

- Rule 54 Sulfur Compounds (Adopted 06/14/94)
- Rule 56 Open Burning (Adopted 11/11/03)
- Rule 57 Incinerators (Adopted 01/11/05)
- Rule 57.1 Particulate Matter Emissions from Fuel Burning Equipment (Adopted 01/11/05)
- Rule 62.7 Asbestos—Demolition and Renovation (Adopted 09/01/92)
- Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
- Rule 64 Sulfur Content of Fuels (Adopted 04/13/99)
- Rule 67 Vacuum Producing Devices (Adopted 07/05/83)
- Rule 68 Carbon Monoxide (Adopted 04/13/04)
- Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
- Rule 71.1 Crude Oil Production and Separation (Adopted 06/16/92)
- Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 09/26/89)
- Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 06/16/92)
- Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 06/08/93)
- Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
- Rule 72 New Source Performance Standards (NSPS) (Adopted 09/13/05)
- Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 09/13/05)
- Rule 74 Specific Source Standards (Adopted 07/06/76)
- Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
- Rule 74.2 Architectural Coatings (Adopted 11/13/01)
- Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/11/03—effective 07/01/04)
- Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 07/01/04)
- Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
- Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 07/05/83)
- Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/08/05)
- Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 03/10/98)
- Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO<sub>x</sub> (Adopted 04/09/85)
- Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 09/14/99)
- Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 04/08/08)
- Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/08/94)
- Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 06/13/00)
- Rule 74.16 Oil Field Drilling Operations (Adopted 01/08/91)
- Rule 74.20 Adhesives and Sealants (Adopted 01/11/05)
- Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
- Rule 74.24 Marine Coating Operations (Adopted 11/11/03)
- Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 01/08/02)
- Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/08/94)
- Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/08/94)
- Rule 74.28 Asphalt Roofing Operations (Adopted 05/10/94)
- Rule 74.30 Wood Products Coatings (Adopted 06/27/06)
- Rule 75 Circumvention (Adopted 11/27/78)
- Rule 101 Sampling and Testing Facilities (Adopted 05/23/72)
- Rule 102 Source Tests (Adopted 04/13/04)
- Rule 103 Continuous Monitoring Systems (Adopted 02/09/99)
- Rule 154 Stage 1 Episode Actions (Adopted 09/17/91)
- Rule 155 Stage 2 Episode Actions (Adopted 09/17/91)
- Rule 156 Stage 3 Episode Actions (Adopted 09/17/91)
- Rule 158 Source Abatement Plans (Adopted 09/17/91)
- Rule 159 Traffic Abatement Procedures (Adopted 09/17/91)
- Rule 220 General Conformity (Adopted 05/09/95)
- Rule 230 Notice to Comply (Adopted 11/09/99)
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- [FR Doc. E8–19336 Filed 8–19–08; 8:45 am]
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## DEPARTMENT OF VETERANS AFFAIRS

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

**RIN 2900–AM92**

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

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006 and Executive Order 13360, Providing Opportunities for Service-Disabled Veteran Businesses to Increase Their Federal Contracting and Subcontracting. The Public Law and Executive Order authorize the Department of Veterans Affairs (VA) to establish special methods for contracting with service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs). Under this proposed rule, a VA contracting officer could restrict competition in contracting for SDVOSBs or VOSBs under certain conditions. Likewise, sole source contracts with SDVOSBs or VOSBs would be permitted under certain

conditions. The proposed rule would implement these special acquisition methods as a change to the VA Acquisition Regulation (VAAR).

**DATES:** Comments on the proposed rule should be submitted on or before October 20, 2008 to be considered in the formulation of the final rule.

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to “RIN 2900–AM92—VA Acquisition Regulation: Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses.” All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. This is not a toll-free number. In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Derek Underwood, Acquisition Policy Division (049P1A), Office of Acquisition and Logistics, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC, 20420, telephone number (202) 461–6865 (not a toll-free number) or e-mail [Derek.Underwood@va.gov](mailto:Derek.Underwood@va.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

VA’s mission is to serve veterans. Buying from SDVOSBs and VOSBs directly supports VA’s mission. Supporting service-disabled veterans who own businesses contributes significantly in restoring their quality of life while enhancing transition from active duty to civilian life. Such acquisitions maintain the socioeconomic well-being of the Nation and carry out VA’s strategic goals. Section 1.102–2(d) of the Federal Acquisition Regulation (FAR) (codified at 48 CFR chapter 1) provides that the Federal Acquisition System “must support the attainment of public policy goals adopted by the Congress and the President.” It is public policy, as expressed in 15 U.S.C. 637 and 644 that SDVOSBs and VOSBs, among others, shall have the maximum practicable opportunity to participate in the

performance of contracts let by any Federal agency.

Sections 502 and 503 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, (codified at 38 U.S.C. 8127 and 8128) contain provisions that authorize VA to create a unique procurement program among Federal agencies. This program would permit VA contracting officers to conduct acquisition actions limited to SDVOSBs or VOSBs for the Department's requirements. The law requires the Secretary to give priority to a small business concern owned and controlled by veterans.

On October 20, 2004, the President issued Executive Order 13360, Providing Opportunities for Service-Disabled Veteran Businesses to Increase Their Federal Contracting and Subcontracting. The Executive Order directs the heads of agencies to significantly increase opportunities for service-disabled veteran businesses in Federal prime contracting and subcontracting actions. To achieve that objective, the Executive Order requires agencies to more effectively implement section 15(g) of the Small Business Act (15 U.S.C. 644(g)) through various efforts, including the development of a strategic plan to implement Executive Order 13360. VA has developed its strategic plan, which is posted at the following Internet Web site: <http://www.vetbiz.gov/fpp/fpp.htm>.

VA proposes to amend the VAAR to implement the changes required by 38 U.S.C. 8127 and 8128 and some rulemaking aspects of VA's strategic plan for Executive Order 13360. Specifically, this proposed rule would allow VA contracting officers to:

- Under certain conditions, permit non-competitive sourcing under the simplified acquisition threshold with SDVOSBs or VOSBs.
- Require set-asides for SDVOSBs or VOSBs above the simplified acquisition threshold when the contracting officer has a reasonable expectation that two or more eligible SDVOSBs or VOSBs will submit offers and that the award can be made at a fair and reasonable price that offers the best value to the United States.
- Under certain conditions, permit non-competitive sourcing for SDVOSBs or VOSBs above the simplified acquisition threshold when the contracting officer determines that a fair and reasonable price will be obtained as a result of negotiations for requirements not to exceed \$5 million.
- Include evaluation factors in negotiated acquisitions that give preference to SDVOSBs and VOSBs and preference to offerors who propose to

include such businesses as subcontractors.

- Require offerors who propose to use SDVOSBs or VOSBs as subcontractors to utilize eligible businesses.

