



DEPARTMENT OF VETERANS AFFAIRS
Deputy Assistant Secretary for Acquisition and Materiel Management
Washington, DC 20420

IL 049-07-08
June 19, 2007

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT INFORMATION LETTER

TO: Under Secretaries for Health, Benefits, and Memorial Affairs; Assistant Secretary for Management; Executive-In-Charge, Office of Construction and Facilities Management; Veterans Integrated Service Network Directors; Directors, VA Medical Center Activities, Domiciliary, Outpatient Clinics, Medical and Regional Office Centers, and Regional Offices; Directors, Denver Acquisition and Logistics Center, VA Corporate Franchise Datacenter, Records Management Center, VBA Benefits Delivery Centers, and the VA Health Administration Center; and the Executive Director and Chief Operating Officer, VA National Acquisition Center

ATTN: Head of the Contracting Activity, VA Contracting Officers, Purchase Card Holders, and All Other VA Employees Involved with Acquiring Equipment, Supplies, and Services, Including Construction

SUBJ: Veterans First Contracting Program

1. This Information Letter (IL) provides guidance to contracting officers concerning the award of contracts to service-disabled veteran-owned small businesses (SDVOSB) and veteran-owned small businesses (VOSB).
2. On December 22, 2006, President Bush signed Public Law (PL) 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006. Title V, Sections 502 and 503 apply to this IL. This legislation is codified at 38 U.S.C. §§ 8127 and 8128. This IL provides guidance on the recent legislative changes.
3. Effective June 20, 2007, this legislation authorizes a unique "Veterans First" approach specific to VA contracting. This approach changes the priorities for contracting preferences within VA, placing SDVOSBs and VOSBs first and second, respectively, in satisfying VA's acquisition requirements. Certain conditions must be met. All VOSBs, including SDVOSBs, must register in the VetBiz.gov Vendor Information Pages (VIP) database, available at www.VetBiz.gov, to be eligible for award of a contract, and contracting officers must continue to make a fair and reasonable price determination. Attachment 1 details interim guidance on the newly effective legislation. In addition,

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Attachment 2 provides recommended solicitation language and Attachment 3 gives an updated June 2007 version of the VA form 2268, Procurement Request Review for the Small Business Program and Contract Bundling Review.

4. Absent specific guidance in this IL, in addition to the Federal Acquisition Regulation (FAR) and the VA Acquisition Regulation (VAAR), existing acquisition ILs and policy guidance will continue to apply. Additionally, the provisions of FAR part 8, Required Sources of Supplies and Services, still apply. Close coordination with the Office of Small and Disadvantaged Business Utilization (OSDBU) is necessary in order to fulfill the intent of the law. In addition, a VAAR change is in process.

5. Each Head of the Contracting Activity (HCA) must provide a report on the use of the Veterans First Contracting Program to the Director, OSDBU (00SB), no later than November 15th of each year. Veterans Health Administration reports should be submitted through the Office of Prosthetics and Clinical Logistics (10F).

6. We encourage all VA employees to support SDVOSBs and VOSBs throughout the acquisition process and thank you for your continuing support. Please direct any questions to Barbara Latvanas, Acquisition Policy Division (049A5A), at (202) 273-7808 or Deborah Van Dover, OSDBU, at (202) 461-4255. Questions about the VetBiz.gov VIP database should be directed to Gail Wegner, Center for Veterans Enterprise (00VE), at (202) 303-3260, ext 5239. Questions regarding Federal Procurement Data System (FPDS) coding should be directed to Eric Davis, FPDS Administrator (049E), at (708) 786-7762.

/s/C. Ford Heard
Director
Acquisition Resources Service

Attachments: 3

Distribution RPC 7029

VETERANS FIRST CONTRACTING PROGRAM

Noncompetitive Procedures for Acquisitions Not Exceeding the Simplified Acquisition Procedures Threshold

Pursuant to 38 U.S.C. § 8127(b), contracting officers **may** use procedures other than competitive (including sole source awards) in acquisitions for an amount less than the Simplified Acquisition Procedures threshold to make awards to service-disabled veteran-owned small businesses (SDVOSB) and veteran-owned small businesses (VOSB). Each related award must be made to a responsible SDVOSB or VOSB at a fair and reasonable price as determined by the contracting officer. Contracts awarded using this authority shall be supported by written justifications and approvals in accordance with FAR 6.302-5, Authorized or required by statute. Synopsis is not required per FAR 5.202(a)(4).

