause requirements for acquisitions under subpart 819.70 may result in action taken by VA officials to debar any service-disabled veteran-owned, veteran-owned small business concern or any large business concern involved in such action.

10–12. Part 810 is added to read as follows:

PART 810—MARKET RESEARCH

810.001 Market research policy.

810.002 Market research procedures.

Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

810.001 Market research policy.

When conducting market research, VA contracting teams shall use the VIP database, at http://www.vetbiz.gov, in addition to other sources of information.

810.002 Market research procedures.

Contracting officers shall record VIP queries in the solicitation file by printing the results of the search(s) along with specific query used to generate the search(s).

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

13. The authority citation for part 813 is revised to read as follows:

   Authority: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

14. Revise section 813.106 to read as follows:

   **813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.**

   (a) Contracting officers may use other than competitive procedures to enter into a contract with a SDVOSB or VOSB when the amount exceeds the micro-purchase threshold up to $5 million.

   (b) Requirements exceeding $25,000 must be synopsized in accordance with FAR Part 5.

15. Add subpart 813.2, consisting of section 813.202, to read as follows:

   **Subpart 813.2—Actions at or Below the Micro-Purchase Threshold**

   813.202 Purchase guidelines.

Open market micro-purchases shall be equitably distributed among all qualified SDVOSBs or VOSBs, respectively, to the maximum extent practicable.
PART 815—CONTRACTING BY NEGOTIATION

16. The authority citation for part 815 is revised to read as follows:


17. Add section 815.304 to read as follows:

815.304 Evaluation factors and significant subfactors.

(a) In an effort to assist SDVOSBs and VOSBs, contracting officers shall include evaluation factors providing additional consideration to such offers in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) Additional consideration shall also be given to any offeror, regardless of size status, that proposes to subcontract with SDVOSBs or VOSBs.

18. Add section 815.304–70 to read as follows:

815.304–70 Evaluation factor commitments.

(a) VA contracting officers shall:

(1) Include provisions in negotiated solicitations giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs;

(2) Use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in selecting offers for award;

(3) Use the proposed inclusion of SDVOSBs or VOSBs as subcontractors as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders; and

(4) Use participation in VA’s Mentor-Protégé Program as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders.

(b) If an offeror proposes to use an SDVOSB or VOSB subcontractor in accordance with 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, the contracting officer shall ensure that the offeror, if awarded the contract, actually does use the proposed subcontractor or another SDVOSB or VOSB subcontractor for that subcontract or for work of similar value.

19. Add section 815.304–71 to read as follows:

815.304–71 Solicitation provision and clause

(a) The contracting officer shall insert the provision at 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs.

(b) The contracting officer shall insert the clause at 852.215–71, Evaluation Factor Commitments, in solicitations and contracts that include VAAR clause 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

PART 817—SPECIAL CONTRACTING METHODS

20. The authority citation for part 817 is added to read as follows:


21. Add subpart 817.5 consisting of section 817.502 to read as follows:

Subpart 817.5—Interagency Acquisitions Under the Economy Act

817.502 General

(a) After December 31, 2008, any contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods and services, shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, as implemented by the VA Acquisition Regulation, in acquiring such goods or services.

(b) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 et seq.).

PART 819—SMALL BUSINESS PROGRAMS

22. The authority citation for part 819 is revised to read as follows:

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).

23. Revise section 819.201 to read as follows:

819.201 General policy

The Secretary shall establish goals for each fiscal year for participation in Department contracts by SDVOSBs and VOSBs. In order to establish contracting priority for veteran-owned and controlled small businesses in accordance with 38 U.S.C. 8128, the Secretary may decrease other status-specific small business goals set forth by section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)) upon consultation with the Administrator of the U.S. Small Business Administration (SBA).

24. Add subpart 819.3 consisting of section 819.307 to read as follows:

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 service-disabled veteran-owned and veteran-owned 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
Subpart 819.70—Service-Disabled Veteran-Owned and Veteran-Owned Small Business Acquisition Program

Sec. 819.7001 General.
819.7002 Applicability.
819.7003 Eligibility.
819.7004 Contracting Order of Priority.
819.7005 Service-disabled veteran-owned small business set-aside procedures.
819.7006 Veteran-owned small business set-aside procedures.
819.7007 Sole source awards to service-disabled veteran-owned small business concerns
819.7008 Sole source awards to veteran-owned small business concerns.
819.7009 Contract clauses.

