



JUL 16 2004

U.S. General Services Administration

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: FAR Case 2004-002, Procurement Program for Service-Disabled Veteran-Owned Small Business Concerns

Attached are comments received on the subject FAR case published at 69 FR 25274; May 5, 2004. The comment closing date is July 6, 2004.

| <u>Response Number</u> | <u>Date Received</u> | <u>Comment Date</u> | <u>Commenter</u> |
|------------------------|----------------------|---------------------|-------------------------|
| 2004-002-1 | 05/07/04 | 05/07/04 | SBA |
| 2004-002-2 | 05/14/04 | 05/14/04 | CSSS.NET |
| 2004-002-3 | 06/04/04 | 06/04/04 | DKI Construction |
| 2004-002-4 | 06/01/04 | 06/01/04 | Jim Sechrist |
| 2004-002-5 | 05/25/04 | 05/25/04 | DKI Construction |
| 2004-002-6 | 06/03/04 | 06/03/04 | Dan Keiser |
| 2004-002-7 | 06/14/04 | 06/14/04 | Four Points Technology |
| 2004-002-8 | 06/15/04 | 06/15/04 | DAVcon Solutions, Inc. |
| 2004-002-9 | 06/15/04 | 06/09/04 | Pacific Defense Systems |

| <u>Response Number</u> | <u>Date Received</u> | <u>Comment Date</u> | <u>Commenter</u> |
|------------------------|----------------------|---------------------|--|
| 2004-002-10 | 06/07/04 | 06/07/04 | INDUS Technology, Inc. |
| 2004-002-11 | 07/01/04 | 07/04/04 | Henry Arthur & Associates, Inc. |
| 2004-002-12 | 07/06/04 | 07/02/04 | R.E.M. Engineering Co., Inc. |
| 2004-002-13 | 07/07/04 | 07/06/04 | California Disabled Veterans Business Enterprise |
| 2004-002-14 | 07/07/04 | 07/06/04 | DLA |
| 2004-002-15 | 07/07/04 | 07/06/04 | HI Tech Services, Inc. |
| 2004-002-16 | 07/13/04 | 07/06/04 | Task Force for Veterans' Entrepreneurship (Rick Weidman) |
| 2004-002-17 | 07/13/04 | 07/06/04 | Task Force for Veterans' Entrepreneurship (David Pales) |

Attachments

2004-002-1



"Libow, D. MS DOC"
<Debra.Libow@usma.edu>

To: farcase.2004-002@gsa.gov
cc:
Subject: SDVOSB set-asides

05/07/2004 12:09 PM

What is the order of precedence for SDVOSB set-asides in relation to the 8(a) and HUBZone set-aside programs?

Debra B. Libow

SBA, Procurement Center Representative

(212) 264-4395

E-Mail: Debra.Libow@usma.army.mil

2004-002-2



"Lisa Wolford"
<lisa@csss.net>

05/14/2004 09:36 PM

To: farcase.2004-002@gsa.gov

cc:

Subject: [Docket No: 01-23; 04-002; 9000-AJ92];[FR Doc: 04-09752];[Page 25273-25280]; Federal Acquisition Regulation (FAR): Service-Disabled Veteran-Owned Small Business Concerns Procurement Program

Dear Sir or Ma'am -

This set aside regulation needs to allow a complete and total sole source award to SDVOBs without regard to whether there are competitors up to 3 million and put it on par with the 8(a) legislation. Otherwise veterans who have served their countries and put themselves in harms way for their countries are still being treated as second class citizens as compared to 8(a)s. You can immigrate to my country, become a US citizen (ie receive an advantage) and have a leg up on every veteran in competing for federal procurements. The 8(a) legislation is for disadvantaged firms, but immigrants have received an advantage, not a disadvantage and they should not be put above veterans, which is the current status of the proposed language of the regulation. That would be the ethical and right thing to do.

Sincerely -

Lisa Wolford
CSSS.NET
402-393-8059 ext 11
lisa@csss.net
www.csss.net

Comment Form

2004-002-3

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Title: Federal Acquisition Regulation; Procurement Program for Service- Disabled Veteran-Owned Small Business Concerns

Subject Category: Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Service-Disabled Veteran-Owned Small Business Concerns Procurement Program Service-Disabled Veteran-Owned Small Business Concerns Procurement Program Service-Disabled Veteran-Owned Small Business Concerns Procurement Program

Docket Id: 01-23; 04-002; 9000-AJ92

CFR Citation: 48 CFR 2, 5, 6, ETC.

Published: May 05, 2004 [FR Doc. 04-09752]

Comments Due: July 06, 2004

Phase: RULES

How To Comment:

Submit electronic comments via the Internet to--farcase.2004-002@gsa.gov or <http://www.regulations.gov>. Submit written comments to--General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Please submit comments only and cite FAC 2001-23, FAR case 2004-002, in all correspondence related to this case.

Your comment has been sent. To verify that this agency has received your comment, please contact the agency directly. If you wish to retain a copy of your comment, print out a copy of this document for your files.

Please note your REGULATIONS.GOV number.

Regulations.gov #: EREG - 5

Date Submitted: Jun 02, 2004

| Title | First Name | Last Name |
|-----------------------|------------|-------------|
| Mr. | Daniel | Keiser |
| Organization Name | | |
| DKI Construction | | |
| Mailing Address | | |
| 8300 Grey Eagle Drive | | |
| City | State | Postal Code |
| Upper Marlboro | MD | 20772 |
| Province | Country | |
| | US | |

Comment

It was my understanding that PL 108-183's intent was to make disabled veteran owned companies equal in opportunities with 8a companies. The new regs do not do this. Contracting officers should be allowed to sole source to SDVOSB using the same rules as with 8a companies.

002-3

Otherwise, it will be impossible for SDVOSB's to get work in service areas where contracts are not openly advertised. Construction is such a field. Many agencies do not want to advertise small construction contracts because their experience shows that the lowest bidder has to make up for his bidding errors through burdensome claims. The result is not in the best interests of the government. Therefore, agencies will not designate projects for SDVOSB set asides for fear of which company might win the bid.

2004-002-4



"Jim Sechrist"
<sechrist@ptd.net>
06/01/2004 02:43 PM

To: farcase.2004-002@gsa.gov
cc:
Subject: Fw: New Service Disabled Veterans Program

Good Afternoon,

Reference FAC 2001-23, FAR Case 2004-002

I'm retired Air Force and Federal Civil Service with over 35 years in the acquisition world.

I've read the interim regulation published 5 May in the Federal Register and would like your office to consider my comments below.

My concern is the NEW Program for Service Disabled and the 8a program DOES NOT mirror the 8a program procedures as it related to Small Disadvantaged Business status.

As your aware the Small Business Administration required small businesses interested in the 8a program to apply in writing and than their certified by SBA to participate in the program.

As you know Services Disabled Veterans Small Business can self certified themselves.

The Federal Acquisition Regulations(FAR 19-1104) has the requirement that the Contracting person preparing the solicitation insert FAR Clause 52-219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business concerns.

Currently DOD has suspended this requirement because they have exceeded their goals for this Fiscal Year. Not so for other Government Agencies.

Here's the problem that needs to be addressed and corrected to make sure the two programs are equal in all facets.

The reason the Service Disabled Veterans Small Business is NOT considered a Small Disadvantaged Business concern IS "The Small Business Administration does not certified the Service Disabled Veteran Small Business making them ineligible to be considered a Small Disadvantaged Business concern."

I believe we can all agree the Service Disabled Veteran Small Business concern should be considered as a Small Disadvantaged Business and be entitled to the same adjustment when competing for Government opportunities.

JIM SECHRIST
RET/AF/MSG
RET/1102/12
205 W High Street
Milford Pa 18337

2004-002-5



"Dan Keiser"
<d_keiser@hotmail.com>

05/25/2004 04:11 PM

To: farcase.2004-002@gsa.gov
cc: gail.wegner@mail.va.gov
Subject: [Docket No: 01-23; 04-002; 9000-AJ92];[FR Doc: 04-09752];[Page 25273-25280]; Federal Acquisition Regulation (FAR): Service-Disabled Veteran-Owned Small Business Concerns Procurement Program

I am the president of a service disabled veteran owned general contractor pursuing work with the federal government.

In meeting with several contracting officers in various facilities, I have received the comment that there can never be a sole source contract award to a SDVOB because the first part of the reg states that there must be 2 or more qualified SDVOB's for a set aside as described in 19.1405 If there are two or more SDVOB's there can never be a sole source award unless all but one bidder withdraws from the competition. Therefore, the conditions for a sole source award as described in 19.1406 are not likely to exist. This apparently does not give contracting officers as much discretion in awarding sole source contracts to SDVOB's as to 8a's. Is it the intent of PL 108-183 to provide us with fewer opportunities than 8a's?

Another comment that I have received from contracting officers is that SDVOB set asides are considered only after HUB zone and 8a set asides. There is no language in the Interim Final Regulation indicating this. Under this interpretation, PL 108-183 applies only when other set aside goals have been satisfied. Does this need clarification?

Thank you for considering these comments.

Sincerely,
Dan Keiser
DKI Construction
d_keiser@hotmail.com

2004-002-6



"Dan Keiser"
<d_keiser@hotmail.com>

To: farcase.2004-002@gsa.gov
cc:
Subject: Comments on FAR Case 2004-002

06/03/2004 08:49 AM

The new regs should be modified to give SDVOSB's an advantage such as in the 8a programs 10% price advantage. Many SDVOB's compete against manufacturers or their own distributors for sales of goods and services and cannot hope to match the low price.

