

Date: February 16, 2023

From: Executive Director, Office of Acquisition and Logistics (003A), and Senior Procurement Executive

Subj: VA Acquisition Regulation (VAAR) Class Deviation to Make Conforming Changes Required by the Small Business Administration Veteran Small Business Certification Program; Various Parts

To: Heads of the Contracting Activities

1. Purpose. To issue a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, and VAAR 801.404, Class deviations, to implement the expansion of the certification requirement across all Federal agencies for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), and the transfer of the certification authority for both SDVOSBs and Veteran-Owned Small Businesses (VOSBs) from the VA to the Small Business Administration (SBA), effective January 1, 2023.

2. VAAR Parts Impacted: VAAR parts 802, 806, 808, 810, 813, 819, 852, and 873.

3. Effective Date. January 1, 2023

4. Expiration Date. This deviation expires when incorporated into the VAAR or is otherwise rescinded.

5. Applicability. This class deviation applies to all VA contracting activities and applies to all VA solicitations, contracts, subcontracts, orders, and agreements awarded to SDVOSBs or VOSBs pursuant to the VA Veterans First Contracting Program under the authority of 38 U.S.C. 8127-8128.

6. Exceptions. None.

7. Background

a. Current VAAR Policy. Currently, the VA Veterans First Contracting Program (as set forth in 38 U.S.C. 8127-8128 and implemented at VAAR subpart 819.70 and affected parts), authorize VA contracting officers to apply specific preferences and priorities, including to award set-aside or sole source contracts to eligible SDVOSBs and VOSBs in accordance with the contracting order of priority (i.e., to SDVOSBs first, then to VOSBs). Until December 31, 2022, these businesses had to be listed as verified in the VA's Center for Verification and Evaluation Vendor Information Pages (VIP) database to be eligible for participation in the Veterans First Contracting Program.

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b. Need for Deviation. Section 862 of the William H. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, [Public Law 116-283](#), (January 1, 2021) (NDAA 2021) required SBA to amend its regulations at 13 CFR 125 to eliminate self-certification and to create a government-wide certification program for SDVOSBs and VOSBs.

NDAA 2021 amended the SDVOSB/VOSB requirements to:

- Transfer responsibility for certification of SDVOSBs and VOSBs to SBA from VA as of January 1, 2023;
- Create a new certification requirement by SBA for SDVOSBs seeking sole source and set-aside contracts across the Federal Government;
- Provide a one-year grace period for SDVOSB firms currently self-certified to apply to SBA for certification; and
- Require that when the program is effective on January 1, 2023, SDVOSBs that are not certified will not be eligible to compete on set-asides or receive sole-source contracts under the broader Federal-wide SDVOSB procurement program, unless they qualify for the grace period. Note that self-certification is not recognized by VA, even at the subcontracting level.

As a result, SBA made revisions to its regulations, to include establishing the Veteran Small Business Certification Program at 13 CFR part 128.

- VA will continue its unique VA Veterans First Contracting Program pursuant to the authority in 38 U.S.C. 8127-8128 to apply preferences and award set-aside or sole source contracts to SDVOSBs and VOSBs in accordance with the contracting order of priority (i.e., to SDVOSBs first, then to VOSBs).

c. New Policy. To implement the new policy regarding the SBA Veteran Small Business Certification Program (also referred to informally by the SBA as “VetCert”), various VAAR parts are updated to remove the VIP database title and web address, and other pertinent information. The changes also include new references to the relevant SBA certification database that VA contracting officers shall use to confirm SDVOSB and VOSB certifications. These revisions affect the VAAR sections listed below:

(1) 802.101, Definitions.

(2) 806.270, Set-asides for certified Veteran-owned small businesses.

(3) 806.302-570, Noncompetitive procedures for certified Veteran-owned small businesses.

(4) 808.002, Priorities for use of mandatory Government sources.

(5) 808.004-70, Use of other priority sources.

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- (6) 808.405-70, Set-aside procedures for VA and GSA Federal Supply Schedules.
- (7) 810.001-70, Market research policy – use of SBA certification database.
- (8) 813.003-70, General policy.
- (9) 813.102, Source list.
- (10) 813.106-70, Soliciting competition, evaluation of quotations or offers, award and documentation—the Veterans First Contracting Program.
- (11) 819.202, Specific policies.
- (12) 819.704-70, VA subcontracting plan requirements.
- (13) 819.7001, General.
- (14) 819.7003, Eligibility.
- (15) 819.7004, Limitations on subcontracting compliance requirements.
- (16) 819.7006, VA service-disabled Veteran-owned small business set-aside procedures.
- (17) 819.7007, VA Veteran-owned small business set-aside procedures.
- (18) 819.7008, Sole source awards to certified service-disabled Veteran-owned small businesses.
- (19) 819.7009, Sole source awards to certified Veteran-owned small businesses.
- (20) 819.7010, Tiered set-aside evaluation.
- (21) 819.7011, Contract clauses.
- (22) 852.208-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.
- (23) 852.208-71, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Commitments—Orders or BPAs.
- (24) 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.
- (25) 852.219-70, VA Small Business Subcontracting Plan Minimum Requirements.

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(26) 852.219-73, VA Notice of Total Set-Aside for Certified Service-Disabled Veteran-Owned Small Businesses.

(27) 852.219-74, VA Notice of Total Set-Aside for Certified Veteran-Owned Small Businesses.

(28) 852.219-75, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction.

(29) 852.219-76, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products.

(30) 873.106, Exchanges with industry before receipt of proposals.

(31) 873.107, Socioeconomic programs.

8. Required Action. Contracting officers shall comply with this class deviation.

9. Additional information. Send questions to va.procurement.policy@va.gov.

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Attachment – VA Acquisition Regulation (VAAR) Class Deviation to Make Conforming Changes Required by the Small Business Administration Veteran Small Business Certification Program; Various Parts (JAN 2023) (DEVIATION)

Attachment

VA Acquisition Regulation (VAAR) Class Deviation to Make Conforming Changes Required by the Small Business Administration Veteran Small Business Certification Program; Various Parts (JAN 2023)(DEVIATION)

CLASS DEVIATION

VAAR Text Baseline is 48 CFR chapter 8 dated January 4, 2023.

Changes to baseline shown as **[bolded, bracketed additions]** and strikethrough deletions.

VAAR text unchanged shown as asterisks.

PART 802—DEFINITIONS OF WORDS AND TERMS

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802.101 Definitions. (DEVIATION)

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[SBA certification database means the database of certified VOSBs and SDVOSBs eligible to participate in the Veteran Small Business Certification Program (VetCert) (see 13 CFR 128) or the VA Veterans First Contracting Program.]

SDVOSB/VOSB **[(see 13 CFR 128.102)]** when used as an initialism means a service-disabled veteran-owned small business (SDVOSB) and/or veteran-owned small business (VOSB) that has been ~~found by VA eligible to participate in the Veterans First Contracting Program implemented at subpart 819.70 and listed in the Vendor Information Pages.~~ **[certified by SBA as eligible to participate in the Veteran Small Business Certification Program (VetCert) or the VA Veterans First Contracting Program after January 1, 2023 and appearing in the SBA certification database.]** The term is synonymous with ~~VA or VIP verified~~ **[certified]** small business concerns owned and controlled by Veterans.

Service-disabled Veteran-owned small business (SDVOSB) or small business concern owned and controlled by **[service-disabled]** Veterans **[or Veterans]** with service-connected disabilities has the same meaning as *service-disabled veteran-owned small business concern* defined in **[15 U.S.C. 632(q)(2)]**, except that for acquisitions **[and subcontracts]** authorized by 38 U.S.C. 8127 and 8128 ~~for~~ **[under]** the Veterans First Contracting Program, these businesses must be **[certified pursuant to 13 CFR 128 and]** listed as **[such]** ~~verified in the VIP~~**[SBA certification]** database. ~~In addition, some SDVOSB listed in the VIP database may be owned and controlled by a surviving spouse. See definition of surviving spouse in this section.~~

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~~*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:~~

~~(i) The date on which the surviving spouse remarries;~~

~~(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;~~

~~(iii) The date that is 10 years after the date of the Veteran's death;~~

~~(iv) 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.~~

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VA Rule of Two means the determination process mandated in 38 U.S.C. 8127(d)(1) whereby a contracting officer of the Department shall award contracts on the basis of competition restricted to **[certified]** small business concerns owned and controlled by Veterans if the contracting officer has a reasonable expectation that two or more ~~small business concerns owned and controlled by Veterans~~ **[SDVOSBs/VOSBs]** will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States. For purposes of this VA specific rule, a service-disabled Veteran-owned small business (SDVOSB) or a Veteran-owned small business (VOSB), must meet the eligibility requirements in 38 U.S.C. 8127(e), and VAAR [819.7003](#) and be listed as verified **[certified]** in the **[SBA certification]** Vendor Information Pages (VIP) database.