Sole Source Contracts over the Simplified Acquisition Procedures Threshold up to \$5,000,000 (including options)

Pursuant to 38 U.S.C. § 8127(c), contracting officers **may** use other than competitive procedures (including sole source awards) for contracts to SDVOSBs and VOSBs where the anticipated award price will exceed the Simplified Acquisition Procedures threshold but not to exceed \$5,000,000 (including options). Each related award must be made to a responsible SDVOSB or VOSB at a fair and reasonable price as determined by the contracting officer. Contracts awarded using this authority shall be supported by written justifications and approvals in accordance with FAR 6.302-5, Authorized or required by statute. Synopsis is not required per FAR 5.202(a)(4).

Use of Restricted Competition (Set-Aside Procedures)

Pursuant to 38 U.S.C. § 8127(d), contracting officers **shall** award contracts on the basis of competition restricted to SDVOSB or VOSB if the contracting officer has a reasonable expectation that two or more responsible SDVOSBs or VOSBs will submit offers and that the award can be made at a fair and reasonable price. While FAR Subpart 19.14 is still an existing authority, the guidance is that contracting officers performing SDVOSB set asides must exclusively use the authority of 38 U.S.C. 8127 and specifically reference that in such solicitations.

SDVOSB Set-Aside Procedures

The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides or VOSB sole source awards. To set aside an acquisition for competition restricted to SDVOSB concerns, the contracting officer must have a reasonable expectation that: (1) offers will be received from two or more eligible SDVOSB concerns; and (2) such award can be made at a fair and reasonable price that offers best value to the United States. If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible SDVOSB concern in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be set aside for VOSB competition, if appropriate. When conducting SDVOSB set-asides, contracting officers shall ensure businesses are registered in VetBiz.gov Vendor Information Pages (VIP) database and otherwise responsible prior to making award.

VOSB Set-Aside Procedures

To set-aside an acquisition for competition restricted to VOSB concerns, the contracting officer must have a reasonable expectation that offers will be received from two or more eligible veteran-owned small business concerns and award can be made at a fair and reasonable price. If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible VOSB concern in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible VOSB concerns, the set-aside shall be withdrawn and the requirement, if still valid, will be set aside for other small business programs, as appropriate. When conducting VOSB set-asides, contracting officers shall ensure businesses are registered in VetBiz.gov VIP database and otherwise responsible prior to making award.

Registration in VetBiz.gov Vendor Information Pages (VIP) Database

In addition to registering in the Central Contractor Registration, all VOSBs, including SDVOSBs, must register in the VetBiz.gov VIP database, available at www.VetBiz.gov. Contracting officers cannot award a contract under the authority of 38 U.S.C. § 8127 (Public Law 109-461) unless they have confirmed

the small business is registered in the database. The contracting officer has the responsibility to confirm registration is listed in the database. For purposes of guidance in this Information Letter, vendors need not be registered at the time of submission of offers; however, no award can be made under this authority unless the business is properly registered.

Priority for Contracting Preferences

Pursuant to 38 U.S.C. § 8127(i), set-aside preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

- (1) SDVOSB;
- (2) VOSB;
- (3) Contracts awarded pursuant to:
 - (a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or
 - (b) Section 31 of such Small Business Act (15 U.S.C. 657a) (HUBZone); and
- (4) Contracts awarded pursuant to any other small business contracting preference.

Evaluation Factors-Additional Credit for SDVOSB or VOSB Status

Contracting officers are reminded that, pursuant to IL 049-06-1, a solicitation may include evaluation factors in competitively negotiated solicitations that are not set aside for SDVOSBs or VOSBs, including other set-asides or requests for quotations (RFQs) issued under Federal Supply Schedule (FSS) contracts. The evaluation factors may give additional consideration to offers received from SDVOSBs and VOSBs. Additional consideration may also be given to any offeror, regardless of size status, that proposes to subcontract with SDVOSBs or VOSBs. If an offeror proposes to use a SDVOSB or VOSB subcontractor in accordance with an evaluation factor giving additional consideration to such offers, the contracting officer shall ensure that the offeror, if awarded the contract, actually does use the proposed subcontractor or another SDVOSB or VOSB subcontractor for that subcontract or for work of similar value.

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Attachment 1

Form

The updated June 2007 version of the VA form 2268, Procurement Request Review for the Small Business Program and Contract Bundling Review, is provided as Attachment 3.

SOLICITATION LANGUAGE_

For a Total Service-Disabled Veteran-Owned Small Business Set-Aside, insert the following language:

VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-
ASIDE

(a) *Definition.* In accordance with 38 U.S.C. § 8127, for the Department of Veterans Affairs, “Service-disabled veteran-owned small business concern”—

(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) (38 U.S.C. §§ 8127(h) and (k)(2)(A)(i)); and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veteran (or eligible surviving spouse) or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran (38 U.S.C. §§ 8127(h) and (k)(2)(A)(ii)); and

(iii) The business meets federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document (38 U.S.C. § 8127(k)(1)); and

(iv) The business is listed in the VetBiz.gov Vendor Information Pages, (<http://www.VetBiz.gov>).