- Require VOSBs participating in the Department's acquisitions to register in VetBiz.gov's Vendor Information Pages (VIP) database and verify that the business meets eligibility requirements.

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

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

- Revise the eligibility definition for "service-disabled veteran-owned small business concerns" to include a spouse who obtains ownership rights upon the death of a 100 percent service-disabled veteran or a veteran who died as a direct result of a service-connected injury for a period of 10 years unless the spouse remarries or sells the interest in the business.

- Recommend debarment of any business that willfully or deliberately misrepresents ownership and control of the business for purposes of registering in the VetBiz.gov Vendor Information Pages database or other Federal databases.

- Under certain conditions, authorize Contracting Officers to acquire supplies and services from SDVOSBs and VOSBs in lieu of Federal Prison Industries (FPI) and the Government Printing Office (GPO).

#### *Section 802.101 Definitions*

In proposed section 802.101, VA adopts and incorporates various statutory definitions. FAR 2.101 defines "service-disabled veteran-owned small business (SDVOSB) concern" and "veteran-owned small business (VOSB) concern." Prime and subcontracting actions conducted under the authority of 38 U.S.C. 8127, as implemented in VAAR subpart 819.70, revise the definition of "service-disabled veteran-owned small business concern" and require that SDVOSBs and VOSBs must be registered in the Vendor Information Pages (VIP) and that the ownership and control of such businesses has been verified by VA. In addition, section 8127(h) enables a surviving spouse who obtains ownership rights to a business upon the death of a veteran with a service-connected disability rated at 100 percent, or a veteran who dies as a direct result of a service-connected disability, to have VA treat the business as a "service-disabled veteran-owned small business" for a 10-year period after the death of the veteran, unless the

surviving spouse remarries, sells the interest in the business or the business outgrows the small business size standards. This section also includes a definition of VIP.

#### *Section 804.1102 Vendor Information Pages*

FAR 4.1102 currently requires all businesses to be registered in the Central Contractor Registration (CCR). Proposed section 804.1102 would require VOSBs, including SDVOSBs, to register in the VIP database, available at <http://www.VetBiz.gov>, in order to be eligible to participate in set-asides for SDVOSBs and VOSBs issued by VA contracting officers. In completing registration, businesses would provide information establishing that the business is owned and controlled by eligible parties, according to the criteria defined in 38 U.S.C. 8127 and FAR 19.1403.

#### *Section 808.603 Purchase Priorities*

Under certain conditions, this section would authorize contracting officers to purchase supplies and services produced or provided by FPI from eligible SDVOSBs and VOSBs, in accordance with procedures set forth in proposed VAAR subpart 819.70, without seeking a waiver from FPI. We interpret section 8128 and the legislative history to mean that SDVOSBs and VOSBs must receive priority in VA contracting opportunities without regard to other provisions of law concerning contracting preferences. This interpretation conflicts with the current contracting priorities in law, and as implemented in the FAR, for Federal agencies buying from FPI. VA finds that section 8128, being directly applicable solely to VA and providing authority without regard to any other provision of law, requires VA contracting officers to have the authority to override other statutory contracting preferences to provide priority to SDVOSBs and VOSBs to meet VA's socioeconomic goals for such concerns. Therefore, proposed section 808.603 is the only means available to VA to implement the requirement in section 8128 that veterans' small businesses have priority in VA acquisitions that would normally be awarded under FPI.

#### *Section 808.803 Priority for Acquisition of Printing and Related Supplies*

This section would authorize contracting officers to acquire government printing from eligible service-disabled veteran-owned small businesses and veteran-owned small businesses, in accordance with

procedures set forth in VAAR subpart 819.70, in lieu of the Government Printing Office (GPO). We interpret section 8128 and the relevant legislative history as authorizing VA to give priority in contracting to SDVOSBs and VOSBs without regard to other provisions of law concerning contracting preferences. This interpretation conflicts with the current contracting priority in law, and as implemented in the FAR, which provides that Federal agencies buying printing services must procure such services from GPO. VA finds that section 8128, being directly applicable solely to VA and providing authority for priority in VA contracting without regard to any other provision of law, requires VA contracting officers to have the authority to override the statutory contracting preference for GPO services and instead provide priority in contracting to SDVOSBs and VOSBs for printing services and related supplies. Therefore, proposed section 808.803 is the only means available to VA to implement section 8128.

#### *Section 809.406-2 Causes for Debarment*

FAR 9.406-2 lists several reasons for which a debarment official may initiate a debarment action. Proposed VAAR 809.406-2 adds one additional reason: misrepresentation of status as an SDVOSB or a VOSB, in accordance with section 8127(g).

#### *Section 810.001 Market Research Policy*

FAR 10.001 requires agencies to conduct market research on an ongoing basis and to effectively identify the capabilities of small businesses to meet agency requirements. VAAR section 810.001 would establish that, when conducting market research, VA contracting teams shall use the VIP database, in addition to other sources of information.

#### *Section 810.002 Market Research Procedures*

This section would require contracting officers to record VIP queries in the solicitation file.

#### *Section 813.106 Soliciting Competition, Evaluation of Quotations or Offers, Award and Documentation*

This section would clarify that contracting officers may use other than competitive procedures to enter into a contract with an SDVOSB or VOSB when the amount is less than the simplified acquisition threshold not to exceed \$5 million. Contracting officers

would give first consideration to SDVOSBs.

#### *Section 813.202 Purchase Guidelines*

FAR 13.202(a)(1) provides that, to the extent practicable, open market micro-purchases shall be distributed equitably among qualified suppliers. The set-aside provisions of FAR Part 19 do not apply to micro-purchases. However, in accordance with sections 8127 and 8128, VA would make an exception to this FAR requirement when supplies are available from SDVOSBs or VOSBs. We would add section 813.202 to allow preference for SDVOSB and VOSB sources when making local open market micro-purchases using the purchase card. In such cases, equitable distribution of open market micro-purchases among all qualified suppliers would not be required. Instead, open market micro-purchases would be equitably distributed among all qualified SDVOSBs or VOSBs, respectively, to the maximum extent practicable. We believe that this change would assist VA in meeting its statutory goals for award of contracts to SDVOSBs and VOSBs.

#### *Sections 815.304 and 852.215-70 Evaluation Factors and Significant Subfactors*

To implement sections 8127 and 8128, VA would add sections 815.304 and 852.215-70 to require VA contracting officers to: (1) Include provisions in negotiated solicitations giving preference to offers received from VOSBs and additional preference to offers received from SDVOSBs; (2) use past performance in meeting SDVOSB subcontracting goals as a non-price evaluation factor in selecting offers for award; (3) use the proposed inclusion of SDVOSBs or VOSBs as subcontractors as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders; and (4) consider participation in VA's Mentor-Protégé Program as an evaluation factor when competitively negotiating the award of contracts or task or delivery orders. VA is particularly interested in receiving comments on the proposed mandatory inclusion of evaluation preferences for SDVOSBs and VOSBs in negotiated acquisitions.