~~Vendor Information Pages (VIP) or VIP database means the Department of Veterans Affairs Office of Small and Disadvantaged Business Utilization (OSDBU) Center for Verification and Evaluation (CVE) Vendor Information Pages (VIP) database at <https://www.vetbiz.va.gov/vip/>. This site's database lists businesses that VA CVE has determined eligible for the Veterans First Contracting Program.~~

Veteran-owned small business (VOSB) has the same meaning as Veteran-owned small business concern defined in **[15 U.S.C. 632(q)(3)]**, except that for acquisitions

authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program, these businesses must be listed as ~~verified~~ **[certified]** in the ~~VIP database~~ **[SBA certification database]**. SDVOSBs, including ~~businesses whose SDVOSB status derive from ownership and control by a surviving spouse,~~ are also considered VOSBs, as long as they are listed as ~~eligible~~ **[as certified]** in ~~VIP~~**[the SBA certification database]**.

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PART 806—COMPETITION REQUIREMENTS

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Subpart 806.2—Full and Open Competition After Exclusion of Sources

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806.270 Set-asides for verified [certified] Veteran-owned small businesses. (DEVIATION)

(a) To fulfill the statutory requirements relating to Public Law 109-461, the Veterans Benefits, Health Care and Information Technology Act of 2006 (38 U.S.C. 8127-8128), contracting officers shall set aside solicitations in accordance with subpart [819.70](#) and the VA Rule of Two for ~~Vendor Information Pages (VIP)~~ verified [certified] service-disabled Veteran-owned small businesses (SDVOSBs) first, then [or certified] Veteran-owned small businesses (VOSBs) (see [819.7005\[,\]](#) and [819.7006\[, and 819.7007\]](#)). (38 U.S.C. 8127-8128)

(b) The requirement in this section to set aside procurements for ~~VIP~~ verified [certified] SDVOSBs and [certified] VOSBs applies to all types of contracts, including orders placed under GSA's Federal Supply Schedules (FSS) and indefinite-delivery contracts. (38 U.S.C. 8127-8128)

Subpart 806.3—Other Than Full and Open Competition

806.302 Circumstances permitting other than full and open competition.

806.302-5 Authorized or required by statute.

806.302-570 Noncompetitive procedures for verified [certified] Veteran-owned small businesses. (DEVIATION)

(a) *Sole source awards made to a verified [certified] SDVOSB or [certified] VOSB.* Full and open competition need not be provided for when awarding a sole source contract under paragraph (b) or (c) of this section, to a verified [certified] SDVOSB or [certified] VOSB in accordance with [819.7007](#) or [819.7008](#), [or [819.7009](#),] respectively, as authorized. Contracts awarded using the authority in this paragraph (a) shall be supported by the applicable justification and approval requirements of [FAR 6.302-5\(c\)\(2\)\(ii\)](#), [6.303](#), and [6.304](#).

(b) *Sole source awards below the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(b)). A contracting officer may award a contract under the authority in this paragraph (b) to a ~~VIP~~ verified [certified] SDVOSB first, then [or certified] VOSB if no SDVOSBs can fulfill the need, for an amount less than the simplified acquisition threshold, using procedures other than full and open competition. (38 U.S.C. 8127)

(c) *Sole source awards above the simplified acquisition threshold.* (Citation: 41 U.S.C. 3304(a)(5), as authorized by 38 U.S.C. 8127(c)). A contracting officer may award a contract to a ~~VIP-verified~~ **[certified]** SDVOSB first, then **[or certified]** VOSB if no SDVOSB can satisfy the need, using procedures other than full and open competition when—

(1) Such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) The anticipated award price of the contract (including options) will exceed the simplified acquisition threshold, but will not exceed \$5 million; and

(3) Contract award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127)

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PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

808.002 Priorities for use of mandatory Government sources. (DEVIATION)

(a) *Priorities.* Contracting activities shall satisfy requirements for supplies and services from or through the mandatory sources listed in paragraphs (a)(1) and (2) of this section in descending order of priority:

(1) *Supplies.* (i) VA inventories including the VA supply stock program (41 CFR 101-26.704) and VA excess.

(ii) Excess from other agencies (see [FAR subpart 8.1](#)).

(iii) Federal Prison Industries, Inc. (see [808.603](#)). Prior to considering award of a contract to Federal Prison Industries, Inc., contracting officers shall apply the VA Rule of Two (see [802.101](#)) to determine whether a requirement should be awarded to veteran-owned small businesses under the authority of 38 U.S.C. 8127-28, by using the preferences and priorities in subpart [819.70](#). If an award is not made to a ~~VIP-listed and verified~~ **[certified]** service-disabled veteran-owned small business (SDVOSB)/**[certified]** veteran-owned small business (VOSB) **[listed in the SBA certification database]** as provided in subpart [819.70](#), FPI remains a mandatory source in accordance with [FAR 8.002](#).

(iv) Supplies that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program ([FAR subpart 8.7](#)). Supplies that are on the Procurement List but which do not meet the definition of a covered product in paragraph (a)(1)(iv)(A) of this section are only required to be procured from a mandatory source in accordance with [FAR 8.002](#) if an award is not made to a ~~VIP-listed and verified~~ **[certified]** SDVOSB/**[certified]** VOSB **[listed in the SBA certification database]** after following the procedures set forth in subpart [819.70](#).

(A) *Definition.* As used in this paragraph (a)(1)(iv), *covered product* means a product that—

(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see [FAR 8.703](#)) and was included on the Procurement List on or before December 22, 2006; or

(2) Meets the following criteria—

(i) Is a replacement for a product under this paragraph (a)(1)(iv);

(ii) Is essentially the same and meeting the same requirement as the product being replaced; and

(iii) The contracting officer determines the product meets the quality standards and delivery schedule requirements of VA.

(B) *Policy.* Except as provided in paragraphs (a)(1)(iv)(C) and (D) of this section, contracting officers shall procure covered products that are on the Procurement List through the AbilityOne Program as set forth in [FAR subpart 8.7](#). Contracting officers shall not procure products that are on the Procurement List, but which do not meet the definition of a covered product using the procedures set forth in [FAR subpart 8.7](#), unless award cannot be made to a ~~VIP-listed and verified~~ **[certified]** SDVOSB/VOSB **[listed in the SBA certification database]** pursuant to the procedures set forth in subpart [819.70](#).

(C) *Exception for certain contracts awarded in accordance with the Veterans First Contracting Program in subpart [819.70](#).* If a contract for a covered product awarded under the authority of 38 U.S.C. 8127(d)(1) to a **[n eligible]** SDVOSB or VOSB was in effect as of August 7, 2020, the requirement shall continue as an SDVOSB/VOSB set-aside in accordance with [819.7006](#) and [819.7007](#).

(D) *Termination or expiration of excepted contracts.* When a contract previously awarded as set forth in paragraph (a)(1)(iv)(C) of this section is terminated or expires, contracting officers shall procure such covered product through the AbilityOne Program as a priority mandatory Government source (see paragraph (a)(1)(iv)(B) of this section), provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(1) Two or more **[certified]** SDVOSBs/VOSBs will submit offers; and

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

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points.

(2) *Services.* Services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program ([FAR subpart 8.7](#)). For services that are on the Procurement List, but which do not meet the definition of a covered service in paragraph (a)(2)(i) of this section are only required to be procured from a mandatory source in accordance with [FAR 8.002](#) if an award is not made to a ~~VIP-listed and verified~~ **[certified]** SDVOSB/VOSB **[listed in the SBA certification database]** after following the procedures set forth in subpart [819.70](#).