(a) Sections 502 and 503 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (38 U.S.C. 8127–8128), created an acquisition program for small business concerns owned and controlled by service-disabled veterans and those owned and controlled by veterans for VA.

(b) The purpose of the program is to provide contracting assistance to SDVOSBs and VOSBs.

Subpart 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 purpose 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.

Subpart 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 (00VE), 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.

Subpart 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.
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 veteran-owned small businesses where this CFR section refers to SDVOSB concerns.

(d) Any SDVOSB or VOSB concern (nonmanufacturer) must meet the requirements in FAR 19.102(f) to receive a benefit under this program.

819.7004 Contracting Order of Priority.

In determining the acquisition strategy applicable to an acquisition, the contracting officer shall consider, in the following order of priority, contracting preferences that ensure contracts will be awarded:

(a) To SDVOSBs;

(b) To VOSB, including but not limited to SDVOSBs;

(c) Pursuant to—

(1) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(2) The Historically-Underutilized Business Zone (HUBZone) Program (15 U.S.C. 657a); and

(d) Pursuant to any other small business contracting preference.

819.7005 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 SDVOSB concerns upon a reasonable expectation that:

(1) Offers will be received from two or more eligible SDVOSB concerns; and

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

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

(1) Eligibility is extended to businesses owned and operated by surviving spouses; and

(2) Businesses are registered and verified as eligible in the VIP database prior to making an award.

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible SDVOSB concern in response to a SDVOSB set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition, if appropriate.

819.7006 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 VOSB concerns upon a reasonable expectation that:

(1) Offers will be received from two or more eligible VOSB concerns; and

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

(b) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible VOSB concern in response to a VOSB set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible VOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs, as appropriate.

(c) When conducting VOSB set-asides, the contracting officer shall ensure the business is registered and verified as eligible in the VIP database prior to making an award.

819.7007 Sole source awards to service-disabled veteran-owned small business concerns.

(a) A contracting officer may award contracts to SDVOSB concerns on a sole source basis provided:

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

(2) The requirement is synopsisized in accordance with FAR part 5;

(3) The SDVOSB 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 contracting officer’s determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. A determination that only one VOSB concern is available to meet the requirement is not required.

(c) If the contracting officer receives no acceptable offers from eligible SDVOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition, if appropriate.

819.7008 Sole source awards to veteran-owned small business concerns.

(a) A contracting officer may award contracts to VOSB concerns on a sole source basis provided:

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

(2) The requirement is synopsisized in accordance with FAR part 5;

(3) The VOSB 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; 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. A determination that only one VOSB concern is available to meet the requirement is not required.

(c) When conducting a VOSB sole source acquisition, the contracting officer shall ensure businesses are registered and verified as eligible in the VIP database prior to making an award.

819.7009 Contract clauses.

The contracting officer shall insert VAAR clause 852.219–10, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside or 852.219–11, Notice of Total Veteran-Owned Small Business Set-Aside in solicitations and contracts for acquisitions under this subpart.

29. Add subpart 819.71 to read as follows:

Subpart 819.71—VA Mentor-Protégeé Program

Sec. 819.7101 Purpose.

819.7102 Definitions.

819.7103 Non-affiliation.

819.7104 General policy.

819.7105 Incentives for mentor participation.

819.7106 Eligibility of Mentor and Protégé firms.

819.7107 Selection of Protégé firms.

819.7108 Application process.

819.7109 VA review of Protégé firms.

819.7110 Developmental assistance.

819.7111 Obligations under the Mentor-Protégeé Program.

819.7112 Internal controls.

819.7113 Reports.

819.7114 Measurement of program success.

819.7115 Solicitation provisions.


Subpart 819.71—VA Mentor-Protégeé Program

819.7101 Purpose.

The VA Mentor-Protégeé 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.epis.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 mentor-protégé 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 non-monetary 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

(3) Protégés may have multiple mentors. Protégés participating in mentor-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 assure 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-
Protege 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 protege(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 protege as defined in the Agreement;
(3) The extent to which the protege has met the developmental objectives in the Agreement;
(4) The extent to which the mentor’s participation in the Mentor-Protege Program impacted the protege(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 protege 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-Protege Agreement, the mentor and the protege shall formally brief the VA OSDBU regarding program accomplishments as pertains to the approved agreement.
(d) Mentor and protege 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-Protege Program encompassing all participating mentors and proteges will be measured by the extent to which it results in:
(a) An increase in the quality of the technical capabilities of the protege firm;
(b) An increase in the number and dollar value of contract and subcontract awards to protege firms since the time of their entry into the program attributable to the mentor-protege 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-Protege 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-Protege Program, in solicitations that include an evaluation factor for participation in VA’s Mentor-Protege Program in accordance with 819.7105 and that also include FAR clause 52.219–9, Small Business Subcontracting Plan.