#### *Section 815.304-70 Evaluation Factor Commitments*

In accordance with section 8127(a)(4), we propose to require prime contractors who offer to use one or more SDVOSBs or VOSBs as subcontractors in accordance with proposed section 852.215-70, Veteran-Owned Small

Business Evaluation Factors, to actually use those subcontractors or to replace any proposed subcontractor who is not used for the specified subcontract with another SDVOSB or VOSB subcontractor. This subsection would be implemented under proposed new sections 815.304-70 and 852.215-71. Further, this subsection would help ensure that SDVOSBs and VOSBs receive subcontract awards under VA prime contracts, as prime contractors will be required to report only utilization of companies appearing in the VIP database as "verified" to be owned and controlled by eligible veterans or surviving spouses.

#### *Section 815.304-71 Solicitation Clauses*

This section would prescribe insertion of certain contract clauses in acquisitions from SDVOSBs and VOSBs, including section 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, and section 852.215-71, Evaluation Factor Commitments, for applicable solicitations and contracts.

#### *Section 819.201 General Policy*

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

#### *Section 819.307 Protests*

FAR 19.307 contains instructions for processing protests of status as a SDVOSB concern. Section 8127 contains additional eligibility criteria for VA's processing of protests and authorizes VA to conduct VOSB set-asides. Proposed VAAR section 819.307 would address protest procedures and other information specific to VA's unique acquisition program.

#### *Section 819.704 Subcontracting Plan Requirements*

In accordance with section 8127, proposed section 819.704 would require contracting officers to include suggested subcontracting goals in acquisitions that may require a subcontracting plan. To receive subcontracting plan accomplishment credit for subcontracting with SDVOSBs and VOSBs, prime contractors would be

required to use eligible businesses identified in the VIP database.

*Section 819.705 Appeals of Contracting Officer Decisions*

This section would prescribe procedures for appeals of VA contracting officers' SDVOSB set-aside decisions, VOSB set-aside decisions, and prime contractor credits for subcontracting.

*Section 819.709 Contract Clause*

This section would require contracting officers to insert the clause in section 852.219-9, Small Business Subcontracting Plan Minimum Requirements, for solicitations and contracts that include the FAR clause at 52.219-9, Small Business Subcontracting Plan.

*Subpart 819.70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Acquisition Program*

This subpart would establish sole source contracting procedures for acquisitions under \$5 million and create a new set-aside program for SDVOSBs and VOSBs.

*Subpart 819.71 VA Mentor-Protégé Program*

In accordance with paragraph (3)(a) of VA's Executive Order 13360 strategic plan, we propose to establish a SDVOSB mentor-protégé program within VA under new subpart 819.71, consisting of sections 819.7101 through 819.7115, and at sections 852.219-71 and 852.219-72. We propose to establish this program to help SDVOSBs receive developmental support from VA prime contractors in order to increase the base of SDVOSBs eligible to perform VA prime contracts and to participate as subcontractors on VA prime contracts.

*Sections 828.106-71, 828.106-72, and 852.228-72 Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds*

In accordance with paragraph (3)(f) of VA's Executive Order 13360 strategic plan, we propose to add new sections 828.106-71, 828.107-72, and 852.228-72, to encourage prime contractors to assist SDVOSBs and VOSBs in obtaining subcontractor performance and payment bonds and to encourage mentor firms to assist protégé SDVOSBs and VOSBs in obtaining acceptable bid, payment, and performance bonds as prime contractors. The ability to obtain acceptable surety bonds is one of the major concerns for small businesses in contracting with the Federal government for construction.

*Regulatory Flexibility Act*

This regulation may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the law provides that the Secretary shall give priority to small business concerns owned and controlled by veterans. Service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) may benefit from this regulation. Other small businesses may be indirectly affected if a greater portion of VA's small business contracts are awarded to SDVOSBs and VOSBs. However, this regulation may result in an increase in VA contracts awarded to the overall total of small businesses.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 5 U.S.C. 603. Interested parties are invited to submit comments on VA's regulatory flexibility analysis. The analysis is as follows:

1. Description of the reasons why action by the agency is being considered.

These proposed changes to the Veterans Affairs Acquisition Regulation (VAAR) implement sections 502 and 503 of Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006 (38 U.S.C. 8127 and 8128). The changes will also implement the rulemaking portions of VA's Strategic Plan for Executive Order 13360, Providing Opportunities for Service-Disabled Veteran Businesses to Increase Their Federal Contracting and Subcontracting (<http://www.vetbiz.gov/fpp/fpp.htm>). VA exists to serve veterans, and buying from SDVOSBs and VOSBs directly supports that mission. Such acquisitions support the socioeconomic well-being of the Nation and support VA's Strategic Goals. The proposed changes to the VA Acquisition Regulation reflect the intent of Congress that VA fulfill its special mission to serve veterans and enable them to realize the American dream that they fought to protect, especially those who became disabled while serving their country.

2. Succinct statement of the objectives of, and legal basis for, the proposed rule.

Sections 502 and 503 of Public Law 109-461 require VA to create a unique acquisition program among Federal agencies that permits preferences for SDVOSBs and VOSBs. This proposed rule would permit VA contracting officers to conduct acquisition actions

with preferences for SDVOSBs or VOSBs. Specifically, this proposed rule will allow VA contracting officers to:

a. Under certain conditions, permit non-competitive sourcing under the simplified acquisition threshold with SDVOSBs or VOSBs;

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

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

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

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

f. Require VOSBs participating in the Department's acquisitions to register in VetBiz.gov's Vendor Information Pages (VIP) database and verify that the business meets eligibility requirements;

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

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

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

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

3. Description of, and, where feasible, estimate of the number of small entities to which the proposed rule will apply.

VA cannot accurately determine how many concerns would be participating in these SDVOSB/VOSB contract awards because there is insufficient data on SDVOSBs/VOSBs that are ready and able to perform under VA requirements to support a reasonable estimate.

To establish the likely number of SDVOSBs or VOSBs that may benefit from VA's unique procurement authority there are two principal data sources, the Central Contractor

Registration (CCR) database, in which a business must be listed to receive a payment from a Federal agency, and VA's VetBiz.gov VIP database. A CCR Dynamic Small Business Search query conducted on March 13, 2008, returned 40,163 VOSBs, including 11,465 SDVOSBs. A VIP query returned 10,695 VOSBs, including 6,354 SDVOSBs. The VIP database requires that businesses answer eligibility questions before they are permitted to register their business. The CCR is a self-representation database.