(i) *Definition.* As used in this paragraph (a)(2)—

Covered service means a service that—

(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see [FAR 8.703](#)) and was included on the Procurement List on or before December 22, 2006; or

(2) Meets the following criteria—

(i) Is a replacement for a service under this paragraph (a)(2);

(ii) Is essentially the same and meeting the same requirement as the service being replaced; and

(iii) The contracting officer determines the service meets the quality standards and delivery schedule requirements of VA.

(ii) *Policy.* Except as provided in paragraphs (a)(2)(iii) and (iv) of this section, contracting officers shall procure covered services that are on the Procurement List through the AbilityOne Program as set forth in [FAR subpart 8.7](#). Contracting officers shall not procure services that are on the Procurement List, but which do not meet the definition of a covered service using the procedures set forth in [FAR subpart 8.7](#), unless award cannot be made to a ~~VIP-listed and verified~~ **[certified]** SDVOSB/VOSB **[listed in the SBA certification database]** pursuant to the procedures set forth in subpart [819.70](#).

(iii) *Exception for certain contracts awarded in accordance with the Veterans First Contracting Program in subpart 819.70.* If a contract for a covered service awarded under the authority of 38 U.S.C. 8127(d)(1) to a ~~VIP-listed~~ **[eligible]** SDVOSB or VOSB **[listed in the SBA certification database]** was in effect as of August 7, 2020, the requirement shall continue as an SDVOSB/VOSB set-aside in accordance with [819.7006](#) and [819.7007](#).

(iv) *Termination or expiration of certain excepted contracts.* When a contract previously awarded as set forth in paragraph (a)(2)(iii) of this section is terminated or expires, contracting officers shall procure such covered service through the AbilityOne Program as a priority mandatory Government source (see paragraph (a)(2)(ii) of this section), provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(A) Two or more **[certified]** SDVOSBs/VOSBs will submit offers; and

(B) Award can be made at a fair and reasonable price that offers best value to the United States.

(b) *Unusual and compelling urgency.* The contracting officer may use a source other than those listed in paragraph (a) of this section when the need for supplies or services is of an unusual and compelling urgency (see [FAR 6.302-2](#), [8.405-6](#), and [13.106-1](#) and part [806](#) for justification requirements).

808.004 Use of other sources.

808.004-70 Use of other priority sources. (DEVIATION)

(a) *Veterans contracting priority.* In order to fulfill the requirements of 38 U.S.C. 8127-8128 (see subpart [819.70](#)), contracting officers shall award contracts (see [FAR 2.101](#) for the definition of contracts), as well as Blanket Purchase Agreements (BPAs),

and orders against VA and GSA Federal Supply Schedules (FSS), providing priority in the awarding of such contracts to ~~VIP-listed~~ **[certified]** SDVOSBs first, then **[certified]** VOSBs, **listed in the SBA certification database**.

(b) *Strategic sourcing priorities and application of the VA Rule of Two.* To provide medical supplies in Federal Supply Classification (FSC) groups 65 and 66 efficiently and effectively the VA, through previous reform initiatives, has implemented key strategic sourcing contract vehicles (e.g., prime-vendor, national contracts, VA FSS). If these strategic sourcing contracts were subject to the VA Rule of Two (see [802.101](#)), they may be determined mandatory by the head of the contracting activity. Contracting officers shall consider these priority contract vehicles before using other existing contract vehicles.

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Subpart 808.4—Federal Supply Schedules

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808.405 Ordering procedures for Federal Supply Schedules.

808.405-70 Set-aside procedures for VA and GSA Federal Supply Schedules. (DEVIATION)

To satisfy VA legislative requirements, contracting officers shall use the supplemental ordering procedures of this section when establishing a BPA or placing an order for supplies or services under this subpart as follows:

(a) *When market research supports set-asides.* Pursuant to 38 U.S.C. 8127, contracting activities shall set-aside BPAs and orders for ~~VIP-listed~~ **[certified]** SDVOSBs or VOSBs **[listed in the SBA certification database]** when, based on research, the contracting officer has a reasonable expectation that two or more **[certified]** small business concerns owned and controlled by Veterans or owned and controlled by Veterans with service-connected disabilities will submit offers and that award can be made at a fair and reasonable price that offers best value to the United States. When the VA Rule of Two (see [802.101](#)) is met:

(1) The set-aside requirements as provided in [819.7006](#) and [819.7007](#) are mandatory.

(2) The requirements in [FAR 8.405-1](#), [8.405-2](#), and [8.405-3](#) apply, except only quotes received from ~~verified (i.e., VIP-listed)~~ **[certified]** and eligible SDVOSBs or VOSBs will be considered.

(3) The eligibility requirements of [819.7003](#), [819.7006](#), and [819.7007](#) apply, including the requirement for offerors to be ~~VIP-listed~~ **[listed in the SBA certification database]** at the time they submit offers/quotes as well as at the time awards are made.

(4) The contracting officer shall notify potential offerors of the unique VA verification requirements by including in the solicitation the applicable set-aside clause prescribed at [819.7011](#).

(b) *When market research does not support set-asides.* Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside in either FSS or the open market, the contracting activity shall give priority in the award of orders placed under this part to ~~VIP-listed~~ **[certified]** SDVOSBs/VOSBs **[listed in the SBA certification database]** through the use of evaluation preferences giving priority to **[certified]** SDVOSBs first, then to a lesser extent VOSBs, and finally to any firm that proposes to use SDVOSBs/VOSBs as subcontractors. Contracting officers must use the clause prescribed in [808.405-570\(b\)](#).

(c) *SDVOSB/VOSB eligibility requirements.* The SDVOSB and VOSB eligibility requirements in [819.7003](#) apply, including current **[being a currently certified]** SDVOSB **[or]** ~~VIP-listed~~ **[listed in the SBA certification database]** status at the time of submission of offer/quote and at **[the]** time of award. The offeror must also represent that it meets the small business size standard for the assigned North American Industry Classification System (NAICS) code as well as other small business requirements (including completing the **[the applicable subcontracting limitations certificate of compliance]** certification found in [852.219-75](#) or [852.219-76](#))).

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PART 810—MARKET RESEARCH

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810.01 Policy.

810.001-70 Market research policy—use of ~~VA Vendor Information Pages~~ [SBA certification database]. (DEVIATION)

When performing market research, contracting officers shall—

[(a) R]review **[the Small Business Administration (SBA) certification database on the SBA Veteran Small Business Certification Program (VetCert) portal at <https://veterans.certify.sba.gov/>** ~~Vendor Information Pages (VIP) database at <https://www.vetbiz.va.gov> at <https://www.vetbiz.va.gov/vip/>~~ as required by subpart [819.70](#).

[(b)] ~~The contracting officer will s~~**[S]**earch the **[SBA certification]** ~~VIP~~ database by applicable North American Industry Classification System (NAICS) codes to determine whether two or more ~~verified~~ **[certified]** service-disabled veteran-owned small businesses (SDVOSBs) and/or veteran-owned small businesses (VOSBs), with the appropriate NAICS code, are listed as ~~verified~~ in the ~~VIP~~ database. ~~The contracting officer will~~

[(c) D]~~determine, among other things as the requirement dictates, whether VIP-listed~~ **[certified]** SDVOSBs or **[certified]** VOSBs **[listed in the SBA certification database, and]** identified as a result of market research~~[-]~~

[(1) A]are capable of performing the work[;]-

[(2) A]are likely to submit an offer/quote[;]- and

[(3) W]whether an award can be made at a fair and reasonable price that offers best value to the Government.

[(d)] The contracting officer shall use the market research for acquisition planning purposes, and as set forth in subpart [819.70](#), conduct a VA Rule of Two (see 802.101) determination in accordance with the contracting order of priority (see [819.7005](#) and [819.7006](#)).

PART 813—SIMPLIFIED ACQUISITION PROCEDURES

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813.003-70 General policy. (DEVIATION)

(a) The Veterans First Contracting Program in subpart [819.70](#) applies to VA contracts, orders and BPAs under this part and has precedence over other small business programs referenced in FAR parts [13](#) and [19](#). For VA policy regarding mandatory Government sources, refer to [808.002](#).

(b) Notwithstanding FAR [13.003\(b\)\(2\)](#), the contracting officer shall make an award utilizing the priorities for veteran-owned small businesses as implemented within the VA hierarchy of small business program preferences, the Veterans First Contracting Program in subpart [819.70](#). Specifically, the contracting officer shall consider preferences for ~~verified~~ **[certified]** service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for ~~verified~~ **[certified]** veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small businesses in accordance with [819.7005](#).