(2) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

(3) "Surviving Spouse" is an individual as defined in 38 U.S.C. § 101(3).

(b) General.

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

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

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

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

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

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

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

(d) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern and makes the following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b).

(e) Any service-disabled veteran-owned small business concern (nonmanufacturer) must meet the requirements in 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.

For a Total Veteran-Owned Small Business Set-Aside, insert the following language:

VA NOTICE OF TOTAL VETERAN-OWNED SMALL BUSINESS SET-ASIDE

(a) *Definition.* In accordance with 38 U.S.C. § 8127, for the Department of Veterans Affairs, “Veteran-owned small business concern”—

(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 veterans; and

(ii) The management and daily business operations of which are controlled by one or more veterans.

(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 is listed in the VetBiz.gov Vendor Information Pages, (<http://www.VetBiz.gov>).

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

(b) General.

(1) Offers are solicited only from veteran-owned small business concerns. All service-disabled veteran-owned small businesses are also determined to be veteran-owned small businesses if they meet the criteria identified in subparagraph (a)(1) above. Offers received from concerns that are not veteran-owned small business concerns shall not be considered.

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

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

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

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

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

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

(d) A joint venture may be considered a veteran-owned small business concern if—

(1) At least one member of the joint venture is a veteran-owned small business concern and makes the following representations: That it is a veteran-owned small business concern and that it is a small business concern under the NAICS code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in 19.101 of the Federal Acquisition Regulation; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b), except that the principal company may be a veteran-owned small business concern or a service-disabled veteran-owned small business concern.

(e) Any veteran-owned small business concern (nonmanufacturer) must meet the requirements in 19.102(f) of the Federal Acquisition Regulation to receive a benefit under this program.



PROCUREMENT REQUEST REVIEW FOR THE SMALL BUSINESS PROGRAM AND CONTRACT BUNDLING REVIEW

1. CONTRACTING ACTIVITY INFORMATION			2. DATE OF PURCHASE REQUEST	3. ESTIMATED DOLLAR VALUE		OSDBU CONTROL NO. <i>(Assigned by OSDBU)</i>
A. NAME OF THE CONTRACTING ACTIVITY				A. THIS F.Y. \$	B. TOTAL CONTRACT VALUE \$	
B. STREET ADDRESS			4. PERIOD OF PERFORMANCE <i>(Include all option years)</i>			
C. CITY	D. STATE	E. ZIP CODE	5. DESCRIPTION OF SUPPLIES OR SERVICES			
F. TELEPHONE NO. <i>(Include Area Code)</i> ()	G. FAX NO. <i>(Include Area Code)</i> ()					
6A. SIGNATURE AND PRINTED NAME OF CONCURRING SMALL BUSINESS OFFICE SPECIALIST FOR CONTRACTING ACTIVITY					6B. DATE OF CONCURRENCE	

CONTRACTING OFFICE

7. SOLICITATION NUMBER	8. ANTICIPATED DATE OF RELEASE	9. ANTICIPATED DATE OF RESPONSE/BID OPENING	10. NAICS CODE AND SMALL BUSINESS SIZE STANDARDS
11. PROPOSED METHOD OF PROCUREMENT <i>(Check all applicable boxes)</i> <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED BUSINESS SET-ASIDE <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED BUSINESS S SOLE SOURCE <input type="checkbox"/> VETERAN OWNED SMALL BUSINESS SET-ASIDE <input type="checkbox"/> VETERAN OWNED SMALL BUSINESS SOLE SOURCE <input type="checkbox"/> 8(A) COMPETITION <input type="checkbox"/> 8(A) SOLE SOURCE <input type="checkbox"/> HUBZONE COMPETITON <input type="checkbox"/> HUBZONE SOLE SOURCE <input type="checkbox"/> 100% SMALL BUSINESS SET-ASIDE <input type="checkbox"/> PARTIAL SMALL BUSINESS SET-ASIDE: \$ _____ <input type="checkbox"/> Task/Delivery Order against existing contract Value: \$ _____ <input type="checkbox"/> UNRESTRICTED-INSUFFICIENT SMALL BUSINESS <i>(Attach justification, proposed subcontracting amounts and evaluation preference for SDVOSBs and VOSBs)</i>			

12. FAR PART 5 – PUBLICIZING CONTRACT ACTIONS – HAS THIS REQUIREMENT BEEN ADVERTISED?

PRESOLICITATION NOTICE/PROCUREMENT
 MODIFICATION OF A PREVIOUSLY ANNOUNCED PROCUREMENT ACTION
 SOURCES SOUGHT *(Includes A-76 Services and Architect-Engineer contracts)*