Under this proposed rule, VA contracting teams will be required to give priority consideration to SDVOSBs and VOSBs when using other contracting programs, like set-asides for the Historically Underutilized Business (HUB) Zone Program or 8(a) Business Development Program reserved actions or the Small Business Set-aside program. A CCR Dynamic Small Business Search conducted on March 13, 2008, returned 13,848 active

HUBZone firms. Of this population, 2,565, or 19 percent, are also VOSBs. A search of active 8(a) businesses identified 9,822 current firms, which includes 1,285 VOSBs, or 14 percent of the total population. There are 63,395 woman-owned small businesses (WOSBs) in the Central Contractor Registration, of which 4,471 appear to also be VOSBs. VA notes that the SBA is in the process of establishing a WOSB set-aside program, making the percentage of WOSBs who are also VOSB eligible of interest to the Department.

There are some concerns that the proposed rule will displace business opportunities for non-veteran-owned businesses, based on the following speculations:

- Additional businesses may be opened by veterans seeking to participate in the sole source or set-aside procurement actions;
- Veteran-owned small businesses not currently in the Federal market may be expected to explore selling to VA;

• The VOSB population may increase as these businesses register in the VetBiz.gov VIP database;

• Public Law 109-461 procurement authority also requires that VA's large prime contractors use eligible businesses in order to receive subcontracting program credit for VOSBs and SDVOSBs; and

• On June 6, 2008, the Office of Federal Procurement Policy issued new guidance regarding Interagency Agreements. Under this policy, other Federal agencies with which VA executes such agreements will be governed by the procurement rules contained in this regulation. In FY 2007, interagency acquisitions were approximately \$15,444,709.39, or 0.13% of total contract dollars.

The Department of Veterans Affairs has a strong commitment to supporting all types of small businesses, as demonstrated in the procurement chart below:

	FY 2006		FY 2007	
	(\$)	(%)	(\$)	(%)
Total Procurement .....	10,282,566,304	.....	11,784,896,886	.....
Total Small Business .....	3,028,055,461	29.45	3,878,901,724	32.91
Small and Disadvantaged Business .....	507,442,123	4.93	603,502,602	5.12
8(a) .....	402,659,565	3.92	406,996,187	3.45
Woman-Owned Small Business .....	513,104,216	4.99	573,355,381	4.87
Veteran-Owned Small Business .....	666,825,417	6.49	1,193,853,547	10.13
Service-Disabled Veteran-Owned Small Business .....	348,077,159	3.39	818,698,785	6.95
HUBZone .....	336,856,889	3.28	381,875,493	3.24

The preliminary Total Small Business procurement for FY2007 was \$3,878,901,724.00 or 32.91%. Procurement totals for SDVOSBs and VOSBs were \$2,012,552,332.00 or 17.08% and procurement totals for non-veteran-owned businesses were \$1,965,729,663.00 or 16.68%, a mere .40% difference. Although, SDVOSBs and VOSBs gained 7.2% of procurements from FY2006 to FY2007 and non-veteran-owned businesses lost .44% of procurements, the non-veteran-owned businesses still received increased procurement dollars totaling \$205,666,870.00 from FY2006 to FY2007. Assuming this trend and/or this new procurement authority does increase procurement percentages for SDVOSBs and VOSBs and the procurement percentages for non-veteran-owned businesses decrease, as previously demonstrated from FY2006 to FY2007, the contracting dollars and/or opportunities for non-veteran-owned businesses were not adversely impacted economically. VA also estimates that it would be unrealistic for SDVOSBs and

VOSBs to absorb the entire 16.68% of procurements that are currently being awarded to the non-veteran-owned businesses. The SDVOSBs and VOSBs are more likely to sub-contract with the non-veteran-owned businesses with existing contracts rather than investing in costly business expansions. Based on prior procurement trends, VA believes there would not be an adverse economic impact on non-veteran-owned businesses, but requests comment from the public on other possible impacts this rule may have on small entities.

This rule also creates a Mentor-Protégé Program for SDVOSBs and VOSBs. It is the expectation that at such time as this rule is finalized, those Protégé entities would directly benefit from the forms of Mentoring described in this proposed rule. VA believes there would not be an adverse economic impact on small contractors or subcontractors, but requests comment from the public on other possible impacts this rule may have on small entities. Comments will be used as a factual basis upon which VA would

certify that this rule will not have a significant economic impact on a substantial number of small entities.

For the reasons outlined above, given the relatively small number of businesses owned and controlled by veterans in the Federal marketplace and with the understanding that this rule would apply only to VA and its large prime contractors, VA believes this rule would not have a major impact on small entities doing business in the Federal marketplace.

VA welcomes comments concerning the potential number of small entities that could become eligible under this rule. VA also specifically requests comments concerning the rule's impact on small entities that are not VOSBs.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

There are two categories of coverage in this proposed rule that could potentially require the collection of information from contractors. VA will collect information from prime contractors seeking a preference for subcontracting with SDVOSBs or VOSBs. That information would include identity of the SDVOSBs or VOSBs, the approximate dollar value of the proposed subcontracts, and confirmation that the proposed subcontractors are eligible SDVOSBs or VOSBs as verified by the VetBiz.gov VIP database. VA estimates the cost to an individual business to be less than \$100.00 for 70–75% of the businesses seeking verification, and the average cost to the entire population of veterans seeking to become verified is less than \$325.00 on average. VA also will collect information in conjunction with preferences associated with the VA Mentor-Protégé Program. That information would include the program agreement, developmental plan, and reports on the success of the program.

5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

The VAAR (48 CFR chapter 8) supplements the FAR (48 CFR chapter 1). This proposed rule would affect 48 CFR parts 802, 804, 808, 809, 810, 813, 815, 819, 828, and 852 and corresponding parts of the FAR.

6. Description of any significant alternatives to the proposed rule which would accomplish the stated objectives of applicable statutes and which would minimize any significant economic impact of the proposed rule on small entities. This proposed rule is designed to benefit SDVOSBs and VOSBs. There are no alternatives which would accomplish the stated objectives of sections 502 and 503 of Public Law 109–461 to give contracting priority to SDVOSBs and VOSBs.

#### *Executive Order 12866*

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a

material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or principles set forth in the Executive Order.

#### *Unfunded Mandates*

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), collections of information are contained in this proposed rule. These collections are contained in new sections that were not previously contained in the VAAR. This notice is to obtain an OMB control number for these new sections. As required under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collection of information should be submitted to OMB, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, with copies to

the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. Comments should indicate that they are submitted in response to “RIN 2900–AM92.”

There are categories of coverage in this proposed rule that could potentially require the collection of information from contractors: (1) Section 852.215–70, Veteran-Owned Small Business Evaluation Factors; and (2) subpart 819.71, VA Mentor-Protégé Program, specifically sections 819.7101 through 819.7115 and the related clauses at sections 852.219–71 and 852.219–72. There is no information available upon which to judge the impact of these PRA requirements, but since the provisions are limited to SDVOSBs and VOSBs, rather than to all small businesses, collection efforts are estimated to be minimal.