(c) When using competitive procedures, the preference for restricting competition to ~~verified~~ **[certified]** SDVOSBs/VOSBs in accordance with paragraph (b) of this section is mandatory whenever market research provides a reasonable expectation of receiving two or more offers/quotes from eligible, capable and ~~verified~~ **[certified]** firms, and that an award can be made at a fair and reasonable price that offers best value to the Government.

(1) Pursuant to 38 U.S.C. 8127, contracts under this part shall be set-aside for SDVOSBs/VOSBs, in accordance with [819.7006](#) or [819.7007](#) when supported by market research. Contracting officers shall use the applicable set-aside clause prescribed at [819.7011](#).

(2) Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside, the contracting officer shall include evaluation factors as prescribed at [815.304-70](#) and the evaluation criteria clause prescribed at [815.304-71\(a\)](#).

(d) The SDVOSB and VOSB eligibility requirements in [819.7003](#) apply, including **[being listed in the SBA certification database]**~~verification of the SDVOSB and VOSB status of an offeror [(see 13 CFR part 128)]~~, and other small business requirements in 13 CFR part 121, and 13 CFR 125.6 (e.g., small business representation, nonmanufacturer rule, and subcontracting limitations **[certificate of compliance]** (see [819.7004](#) and [819.7011](#))).

Subpart 813.1—Procedures

813.102 Source list. (DEVIATION)

(a) Pursuant to [819.7003](#), contracting officers shall use the ~~Vendor Information Pages (VIP)~~ **[Small Business Administration (SBA) certification]** database to verify SDVOSB/VOSB status.

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813.106-70 Soliciting competition, evaluation of quotations or offers, award and documentation—the Veterans First Contracting Program.(DEVIATION)

(a) When using competitive procedures under this part, the contracting officer shall use the Veterans First Contracting Program in subpart [819.70](#) and the guidance set forth in [813.003-70](#).

(b) Pursuant to 38 U.S.C 8127(b), contracting officers may use other than competitive procedures to enter into a contract with a ~~verified~~ **[certified]** SDVOSB or VOSB for procurements below the simplified acquisition threshold, as authorized by FAR [6.302-5](#) and [806.302-570\(a\) and \(b\)](#).

(c) For procurements above the simplified acquisition threshold, pursuant to 38 U.S.C. 8127(c), contracting officers may also award a contract under this part to a ~~a[n] firm verified under the Veterans First Contracting Program at subpart 819.70~~ **[certified SDVOSB/VOSB]** using procedures other than competitive procedures, as authorized by FAR [6.302-5](#) and [806.302-570\(a\) and \(c\)](#), and in accordance with [819.7008](#) and [819.7009](#).

PART 819—SMALL BUSINESS PROGRAMS

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819.202 Specific policies. (DEVIATION)

OSDBU is responsible for reviewing procurement strategies, establishing thresholds for such reviews and making recommendations to assist contracting officers in the implementation of this part. These responsibilities shall be conducted within the VA hierarchy of small business program preferences established by 38 U.S.C. 8127(h) (see subpart [819.70](#)), which requires VA to consider preferences for **[eligible and]** ~~VIP-listed~~ **[certified]** SDVOSBs first, then preferences for ~~VIP-listed~~ **[eligible and certified]** VOSBs, **both listed in the SBA certification database on the SBA Veterans Small Business Certification Program (VetCert) portal at <https://veterans.certify.sba.gov/> (see 819.7003 and 819.7005).** Contracting officers shall use VA Form 2268, Small Business Program and Contract Bundling Review, to document actions and recommendations.

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Subpart 819.7—The Small Business Subcontracting Program

819.704-70 VA subcontracting plan requirements. (DEVIATION)

(a) VA's current subcontracting goals, at a minimum, shall be inserted into all solicitations which contain [FAR clause 52.219-9](#). To the maximum extent possible, the contracting officer shall ensure that individual subcontracting plans submitted by offerors subject to clause [852.219-70](#), VA Small Business Subcontracting Plan Minimum Requirements, include SDVOSB/VOSB goals that are commensurate with the annual VA SDVOSB/VOSB subcontracting goals (see [819.708](#)).

(1) Only **[certified]** firms ~~listed as verified on the Vendor Information Pages (VIP)~~ **[in the SBA certification]** database **[on the SBA VetCert portal at <https://veterans.certify.sba.gov/>]** (see subpart [819.70](#)) will count towards SDVOSB and VOSB **[subcontracting]** goals **[or towards any subcontract commitments pursuant to paragraph (c)]**.

(2) A contractor may reasonably rely on a subcontractor's status as shown in the ~~VIP~~ **[SBA certification]** database of the date of subcontract award, provided the contractor retains records of the results of the ~~VIP~~ **[SBA certification]** database query.

(3) In furtherance of 38 U.S.C. 8127(a)(4), contractors shall submit subcontracting plan reports to OSDBU as set forth in clause [852.219-70](#), VA Small Business Subcontracting Plan Minimum Requirements. Unless otherwise directed by

OSDBU, VA Form 0896A, Report of Subcontracts to Small and Veteran Owned Business, shall be used to submit the required information.

(b) Subcontracting goals should be expressed as a percentage of total dollars to be subcontracted unless otherwise stated in the solicitation.

(c) If an offeror proposes to use an SDVOSB/VOSB subcontractor for the purpose of receiving SDVOSB/VOSB evaluation factors credit pursuant to [808.405-70](#) or [815.304-70](#), the contracting officer shall ensure that the offeror, if awarded the contract, actually uses the proposed subcontractor or another SDVOSB/VOSB for that subcontract or for work of similar value, in accordance with clause [852.208-70](#), Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs, or [852.215-71](#), Evaluation Factor Commitments.

(d) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB or VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business (see [809.406-270](#)).

* * * * *

Subpart 819.70—The VA Veterans First Contracting Program

819.7001 General. (DEVIATION)

(a) Sections 502 and 503 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, as amended (38 U.S.C. 8127- 8128), authorizes a VA specific program to increase contracting opportunities for eligible small business concerns owned and controlled by Veterans with service-connected disabilities and small business concerns owned and controlled by Veterans. ~~Once ownership and control by these veterans is verified, t~~**[T]hese [eligible small businesses listed in the SBA certification database, pursuant to 13 CFR 128] businesses** are referred to as **[certified]** service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) or collectively **[certified]** SDVOSB/VOSB for ease of reference.

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

(c) VA's program is codified at 38 U.S.C. 8127, and provides the authority for VA contracting officers to make awards to **[certified]** SDVOSBs/VOSBs using restricted competition, as well as other than full and open competition (sole source) (see 38 U.S.C. 8127 (b), (c) and (d)), as set-forth in this subpart. Additionally, 38 U.S.C. 8128 provides

the authority for VA to give **[certified]** SDVOSBs/VOSBs priority in the awarding of contracts and subcontracts using evaluation preferences.

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

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

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

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

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

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819.7003 Eligibility. (DEVIATION)

(a) SDVOSB/VOSB **[certification,]** size eligibility, challenges, and appeals are governed by the Small Business Administration (SBA) regulations at 13 CFR parts 121, 125, **[128,]** and 134, except where directed otherwise by this part ~~or 38 CFR part 74~~.

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

(1) SDVOSB or VOSB eligible under this subpart;

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

(3) ~~Listed as a verified~~ **[Certified]** SDVOSB/VOSB ~~on~~ **[listed in]** the VA's Vendor Information Pages (VIP) at <https://www.vetbiz.va.gov/vip/> **[SBA certification database at <https://veterans.certify.sba.gov/> (see 13 CFR 128)]**.

(c) A joint venture may be considered eligible if it meets the requirements in 13 CFR part 125 **[128, and the managing joint venture partner makes the representations under paragraph (b) of this section]**; ~~and the joint venture is listed in the VIP database.~~

(d) To receive a benefit under the Veterans First Contacting Program, an otherwise eligible SDVOSB/VOSB **[certified pursuant to 13 CFR 128,]** must also meet SBA requirements at 13 CFR parts 121~~[,]~~ and 125, **[and 128]** including the nonmanufacturer rule requirements at 13 CFR 121.406(b) and limitations on subcontracting at 13 CFR 125.6. The nonmanufacturer rule (see 13 CFR 121.406) and the limitations on subcontracting requirements apply to all SDVOSB and VOSB set-aside and sole source contracts above the micro-purchase threshold. **[In addition,]** ~~[a]~~ An offeror shall submit a certification of compliance to be considered eligible for any award under this part (see [819.7004](#)).