13. PROPOSED ISSUING NUMBER OF SOLICITATIONS TO

_____ SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS _____ 8(A) _____ WOMEN-OWNED SMALL BUSINESS _____ LARGE BUSINESS
 _____ VETERAN-OWNED SMALL BUSINESS _____ HUBZONE _____ SMALL BUSINESS

14. CONTRACT BUNDLING CHECKLIST 2268a MUST BE SUBMITTED WITH VA FORM 2268 FOR ALL PROCUREMENTS IN EXCESS OF \$1M

PROCUREMENT HISTORY

15. HAS ITEM/SERVICE BEEN PREVIOUSLY AWARDED? <input type="checkbox"/> YES <i>(Complete items 16 thru 18)</i> <input type="checkbox"/> NO <i>(Skip to item 19)</i>	16. PERIOD OF PERFORMANCE	17. CONTRACT NO.	18. NAICS CODE AND SMALL BUSINESS SIZE STANDARDS
19A. NAME AND ADDRESS OF CONTRACTOR(S)	19B. BUSINESS TYPE <input type="checkbox"/> SDVOSB <input type="checkbox"/> WOSB <input type="checkbox"/> VOSB <input type="checkbox"/> SB <input type="checkbox"/> 8(A) <input type="checkbox"/> LARGE <input type="checkbox"/> HUBZONE	20. TOTAL DOLLAR VALUE OF PAST PROCUREMENT \$	22. NUMBER OF RESPONSES RECEIVED FROM MOST RECENT PROCUREMENT _____ SDVOSB _____ WOMAN OWNED _____ VOSB _____ SMALL BUSINESS _____ 8(A) _____ LARGE BUSINESS _____ HUBZONE
		21. METHOD OF PROCUREMENT	

23A. SIGNATURE AND PRINTED NAME OF CONTRACTING OFFICER	23B. DATE SIGNED	24A. SIGNATURE, HEAD OF CONTRACTING ACTIVITY	24B. DATE SIGNED
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25. Informational Subcontracting Goals

_____ %SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS _____ % SMALL DISADVANTAGED BUSINESS _____ % WOMEN-OWNED SMALL BUSINESS
 _____ %VETERAN-OWNED SMALL BUSINESS _____ % HUBZONE SMALL BUSINESS _____ % SMALL BUSINESS

26A. SIGNATURE VA OSDBU REPRESENTATIVE	26C. DATE OF SIGNATURE	26C. EXPIRATION DATE OF THIS 2268
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INSTRUCTIONS

If procurement is over \$2,500 and under \$100,000 - No form required if a small business program is used. If small business program is not used, form must be completed and signed by Head of Contracting Activity. Field activities shall submit this form to the Office of Small and Disadvantaged business Utilization (OSDBU) If procurement is estimated to exceed \$500,000. Central Office activities shall submit this form for all actions exceeding \$100,000 to OSDBU. All FSS buys over \$1M shall be recorded on VA Form 2268, and then submitted to OSDBU for approval. Decisions to solicit competition from all contractors on an indefinite delivery vehicle shall be reported to OSDBU on VA Form 2268 and submitted for review and approval prior to soliciting offers.

- Item 1 Provide the name and location of the contracting activity. If a consolidated contracting activity, then provide the name and location of the consolidated contracting activity.
- Item 2 Date of purchase request.
- Item 3 Estimated dollar value for this fiscal year and total contract value.
- Item 4 Period of performance, to include all option years.
- Item 5 Provide a description of supplies and/or services.
- Item 6 Concurrence of activity Small Business Specialist signified by print and signing name and dating.
- Item 7 Provide the solicitation number.
- Item 8 Anticipated date of release of solicitation.
- Item 9 Anticipated date of response/bid opening.
- Item 10 Enter applicable NAICS and small business size standard.
- Item 11 Check the applicable method of procurement.
- Item 12. Check correct information regarding publicizing.
- Item 13 Enter proposed number of solicitations to be issued and to the appropriate business groups listed.
- Item 14 Bundling checklist is required to be submitted for all procurements in excess of \$1M.
- Item 15 Check either "YES" or "NO" regarding procurement history of supplies and/or services.
- Item 16 Enter period of performance for past procurement
- Item 17 Enter contract number for past procurement.
- Item 18 Enter NAICS and small business size standard for past procurement.
- Item 19 Enter name, address and business type of contractor for past procurement.
- Item 20 Enter total dollar value of past procurement.
- Item 21 Enter method of procurement used in past.
- Item 22 Enter number of responses, by business type, relative to most recent procurement.
- Item 23 Printed Name and Signature of Contracting Officer and date signed.
- Item 24 Signature of Head of Contracting Activity (HCA) and date signed.
- Item 25 Subcontracting goals, entered by OSDBU, and to be listed in the solicitation.
- Item 26 Signature of VA OSDBU representative, date signed, and expiration date of form (6 months)