*Title and section number:* 852.215–70, Veteran-Owned Small Business Evaluation Factors.

*Summary of collection of information:* VA is proposing to give preference to prime contractors who offer to subcontract with SDVOSBs or VOSBs. VA must collect information from offerors regarding: (1) Proposed SDVOSB and VOSB subcontractors; (2) the approximate dollar value of the proposed subcontracts; and (3) eligibility of the proposed subcontractors as verified in VetBiz.gov VIP database (<http://www.VetBiz.gov>).

*Description of need for information and proposed use of information:* The information is submitted on a voluntary basis by those offerors who wish to qualify for this evaluation factor. The information will be used by the contracting officer to determine whether or not the offeror qualifies for extra credit in the selection of the contract awardee. Those offerors who qualify will be afforded a preference in the selection.

*Description of likely respondents:* Any offeror, on a negotiated solicitation that includes the applicable evaluation factor, who intends to subcontract with one or more SDVOSBs or VOSBs and who wishes to obtain a preference in the award selection.

*Estimated number of respondents:* 125.

*Estimated frequency of responses:* 1 response for each solicitation.

*Estimated average burden per collection:* 5 minutes.

*Estimated total annual reporting and recordkeeping burden:* 10 hours.

*Title and section number:* Subpart 819.71, VA Mentor-Protégé Program, subpart 819.71’s related sections

819.7101 through 819.7115, and the related clauses at section 852.219–71, VA Mentor-Protégé Program, and section 852.219–72, Evaluation Factor for Participation in the VA Mentor-Protégé Program.

*Summary of collection of information:* VA is proposing to institute a Mentor-Protégé Program, whereby a large business agrees to provide developmental support to a VOSB or SDVOSB. VA must approve the Mentor-Protégé Agreement entered into by the two parties, and VA requires both parties to report on the success of the program. Mentors can qualify for additional preference on negotiated solicitations by furnishing evidence of participation in the program with their offer.

*Description of need for information and proposed use of information:* The information is needed for the review and evaluation of mentor applications for realism, validity, and accuracy of provided information and for conducting a mid-term evaluation at the mid-point interval to measure protégé progress against the developmental plan contained in the approved agreement. The information will also be used to evaluate the status of a business as a participant in VA's Mentor-Protégé Program for possible credit in negotiated contracts.

*Description of likely respondents:* Large business prime contractors and SDVOSBs or VOSBs.

*Estimated number of respondents:* 50.

*Estimated frequency of responses:* Each protégé program participant will be required to submit 3 sets of data consisting of the application and the mid- and end-term reports. Each mentor program participant will be required to submit 4 sets of data consisting of the application, the mid- and end-term reports, and, when submitting an offer, information to verify their participation in the program in order to receive evaluation credit.

*Estimated average burden per collection:* 1 hour weighted average per data submission.

*Estimated total annual reporting and recordkeeping burden:* 200 hours (4 data submissions @ 1 hour each times 50 program participants).

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including

the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a final decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

#### List of Subjects

48 CFR Parts 802, 804, 809, 810, 813, and 815

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 819

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

48 CFR Part 828

Government procurement, Insurance, Surety bonds.

48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

Approved: April 21, 2008.

**James B. Peake**,  
Secretary of Veterans Affairs.

**Editorial Note:** This document was received at the Office of the Federal Register on August 15, 2008.

For the reasons set out in the preamble, the Department of Veterans Affairs proposes to amend 48 CFR Chapter 8 as follows:

## CHAPTER 8—DEPARTMENT OF VETERANS AFFAIRS

### Subchapter A—General

#### PART 802—DEFINITIONS OF WORDS AND TERMS

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

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

2. Section 802.101 is amended by adding in alphabetical order the following terms:

#### 802.101 Definitions.

\* \* \* \* \*

*Service-disabled veteran-owned small business concern (SDVOSB)* has the same meaning as defined in FAR Part 2.101, except for businesses participating in set-asides or subcontracts authorized by VAAR subpart 819.70. These businesses must be listed as verified on the Vendor Information Pages (VIP) at <http://www.vetbiz.gov>. In addition, some businesses may be owned and controlled by a surviving spouse.

\* \* \* \* \*

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

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

(2) The period referred to above is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

- The date on which the surviving spouse remarries;
- The date on which the surviving spouse relinquishes an ownership interest in the small business concern;
- The date that is 10 years after the date of the veteran's death; or
- 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.

\* \* \* \* \*

*Vendor Information Pages (VIP)* means the VetBiz.gov Vendor Information Pages at <http://www.vetbiz.gov>.

*Veteran-owned small business concern (VOSB)* has the same meaning as defined in FAR Part 2.101, except for businesses participating in set-asides or subcontracts authorized by VAAR Part 819.7001. These businesses must be

listed as verified on the VetBiz.gov VIP database.

\* \* \* \* \*

#### **PART 804—ADMINISTRATIVE MATTERS**

3. The authority citation for part 804 is revised to read as follows:

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

4. Section 804.1102 is added to read as follows:

##### **804.1102 Vendor Information Pages (VIP) Database.**

In addition to registering in the Central Contractor Registration (CCR), all VOSBs, including SDVOSBs, must register in the VIP database, available at <http://www.VetBiz.gov>, to be eligible to participate in VA's Veteran-owned Small Business prime contracting and subcontracting opportunities programs.

#### **PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

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

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

6. Subpart 808.6 and section 808.603 are added to read as follows:

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

##### **808.603 Purchase priorities.**

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

##### **Subpart 808.8—Acquisition of Printing and Related Supplies**

7. Section 808.803 is added to read as follows:

##### **808.803 Priority for acquisition of printing and related supplies.**

Contracting officers may acquire government printing from eligible service-disabled veteran-owned small businesses and veteran-owned small businesses, in accordance with procedures set forth in VAAR subpart 819.70, in lieu of the Government Printing Office (GPO), in accordance

with 38 U.S.C. 8128, small business concerns owned and controlled by veterans: Contracting priority (See FAR 8.802(a)(4)).

#### **PART 809—CONTRACTOR QUALIFICATIONS**

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

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

9. Section 809.406–2 is added to read as follows:

##### **809.406–2 Cause for debarment.**

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

10. Part 810 is added to read as follows:

#### **PART 810—MARKET RESEARCH**

Sec.

810.001 Market research policy.

810.002 Market research procedures.

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

##### **810.001 Market research policy.**

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

##### **810.002 Market research procedures.**

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

#### **PART 813—SIMPLIFIED ACQUISITION PROCEDURES**

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

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

12. Section 813.106 is revised to read as follows:

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

Contracting officers may use other than competitive procedures to enter into a contract with an SDVOSB or VOSB when the amount is less than the simplified acquisition threshold. Contracting officers shall give first consideration to SDVOSBs.