(e) Pursuant to 38 USC 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business. See [809.406-270](#).

819.7004 Limitations on subcontracting compliance requirements. (DEVIATION)

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

(1) Only ~~VIP-listed~~ **[certified]** SDVOSBs **[listed in the SBA certification database]** are considered eligible and/or “similarly situated” under an SDVOSB sole source or set-aside.

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

(3) Any ~~VIP-listed~~ **[certified]** SDVOSB/VOSB **[listed in the SBA certification database]** is considered eligible and/or “similarly situated” under a VOSB sole source or set-aside.

(b) Pursuant to the authority of 38 U.S.C. 8127(k[1])(2), a contracting officer may award a contract under this subpart only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirement as provided in the solicitation and which shall be included in the resultant contract (see [819.7011](#)).

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

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

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

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

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

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

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

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

(1) If the Secretary or designee determines in consultation with the Inspector General that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not

act in good faith with respect to the requirements described in [819.7003\(d\)](#), such SDVOSB/VOSB shall be subject to any or all of the following—

- (i) Referral to the VA Suspension and Debarment Committee;
- (ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and
- (iii) Prosecution for violating 18 U.S.C. 1001.

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

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

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

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

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

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

(1) Offerors are ~~as eligible in the VIP database~~ **[certified SDVOSBs listed in the SBA certification database]** at the time of submission of offers and at time of award; and

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

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible ~~VIP-listed~~ **[certified]** SDVOSB **[listed in the SBA certification database]**, the contracting officer may make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition if

warranted or otherwise procured using the most appropriate strategy based on the results of market research.

819.7007 VA veteran-owned small business set-aside procedures. (DEVIATION)

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

(1) Offers/quotations will be received from two or more **[eligible]** ~~VIP-listed~~ **[certified]** VOSBs; and

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

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

(1) Offerors are ~~registered and verified as eligible in the VIP database~~ **[certified and listed in the SBA certification database]** at the time of submission of offers and at time of award; and

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

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible ~~VIP-listed~~ **[certified]** VOSB **[listed in the SBA certification database]** in response to a VOSB set-aside, the contracting officer may make an award to that concern. If the contracting officer decides not to make an award to the single acceptable offer received, or if the contracting officer receives no acceptable offers from eligible VOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs in accordance with [819.7005](#) or otherwise procured using the most appropriate strategy based on the results of market research.

819.7008 Sole source awards to verified [certified] service-disabled veteran-owned small businesses. (DEVIATION)

(a) A contracting officer may award a contract to a ~~VIP-listed~~ **[certified]** service-disabled veteran-owned small business (SDVOSB) **[listed in the SBA certification database]** using other than competitive procedures provided—

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

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

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

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

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

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

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

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

819.7009 Sole source awards to ~~verified~~ [certified] veteran-owned small businesses. (DEVIATION)

(a) A contracting officer may award a contract to a ~~VIP-listed~~ [certified] veteran-owned small business (VOSB) [listed in the SBA certification database] using other than competitive procedures provided—

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

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

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

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

(5) No responsible SDVOSB has been identified.

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

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

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

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

819.7010 Tiered set-aside evaluation. (DEVIATION)

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

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

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

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

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

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

(1) Tiered evaluations limited to **[certified]** SDVOSBs or VOSBs;

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

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

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

819.7011 Contract clauses. (DEVIATION)

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

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

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

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PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 852.2—Text of Provisions and Clauses

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852.208-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.

As prescribed in [808.405-570](#), insert the following clause:

SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS—ORDERS OR BPAs (NOV-2022) (JAN 2023) (DEVIATION)

(a) In an effort to increase contracting opportunities for Veterans, depending on the evaluation factors included in the solicitation, VA will evaluate responses received based on the schedule Contractor's ~~VIP-verified~~ **[certified]** service-disabled veteran-owned small business/veteran-owned small business (SDVOSB/VOSB) status; and/or their proposed use of ~~VIP-listed~~ **[certified]** SDVOSB/VOSB **[listed in the SBA certification database on the SBA Veteran Small Business Certification Program portal at <https://veterans.certify.sba.gov/> (see 13 CFR 128)]** as subcontractors or teaming partners.

(b) To receive credit under this clause a contractor or subcontractor must be listed, at time of submission of offer/quotes and at time of award, as an ~~an~~ **[certified]-eligible** SDVOSB/VOSB in the **[SBA certification database on the SBA Veteran Small Business Certification Program portal at <https://veterans.certify.sba.gov/> (see 13 CFR 128) and be otherwise eligible in accordance with SBA size standards for the acquisition and limitations on subcontracting requirements set forth in SBA regulations (see 13 CFR 121, 125 and 128.)]** ~~Vendor Information Pages (VIP) database at <https://www.vetbiz.va.gov/vip/>.~~

(c) A ~~VIP-listed~~ **[certified]** SDVOSB **[listed in the SBA certification database]** schedule holder will receive full credit, and a ~~VIP-listed~~ **[certified]** VOSB **[listed in the SBA certification database]** schedule holder will receive partial credit for the SDVOSB/VOSB status evaluation factor.

(d) Offerors other than SDVOSBs or VOSBs proposing to use ~~VIP-listed~~ **[certified]** SDVOSBs/VOSBs **[listed in the SBA certification database]** as subcontractors/teaming partners, will receive some consideration under this evaluation factor. To receive consideration, offerors must provide in their proposals:

(1) The name(s) and contact information of the ~~VIP-listed~~ **[certified]** SDVOSB(s)/VOSB(s) **[listed in the SBA certification database]** with whom they intend to team or subcontract.

(2) A brief description of the proposed team or subcontractor(s) arrangement.

(3) The approximate dollar value of the proposed teaming arrangements or subcontract(s).

(4) Evidence of teaming partner/subcontractor's ~~VIP database registration and verification~~ **[listing in the SBA certification database]**.

(e) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

852.208-71 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders and BPAs.

As prescribed in [808.405-570](#), insert the following clause:

SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTOR COMMITMENTS—ORDERS AND BPAs (~~NOV 2022~~) (JAN 2023) (DEVIATION)

(a) The Contractor agrees, if selected on the basis of **[having certified]** service-disabled veteran-owned small business (SDVOSB) or veteran-owned small business (VOSB) status **[(see 13 CFR 128)]**, to comply with the eligibility requirements in subpart [819.70](#), including the limitation on subcontracting requirements at 13 CFR 125.6.

(b) The Contractor agrees, if selected for award on the basis of teaming/ subcontracting in accordance with [852.208-70](#), Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders and BPAs, to use the evaluated firm(s) as proposed or if approved by contracting officer to substitute one or more ~~VIP-verified~~ **[certified]** SDVOSB/VOSB **[listed in the SBA certification database]** for work of the same or similar value.

(c) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

* * * * *

852.215-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.

As prescribed in [815.304-71\(a\)](#), insert the following clause:

**SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED
SMALL BUSINESS EVALUATION FACTORS ~~(OCT 2019)~~ (JAN 2023) (DEVIATION)**

(a) In an effort to achieve socioeconomic small business goals, VA shall evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business **[certification]** status and their proposed use of eligible **[certified]** service-disabled veteran-owned small businesses (SDVOSBs) and **[certified]** veteran-owned small businesses (VOSBs) as subcontractors.

(b) Eligible **[and certified]** service-disabled veteran-owned small businesses offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the **[certified]** Service-Disabled Veteran-Owned and Veteran-Owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in the Vendor Information Pages (VIP) database **[listed at the time of submission of offers and at time of award, as a certified SDVOSB/VOSB in the SBA certification database on the SBA Veteran Small Business Certification Program portal at <https://veterans.certify.sba.gov/> (see 13 CFR 128) and be otherwise eligible in accordance with SBA size standards for the acquisition and limitations on subcontracting requirements set forth in SBA regulations (see 13 CFR 121, 125 and 128.)]**.