Also, contracting officers due not have the same authority to sole sourc as in the 8a program. This should be changed to make SDVOB's on an equal footing with 8a's.

Comment Form

2004-002-7

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Title: Federal Acquisition Regulation; Procurement Program for Service- Disabled Veteran-Owned Small Business Concerns

Subject Category: Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Service-Disabled Veteran-Owned Small Business Concerns Procurement Program Service-Disabled Veteran-Owned Small Business Concerns Procurement Program

Docket Id: 01-23; 04-002; 9000-AJ92

CFR Citation: 48 CFR 2, 5, 6, ETC.

Published: May 05, 2004 [FR Doc. 04-09752]

Comments Due: July 06, 2004

Phase: RULES

How To Comment:

Submit electronic comments via the Internet to--farcase.2004-002@gsa.gov or <http://www.regulations.gov>. Submit written comments to--General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Please submit comments only and cite FAC 2001-23, FAR case 2004-002, in all correspondence related to this case.

Your comment has been sent. To verify that this agency has received your comment, please contact the agency directly. If you wish to retain a copy of your comment, print out a copy of this document for your files.

Please note your REGULATIONS.GOV number.

Regulations.gov #: EREG - 9

Date Submitted: Jun 24, 2004

| Title | First Name | Last Name |
|-----------------------------|------------|-------------|
| Mr. | Donald | Beery |
| Organization Name | | |
| Four Points Technology | | |
| Mailing Address | | |
| 21351 Ridgetop Circle, #300 | | |
| City | State | Postal Code |
| Dulles | VA | 20166 |
| Province | Country | |
| | US | |

Comment

In order to provide a viable opportunity for the SDVOSB Program to become successful, similar mandates should be instituted that helped make the 8(a) program successful. One aspect is providing a 10% price differential for SDVOSB when competing against larger, non-SDVOSB

companies. For example: Some IT resellers are still considered Small Businesses, even though they sell over \$500MM per year, and also have over 500 employees. With this type of purchasing power, it is not possible for a SDVOSB to compete on price. In this instance, the term Small Business is a misnomer. What we are talking about are REAL small businesses, that are run by people that know what it means to sacrifice for the good of the country. Not looking for a handout, but just a helping hand would go a long way in making this program successful. Providing equivalent regulations, as in the 8(a) program, will help tremendously. It took years for the 8(a) program to work, with similar mandates, and a lot of hard work on the part of the SDVOSB, this program will work also. Again, when comparing a SDVOSB price to that of another, non-SDVOSB, there should be given a 10% price differential in favor of the SDVOSB. Thank you, Donald Beery

2004-002-8

Comment Form

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Title: Federal Acquisition Regulation; Procurement Program for Service- Disabled Veteran-Owned Small Business Concerns

Subject Category: Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Service-Disabled Veteran-Owned Small Business Concerns Procurement Program Service-Disabled Veteran-Owned Small Business Concerns Procurement Program Service-Disabled Veteran-Owned Small Business Concerns Procurement Program

Docket Id: 01-23; 04-002; 9000-AJ92

CFR Citation: 48 CFR 2, 5, 6, ETC.

Published: May 05, 2004 [FR Doc. 04-09752]

Comments Due: July 06, 2004

Phase: RULES

How To Comment:

Submit electronic comments via the Internet to--farcase.2004-002@gsa.gov or <http://www.regulations.gov>. Submit written comments to--General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Please submit comments only and cite FAC 2001-23, FAR case 2004-002, in all correspondence related to this case.

Your comment has been sent. To verify that this agency has received your comment, please contact the agency directly. If you wish to retain a copy of your comment, print out a copy of this document for your files.

Please note your REGULATIONS.GOV number.

Regulations.gov #: EREG - 6

Date Submitted: Jun 10, 2004

| Title | First Name | Last Name |
|------------------------|------------|-------------|
| Mr. | Mark | Powers |
| Organization Name | | |
| DAVcon Solutions, Inc. | | |
| Mailing Address | | |
| 22876 Shaw Rd. | | |
| City | State | Postal Code |
| Sterling | VA | 20166 |
| Province | Country | |
| | US | |

Comment

This regulation does not go far enough to help in the incubation of Service-disabled Veteran Owned Businesses. Since 1999, neither the agencies, nor the prime contractors have made even a rudimentary effort to satisfy the 3% spending goal established in PL 106-50. In addition to the

002-8

provisions of this legislation as stated in the interim rule, the implementation plan should allow for a 10% competitive advantage on pricing much like the competitive advantage established in the 8(a) program.

002-8

Comment Form

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Title: Federal Acquisition Regulation; Procurement Program for Service- Disabled Veteran-Owned Small Business Concerns

Subject Category: Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Service-Disabled Veteran-Owned Small Business Concerns Procurement Program Service-Disabled Veteran-Owned Small Business Concerns Procurement Program Service-Disabled Veteran-Owned Small Business Concerns Procurement Program

Docket Id: 01-23; 04-002; 9000-AJ92

CFR Citation: 48 CFR 2, 5, 6, ETC.

Published: May 05, 2004 [FR Doc. 04-09752]

Comments Due: July 06, 2004

Phase: RULES

How To Comment:

Submit electronic comments via the Internet to--farcase.2004-002@gsa.gov or <http://www.regulations.gov>. Submit written comments to--General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. Please submit comments only and cite FAC 2001-23, FAR case 2004-002, in all correspondence related to this case.

Your comment has been sent. To verify that this agency has received your comment, please contact the agency directly. If you wish to retain a copy of your comment, print out a copy of this document for your files.

Please note your REGULATIONS.GOV number.

Regulations.gov #: EREG - 7

Date Submitted: Jun 10, 2004

| Title | First Name | Last Name |
|------------------------|------------|-------------|
| Mr. | Mark | Powers |
| Organization Name | | |
| DAVcon Solutions, Inc. | | |
| Mailing Address | | |
| 22876 Shaw Rd. | | |
| City | State | Postal Code |
| Sterling | VA | 20166 |
| Province | Country | |
| | US | |

Comment

RESUBMITTED WITH ATTACHED FILE>>>This regulation does not go far enough to help in the incubation of Service-disabled Veteran Owned Businesses. Since 1999, neither the agencies, nor the prime contractors have made even a rudimentary effort to satisfy the 3% spending goal

established in PL 106-50. In addition to the provisions of this legislation, the implementation plan should allow for a 10% competitive advantage on pricing much like the competitive advantage establish in the 8(a) program.

File(s) Attached:

- *04-09752-81022-ATT-1-EREG-7.xls*

0028

| AGENCY | FISCAL YEAR 2001 | | | | | FISCAL YEAR 2002 | | | | | 2001 - 2002 | |
|-----------------------------------|-------------------|------------|--------|--------------|----------|------------------|------------|--------|--------------|----------|-------------|-------------|
| | 2001 ALL (\$000) | DV (\$000) | DV (%) | VOSB (\$000) | VOSB (%) | 2002 ALL (\$000) | DV (\$000) | DV (%) | VOSB (\$000) | VOSB (%) | TREND % DV | TREND %VOSB |
| TOTAL FEDERAL | 219,573,037 | 554,167 | 0.25 | 558,199 | 0.25 | 235,417,413 | 298,901 | 0.13 | 1,310,447 | 0.56 | NEG | POS |
| OFFICE OF THE PRESIDENT | 33,204 | 0 | 0.00 | 146 | 0.44 | 58,648 | 0 | 0.00 | 0 | 0.00 | NEG | NEG |
| AGRICULTURE | 3,811,840 | 3,702 | 0.10 | 10,054 | 0.26 | 3,706,594 | 8,145 | 0.22 | 24,884 | 0.67 | POS | POS |
| COMMERCE | 1,188,019 | 1,060 | 0.09 | 457 | 0.04 | 1,596,134 | 1,654 | 0.10 | 6,187 | 0.39 | POS | POS |
| DEFENSE | 142,764,938 | 484,857 | 0.34 | 155,463 | 0.11 | 155,167,320 | 163,542 | 0.11 | 800,921 | 0.52 | NEG | POS |
| EDUCATION | 926,071 | 246 | 0.03 | 1,206 | 0.13 | 950,954 | 751 | 0.08 | 7,083 | 0.74 | POS | POS |
| ENERGY | 18,598,697 | 1,347 | 0.01 | 10,423 | 0.06 | 19,005,018 | 1,350 | 0.01 | 16,831 | 0.09 | NEG | POS |
| HEALTH AND HUMAN SERVICES | 4,840,797 | 6,315 | 0.13 | 44,212 | 0.91 | 5,984,503 | 13,481 | 0.23 | 46,429 | 0.78 | POS | NEG |
| HOUSING AND URBAN DEVELOPMENT | 815,424 | 881 | 0.11 | 1,785 | 0.22 | 993,774 | 6,734 | 0.68 | 14,237 | 1.43 | POS | POS |
| INTERIOR | 2,145,628 | 571 | 0.03 | 13,676 | 0.64 | 2,415,596 | 3,664 | 0.15 | 31,037 | 1.28 | POS | POS |
| JUSTICE | 4,837,722 | 610 | 0.01 | 9,712 | 0.20 | 5,035,428 | 3,251 | 0.06 | 10,148 | 0.20 | POS | POS |
| LABOR | 1,396,604 | 11 | 0.00 | 6,840 | 0.49 | 1,640,979 | 13 | 0.00 | 7,323 | 0.45 | POS | NEG |
| STATE | 1,501,463 | 17,568 | 1.17 | 42,710 | 2.84 | 1,613,173 | 8,591 | 0.53 | 29,465 | 1.83 | NEG | NEG |
| TRANSPORTATION | 2,489,262 | 4,032 | 0.16 | 28,326 | 1.14 | 3,795,138 | 12,336 | 0.33 | 22,833 | 0.60 | POS | NEG |
| TREASURY | 2,489,479 | 10,836 | 0.44 | 21,276 | 0.85 | 3,021,553 | 12,019 | 0.40 | 28,467 | 0.94 | NEG | POS |
| VETERANS AFFAIRS | 5,838,519 | 12,961 | 0.22 | 122,607 | 2.10 | 5,720,949 | 24,026 | 0.42 | 153,706 | 2.69 | POS | POS |
| AGENCY FOR INTERNATIONAL DEV | 542,587 | 0 | 0.00 | 0 | 0.00 | 344,805 | 0 | 0.00 | 0 | 0.00 | NEG | NEG |
| AMERICAN BATTLE MONUMENTS | 229 | 0 | 0.00 | 0 | 0.00 | 152 | 0 | 0.00 | 0 | 0.00 | NEG | NEG |
| BROADCASTING BOARD OF GOVERN | 54,880 | 0 | 0.00 | 1,080 | 1.97 | 61,861 | 0 | 0.00 | 1,552 | 2.51 | NEG | POS |
| COMMODITY FUTURES TRADING | 13,164 | 0 | 0.00 | 0 | 0.00 | 5,415 | 0 | 0.00 | 0 | 0.00 | NEG | NEG |
| CONSUMER PRODUCT SAFETY | 8,419 | 426 | 5.06 | 118 | 1.40 | 9,574 | 430 | 4.49 | 87 | 0.91 | NEG | NEG |
| COURT SRVC & OFFENDER SUPERVISION | NO DATA AVAILABLE | | | | | 236 | 0 | 0.00 | 0 | 0.00 | N/A | N/A |
| DEF NUCLEAR FACILITIES SAFETY | 350 | 0 | 0.00 | 0 | 0.00 | 166 | 0 | 0.00 | 0 | 0.00 | NEG | NEG |
| ENVIRONMENTAL PROTECTION AGENCY | 1,105,635 | 0 | 0.00 | 535 | 0.05 | 1,341,452 | 0 | 0.00 | 2,864 | 0.21 | NEG | POS |
| EQUAL EMPLOYMENT OPPORTUNITY | 46,513 | 119 | 0.26 | 0 | 0.00 | 40,855 | 0 | 0.00 | 30 | 0.07 | NEG | POS |
| EXPORT-IMPORT BANK OF THE US | NO DATA AVAILABLE | | | | | 448 | 0 | 0.00 | 0 | 0.00 | N/A | N/A |
| FARM CREDIT ADMINISTRATION | NO DATA AVAILABLE | | | | | 30 | 0 | 0.00 | 0 | 0.00 | N/A | N/A |
| FEDERAL COMMUNICATIONS | 17,409 | 0 | 0.00 | 0 | 0.00 | 1,207 | 0 | 0.00 | 0 | 0.00 | NEG | NEG |
| FEDERAL DEPOSIT INSURANCE CORP | NO DATA AVAILABLE | | | | | 542 | 0 | 0.00 | 0 | 0.00 | NEG | NEG |
| FEDERAL ELECTION COMMISSION | 1,591 | 0 | 0.00 | 0 | 0.00 | 3,301 | 0 | 0.00 | 0 | 0.00 | NEG | NEG |
| FEDERAL EMERGENCY MGMT AGENCY | 308,427 | 0 | 0.00 | 3,255 | 1.06 | 330,424 | 1,937 | 0.59 | 2,115 | 0.64 | POS | NEG |

002-8

| AGENCY | FISCAL YEAR 2001 | | | | | FISCAL YEAR 2002 | | | | | 2001 - 2002 | | |
|-----------------------------------|------------------|-------------------|--------|--------------|----------|------------------|------------|--------|--------------|----------|-------------|-------------|-----|
| | 2001 ALL (\$000) | DV (\$000) | DV (%) | VOSB (\$000) | VOSB (%) | 2002 ALL (\$000) | DV (\$000) | DV (%) | VOSB (\$000) | VOSB (%) | TREND % DV | TREND %VOSB | |
| FEDERAL ENERGY REG COMMISSION | 21,846 | 0 | 0.00 | 0 | 0.00 | 15,102 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| FED LABOR RELATIONS AUTHORITY | | NO DATA AVAILABLE | | | | | 44 | 0 | 0.00 | 0 | 0.00 | N/A | N/A |
| FEDERAL MARITIME COMMISSION | 573 | 0 | 0.00 | 0 | 0.00 | 1,063 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| FED MEDIATION & CONCILIATION | 1,289 | 0 | 0.00 | 0 | 0.00 | 2,324 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| FEDERAL TRADE COMMISSION | 14,992 | 119 | 0.80 | 795 | 5.34 | 20,493 | 511 | 2.49 | 179 | 0.87 | POS | POS | |
| GENERAL SERVICES ADMINISTRATION | 10,656,575 | 5,405 | 0.05 | 54,172 | 0.51 | 9,417,475 | 10,712 | 0.11 | 76,985 | 0.82 | POS | POS | |
| INTERNATIONAL TRADE COMMISSION | 3,894 | 0 | 0.00 | 55 | 1.41 | 7,533 | 0 | 0.00 | 205 | 2.72 | NEG | POS | |
| KENNEDY CENTER | 17,534 | 638 | 3.64 | 28 | 0.16 | 4,494 | 0 | 0.00 | 9 | 0.20 | NEG | POS | |
| MERIT SYSTEMS PROTECTION | 1,349 | 0 | 0.00 | 0 | 0.00 | 269 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATL AERONAUTICS & SPACE ADMIN | 11,232,435 | 178 | 0.00 | 16,104 | 0.14 | 11,627,660 | 22,813 | 0.20 | 17,419 | 0.15 | POS | POS | |
| NATL ARCHIVES & RECORDS ADMIN | 46,116 | 0 | 0.00 | 122 | 0.26 | 102,080 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATL ENDOWMENT FOR THE ARTS | 895 | 0 | 0.00 | 0 | 0.00 | 1,230 | 214 | 17.40 | 4 | 0.33 | POS | POS | |
| NATL ENDOWMENT FOR THE HUMANITIES | 1,458 | 0 | 0.00 | 0 | 0.00 | 1,890 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATIONAL GALLERY OF ART | 16,433 | 0 | 0.00 | 0 | 0.00 | 10,822 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATIONAL LABOR RELATIONS BOARD | 9,662 | 0 | 0.00 | 0 | 0.00 | 5,004 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATIONAL MEDIATION BOARD | 2,873 | 0 | 0.00 | 0 | 0.00 | 1,853 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATIONAL SCIENCE FOUNDATION | 62,438 | 0 | 0.00 | 24 | 0.04 | 102,954 | 5 | 0.00 | 157 | 0.15 | POS | POS | |
| NATL TRANS SAFETY BOARD | 827 | 0 | 0.00 | 0 | 0.00 | 3,458 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NUCLEAR REGULATORY COMMISSION | 78,395 | 0 | 0.00 | 65 | 0.08 | 95,764 | 44 | 0.05 | 371 | 0.39 | POS | POS | |
| OFFICE OF PERSONNEL MANAGEMENT | 284,658 | 51 | 0.02 | 23 | 0.01 | 350,295 | 30 | 0.01 | 91 | 0.03 | NEG | POS | |
| PEACE CORPS | 16,496 | 390 | 2.36 | 0 | 0.00 | 10,727 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| RAILROAD RETIREMENT BOARD | 12,288 | 507 | 4.13 | 586 | 4.77 | 8,749 | 406 | 4.64 | 178 | 2.03 | POS | NEG | |
| SECURITIES AND EXCHANGE | 28,784 | 0 | 0.00 | 0 | 0.00 | 30,035 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| SELECTIVE SERVICE SYSTEM | 1,103 | 10 | 0.91 | 97 | 8.79 | 561 | 0 | 0.00 | 5 | 0.89 | NEG | NEG | |
| SMALL BUSINESS ADMINISTRATION | 71,511 | 75 | 0.10 | 527 | 0.74 | 45,554 | 0 | 0.00 | 618 | 1.36 | NEG | POS | |
| SMITHSONIAN INSTITUTION | 102,853 | 0 | 0.00 | 0 | 0.00 | 85,776 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| SOCIAL SECURITY ADMINISTRATION | 538,292 | 1,249 | 0.23 | 11,461 | 2.13 | 613,144 | 2,235 | 0.36 | 7,838 | 1.28 | POS | NEG | |
| TENNESSEE VALLEY AUTHORITY | | NO DATA AVAILABLE | | | | | 338 | 0 | 0.00 | 0 | 0.00 | N/A | N/A |
| US HOLOCAUST MEMORIAL MUSEAM | 4,160 | 0 | 0.00 | 0 | 0.00 | 2,315 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| US SOLDIERS AND AIRMENS HOME | 6,809 | 0 | 0.00 | 259 | 3.80 | 4,105 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| US TRADE AND DEVELOPMENT AGENCY | 556,634 | 0 | 0.00 | 0 | 0.00 | 1,657 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |

002-8

| AGENCY | FISCAL YEAR 2001 | | | | | | FISCAL YEAR 2002 | | | | | | 2001 - 2002 | |
|-----------------------------------|------------------|-------------------|--------|--------------|----------|------------------|------------------|--------|--------------|----------|--------------|--------|-------------|-------------|
| | 2001 ALL (\$000) | DV (\$000) | DV (%) | VOSB (\$000) | VOSB (%) | 2002 ALL (\$000) | DV (\$000) | DV (%) | VOSB (\$000) | VOSB (%) | VOSB (\$000) | DV (%) | TREND % DV | TREND %VOSB |
| TOTAL FEDERAL | 219,573,037 | 554,167 | 0.25 | 558,199 | 0.25 | 235,417,413 | 298,901 | 0.13 | 1,310,447 | 0.56 | | | NEG | POS |
| OFFICE OF THE PRESIDENT | 33,204 | 0 | 0.00 | 146 | 0.44 | 58,648 | 0 | 0.00 | 0 | 0.00 | | | NEG | NEG |
| AGRICULTURE | 3,811,840 | 3,702 | 0.10 | 10,054 | 0.26 | 3,706,594 | 8,145 | 0.22 | 24,884 | 0.67 | | | POS | POS |
| COMMERCE | 1,188,019 | 1,060 | 0.09 | 457 | 0.04 | 1,596,134 | 1,654 | 0.10 | 6,187 | 0.39 | | | POS | POS |
| DEFENSE | 142,764,938 | 484,857 | 0.34 | 155,463 | 0.11 | 155,167,320 | 163,542 | 0.11 | 800,921 | 0.52 | | | NEG | POS |
| EDUCATION | 926,071 | 246 | 0.03 | 1,206 | 0.13 | 950,954 | 751 | 0.08 | 7,083 | 0.74 | | | POS | POS |
| ENERGY | 18,598,697 | 1,347 | 0.01 | 10,423 | 0.06 | 19,005,018 | 1,350 | 0.01 | 16,831 | 0.09 | | | NEG | POS |
| HEALTH AND HUMAN SERVICES | 4,840,797 | 6,315 | 0.13 | 44,212 | 0.91 | 5,984,503 | 13,481 | 0.23 | 46,429 | 0.78 | | | POS | NEG |
| HOUSING AND URBAN DEVELOPMENT | 815,424 | 881 | 0.11 | 1,785 | 0.22 | 993,774 | 6,734 | 0.68 | 14,237 | 1.43 | | | POS | POS |
| INTERIOR | 2,145,628 | 571 | 0.03 | 13,676 | 0.64 | 2,415,596 | 3,664 | 0.15 | 31,037 | 1.28 | | | POS | POS |
| JUSTICE | 4,837,722 | 610 | 0.01 | 9,712 | 0.20 | 5,035,428 | 3,251 | 0.06 | 10,148 | 0.20 | | | POS | POS |
| LABOR | 1,396,604 | 11 | 0.00 | 6,840 | 0.49 | 1,640,979 | 13 | 0.00 | 7,323 | 0.45 | | | POS | NEG |
| STATE | 1,501,463 | 17,568 | 1.17 | 42,710 | 2.84 | 1,613,173 | 8,591 | 0.53 | 29,465 | 1.83 | | | NEG | NEG |
| TRANSPORTATION | 2,489,262 | 4,032 | 0.16 | 28,326 | 1.14 | 3,795,138 | 12,336 | 0.33 | 22,833 | 0.60 | | | POS | NEG |
| TREASURY | 2,489,479 | 10,836 | 0.44 | 21,276 | 0.85 | 3,021,553 | 12,019 | 0.40 | 28,467 | 0.94 | | | NEG | POS |
| VETERANS AFFAIRS | 5,838,519 | 12,961 | 0.22 | 122,607 | 2.10 | 5,720,949 | 24,026 | 0.42 | 153,706 | 2.69 | | | POS | POS |
| AGENCY FOR INTERNATIONAL DEV | 542,587 | 0 | 0.00 | 0 | 0.00 | 344,805 | 0 | 0.00 | 0 | 0.00 | | | NEG | NEG |
| AMERICAN BATTLE MONUMENTS | 229 | 0 | 0.00 | 0 | 0.00 | 152 | 0 | 0.00 | 0 | 0.00 | | | NEG | NEG |
| BROADCASTING BOARD OF GOVERN | 54,880 | 0 | 0.00 | 1,080 | 1.97 | 61,861 | 0 | 0.00 | 1,552 | 2.51 | | | NEG | POS |
| COMMODITY FUTURES TRADING | 13,164 | 0 | 0.00 | 0 | 0.00 | 5,415 | 0 | 0.00 | 0 | 0.00 | | | NEG | NEG |
| CONSUMER PRODUCT SAFETY | 8,419 | 426 | 5.06 | 118 | 1.40 | 9,574 | 430 | 4.49 | 87 | 0.91 | | | NEG | NEG |
| COURT SRVC & OFFENDER SUPERVISION | | NO DATA AVAILABLE | | | | 236 | 0 | 0.00 | 0 | 0.00 | | | N/A | N/A |
| DEF NUCLEAR FACILITIES SAFETY | 350 | 0 | 0.00 | 0 | 0.00 | 166 | 0 | 0.00 | 0 | 0.00 | | | NEG | NEG |
| ENVIRONMENTAL PROTECTION AGENCY | 1,105,635 | 0 | 0.00 | 535 | 0.05 | 1,341,452 | 0 | 0.00 | 2,864 | 0.21 | | | NEG | POS |
| EQUAL EMPLOYMENT OPPORTUNITY | 46,513 | 119 | 0.26 | 0 | 0.00 | 40,855 | 0 | 0.00 | 30 | 0.07 | | | NEG | POS |
| EXPORT-IMPORT BANK OF THE US | | NO DATA AVAILABLE | | | | 448 | 0 | 0.00 | 0 | 0.00 | | | N/A | N/A |
| FARM CREDIT ADMINISTRATION | 17,409 | 0 | 0.00 | 0 | 0.00 | 30 | 0 | 0.00 | 0 | 0.00 | | | N/A | N/A |
| FEDERAL COMMUNICATIONS | | NO DATA AVAILABLE | | | | 1,207 | 0 | 0.00 | 0 | 0.00 | | | NEG | NEG |
| FEDERAL DEPOSIT INSURANCE CORP | | NO DATA AVAILABLE | | | | 542 | 0 | 0.00 | 0 | 0.00 | | | NEG | NEG |
| FEDERAL ELECTION COMMISSION | 1,591 | 0 | 0.00 | 0 | 0.00 | 3,301 | 0 | 0.00 | 0 | 0.00 | | | NEG | NEG |
| FEDERAL EMERGENCY MGMT AGENCY | 308,427 | 0 | 0.00 | 3,255 | 1.06 | 330,424 | 1,937 | 0.59 | 2,115 | 0.64 | | | POS | NEG |