13. Section 813.202 is added to read as follows:

##### **813.202 Purchase guidelines.**

Open market micro-purchases shall be equitably distributed among all qualified SDVOSBs or VOSBs, respectively, to the maximum extent practicable.

#### **PART 815—CONTRACTING BY NEGOTIATION**

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

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

15. Section 815.304 is added to read as follows:

##### **815.304 Evaluation factors and significant subfactors.**

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

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

16. Section 815.304–70 is added to read as follows:

##### **815.304–70 Evaluation factor commitments.**

(a) VA contracting officers shall:

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

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

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

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

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

17. Section 815.304–71 is added to read as follows:



**815.304–71 Solicitation provision and clause.**

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

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

**PART 819—SMALL BUSINESS PROGRAMS**

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

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

**Subpart 819.2—Policies**

19. Section 819.201 is revised to read as follows:

**819.201 General policy.**

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

20. Section 819.307 is added to read as follows:

**819.307 Protests.**

For acquisitions under the authority of VAAR part 819.70, regarding eligibility of SDVOSB and VOSB concerns, contracting officers shall forward all protests to the Associate Administrator for Government Contracting AA/GC, U.S. Small Business Administration (ATTN: Veterans Business Program Protest), 409 3rd Street, SW., Washington, DC 20416, for disposition.

21. Section 819.704 is added to read as follows:

**819.704. Subcontracting plan requirements.**

(a) The contracting officer shall ensure that any subcontracting plans submitted by offerors include a goal that is at least commensurate with the annual VA SDVOSB prime contracting

goal for the total value of planned subcontracts.

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

(c) VA's Office of Small and Disadvantaged Business Utilization (OSDBU) shall review all prime contractors' subcontracting plan achievement reports to ensure that, in the case of a subcontract that is counted for purposes of meeting a goal in accordance with subparagraphs (a) and (b) above, the subcontract was actually awarded to a business concern that is eligible to be counted toward meeting the goal, as provided in VAAR 804.1102.

22. Section 819.705 is added as follows:

**819.705 Appeal of Contracting Officer Decisions.**

(a) Acquisitions not exceeding the SAT and sections 819.7007 and 819.7008 are excluded from this section.

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

(c) Prime contractors submitting businesses declared ineligible for credit in SDVOSB and/or VOSB subcontracting plans may appeal to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU), within 5 working days of receipt of information declaring their subcontractor ineligible. The Director, OSDBU, shall have 5 working days to respond. The decision of the Director, OSDBU, may be appealed to the Senior Procurement Executive (SPE) within 5 working days. The SPE shall have 15

working days to respond and that decision shall be final.

23. Section 819.709 is added to read as follows:

**819.709 Contract clause.**

The contracting officer shall insert the clause at 852.219–9, Small Business Subcontracting Plan Minimum Requirements, in solicitations and contracts that include the FAR clause at 52.219–9, Small Business Subcontracting Plan.

24. Subpart 819.70 is revised to read as follows:

**Subpart 819.70—Service-Disabled Veteran-Owned and Veteran-Owned Small Business Acquisition Program****819.7001 General.**

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

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

**819.7002 Applicability.**

This subpart applies to VA contracting activities and to its prime contractors.

**819.7003 Eligibility.**

(a) Eligibility of SDVOSBs and VOSBs continues to be governed by the Small Business Administration regulations, 13 CFR subparts 125.8 through 125.13, as well as the FAR, except where expressly directed otherwise by the VAAR, and 38 CFR verification regulations for SDVOSBs and VOSBs.

(b) At the time of submission of offer, the offeror must represent to the contracting officer that it is a—

(1) Service-disabled veteran-owned small business concern or veteran-owned small business concern;

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

(3) Verified for eligibility in the Vendor Information Pages database.

(c) A joint venture may be considered an SDVOSB or VOSB concern if—

(1) At least one member of the joint venture is an SDVOSB or VOSB concern, and makes the representations in paragraph (b) of this section;

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

(3) The joint venture meets the requirements of paragraph 7 of the size standard explanation of Affiliates in FAR 19.101; and

(4) The joint venture meets the requirements of 13 CFR 125.15(b), modified to include veteran-owned small businesses where this CFR section refers to SDVOSB concerns.

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

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

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

(a) To SDVOSBs;

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

(c) Pursuant to—

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

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

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

#### **819.7005 Service-disabled veteran-owned small business set-aside procedures.**

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 819.7007 and 819.7008, the contracting officer shall set-aside an acquisition for competition restricted to SDVOSB concerns upon a reasonable expectation that—

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

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

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

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

(2) Businesses are registered and verified as eligible in Vendor Information Pages prior to making an award.

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

#### **819.7006 Veteran-owned small business set-aside procedures.**

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 819.7007 and 819.7008, the contracting officer shall set aside an acquisition for competition restricted to VOSB concerns upon a reasonable expectation that—

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

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

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

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

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

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

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

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

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

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

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. A determination that only one service-disabled veteran-owned small business concern is available to meet the requirement is not required. No protest is authorized in connection with the issuance or proposed issuance of a contract under this section, on the basis that more than one service-disabled veteran-owned small business concern is available to meet the requirement.

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

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

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

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

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

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

(4) Award can be made at a fair and reasonable price; and

(5) No responsible SDVOSB concern has been identified.

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. A determination that only one veteran-owned small business concern is available to meet the requirement is not required. No protest is authorized in connection with the issuance or proposed issuance of a contract under this section, on the basis that more than one veteran-owned small business concern is available to meet the requirement.

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

#### **819.7009 Contract clauses.**

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

25. Subpart 819.71, consisting of sections 819.7101 through 819.7115, is added to read as follows:

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

Sec.	
819.7101	Purpose.
819.7102	Definitions.
819.7103	Non-affiliation.
819.7104	General policy.
819.7105	Incentives for mentor participation.
819.7106	Eligibility of Mentor and Protégé firms.
819.7107	Selection of Protégé firms.
819.7108	Application process.
819.7109	VA review of application.
819.7110	Developmental assistance.
819.7111	Obligations under the Mentor-Protégé Program.
819.7112	Internal controls.
819.7113	Reports.
819.7114	Measurement of program success.

819.7115 Solicitation provisions.

Authority: 38 U.S.C. 501.

### Subpart 819.71—VA Mentor-Protégé Program

#### 819.7101 Purpose.

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

#### 819.7102 Definitions.

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

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

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

(d) *Protégé* means a service-disabled veteran-owned small business or veteran-owned small business, as defined in VAAR 802.101, which meets Federal small business size standards in its primary North American Industrial Classification System (NAICS) code and which is the recipient of developmental assistance pursuant to a Mentor-Protégé agreement.