(c) Non-Veteran offerors proposing to use **[certified]** SDVOSBs or VOSBs as subcontractors will receive some consideration under this evaluation factor. Offerors must state in their proposals the names of the **[certified]** SDVOSBs and VOSBs with whom they intend to subcontract and provide a brief description of the proposed subcontracts and the approximate dollar values of the proposed subcontracts. In addition, the proposed subcontractors must be registered and verified in the VIP database **[listed at the time of submission of offers and at time of award, as a certified SDVOSB/VOSB in the SBA certification database]**.

(d) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

* * * * *

852.219-70 VA Small Business Subcontracting Plan Minimum Requirements.

As prescribed in [819.708](#), insert the following clause:

**VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS
~~(NOV 2022)~~ (JAN 2023) (DEVIATION)**

(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 ~~VA-verified~~ **[certified]** service-disabled veteran-owned small business and **[certified]** veteran-owned small business SDVOSB/VOSB shall be at least commensurate with the Department's annual SDVOSB/VOSB subcontracting goals.

(c) For a commercial plan, the minimum goals for award of subcontracts to SDVOSB/VOSB shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business subcontracting goals for the total value of projected subcontracts to support the sales for the commercial plan.

(d) To be credited toward goal achievements, SDVOSB/VOSBs must be ~~verified~~ **[certified]** as eligible **[and listed in the SBA certification database]** in the ~~VA's Vendor Information Pages (VIP) database at <https://www.vetbiz.va.gov/vip/>~~ **[at <https://veterans.certify.sba.gov/> (see 13 CFR 128) and be otherwise eligible in accordance with SBA size standards for the acquisition and limitations on subcontracting requirements set forth in SBA regulations (see 13 CFR 121, 125 and 128).]** A contractor may reasonably rely on a subcontractor's status as shown in the ~~VIP~~ database **[SBA certification database]** as of the date of subcontract award, provided the contractor retains records of the results of the ~~VIP~~ **[SBA certification]** database query.

(e) The Contractor shall annually submit a listing of SDVOSB/VOSB (for which credit toward goal achievement is to be applied) for review by personnel in the Office of Small and Disadvantaged Business Utilization. Use VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Business.

(f) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

* * * * *

852.219-73 VA Notice of Total Set-Aside for ~~Verified~~ [Certified] Service-Disabled Veteran-Owned Small Businesses.

As prescribed in [819.7011](#), insert the following clause:

**VA NOTICE OF TOTAL SET-ASIDE FOR ~~VERIFIED~~ [CERTIFIED] SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESSES (NOV 2022)
(JAN 2023) (DEVIATION)**

(a) *Definition.* For the Department of Veterans Affairs, “*Service-disabled Veteran-owned small business concern or SDVOSB*”:

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled Veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled Veterans or eligible surviving spouses (see 13 CFR 128.102, Surviving spouse definition);

(ii) The management and daily business operations of which are controlled by one or more service-disabled Veterans (or eligible surviving spouses) or, in the case of a service-disabled Veteran with permanent and severe disability, the spouse or permanent caregiver of such Veteran;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

(iv) The business has been ~~verified~~ **[certified]** for ownership and control pursuant to 38 **[U.S.C. 8127, 13 CFR 128,]** ~~CFR part 74~~ and is listed **[as certified]** in VA’s ~~Vendor Information Pages (VIP)~~ **[the SBA certification]** database at ~~<https://www.vetbiz.va.gov/vip/>~~ **[<https://veterans.certify.sba.gov/>]**; and

(v) The business ~~will~~ **[agrees to]** comply with VAAR subpart [819.70](#) and Small Business Administration (SBA) regulations regarding small business size~~[,]~~ and government contracting programs~~[, and the Veteran Small Business Certification Program]~~ at 13 CFR parts 121~~[,]~~ and 125, ~~[and 128]~~ ~~provided that any reference therein to a service-disabled veteran-owned small business concern or SDVO SBC, is to be construed to apply to a VA verified and VIP-listed SDVOSB, unless otherwise stated in this clause.~~

(2) The term “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(16).

(3) The term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(4) The term “small business concern owned and controlled by Veterans with service-connected disabilities” has the meaning given the term “*small business concern owned and controlled by service-disabled veterans*” under section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)(2)), ~~except that for a VA contract the firm must be listed in the VIP database (see paragraph (a)(1)(iv) of this clause).~~

[(5) The term “SDVOSB participant” or certified SDVOSB means a small business that has been certified in the SBA Veteran Small Business Certification Program and listed in the SBA certification database (see 13 CFR 128.102).]

(b) *General.* **[In order for a concern to submit an offer and be eligible for the award of an SDVOSB set-aside or sole source contract, the concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract and be listed as an SDVOSB participant in the SBA certification database as set forth in 13 CFR 128.]**

(1) ~~Offers are solicited only from VIP-listed SDVOSBs.~~ Offers received from entities that are not ~~VIP-listed~~ **[certified]** SDVOSBs **[and listed in the SBA certification database]** at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made to a ~~VIP-listed~~ **[certified]** SDVOSB **[listed in the SBA certification database]** who is eligible at the time of submission of offer(s) and at the time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as an SDVOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation.* Pursuant to 38 U.S.C. 8127(e), only ~~VIP-listed~~ **[certified]** SDVOSBs **[listed in the SBA certification database]** are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible **[and certified]** SDVOSB as defined in this clause, ~~38 CFR part 74~~ **[13 CFR 121, 125, and 128]**, and VAAR subpart [819.70](#).

(d) *Agreement***[/LOS certification]**. When awarded a contract action, including orders under multiple-award contracts, an SDVOSB agrees that in the performance of the contract, the SDVOSB shall comply with requirements in VAAR subpart [819.70](#) and SBA regulations on small business size[,], and government contracting programs at 13 CFR part 121 and part 125, including the non-manufacturer rule and limitations on subcontracting **[(LOS)]** requirements in 13 CFR 121.406(b) and 13 CFR 125.6. ~~Unless otherwise stated in this clause, a requirement in 13 CFR parts 121 and 125 that applies to an SDVO SBC, is to be construed to also apply to a VIP-listed SDVOSB.~~ For the purpose of limitations on subcontracting, only ~~VIP-listed~~ **[certified]** SDVOSBs **[listed in the SBA certification database]** (including independent contractors) shall be considered eligible and/or “similarly situated” (i.e., a firm that has the same small business program status as the prime contractor). An otherwise eligible firm further agrees to comply with the required **[LOS]** certification requirements in this solicitation (see [852.219-75](#) or [852.219-76](#) as applicable). These requirements are summarized as follows:

(1) *Services.* In the case of a contract for services (except construction), the SDVOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance to firms that are not ~~VIP-listed~~ **[certified]** SDVOSBs **[listed in the SBA certification database]** (excluding direct costs to the extent they are not the principal purpose of the acquisition and the SDVOSB/VOSB does not provide the service, such as airline travel, cloud computing services, or mass media purchases). When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

(2) *Supplies/products.* (i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), the SDVOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not ~~VIP-listed~~ **[certified] SDVOSBs [listed in the SBA certification database]**. When a contract includes both supply and services, the 50 percent limitation shall apply only to the supply portion of the contract.

(ii) In the case of a contract for supplies from a non-manufacturer, the SDVOSB prime contractor will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) has been granted. Refer to 13 CFR ~~CFR~~ **[CFR]125.6(a)(2)(ii)** for guidance pertaining to multiple item procurements.

(3) *General construction.* In the case of a contract for general construction, the SDVOSB prime contractor will not pay more than 85% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not ~~VIP-listed~~ **[certified] SDVOSBs [listed in the SBA certification database]**.

(4) *Special trade construction contractors.* In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, may be paid to firms that are not ~~VIP-listed~~ **[certified] SDVOSBs [listed in the SBA certification database]**.

(5) *Subcontracting.* An SDVOSB **[subcontractor]** must meet the NAICS size standard assigned by the prime contractor and be **[certified and]** listed in ~~VIP~~ **[the SBA certification database]** to count as similarly situated. Any work that a first tier ~~VIP-listed~~ SDVOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction contracts, the cost of materials is excluded and not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the portion of the contract with the preponderance of the expenditure upon which the assigned NAICS is based. For information and more specific requirements, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period.* An SDVOSB shall comply with the limitations on subcontracting as follows:

[Contracting Officer check as appropriate.]