0028

| AGENCY | FISCAL YEAR 2001 | | | | | FISCAL YEAR 2002 | | | | | 2001 - 2002 | | |
|-----------------------------------|------------------|-------------------|--------|--------------|----------|------------------|------------|--------|--------------|----------|-------------|-------------|-----|
| | 2001 ALL (\$000) | DV (\$000) | DV (%) | VOSB (\$000) | VOSB (%) | 2002 ALL (\$000) | DV (\$000) | DV (%) | VOSB (\$000) | VOSB (%) | TREND % DV | TREND %VOSB | |
| FEDERAL ENERGY REG COMMISSION | 21,846 | 0 | 0.00 | 0 | 0.00 | 15,102 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| FED LABOR RELATIONS AUTHORITY | | NO DATA AVAILABLE | | | | | 44 | 0 | 0.00 | 0 | 0.00 | N/A | N/A |
| FEDERAL MARITIME COMMISSION | 573 | 0 | 0.00 | 0 | 0.00 | 1,063 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| FED MEDIATION & CONCILIATION | 1,289 | 0 | 0.00 | 0 | 0.00 | 2,324 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| FEDERAL TRADE COMMISSION | 14,892 | 119 | 0.80 | 795 | 5.34 | 20,493 | 511 | 2.49 | 179 | 0.87 | POS | POS | |
| GENERAL SERVICES ADMINISTRATION | 10,656,575 | 5,405 | 0.05 | 54,172 | 0.51 | 9,417,475 | 10,712 | 0.11 | 76,985 | 0.82 | POS | POS | |
| INTERNATIONAL TRADE COMMISSION | 3,894 | 0 | 0.00 | 55 | 1.41 | 7,533 | 0 | 0.00 | 205 | 2.72 | NEG | POS | |
| KENNEDY CENTER | 17,534 | 638 | 3.64 | 28 | 0.16 | 4,494 | 0 | 0.00 | 9 | 0.20 | NEG | POS | |
| MERIT SYSTEMS PROTECTION | 1,349 | 0 | 0.00 | 0 | 0.00 | 269 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATL AERONAUTICS & SPACE ADMIN | 11,232,435 | 178 | 0.00 | 16,104 | 0.14 | 11,627,660 | 22,813 | 0.20 | 17,419 | 0.15 | POS | POS | |
| NATL ARCHIVES & RECORDS ADMIN | 46,116 | 0 | 0.00 | 122 | 0.26 | 102,080 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATL ENDOWMENT FOR THE ARTS | 895 | 0 | 0.00 | 0 | 0.00 | 1,230 | 214 | 17.40 | 4 | 0.33 | POS | POS | |
| NATL ENDOWMENT FOR THE HUMANITIES | 1,458 | 0 | 0.00 | 0 | 0.00 | 1,890 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATIONAL GALLERY OF ART | 16,433 | 0 | 0.00 | 0 | 0.00 | 10,822 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATIONAL LABOR RELATIONS BOARD | 9,862 | 0 | 0.00 | 0 | 0.00 | 5,004 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATIONAL MEDIATION BOARD | 2,873 | 0 | 0.00 | 0 | 0.00 | 1,853 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NATIONAL SCIENCE FOUNDATION | 62,438 | 0 | 0.00 | 24 | 0.04 | 102,954 | 5 | 0.00 | 157 | 0.15 | POS | POS | |
| NATL TRANS SAFETY BOARD | 827 | 0 | 0.00 | 0 | 0.00 | 3,458 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| NUCLEAR REGULATORY COMMISSION | 78,395 | 0 | 0.00 | 65 | 0.08 | 95,764 | 44 | 0.05 | 371 | 0.39 | POS | POS | |
| OFFICE OF PERSONNEL MANAGEMENT | 284,658 | 51 | 0.02 | 23 | 0.01 | 350,295 | 30 | 0.01 | 91 | 0.03 | NEG | POS | |
| PEACE CORPS | 16,496 | 390 | 2.36 | 0 | 0.00 | 10,727 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| RAILROAD RETIREMENT BOARD | 12,288 | 507 | 4.13 | 586 | 4.77 | 8,749 | 406 | 4.64 | 178 | 2.03 | POS | NEG | |
| SECURITIES AND EXCHANGE | 28,784 | 0 | 0.00 | 0 | 0.00 | 30,035 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| SELECTIVE SERVICE SYSTEM | 1,103 | 10 | 0.91 | 97 | 8.79 | 561 | 0 | 0.00 | 5 | 0.89 | NEG | NEG | |
| SMALL BUSINESS ADMINISTRATION | 71,511 | 75 | 0.10 | 527 | 0.74 | 45,554 | 0 | 0.00 | 618 | 1.36 | NEG | POS | |
| SMITHSONIAN INSTITUTION | 102,853 | 0 | 0.00 | 0 | 0.00 | 85,776 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| SOCIAL SECURITY ADMINISTRATION | 536,292 | 1,249 | 0.23 | 11,461 | 2.13 | 613,144 | 2,235 | 0.36 | 7,838 | 1.28 | POS | NEG | |
| TENNESSEE VALLEY AUTHORITY | | NO DATA AVAILABLE | | | | | 338 | 0 | 0.00 | 0 | 0.00 | N/A | N/A |
| US HOLOCAUST MEMORIAL MUSEAM | 4,160 | 0 | 0.00 | 0 | 0.00 | 2,315 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| US SOLDIERS AND AIRMENS HOME | 6,809 | 0 | 0.00 | 259 | 3.80 | 4,105 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |
| US TRADE AND DEVELOPMENT AGENCY | 556,634 | 0 | 0.00 | 0 | 0.00 | 1,657 | 0 | 0.00 | 0 | 0.00 | NEG | NEG | |



PACIFIC DEFENSE SYSTEMS
1428 McKinley Avenue
National City, CA 91950-4217
Phone (619) 474-8122 Fax (619) 477-3669

2004-002-9

In reply refer to:
Ser 2004-26

Mailing address:
P.O. Box 448, National City, CA 91951-0448

9 June 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Washington, DC 20405

Attention: Ms. Laurie Durate

Subject: FAC 2001-23 FAR case 2004-002

Pacific Defense Systems (PDS) is concerned with the language in the interim rule amending the FAR in accordance with Public Law 108-183, Veterans Benefits Act of 2003.

The order of precedence and the “may set aside” and “shall set-aside” language make the Service –Disabled Veteran Owned Small Business (SDVOSB) the lesser priority.

The following information is germane:

- FAR 19.800 SBA 8(a) Program:
- (e) Before deciding to set aside an acquisition in accordance with subpart 19.5, 19.13, or 19.14 the contracting officer should review the acquisition for offering under the 8(a) Program. If the acquisition is offered to the SBA, SBA regulations (13 CFR 126.607(b)) **give first priority to HUBZone 8(a) concerns.**
- FAR 19.1305 HUBZone set-aside procedures (a) states “A participating agency contracting officer **shall set aside** acquisitions ...”.
- (c) For acquisitions exceeding the simplified acquisition threshold, the requirement to set aside an acquisition for HUBZone small business concerns (see 19.1305) **takes priority over the requirement to set aside the acquisition for small business concerns.**

HUBZone Certified
Disabled Veteran Certified (P.L. 106-50 & 108-183)

Western Service Center, Warren Pumps, Inc.
Carver Pump Co., West Coast Representative
Authorized Service Representative, Oldenburg Lake Shore

002-9

- FAR 19.1405 Service –Disabled Veteran Owned Small Business (SDVOSB) set aside procedures (a) states “The contracting officer **may set-aside** acquisitions...”.
- As a case in point, discussions with the Small Business Procurement Officer at the SUPSHIP office in San Diego indicated that their interpretation is that the “**shall set aside**” language in FAR 19.1305 (HUBZone) takes precedence over the “**may set-aside**” requirement of FAR 19.1305 SDVOSB, thereby nullifying this very important act.
- This lack of parity with the SBA 8(a) and HUBZone requirements means that the spirit and intent of PL 108-183 is seriously compromised because of the “shall” and “may” language in the respective sections.

The initial objective of PL 108-183 and the subsequent FAR 19.1305 was to provide Federal Contracting Officers a means to improve their performance toward **the statutorily mandated 3% government wide requirement for procurement** from Service-Disabled Veteran Owned Small Business concerns (emphasis added).

Accordingly, Pacific Defense Systems (PDS) formally requests that a change be made to the language in FAR 19.1305 and that the words “shall set-aside” be used in every place that “may set-aside” is found.

This action will give more latitude to the Contracting Officers to help meet ***the statutorily mandated 3% government wide requirement for procurement from Service- Disabled Veteran Owned Small Business concerns.***

If you have any questions, please contact the undersigned.

Sincerely,

Irving I. Refkin
President/CEO
(619) 474-8122
irv@pacdef.com

*HUBZone Certified
Disabled Veteran Certified (P.L. 106-50 & 108-183)*

*Western Service Center, Warren Pumps, Inc.
Carver Pump Co., West Coast Representative
Authorized Service Representative, Oldenburg Lake Shore*



2243 San Diego Ave.
San Diego, CA 92110
619-299-2555
619-299-2444 fax

www.industechnology.com

2004-002-10

07 June 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035 (Attn: Ms. Laurie Duarte)
Washington, DC 20405

(Provided by email to farcase.2004-002@gsa.gov)

Dear Ms. Duarte:

Per the Federal Register, Part V, Department of Defense, GSA, NASA, 48 CFR Parts 2, 5, 6, et al. Federal Acquisition Regulation; Procurement Program for Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns; Small Equity Compliance Guide; Interim Rules, of 05 May 2004, we would like to make the following comments for consideration in the formulation of a Final Rule.

SDVOSB Concerns should be provided equal consideration as those business concerns in the 8(a) SDB Program, including equivalent government-wide procurement goals to those of 8(a) SDB Concerns. This would put service-disabled veterans on an equal footing with 8(a) SDB Concerns. Some 8(a) SDB Concerns garner their 8(a) SDB status as immigrants to the United States, and this change would allow our service-disabled veteran-owned small business concerns the ability to equally realize the American dream, one that they have fought to protect through their service to our Country.

Allow business concerns in the 8(a) SDB Program to migrate work from that program to the SDVOSB Procurement Program if eligible, and allow SDVOSB Concerns to migrate work to the 8(a) SDB Program if eligible.

Please feel free to contact me at (619) 299-2555 Extension 353 or contracts@industechnology.com if you would like to discuss this recommendation further.

Sincerely,


Deborah J. Brassard
Senior Contracts Manager

2004-002-11



kstrafer@henryarthur.com
07/01/2004 10:41 AM

To: farcase.2004-002@gsa.gov
cc:
Subject: Comments on P.L.108_183

Laurie,

Here on are the comments from Henry Arthur & Associates, Inc, a SDVOSB located in Fairfax, Va. In summary they call for a more forceful voie in competitive business with Federal Government; Accountability of Contract Officers; creation of an office of Advocay in OMB (Moved from SBA); enforcement authority for SDVOSB goal attainment; and acountability of the Federal Contractor Primes (Large Business) as well as Federal Secretariats and agencies.

VR

Ken Strafer

703-307-1257

This mail sent through IMP: <http://horde.org/imp/>



HA2I comments on 108_183.d

SUBJECT: Federal Acquisition Regulation: procurement Program for Service Disabled Veteran-Owned Small Business-Interim Rules, May 5, 2004

COMMENTS

As Section 308 of the Veterans Benefits Act of 2003 (identified as P.L. 108-183), this input should be seen as official comments from Henry Arthur & Associates, an SDVOSB located in Fairfax , Virginia and Orlando, Florida. In formulating our comments we have tried to respond in accordance with the sections and paragraphs of the publication in the Federal Registry, however, some comments are general in nature and will be identified as such.