#### 819.7103 Non-affiliation.

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

#### 819.7104 General policy.

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

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

#### 819.7105 Incentives for prime contractor participation.

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

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

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

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

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

(d) OSDBU Mentoring Award. A non-monetary award will be presented annually to the Mentoring firm providing the most effective developmental support of a Protégé. The Mentor-Protégé Program Manager will

recommend an award winner to the OSDBU Director.

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

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

Eligible business entities approved as Mentors may enter into agreements (hereafter referred to as "Mentor-Protégé Agreement" or "Agreement" and explained in 819.7108) with eligible Protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of Protégés to perform as contractors and/or subcontractors. Eligible small business entities capable of providing developmental assistance may be approved as Mentors. Protégés may participate in the Program in pursuit of a prime contract or as subcontractors under the Mentor's prime contract with VA, but are not required to be a subcontractor to a VA prime contractor or be a VA prime contractor.

(a) Eligibility. A Mentor: (1) May be either a large or small business entity;

(2) Must be able to provide developmental assistance that will enhance the ability of Protégés to perform as prime contractors or subcontractors; and

(3) Will be encouraged to enter into arrangements with entities with which it has established business relationships.

(b) Eligibility. A Protégé:

(1) Must be a service-disabled veteran-owned small business or veteran-owned small business as defined in VAAR 802.101;

(2) Must meet the size standard corresponding to the NAICS code that the Mentor prime contractor believes best describes the product or service being acquired by the subcontract; and

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

(d) A Protégé firm shall self-represent to a Mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors shall confirm eligibility by documenting the verified status of the protégé in the VetBiz.gov Vendor Information Pages database. Protégés must maintain verified status throughout the term of the Mentor-

Protégé Agreement. Failure to do so shall result in cancellation of the Agreement.

**819.7107 Selection of Protégé firms.**

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

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

(c) The selection of Protégé firms by Mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a Mentor shall be handled in accordance with the Federal Acquisition Regulation (FAR) and the Small Business Administration regulations.

**819.7108 Application process.**

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

(b) The Mentor-Protégé Agreement must contain:

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

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

(3) A description of the Mentor's ability to provide developmental assistance to the Protégé and the type of developmental assistance that will be provided, to include a description of the types and dollar amounts of subcontract

work, if any, that may be awarded to the Protégé firm;

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

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

(6) A schedule with milestones for providing assistance;

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

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

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

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

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

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

(13) Signatures and date(s).

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

**819.7109 VA review of application.**

(a) VA OSDDBU will review the information to establish the Mentor and Protégé eligibility and to ensure that the information that is in section 819.7108 is included. If the application relates to a specific contract, then OSDDBU will consult with the responsible contracting officer on the adequacy of the proposed Agreement, as appropriate. OSDDBU will complete its review no later than 30 calendar days after receipt of the application or after consultation with the contracting officer, whichever is later. There is no charge to apply for the Mentor-Protégé Program.

(b) After OSDDBU completes its review and provides written approval, the Mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. OSDDBU will provide a copy of the Mentor-Protégé Agreement to the VA contracting officer for any VA contracts affected by the Agreement.

(c) If the application is disapproved, the Mentor may provide additional

information for reconsideration. OSDDBU will complete review of any supplemental material no later than 30 days after its receipt. Upon finding deficiencies that VA considers correctable, OSDDBU will notify the Mentor and Protégé and request correction of deficiencies to be provided within 15 days.

**819.7110 Developmental assistance.**

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

(a) Guidance relating to—

- (1) Financial management;
- (2) Organizational management;
- (3) Overall business management/

planning;

- (4) Business development; and
- (5) Technical assistance.

(b) Loans.

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

(d) Property.

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

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

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

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

(b) Mentors and protégés shall submit reports to VA OSDDBU in accordance with 819.7113.

**819.7112 Internal controls.**

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

(1) Reviewing and evaluating Mentor applications for validity of the provided information;

(2) Reviewing bi-annual progress reports submitted by Mentors and Protégés on Protégé development to measure Protégé progress against the plan submitted in the approved Agreement;

(3) Reviewing and evaluating financial reports and invoices submitted by the Mentor to verify that VA is not charged by the Mentor for providing developmental assistance to the Protégé; and

(4) Limiting the number of participants in the Mentor-Protégé Program within a reporting period, in order to insure the effective management of the Program.

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

#### 819.7113 Reports.

(a) Mentor and Protégé entities shall submit to VA's Office of Small and Disadvantaged Business Utilization bi-annual reports on progress under the Mentor-Protégé Agreement. VA will evaluate reports by considering the following:

(1) Specific actions taken by the Mentor during the evaluation period to increase the participation of their Protégé(s) as suppliers to VA, other government agencies and to commercial entities;

(2) Specific actions taken by the Mentor during the evaluation period to develop technical and administrative expertise of a Protégé as defined in the Agreement;

(3) The extent to which the Protégé has met the developmental objectives in the Agreement;

(4) The extent to which the Mentor's participation in the Mentor-Protégé Program impacted the Protégé'(s) ability to receive contract(s) and subcontract(s) from private firms and Federal agencies other than VA; and, if deemed necessary;

(5) Input from the Protégé on the nature of the developmental assistance provided by the Mentor.

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

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

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

#### 819.7114 Measurement of program success.

The overall success of the VA Mentor-Protégé Program encompassing all participating mentors and protégés will

be measured by the extent to which it results in:

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

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

#### 819.7115 Solicitation provisions.

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

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

### PART 828—BONDS AND INSURANCE

26. The authority citation for part 828 is revised to read as follows:

**Authority:** 38 U.S.C. 501, 8127, 8128 and 8151-8153; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

27. Section 828.106-71 is added to read as follows:

#### 828.106-71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.

VA prime contractors are encouraged to assist SDVOSB concerns and VOSB concerns in obtaining subcontractor performance and payment bonds. Mentors are especially encouraged to assist their Protégés in obtaining bid, payment, and performance bonds as prime contractors and bonds as subcontractors when bonds are required.

28. Section 828.106-72 is added to read as follows:

#### 828.106-72 Contract provision.

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

### PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

29. The authority citation for part 852 is revised to read as follows:

**Authority:** 38 U.S.C. 501, 8127, 8128, and 8151-8153; 40 U.S.C. 121(c); and 48 CFR 1.301-1.304.

30. Section 852.215-70 is added to read as follows:

#### 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 (Date)

(a) In an effort to achieve socioeconomic small business goals, depending on the evaluation factors included in the solicitation, VA may evaluate offerors based on their service-disabled veteran-owned or veteran-owned small business status and their proposed use of eligible service-disabled veteran-owned small businesses and veteran-owned small businesses as subcontractors.