_____ By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

_____ By the end of the performance period for each order issued under the contract.

(f) *Joint ventures.* A joint venture may be considered eligible as an SDVOSB if the joint venture ~~is listed in VIP~~ and complies with the requirements in 13 CFR 125.18(b) **[128.402 and the managing joint venture partner makes the**

representations under paragraph (c) of this clause], provided that any requirement therein that applies to an SDVO SBC is to be construed to apply to a VIP-listed SDVOSB. A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

(g) *Precedence*. The VA Veterans First Contracting Program, as defined in VAAR [802.101](#), subpart [819.70](#), and this clause, takes precedence over any inconsistencies between the requirements of the SBA **[Veteran Small Business Certification]** Program for SDVO SBCs, and the VA Veterans First Contracting Program.

(h) *Misrepresentation*. Pursuant to 38 USC 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR [809.406-2](#) Causes for Debarment).

(End of clause)

852.219-74 VA Notice of Total Set-Aside for Verified [Certified] Veteran-Owned Small Businesses.

As prescribed in [819.7011](#), insert the following clause:

VA NOTICE OF TOTAL SET-ASIDE FOR VERIFIED [CERTIFIED] VETERAN-OWNED SMALL BUSINESSES (NOV-2022) (JAN 2023) (DEVIATION)

(a) *Definition*. For the Department of Veterans Affairs, "*Veteran-owned small business or VOSB*":

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more Veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more Veteran(s);

(ii) The management and daily business operations of which are controlled by one or more Veteran(s);

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

(iv) The business has been verified for ownership and control pursuant to ~~38 CFR part 74~~ **[38 U.S.C. 8127 and 13 CFR 128,]** and is **[certified and]** listed in **[the SBA certification database at <https://veterans.certify.sba.gov/>]** VA's Vendor Information Pages (VIP) database at: <https://www.vetbiz.va.gov/vip/>; and

(v) The business will **[agrees to]** comply with VAAR subpart [819.70](#) and Small Business Administration (SBA) regulations regarding small business size and government contracting programs, **and the Veterans Small Business Certification Program** at 13 CFR parts 121[,], and 125, **[and 128.]** ~~provided that any requirement therein that applies to a service-disabled veteran-owned small business concern or SDVO SBC, is to be construed to also apply to a VA verified and VIP-listed VOSB, unless otherwise stated in this clause.~~

~~(vi) The term VOSB includes VIP-listed service-disabled veteran-owned small businesses (SDVOSB).~~

(2) "Veteran" is defined in 38 U.S.C. 101(2).

(3) The term "small business concern" has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(4) The term "small business concern owned and controlled by Veterans" has the meaning given that term under section 3(q)(3) of the Small Business Act (15 U.S.C. 632(q)(3)), except that for a VA contract the firm must be **[certified and]** listed in the ~~VIP~~ **[SBA certification]** database ~~(see paragraph (a)(1)(iv) of this clause).~~

[(5) The term "VOSB participant" or certified VOSB means a small business that has been certified as eligible to participate in the Veteran Small Business Certification Program and listed in the SBA certification database (see 13 CFR 128.102). It includes certified service-disabled veteran-owned small businesses (SDVOSBs).]

(b) *General.* **[In order for a concern to submit an offer and be eligible for the award of a VOSB set-aside or sole source contract, the concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract and be certified and listed as a VOSB or SDVOSB participant in the certification database as set forth in 13 CFR 128.]**

~~(1) Offers are solicited only from VIP-listed VOSBs, including VIP-listed SDVOSBs. Offers received from entities that are not VIP-listed~~ **[certified VOSBs or SDVOSBs and listed in the SBA certification database]** at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made only to a ~~VIP-listed~~ **[certified]** VOSB who is eligible at the time of submission of offer(s) and at time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as a VOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation.* Pursuant to 38 U.S.C. 8127(e), only ~~VIP-listed~~ **[certified]** VOSBs **[listed in the SBA certification database]** are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible **[and certified]** VOSB as defined in this clause, ~~38 CFR part 74~~ **[13 CFR 121, 125, and 128]**, and VAAR subpart [819.70](#).

(d) *Agreement*~~[/LOS certification]~~. When awarded a contract action, including orders under multiple-award contracts, a VOSB agrees that in the performance of the contract, the VOSB shall comply with requirements in VAAR subpart [819.70](#) and SBA regulations on small business size~~[,]~~ and government contracting programs at 13 CFR parts 121 and 125, including the non-manufacturer rule and limitations on subcontracting ~~[(LOS)]~~ requirements in 13 CFR 121.406(b) and 125.6. ~~Unless otherwise stated in this clause, any requirement in 13 CFR parts 121 and 125 that applies to an SDVO SBC, is to be construed to also apply to a VIP-listed VOSB.~~ For the purpose of the limitations on subcontracting, only ~~VIP-listed~~ **[certified]** VOSB[s] **[listed in the SBA certification database]**, (including independent contractors) ~~is~~**[shall be]** considered eligible and/or “similarly situated” (*i.e.*, a firm that has the same small business program status as the prime contractor). An otherwise eligible firm further agrees to comply with the required **[LOS]** certification requirements in this solicitation (see [852.219-75](#) or [852.219-76](#) as applicable). These requirements are summarized as follows:

(1) *Services*. In the case of a contract for services (except construction), the VOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance to firms that are not ~~VIP-listed~~ **[certified]** VOSBs **[listed in the SBA certification database]** (excluding direct costs to the extent they are not the principal purpose of the acquisition and the SDVOSB/VOSB does not provide the service, such as airline travel, cloud computing services, or mass media purchases). When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

(2) *Supplies/products*. (i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), the VOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not ~~VIP-listed~~ **[certified]** VOSBs **[listed in the SBA certification database]**. When a contract includes both supply and services, the 50 percent limitation shall apply only to the supply portion of the contract.

(ii) In the case of a contract for supplies from a non-manufacturer, the VOSB prime contractor will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) has been granted. Refer to 13 CFR 125.6(a)(2)(ii) for guidance pertaining to multiple item procurements.

(3) *General construction*. In the case of a contract for general construction, the VOSB prime contractor will not pay more than 85% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not ~~VIP-listed~~ **[certified]** VOSBs **[listed in the SBA certification database]**.

(4) *Special trade construction contractors*. In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, may be paid to firms that are not ~~VIP-listed~~ **[certified]** VOSBs **[listed in the SBA certification database]**.

(5) *Subcontracting*. A VOSB must meet the NAICS size standard assigned by the prime contractor and be listed in ~~VIP~~**[the SBA certification database]** to count as

similarly situated. Any work that a first tier ~~VIP-listed~~ VOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction contracts, the cost of materials is excluded and not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the portion of the contract with the preponderance of the expenditure upon which the assigned NAICS is based. For information and more specific requirements, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period.* A VOSB shall comply with the limitations on subcontracting as follows:

[Contracting Officer check as appropriate.]

_____By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

_____By the end of the performance period for each order issued under the contract.

(f) *Joint ventures.* A joint venture may be considered eligible as a VOSB if the joint venture ~~is listed in VIP and~~ complies with the requirements in 13 CFR ~~125.18(b)~~ **[128.402 and the managing joint venture partner makes the representations under paragraph (c) of this clause.]**, provided that any requirement therein that applies to an SDVO SBC ~~is to be construed to also apply to a VIP-listed VOSB.~~ A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

(g) *Precedence.* The VA Veterans First Contracting Program, as defined in VAAR [802.101](#), subpart [819.70](#), and this clause, takes precedence over any inconsistencies between the requirements of the SBA **[Veteran Small Business Certification]** Program ~~for SDVO SBCs~~ and the VA Veterans First Contracting Program.

(h) *Misrepresentation.* Pursuant to 38 U.S.C. 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's VOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR [809.406-2](#), Causes for Debarment).

(End of clause)

852.219-75 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction.

As prescribed in [819.7011\(b\)](#), insert the following clause:

**VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SERVICES AND CONSTRUCTION (NOV 2022)
(JAN 2023) (DEVIATION)**

(a) Pursuant to 38 U.S.C. 8127(k(1))(2), the offeror certifies that—

(1) If awarded a contract (see [FAR 2.101](#) definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [*Contracting Officer check the appropriate box below based on the predominant NAICS code assigned to the instant acquisition as set forth in [FAR 19.102.](#)*]

(i) *Services.* In the case of a contract for services (except construction), the contractor will not pay more than 50% of the amount paid by the government to it to firms that are not ~~VIP-listed~~ **[certified] SDVOSBs [listed in the SBA certification database]** as set forth in [852.219-73](#) or **[certified] VOSBs [listed in the SBA certification database]** as set forth in [852.219-74](#). Any work that a similarly situated ~~VIP-listed~~ **[certified SDVOSB/VOSB]** subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Other direct costs may be excluded to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service as set forth in 13 CFR 125.6.