PART 828—BONDS AND INSURANCE
§ 828.106–71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.
VA prime contractors are encouraged to assist SDVOSB concerns and VOSB concerns in obtaining subcontractor performance and payment bonds. Mentors are especially encouraged to assist their proteges in obtaining bid, payment, and performance bonds as prime contractors and bonds as subcontractors when bonds are required.

§ 828.106–72 Contract provision.
Insert 852.228–72, Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds, in solicitations that include FAR clause 52.228–1, Bid Guarantee.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES
As prescribed in 815.304–71(b), insert the following clause:

Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors

(a) In an effort to achieve socioeconomic small business goals, depending on the evaluation factors included in the solicitation, VA shall evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business status and their proposed use of eligible service-disabled veteran-owned small businesses and veteran-owned small businesses as subcontractors.
(b) Eligible service-disabled veteran-owned offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-Owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in Vendor Information Pages (VIP) database. (http://www.VetBiz.gov).

(c) Non-veteran offerors proposing to use service-disabled veteran-owned small businesses or veteran-owned small businesses as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontractors and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VetBiz.gov VIP database (http://www.VetBiz.gov).

(End of Clause)

§ 852.219–72 Evaluation Factor for Participation in the VA Mentor-Protege Program.

The offeror agrees, if awarded a contract, to use the service-disabled veteran-owned small businesses or veteran-owned small businesses proposed as subcontractors in accordance with 852.215–70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, or to substitute one or more service-disabled veteran-owned small businesses or veteran-owned small businesses for subcontract work of the same or similar value.

(End of Clause)

As prescribed in subpart 819.709, insert the following clause:

Service-Disabled Veteran-Owned and Veteran-Owned Small Business Subcontracting Plan Minimum Requirements

(DEC2009)
(a) This clause does not apply to small business concerns.
(b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small business concerns shall be at least

§ 852.219–74 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Subcontracting Plan Minimum Requirements

(DEC2009)
veteran, as defined in 38 U.S.C. 101(2), with ownership and control and is so listed in the Vendor Information Pages database.

(2) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(2).

(b) General. (1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a service-disabled veteran-owned small business concern.

(c) Agreement. A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for:

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible service-disabled veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible service-disabled veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other eligible service-disabled veteran-owned small business concerns;

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other eligible service-disabled veteran-owned small business concerns.

(d) 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 following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification System (NAICS) code assigned to the procurement; and each member of the joint venture will meet the requirements of paragraph (a)(1) of this section. Offers received from concerns that are not veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a veteran-owned small business concern.

(c) Agreement. A veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for:

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other eligible veteran-owned small business concerns;

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other eligible veteran-owned small business concerns.

(2) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(2).

(b) General. (1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a service-disabled veteran-owned small business concern.

(c) Agreement. A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for:

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible service-disabled veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible service-disabled veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other eligible service-disabled veteran-owned small business concerns;

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other eligible service-disabled veteran-owned small business concerns.

(d) 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 following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification System (NAICS) code assigned to the procurement; and each member of the joint venture will meet the requirements of paragraph (a)(1) of this section. Offers received from concerns that are not veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation shall be made to a veteran-owned small business concern.

(c) Agreement. A veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for:

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other eligible veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other eligible veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other eligible veteran-owned small business concerns;

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other eligible veteran-owned small business concerns.

(2) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(2).
(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 of the Federal Acquisition Regulation; and
(4) The joint venture meets the requirements of 13 CFR 125.15(b), except that the principal company may be a veteran-owned small business concern or a service-disabled veteran-owned small business concern.

(e) Any veteran-owned small business concern (non-manufacturer) must meet the requirements of 13 CFR 125.15(b), except that the principal company may be a veteran-owned small business concern or a service-disabled veteran-owned small business concern.