Section A. Background: This Public Law should be written to state that it is restricted to those U.S. Veterans that are also citizen of the United States and not dual citizenship individuals living abroad.

The contract officers may award contracts on the basis of SDVOSB where multiple SDVOSB exist, however, the wording should be changed to:

Competition among SDVOSB is encouraged for 25% of the total procurement from agencies and organizations governed by this ruling. To achieve this percentage, agencies are will require all Federal contractors competing for procurement to have on their teams SDVOSD with a required set aside for that category. This is for all Federal procurements that exceed \$15,000,000 in value regardless of the contract award period.

Organization that fail to achieve the stated 25% for SDVOSB will be reviewed at the beginning of the 3rd Fiscal Year Quarter (April of the Federal FY) and notified by GSA and the Federal Agency Secretary/Administrator concerned.

For that organization who does not meet the 25% threshold at the end of the Fiscal Year, verification will be made by GSA and the Small Business Administration during the first quarter of the new FY. Those found agencies and organizations, upon verification, and notification to Office of Small Business Development and Commerce, Office of Management and Budget (OMB) will have a commentary published in the Federal Registry. OMB is requested to notify the Secretary concerned and the agency and Federal commercial contractor required to respond as to their corrective action to be taken to achieve the threshold percentage of 25%. A Contractor doing business with the Federal Government and not achieving the required 25% for two consecutive years will be barred from Federal contracting until a suitable corrective action plan is received and approved by GSA. The agency/organization Contracting Officers (KO) responsible for the procurement action affecting the percentage outcome will have their contracting warrants suspended during the period of GSA corrective plan adjudication.

Where a situation arise when a Federal contractor does not comply with the sections of this ruling after official notification, the Secretariat Inspector General concerned will be called upon to verify the non-compliance and that Contractor should be disbarred from further opportunities as a prime during the remainder of that FY. Should the IG

determined that a KO was acting in complicity with the contractor, that KO will be recommend from further contracting warranted activity and that individual's warrant rescinded. Following a GSA directed desk audit, that former KO should be reassigned.

SUB-Paragraph referring to the "sole discretion of the contracting officer and are not subject to review by the Small Business Administration: Strike that phraseology and add:

Recognize that SDVOSB set asides above the micro-purchase level, but below the simplified acquisition threshold are required by this ruling and will be monitored by GSA and SBA jointly, reporting to the Office of Economic Advocacy in OMB. (FAR 13.003 and 19.1405).

OMB, as a component agency of this ruling, will establish an office of Economic Advocacy to monitor America's development of small business concerns and assist those citizens who wish to compete in the Federal economic sector. The office of economic advocacy as part of its charter will report annually to the President of the United States, the status of America Small Business and likewise render to the Congress of the United States, an economic report on the climate of small business in America (Compliance with Title 5, U.S.C.).

B. Regulatory Flexibility Act

Regulatory Flexibility Act, 5 U.S.C 601, should be changed to require K.O's set aside 25% annually for SDVOSB concerns when federal procurements are to be considered. Remove the Chief Counsel at SBA and insert, OMB as the senior reporting agency for this advocacy responsibility within the Executive Branch of the Government. The set aside should not be "discretionary" rather required as a percentage threshold.

Section B.2

The percentage of 3% of total fiscal value of the procurements should be made equal to Women-Owned businesses and 8a Socio and Economically disadvantaged set aside categories. SDVOSB, have more than 8a in a contemporary historical view, have been socio and economically deprived of their equal rights. As those who have served and having been wounded in combat or injured in the cause of America Freedom. They have earned this opportunity to compete. The SDVOSB owners supported the United States by wearing its uniforms and upon return home to re-enter the work place, a fair and reasonable opportunity should be made available to them.

Section B3.

Change to comply with Section B2, remove the wording may and insert KO's will set aside and insure that prime contractor bidding on Federal procurement comply with the set aside rules of this FAR section.

PART 6-Competition Requirements

Change from may set aside to will set aside and monitor for percentage threshold attainment on an annual basis.

Section 19.1406 Sole Source Award, et al

- a. change this section to KO's will award and write Request for Proposal to state the need for SDVOSD as a evaluation point of any and all procurements in excess of \$15,000.000 during the contract award period.

Where the procurement is in excess of \$15,000.000 a copy of the source selection evaluation guidance will be made public for inspection and review by GSA, SBA, and notification to the Office of Economic Advocacy in OMB. When it is determined by the Secretariat IG, that a KO is in non-complicacy and a finding of Gross Negligence has occurred, the KO contracting warrant will be administratively suspending pending review by the Office of Economic Advocacy, OMB.

Summary: The above changes are needed to allow Veterans Owned firms to compete on a far contracting competition laying field. Until now, the compliance has not been directed by GSA, SBA and DOD, rather it is discretionary. OMB has not played in the advocacy roll yet we realize that small business is the main stream of new job growth in America. It is also recognized with an influx of alien Americans to the 8a competition pool, the socio-economically deprived category is now broken; work and money exit the United States in record amounts while the originally targeted population of the 8a category intent remain socio and economically deprived.

There should be a Veterans Entrepreneur Bill of Rights developed by the commercial and perhaps with the help of the Federal sector. Among those rights should be:
A far contracting opportunity for Veterans to achieve goals they have set for themselves while serving America.

Kenneth J. Strafer
President

2004-002-12



"Robert E. Milton, Jr."
<remeng@remengr.com>

07/02/2004 06:27 PM

To: farcase.2004-002@gsa.gov
cc:
Subject: [Docket No: 01-23; 04-002; 9000-AJ92];[FR Doc: 04-09752];[Page 25273-25280]; Federal Acquisition Regulation (FAR): Service-Disabled Veteran-Owned Small Business Concerns Procurement Program

Please consider the following requested modifications/additions to the rule:

1. The proposed rule should establish guidelines for a SDVOSB Mentor-Protégé Program similar to SBA's 8(a) regulations (13 CFR 124.520).
2. The proposed rule should establish provisions to award SDVOSB set-aside contracts to SDVOSB Mentor-Protégé joint ventures very similar to SBA's 8(a) Mentor-Protégé joint ventures (13 CFR 124.513).

Respectfully,

Robert E. Milton, Jr.
President and General Manager

The R.E.M. Engineering Co., Inc.
1575 N. Lake Ave. Suite 100
Pasadena, CA 91104-2340

tel 626/296-7200
fax 626/296-7201

2004-002-14



"Massaro, Mary (HQ
DLA)"
<Mary.Massaro@dla.mil>
I>

07/06/2004 05:43 PM

To: "farcase.2004-002@gsa.gov" <farcase.2004-002@gsa.gov>
cc: "Heimbaugh, Nancy (HQ DLA)" <Nancy.Heimbaugh@dla.mil>,
"Shelkin, Ynette (HQ DLA)" <Ynette.Shelkin@dla.mil>, "Baileymuller,
Norma (HQ DLA)" <Norma.Baileymuller@dla.mil>
Subject: Defense Logistics Agency Comments re: FAC 2001-23, FAR Case
2004 -002, Procurement Program for SDVOSB Concerns (Attn: Laurie
Duarte)

Dear Ms. Duarte:

The Defense Logistics Agency (DLA) submits the following comments with regard to FAC 2001-23, FAR Case 2004-002, Procurement Program for Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns.

The May 5, 2004 Federal Register notice, volume 69, No. 87, page 25274, states that the Federal Procurement Data System-Next Generation (FPDS-NG) "will be updated" at some future time to reflect SDVOSB procurement authorities. However, the FAR coverage regarding use of these authorities was published as an interim rule, with an immediate effective date. We recognize that this was done because the regulation implements statute (namely, Sec. 308 of the Veterans Benefits Act of 2003), and there is significant Congressional interest in the awarding of contracts to these concerns. However, the goal for doing business with SDVOSBs had already been set prior to passage of that Act, and the set-aside and sole-source authorities were merely intended to make it easier for the contracting officer to fulfill the existing requirement. If the system change wasn't able to be effected beforehand, though, these tools are not especially helpful. Contracting officers are unlikely to avail themselves of them until they can "claim credit" for the awards via the official Governmental contract reporting mechanism (that is, via the database system Congress would cause to be queried to see whether federal agencies were fulfilling their SDVOSB goals). In this regard, the effective date of the coverage seems premature, and the use of the interim rule designation seems unnecessary.

FAR 13.003(b)(2) says that "the contracting officer's decision not to set aside an acquisition for HUBZone small business or service-disabled veteran-owned small business concerns participation below the simplified acquisition threshold is not subject to review under Subpart 19.4." However, even though FAR 19.1405(a) states that the contracting officer may set aside acquisitions exceeding the micro-purchase threshold for competition restricted to SDVOSB concerns when the requirements of paragraph (b) of that section can be satisfied, its paragraph (d) indicates that the Small Business Administration (SBA) can appeal the contracting officer's decision not to set aside an acquisition for exclusive SDVOSB participation if the acquisition's value is greater than the simplified acquisition threshold (SAT). This language has generated some questions regarding whether use of the SDVOSB set-aside tool is truly at the discretion of the contracting officer. Similar HUBZone coverage at 19.1305(a) and (c) states that set-asides "may" be used at values below the SAT and "shall" be used at greater dollar values. This eliminates confusion about the contracting officer's discretion and the proper role of the SBA. Accordingly, recommend that the first sentence of 19.1405(a) be changed to read, "The contracting officer may set aside acquisitions exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, and shall set aside acquisitions exceeding the SAT, for competition restricted to service-disabled veteran-owned small business concerns when the requirements of paragraph (b) of this section can be satisfied."