(ii) *General construction.* In the case of a contract for general construction, the contractor will not pay more than 85% of the amount paid by the government to it to firms that are not ~~VIP-listed~~ **[certified] SDVOSBs [listed in the SBA certification database]** as set forth in [852.219-73](#) or **[certified] VOSBs [listed in the SBA certification database]** as set forth in [852.219-74](#). Any work that a similarly situated ~~VIP-listed~~ **[certified SDVOSB/VOSB]** subcontractor further subcontracts will count towards the 85% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(iii) *Special trade construction contractors.* In the case of a contract for special trade contractors, the contractor will not pay more than 75% of the amount paid by the government to it to firms that are not ~~VIP-listed~~ **[certified] SDVOSBs [listed in the SBA certification database]** as set forth in [852.219-73](#) or **[certified] VOSBs [listed in the SBA certification database]** as set forth in [852.219-74](#). Any work that a similarly situated **[certified SDVOSB/VOSB]** subcontractor further subcontracts will count towards the 75% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(2) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(3) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

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

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

(iii) Prosecution for violating ~~section 1001 of title 18~~ **[U.S.C. 1001]**.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract. Contracting officers may, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance with the limitations on subcontracting requirement. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/fill-in required. The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

Certification:

I hereby certify that if awarded the contract, *[insert name of offeror]* will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of *[insert name of offeror]*.

Printed Name of Signee: _____

Printed Title of Signee: _____

Signature: _____

Date: _____

Company Name and Address: _____

(End of clause)

852.219-76 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products.

As prescribed in [819.7011\(c\)](#), insert the following clause. The contracting officer shall tailor the clause in paragraph (a)(2)(iii) as appropriate:

VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SUPPLIES AND PRODUCTS (NOV 2022) (JAN 2023) (DEVIATION)

(a) Pursuant to 38 U.S.C. 8127(k~~(l)~~)(2), the offeror certifies that—

(1) If awarded a contract (see [FAR 2.101](#) definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [*Offeror check the appropriate box*]

(i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not ~~VIP-listed~~ **[certified] SDVOSBs [listed in the SBA certification database]** as set forth in [852.219-73](#) or **[certified] VOSBs [listed in the SBA certification database]** as set forth in [852.219-74](#). Any work that a similarly situated ~~VIP-listed~~ **[certified SDVOSB/VOSB]** subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(ii) In the case of a contract for supplies from a nonmanufacturer, it will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) is granted. The offeror understands that, as provided in 13 CFR 121.406(b)(7), such a waiver has no effect on requirements external to the Small Business Act, such as the Buy American Act or the Trade Agreements Act.

(2) Manufacturer or nonmanufacturer representation and certification. [*Offeror fill-in—check each applicable box below. The offeror must select the applicable provision below, identifying itself as either a manufacturer or nonmanufacturer*]:

(i) *Manufacturer or producer.* The offeror certifies that it is the manufacturer or producer of the end item being procured, and the end item is manufactured or produced in the United States, in accordance with paragraph (a)(1)(i).

(ii) *Nonmanufacturer.* The offeror certifies that it qualifies as a nonmanufacturer in accordance with the requirements of 13 CFR 121.406(b) and paragraph (a)(1)(ii). The offeror further certifies it meets each element below as required in order to qualify as a nonmanufacturer. [*Offeror fill-in—check each box below.*]

The offeror certifies that it does not exceed 500 employees (or 150 employees for the Information Technology Value Added Reseller exception to NAICS code 541519, which is found at 13 CFR 121.201, footnote 18).

The offeror certifies that it is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied.

The offeror certifies that it will take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice.

(iii) The offeror certifies that it will supply the end item of a small business manufacturer, processor, or producer made in the United States, unless a waiver as provided in 13 CFR 121.406(b)(5) has been issued by SBA. *[Contracting Officer fill-in or removal (see 13 CFR 121.1205). This requirement must be included for a single end item. However, if SBA has issued an applicable waiver of the nonmanufacturer rule for the end item, this requirement must be removed in the final solicitation or contract.]*

or *[Contracting officer tailor clause to remove one or other block under subparagraph (iii).]*

If this is a multiple item acquisition, the offeror certifies that at least 50% of the estimated contract value is composed of items that are manufactured by small business concerns. *[Contracting Officer fill-in or removal. See 13 CFR 121.406(d) for multiple end items. If SBA has issued an applicable nonmanufacturer rule waiver, this requirement must be removed in the final solicitation or contract.]*

(3) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(4) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

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

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

(iii) Prosecution for violating ~~section 1001 of title 18~~ **[U.S.C. 1001]**.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on

subcontracting requirement specified in the contract or to determine whether the offeror qualifies as a manufacturer or nonmanufacturer in compliance with the limitations on subcontracting requirement. Contracting officers may, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/fill-in required. The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

Certification:

I hereby certify that if awarded the contract, *[insert name of offeror]* will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of *[insert name of offeror]*.

Printed Name of Signee: _____

Printed Title of Signee: _____

Signature: _____

Date: _____

Company Name and Address: _____

(End of clause)

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PART 873—SIMPLIFIED PROCEDURES FOR HEALTH-CARE RESOURCES

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873.106 Exchanges with industry before receipt of proposals. (DEVIATION)

(a) Exchange of information among all interested parties involved in an acquisition described in [873.104\(b\)](#), from the earliest identification of a requirement through release of the solicitation, is encouraged. Any exchange of information must be consistent with procurement integrity requirements in [FAR 3.104](#). The nature and extent of exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer. (38 U.S.C. 8153)

(b) Techniques to promote early exchange of information include—

- (1) Industry or small business conferences;
- (2) Public hearings;
- (3) Market research in accordance with [FAR 10.002\(b\)](#), which shall be followed to the extent that the provisions therein would provide relevant information;
- (4) One-on-one meetings with potential offerors;
- (5) Presolicitation notices;
- (6) Draft requests for proposals (RFPs);
- (7) Requests for information (RFIs);
- (8) Presolicitation or preproposal conferences;
- (9) Site visits;
- (10) Electronic notices (e.g., Internet);
- (11) Use of the System for Award Management (SAM) (see <http://www.sam.gov/>); and
- (12) Researching [the SBA certification database at <https://veterans.certify.sba.gov/>]. VA's Vendor Information Pages (VIP) database at <https://www.vip.vetbiz.va.gov/>.

873.107 Socioeconomic programs. (DEVIATION)

- (a) The Veterans First Contracting Program in VAAR subpart [819.70](#) takes

precedence over other small business programs. (38 U.S.C. 8127-8128)

(b)(1) Except for contract actions subject to [808.002\(a\)\(2\)](#), competitive contract actions not otherwise excluded under this part shall be set-aside for ~~VIP-~~**listed[certified]** service-disabled veteran-owned small business (SDVOSB) concerns or veteran-owned small business (VOSB) concerns**[, listed in the SBA certification database]** if the contracting officer has a reasonable expectation that two or more eligible **[certified]** small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States. (38 U.S.C. 8127-8128)

(2) The contracting officer shall proceed with the acquisition under the simplified procedures of this part considering priority sources (see [808.002\(a\)\(2\)](#) and [873.103](#)) and preferences for other small businesses in accordance with [819.203-70](#) and [819.7004](#). (38 U.S.C. 8153)

(c) Without regard to [FAR 13.003\(b\)\(1\)](#), [19.203](#), [19.502](#), the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government. (38 U.S.C. 8153)

(d) The contracting officer shall ensure priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences, established by 38 U.S.C. 8127 and 8128, as implemented in VAAR subpart [819.70](#), the Veterans First Contracting Program. Specifically, the contracting officer shall consider preferences for ~~verified~~**[certified]** service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for ~~verified~~**[certified]** veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small business concerns in accordance with FAR [19.203](#), [819.203-70](#) and [819.7004](#). (38 U.S.C. 8153)

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