(End of Clause)

39. Add section 852.219–71 to read as follows:

852.219–71 VA Mentor-Protégé Program.
As prescribed in 819.715(b), insert the following clause:

VA Mentor-Protégé Program
(DEC2009)
(a) Large businesses are encouraged to participate in the VA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible service-disabled veteran-owned small businesses and veteran-owned small businesses to enhance the small businesses’ capabilities and increase their participation as VA prime contractors and as subcontractors.
(b) The program consists of:
(1) Mentor firms, which are contractors capable of providing developmental assistance;
(2) Protégé firms, which are service-disabled veteran-owned small business concerns or veteran-owned small business concerns; and
(3) Mentor-Protégé Agreements approved by the VA Office of Small and Disadvantaged Business Utilization.
(c) Mentor participation in the program means providing business developmental assistance to aid protégés in developing the requisite expertise to effectively compete for and successfully perform VA prime contracts and subcontracts.
(d) Large business prime contractors serving as mentors in the VA Mentor-Protégé Program are eligible for an incentive for subcontracting plan participation goals under a VA contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar-for-dollar basis and reported by the large business prime contractor via the Electronic Subcontracting Reporting System (eSRS).
(e) Contractors interested in participating in the program are encouraged to contact the VA Office of Small and Disadvantaged Business Utilization for more information.

(End of Clause)

40. Add section 852.219–72 to read as follows:

852.219–72 Evaluation Factor for Participation in the VA Mentor-Protégé Program.
As prescribed in 819.715(b), insert the following clause:

Evaluation Factor for Participation in the VA Mentor-Protégé Program
(DEC2009)
This solicitation contains an evaluation factor or sub-factor regarding participation in the VA Mentor-Protégé Program. In order to receive credit under the evaluation factor or sub-factor, the offeror must provide with its proposal a copy of a signed letter issued by the VA Office of Small and Disadvantaged Business Utilization approving the offeror’s Mentor-Protégé Agreement.

(End of Clause)

41. Add section 852.228–72 to read as follows:

852.228–72 Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds.
As prescribed in 828.106–71, insert the following clause:

Assisting Service-Disabled Veteran-Owned Small Businesses and Veteran-Owned Small Businesses in Obtaining Bonds
(DEC2009)
Prime contractors are encouraged to assist service-disabled veteran-owned and veteran-owned small business potential subcontractors in obtaining bonding, when required. Mentor firms are encouraged to assist protégé firms under VA’s Mentor-Protégé Program in obtaining acceptable bid, payment, and performance bonds, when required, as a prime contractor under a solicitation or contract and in obtaining any required bonds under subcontracts.

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DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 21
RIN 1018–AW98
Migratory Bird Permits; States Delegated Falconry Permitting Authority
AGENCY: Fish and Wildlife Service, Interior.
ACTION: Final rule.
SUMMARY: The States of Mississippi, Montana, Oklahoma, Pennsylvania, Texas, and Utah have requested that we, the U.S. Fish and Wildlife Service, delegate permitting for falconry to the State, as provided under the regulations at 50 CFR 21.29. We have reviewed regulations and supporting materials provided by the States, and have concluded that their regulations comply with the Federal regulations. We change the falconry regulations accordingly.
DATES: This rule is effective January 7, 2010.
FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.
SUPPLEMENTARY INFORMATION:
Background
We, the U.S. Fish and Wildlife Service, published a final rule in the Federal Register on October 8, 2008, to revise our regulations governing falconry in the United States (50 CFR 21.29). The regulations provide that, when a State meets the requirements for operating under the regulations, falconry permitting must be delegated to the State. The States of Mississippi, Montana, Oklahoma, Pennsylvania, Texas, and Utah have submitted revised falconry regulations and supporting materials, and have requested to be allowed to operate under the revised Federal regulations. We have reviewed the States’ regulations and determined that they meet the requirements of 50 CFR 21.29(b). According to the regulations at § 21.29(b)(4), we must issue a rule to add the State to the list at § 21.29(b)(10) of approved States with a falconry program. We change the Federal regulations accordingly. Therefore, a Federal permit will no longer be required to practice falconry in the States of Mississippi, Montana, Oklahoma, Pennsylvania, Texas, and Utah beginning January 1, 2010.

Administrative Procedure
In accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq.), we are issuing this final rule without prior opportunity for public comment. Under the regulations at 50 CFR 21.29(b)(1)(ii), the Director of the U.S. Fish and Wildlife Service must determine if a State, tribal, or territorial falconry permitting program meets Federal requirements. When the Director makes this determination, the Service is required by regulations at 50 CFR 21.29(b)(4) to publish a rule in the Federal Register adding the State, tribe, or territory to the list of those approved for allowing the practice of falconry. On January 1st of the calendar year following publication of the rule, the