

UNCLASSIFIED

INFO MEMO

FOR: DEFENSE ACQUISITION EXCELLENCE COUNCIL (DAEC)

FROM: Department of Defense, Director, Small Business Programs

SUBJECT: Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Authority

Section 308 of the Veterans Benefit Act of 2003 (Public Law 108-183) amends the Small Business Act (15 U.S.C. 631 et seq) to provide for a procurement program for service-disabled veteran-owned small business (SDVOSB) concerns. Specifically, the law provides that contracting officers may:

1. Award contracts on the basis of competition restricted to SDVOSBs if there is a reasonable expectation that two or more SDVOSBs will submit bids and that the award can be made at a fair market price, or
2. Award a sole source contract to a responsible SDVOSB when there is not a reasonable expectation that two or more SDVOSBs would bid, the anticipated contract price (including options) will not exceed \$5 million (for manufacturing) or \$3 million otherwise, and the contract award can be made at a fair and reasonable price.

The SDVOSB procurement authority does not take precedence over the procurement preference provisions of Federal Prison Industries (FPI) or those made pursuant to the Javits-Wagner-O'Day (JWOD) Act.

It is expected that an interim rule to modify the Federal Acquisition Regulation (FAR) will be published in the Federal Register before May 1, 2004. The interim rule:

- Was worked in conjunction with the Small Business Administration (SBA) interim rule and is consistent with authority provided by law and SBA regulation.
- Establishes subpart 19.14 for the SDVOSB program.
- Requires consideration of SDVOSB set-asides before SDVOSB sole source awards.
- Provides for awards to SDVOSB, notwithstanding the small business reservations and set-aside requirements at 19.502-2.
- Excludes requirements currently being performed by an 8(a) participant or requirements SBA has accepted for the 8(a) program from the SDVOSB program, unless SBA consents to release to the SDVOSB program.
- It does not establish a priority among the various small business programs. However, FAR requirements, like law, reflect the mandatory vice discretionary nature of the various small business procurement authorities.

- Provides for contractor self-representation, requires all questions about SDVOSB size or status to be referred to SBA for resolution recognizing that SBA will rely upon existing Department of Veteran's Affairs or Department of Defense determinations regarding status, and provides for penalties for false representation.

The SBA's interim rule that goes into effect upon publication will be published in the Federal Register concurrently with the companion FAR interim procurement regulations.