(b) Eligible service-disabled veteran-owned offerors will receive full credit, and offerors qualifying as veteran-owned small businesses will receive partial credit for the Service-Disabled Veteran-Owned and Veteran-Owned Small Business Status evaluation factor. To receive credit, an offeror must be registered and verified in Vendor Information Pages. (<http://www.VetBiz.gov>).

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

(End of Clause)

31. Section 852.215-71 is added to read as follows:

#### 852.215-71 Evaluation Factor Commitments.

As prescribed in 815.304-71(b), insert the following clause:

Evaluation Factor Commitments (Date)

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

(End of Clause)

32. Section 852.219-9 is added to read as follows:

**852.219-9 VA Small Business Subcontracting Plan Minimum Requirements.**

As prescribed in 819.9, insert the following clause:

**VA Small Business Subcontracting Plan Minimum Requirements (Date)**

(a) This clause does not apply to small business concerns.

(b) If the offeror is required to submit an individual subcontracting plan, the minimum goals for award of subcontracts to service-disabled veteran-owned small business concerns and veteran-owned small business concerns shall be at least commensurate with the Department's annual service-disabled veteran-owned small business and veteran-owned small business prime contracting goals for the total dollars planned to be subcontracted.

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

(d) To be credited toward goal achievements, businesses must be verified as eligible in the Vendor Information Pages database. The contractor shall annually submit a listing of service-disabled veteran-owned small businesses and veteran-owned small businesses for which credit toward goal achievement is to be applied for the review of personnel in the Office of Small and Disadvantaged Business Utilization.

(e) The contractor may appeal any businesses determined not eligible for crediting toward goal achievements by following the procedures contained in VAAR subpart 819.407.

(End of Clause)

33. Section 852.219-10 is added to read as follows:

**852.219-10 VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.**

As prescribed in 819.7009, insert the following clause:

**VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (Date)**

(a) *Definition.* 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);

(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; and

(iv) The business has been verified for ownership and control and is so listed in the 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).

(b) *General.*

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

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

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

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

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

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

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

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

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

(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.

(End of Clause)

34. Section 852.219-11 is added to read as follows:

**852.219-11 VA Notice of Total Veteran-Owned Small Business Set-Aside.**

As prescribed in 819.7009, insert the following clause:

**VA Notice of Total Veteran-Owned Small Business Set-Aside (Date)**

(a) *Definition.* 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;

(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; and

(iv) The business has been verified for ownership and control and is so listed in the 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 paragraph (a)(1) of this section. Offers received from concerns that are not veteran-owned small business concerns shall not be considered.

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

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

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

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

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

(End of Clause)

35. Section 852.219–71 is added to read as follows:

**852.219–71 VA Mentor-Protégé Program.**

As prescribed in 819.7115(a), insert the following clause:

VA Mentor-Protégé Program (Date)

(a) Large businesses are encouraged to participate in the VA Mentor-Protégé Program for the purpose of providing developmental assistance to eligible service-disabled veteran-owned small businesses and veteran-owned small businesses to enhance the small businesses' capabilities and increase their participation as VA prime contractors and as subcontractors.

(b) The program consists of:

(1) Mentor firms, which are prime contractors capable of providing developmental assistance;

(2) Protégé firms, which are service-disabled veteran-owned small business concerns or veteran-owned small business concerns; and

(3) Mentor-Protégé Agreements approved by the VA Office of Small and Disadvantaged Business Utilization.

(c) Mentor participation in the program means providing business developmental assistance to aid Protégés in developing the requisite expertise to effectively compete for and successfully perform VA prime contracts and subcontracts.

(d) Large business prime contractors serving as Mentors in the VA Mentor-Protégé Program are eligible for an incentive for subcontracting plan credit. VA will recognize the costs incurred by a Mentor firm in providing assistance to a Protégé firm and apply those costs for purposes of determining

whether the mentor firm attains its subcontracting plan participation goals under a VA contract. The amount of credit given to a Mentor firm for these Protégé developmental assistance costs shall be calculated on a dollar-for-dollar basis and reported by the large business prime contractor via the Electronic Subcontracting Reporting System (eSRS).

(e) Contractors interested in participating in the program are encouraged to contact the VA Office of Small and Disadvantaged Business Utilization for more information.

(End of Clause)

36. Section 852.219–72 is added to read as follows:

**852.219–72 Evaluation Factor for Participation in the VA Mentor-Protégé Program.**

As prescribed in 819.7115(b), insert the following clause:

Evaluation Factor for Participation in the VA Mentor-Protégé Program (Date)

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

(End of Clause)

37. Section 852.228–72 is added to read as follows:

**852.228–72 Assisting Service-Disabled Veteran-owned and Veteran-owned Small Businesses in Obtaining Bonds.**

As prescribed in 828.106–71, insert the following clause:

Assisting Service-Disabled Veteran-Owned Small Businesses and Veteran-Owned Small Businesses in Obtaining Bonds (Date)

Prime contractors are encouraged to assist service-disabled veteran-owned and veteran-owned small business potential subcontractors in obtaining bonding, when required. Mentor firms are encouraged to assist Protégé firms under VA's Mentor-Protégé Program in obtaining acceptable bid, payment, and performance bonds, when required, as a prime contractor under a solicitation or contract and in obtaining any required bonds under subcontracts.

(End of Provision)

[FR Doc. E8–19261 Filed 8–19–08; 8:45 am]

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**NATIONAL TRANSPORTATION SAFETY BOARD**

**49 CFR Part 830**

**Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records**

**AGENCY:** National Transportation Safety Board (NTSB).

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On March 31, 2008, the NTSB published a Notice of Proposed Rulemaking to amend its regulations concerning notification and reporting requirements with regard to unmanned aircraft accidents, found at 49 *Code of Federal Regulations* (CFR) Part 830, "Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records." This Notice of Proposed Rulemaking is available at 73 FR 16826 (Mar. 31, 2008). The NTSB is publishing this notice to inform the public that it is extending the comment period for the Notice of Proposed Rulemaking to September 30, 2008.

**DATES:** Submit comments on or before September 30, 2008.

**ADDRESSES:** You may send written comments using any of the following methods:

1. *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

2. *Mail:* Mail comments concerning this proposed rule to Dana Schuize, AS–b, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594–2000.

3. *Fax:* (202) 314–6319, Attention: Dana Schuize.

4. *Hand Delivery:* 6th Floor, 490 L'Enfant Plaza, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION, CONTACT:** Dana Schuize, Office of Aviation Safety, (202) 314–6323.

**SUPPLEMENTARY INFORMATION:** After issuing the March 31, 2008, Notice of Proposed Rulemaking concerning unmanned aircraft accidents, the NTSB discovered that a problem existed with the Web site, available at <http://www.regulations.gov>, that the NTSB listed in the Notice as one mechanism by which it would receive public comments. In particular, the NTSB subsequently determined that commenters were unable to submit comments through that Web site. The