2004-002-14

Finally, a question was raised with regard to whether sole-source awards apply below the SAT. FAR paragraph 13.003(b)(2) only refers to use of FAR 19.1405, not 19.1406; however, there is no explicit prohibition against use of the sole-source tool at these dollar amounts. By contrast, the HUBZone coverage specifically states at 19.1306(a)(4) that sole-source HUBZone awards are to be made only at values greater than the SAT. The statutory language for both the HUBZone and SDVOSB programs is silent regarding whether sole-source can be used below the SAT. Since the other criteria for use (i.e., only one responsible contractor; the different not-to-exceed award price levels for manufacturing and non-manufacturing; the idea that the award can be made at a fair and reasonable price) are set forth identically in both statutes, presumably the coverage should be the same for both, as well. Because it might affect the simplicity of Part 13 acquisitions to permit sole-source buys below the SAT, recommend that neither HUBZone nor SDVOSB sole-source buys be permitted below that figure. A statement declaring that sole-source should only be used for higher-dollar acquisitions should be included in 19.1406(a).

Thank you for your consideration of these matters.

Mary Massaro

Defense Logistics Agency/Acquisition

Policy Branch

(703) 767-1366

2004-002-15



"Bob Hesser"
<bhesser@hits-inc.com>
m>

To: farcase.2004-002@gsa.gov
cc:
Subject: RIN 9000-AJ92

07/06/2004 03:32 PM
Please respond to
bhesser

Forwarding letter attached for
FAC 2001-23, FAR case 2004-002

Bob Hesser
President
HI Tech Services, Inc.
12262 Streamvale Circle
Herndon, VA 20170
Office: (703) 318-8819 (Forwards to Cell After 3rd Ring)

<http://www.hits-inc.com>
<mailto:bhesser@hits-inc.com>

HITS is a Service-Disabled Veteran-Owned Small Business



HITS Comments on P L 108-183 FAR

2004-002-15

July 6, 2004

HI Tech Services, Inc.
12262 Streamvale Circle
Herndon, VA 20170
(703) 318-8819
bhesser@hits-inc.com

By Bob Hesser

Comments on Public Law 108-183 and subsequent Federal Acquisition Circular 2001-23 (FAR Case 2004-002, RIN 9000-AJ92: Federal Acquisition Regulations; Procurement Program for Service-Disabled Veteran-Owned Small Business Concerns (SDVOB)).

Section 308 of the Veterans Benefits Act of 2003, Procurement Program for Small Business Concerns Owned and Controlled by Service-Disabled Veterans (P. L. 108-183) states:

“The Small Business Act (15 U.S.C. 631 et seq.) is amended by redesignating section 36 <<NOTE: 15 USC 631 note.>> as section 37 and by inserting after section 35 the following new section:

“SEC. 36. <<NOTE: 15 USC 657f.>> PROCUREMENT PROGRAM FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.

“(a) Sole Source Contracts.--In accordance with this section, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if--

“(1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity;

“(2) the anticipated award price of the contract (including options) will not exceed--

“(A) \$5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

“(B) \$3,000,000, in the case of any other contract opportunity; and

“(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

“(b) Restricted Competition.--In accordance with this section, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.”

However, FAR Case 2004-002 changed the wording to state:

2004-002-15

“The law provides for set-aside and sole source procurement authority for service-disabled veteran-owned small business (SDVOSB) concerns. This interim rule is published in conjunction with the interim rule proposed by the Small Business Administration.”

FAR Part 19 is modified by the interim rule. That modification states:

19.1405 Service-disabled veteran-owned small business set-aside procedures.

- (a) The contracting officer may set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to service-disabled veteran-owned small business concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider service-disabled veteran-owned small business set-asides before considering service-disabled veteran-owned small business sole source awards (see 19.1406).
- (b) To set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the contracting officer must have a reasonable expectation that--
 - (1) Offers will be received from two or more service-disabled veteran-owned small business concerns; and
 - (2) Award will be made at a fair market price.
- (c) If the contracting officer receives only one acceptable offer from a service-disabled veteran-owned small business concern in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from service-disabled veteran-owned small business concerns, the service-disabled veteran-owned set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see Subpart 19.5).

Congress did not use the words “set-aside.” They did provide for “Restricted Competition” if the contracting officer has a **reasonable expectation** that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.” Congress did not require that a *set-aside* must first be achieved.

FAR Case 2004-002 requires a SDVOSB set-aside before a sole-source can be awarded. The reason why congress used “Restricted Competition” is because of a belief that service-disabled veteran-owned concerns must be at the *same level* of competition as 8(a) concerns. An 8(a) concern can market federal agencies and, if the 8(a) convinces the federal customer and contracting officer that they can perform the service or obtain the product required, the contracting officer can award a non-competitive (sole source) award without announcing the requirement or using a set-aside for the requirement. In order for a contracting officer to award a contract over \$100,000 from a SDVOB, the contracting officer is required to announce the requirement as a SDVOB set-aside. Ten days or more is required for the purchase. If a SDVOB has marketed to the extent that the agency wants to purchase from **that SDVOB** they must announce a set-aside when the contracting officer knows there will not be another SDVOB **capable of meeting the same requirements**. This is the advantage of the 8(a) non-competitive

2004-002-15

sole-source. The new FAR puts the 8(a) at a different level. This is neither right, nor is it actually derived from a fair reading of the statute. Therefore this section should be eliminated!

It may be the FAR Council's opinion or belief that sole source procurements should be difficult to obtain, but that was not the intent of Public Law 108-183. Public Law 108-183 wording supports the belief that the contracting officers' "reasonable expectation" is sufficient.

FAR Part 19.1404 Exclusions go far beyond Public Law 108-183. Public Law 108-183 states:


“(c) Relationship to Other Contracting Preferences.--A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).”

FAR Part 19.1404 Exclusions, states:

“This subpart does not apply to--

- (a) Requirements that can be satisfied through award to--
 - (1) Federal Prison Industries, Inc. (see Subpart 8.6);
 - (2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see Subpart 8.7);
- (b) Orders under indefinite delivery contracts (see Subpart 16.5);
- (c) Orders against Federal Supply Schedules (see Subpart 8.4);
- (d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program; or
- (e) Requirements for commissary or exchange resale items.”

The interim rule should not include the additional exclusions in subparagraphs (b), (c), (d) and (e) of FAR Part 19.1404. There is nothing in the statute that supports these exclusions.


Robert G. Hesser
President



2004-002-16

Task Force for Veterans' Entrepreneurship

8605 Cameron Street, Suite 400, Silver Spring, MD 20910

Tel: 301.585.4000 Fax: 301.585.0519

Tuesday, July 06, 2004

Dean Koppel
Assistant Administrator
Office of Policy and Research
409 3rd Street, SW
Washington, DC 20416

Attention: RIN 3245-AF16

Dear Mr. Koppel:

On behalf of the more than 300 members of the Task Force for Veterans' Entrepreneurship (TFVE) consisting of Veteran Service Organizations, Service Disabled Veteran Owned Small Businesses and Veteran Owned Small Businesses, we are writing to comment on the Interim Final Rules regarding Contracting Opportunities for Service Disabled Veteran Owned Small Business (SDVOSB).

The TFVE was created prior to Public Law 106-50 and played a significant role in its development and passing. This holds true also for Public Law 108-183. Therefore, the analysis and recommendation of Public Law 108-183 comes with an accurate historical recollection.

Overall, the provisions contained in the Interim Final Rules have responded appropriately to concerns expressed by SDVOSBs. In particular, the TFVE appreciates the attempt by the Small Business Administration (SBA) to commence SDVOSB contracting opportunity by issuing the regulations as Interim Final status, thus allowing SDVOSBs to compete for federal procurement right away.

Although the TFVE appreciates the speed of the release of the rules unfortunately we discovered a few provisions within the drafted regulations that were not originally intended by Public Law 108-183. After numerous meetings with TFVE members, it is our opinion that the regulations as drafted *per Interim Rules* are not meeting the intent of the law by spirit or by means. We can all agree that the sacrifices by veterans in preserving our Nation and the Constitution deserves nothing less than unequivocal commitment by government representatives to accurately render the procurement rights of veterans, as intended by law.

The TFVE will comment in greater detail on several provisions below that are of particular concern.

“May” vs. “Shall”

FAR 19-1305 HUBZone set aside procedures read “the contracting officer **SHALL** set aside all acquisition exceeding the simplified acquisition threshold for competition restricted to HUBZone small business when the requirements of paragraph 19.1305(b) of this section are satisfied. TFVE believes that the law was created to ensue that SDVOSBs can compete in free enterprise on an equal footing with other special programs. As you are aware, President Bush throughout his presidency has promoted his beliefs in the free enterprise system that promotes liberty. He further noted that the “government’s role is not one of handouts or entitlements instead, government’s role is to ensure that the playing field is level for all involved.” Yet our ability to provide the government with the products they need is being threatened by the very people we serve. The TFVE request that the final rules eliminate the word “may” and replace it with “shall.” The TFVE points out that this is a right that has been **earned** by SDVOSBs by virtue of military service, and being injured by said service to country.

Parity/Self Market

A common misconception that we have identified among decision-makers and contractors around the country is that all 8(a) and HUBZone set aside goals must be completely satisfied before contracts are set-aside for SDVOSBs. We have also heard that many contracting officers are fearful that a sole source to a SDVOSB would draw too many complaints from other groups.

Section 308 of the Veterans Benefits Act of 2003, Procurement Program for Small Business Concerns Owned and Controlled by Service-Disabled Veterans (P. L. 108-183) states:

“The Small Business Act (15 U.S.C. 631 et seq.) is amended by redesignating section 36 <<NOTE: 15 USC 631 note.>> as section 37 and by inserting after section 35 the following new section:

“SEC. 36. <<NOTE: 15 USC 657f.>> **PROCUREMENT PROGRAM FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.**

“(a) Sole Source Contracts.--In accordance with this section, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if--

“(1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity;

“(2) the anticipated award price of the contract (including options) will not exceed--

“(A) \$5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or
“(B) \$3,000,000, in the case of any other contract opportunity; and
“(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.”

“(b) Restricted Competition.--In accordance with this section, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.”

However, FAR Case 2004-002 changed the wording to state:

“The law provides for set-aside and sole source procurement authority for service-disabled veteran-owned small business (SDVOSB) concerns. This interim rule is published in conjunction with the interim rule proposed by the Small Business Administration.”

FAR Part 19 is modified by the interim rule. That modification states:

19.1405 Service-disabled veteran-owned small business set-aside procedures.

- (a) The contracting officer may set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to service-disabled veteran-owned small business concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider service-disabled veteran-owned small business set-asides before considering service-disabled veteran-owned small business sole source awards (see 19.1406).
- (b) To set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the contracting officer must have a reasonable expectation that--
 - (1) Offers will be received from two or more service-disabled veteran-owned small business concerns; and
 - (2) Award will be made at a fair market price.
- (c) If the contracting officer receives only one acceptable offer from a service-disabled veteran-owned small business concern in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from service-disabled veteran-owned small business concerns, the service-disabled veteran-owned set-aside shall be *withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see Subpart 19.5).*”

Congress did not use the words “set-aside.” They did provide for “Restricted Competition” if the contracting officer has a **reasonable expectation** that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.” Congress did not require that a *set-aside* must first be achieved.

FAR Case 2004-002 requires a SDVOSB set-aside before a sole-source can be awarded. The reason why congress used “Restricted Competition” is because of a belief that service-disabled veteran-owned concerns must be at the *same level* of competition as 8(a) concerns. An 8(a) concern can market federal agencies and, if the 8(a) convinces the federal customer and contracting officer that they can perform the service or obtain the product required, the contracting officer can award a non-competitive (sole source) award without announcing the requirement or using a set-aside for the requirement. In order for a contracting officer to award a contract over \$100,000 from a SDVOB, the contracting officer is required to announce the requirement as a SDVOB set-aside. Ten days or more is required for the purchase. If a SDVOB has marketed to the extent that the agency wants to purchase from **that SDVOB** they must announce a set-aside when the contracting officer knows there will not be another SDVOB capable of meeting the same requirements. This is the advantage of the 8(a) non-competitive sole-source. The new FAR puts the 8(a) at a different level. This is neither right, nor is it actually derived from a fair reading of the statute. Therefore this section should be eliminated!

It may be the FAR Council’s opinion or belief that sole source procurements should be difficult to obtain, but that was not the intent of Public Law 108-183. Public Law 108-183 wording supports the belief that the contracting officers’ “*reasonable expectation*” is sufficient.

FAR Part 19.1404 Exclusions go far beyond Public Law 108-183. Public Law 108-183 states:

“(c) Relationship to Other Contracting Preferences.--A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).”

FAR Part 19.1404 Exclusions, states:

“This subpart does not apply to--

(a) Requirements that can be satisfied through award to--

- (1) Federal Prison Industries, Inc. (see Subpart 8.6);
- (2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see Subpart 8.7);

(b) Orders under indefinite delivery contracts (see Subpart 16.5);

- (c) Orders against Federal Supply Schedules (see Subpart 8.4);
- (d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program; or
- (e) Requirements for commissary or exchange resale items.”

The interim rule should not include the additional exclusions in subparagraphs (b), (c), (d) and (e) of FAR Part 19.1404. There is nothing in the statute that supports these exclusions.

Self-Certification

The Small Business Administration (SBA) has established certification processes for the Small Disadvantage Businesses and 8(a) small business programs. Public Laws 106-50 and 108-183 permit self-certification for SDVOB's. However, there have already been business concerns claiming to be SDVOB qualified but are not. The TFVE is concerned that without the Department of Veterans Affairs (DVA) and the Department of Defense (DoD) or federally recognized entity certifying a SDVOSB, the doors will be open for fraud and abuse.

The DVA and DoD are the only two government agencies authorized to grant service-connected disability status to veterans. Thus it would be quite natural for these agencies to issue a letter indicating a veterans' disability status. The DVA currently has a similar program where it issues a letter to a veteran certifying Civil Service Preference in seeking government employment.

Absence an official certifying letter, as to the owner(s) are in fact a service-connected disabled veteran, we are afraid that the system that is currently in place where a contract awardees' claim of SDVOSB can be challenged, is time consuming and an unnecessary burden.

Sub Contracting SDVOSB Goals

As government contracts become larger, many SDVOSBs find that working as a subcontractor is their only chance of getting a piece of the federal pie. Unfortunately, many prime contractors have not been following through with their plans for subcontracting to SDVOSBs, and the federal government is doing little about it.

While SBA's reviews of contractor-reported data look at a range of important factors, such as management support and controls and actual performance, SBA's approach does not ensure that the highest risk contractors are adequately covered or that the officials responsible for monitoring contractor performance are aware of the results of reviews. Moreover, assessing the validity of SDVOSB subcontracting data government

wide is difficult because SBA does not readily summarize the results of their reviews in terms that would allow government wide assessments and enforcement of contractor performance or lack thereof.

Therefore the TFVE makes the following recommendations to improve compliance with SDVOSB subcontracting plans:

- Base SBA contractor reviews on compliance risks, such as size of the contract, date of the last review, and previous ratings. This will ensure that the larger or previous violators are aware that their plans will be closely monitored.
- Send the results of the reviews to contracting officers, especially when the ratings are marginal. With a plan of enforcement, this will ensure that the government official responsible for the contract is kept abreast of compliance.
- To promote government wide oversight, the SBA should produce an annual list of prime contractors who meet their small business plans by category. The primes who fail to meet their plans for two consecutive years should be barred from federal contracting until a suitable corrective action plan is received and approved. Or, if this is not feasible, enforce FAR 52.219-16 – “Liquidated Damages -- Subcontracting Plan.”
- Those prime contractors who consistently meet their subcontracting plans should be rewarded by receiving priority in future contracts. FAR 52.219-10 -- Incentive Subcontracting Program should be vigorously used where applicable.

Thank you for your consideration of these issues. Should you have any questions or require additional information, please contact Eddie Gleason at 301/585-4000 ext. 147

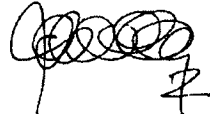
Sincerely,

Rick Weidman



Chairman

John Lopez



Co-Chairman

2004-002-17
770 Wellman Avenue
N Chelmsford, MA 01863

Tuesday, July 06, 2004

Dean Koppel
Assistant Administrator
Office of Policy and Research
409 3rd Street, SW
Washington, DC 20416

Attention: RIN 3245-AF16

Dear Mr. Koppel:

I am a member of the Task Force for Veterans' Entrepreneurship (TFVE) consisting of Veteran Service Organizations, Service Disabled Veteran Owned Small Businesses and Veteran Owned Small Businesses. I am also a service disabled veteran. As a member, I am writing to comment on the Interim Final Rules regarding Contracting Opportunities for Service Disabled Veteran Owned Small Business (SDVOSB).

As you may know, the TFVE was created prior to Public Law 106-50 and played a significant role in its development and passing. This holds true also for Public Law 108-183. Therefore, the analysis and recommendation of Public Law 108-183 comes with an accurate historical recollection. I was a task force member during this period, and continue to be actively involved in veteran entrepreneurship issues.

Generally, the provisions contained in the Interim Final Rules responded to many concerns expressed by SDVOSBs. In particular, I have been actively involved with SBA and other Federal agencies in the Boston area to commence SDVOSB contracting opportunity in areas of Federal financial assistance contracting. Specifically, I oversee a certification program for Disadvantaged Business Enterprises that is expected to recognize service disabled business owners within the ambit of these programs – not subject to PL-108-183. Indeed, the State of Massachusetts' recent contracting requirements for veteran owned business speaks to the State of Massachusetts' strong commitment to veterans.

Although the speed of the release of the rules is appreciated, unfortunately I have discovered a few provisions within the drafted regulations that were not originally intended by Public Law 108-183 and, if promulgated, have a direct and adverse effect on my ability to take full advantage of such opportunities. We can all agree that the sacrifices by veterans in preserving our Nation and the Constitution deserves nothing less than unequivocal commitment by government representatives to accurately render the procurement rights of veterans, as intended by law. Clearly, there are those in the government who may hold a different view. Hopefully, these interim regulations will be able to establish an appropriate path for all agencies to follow in support of SDVOSBs.

002-17

While I fully endorse the TFVE comments, I will comment also in greater detail on several provisions below that are of particular concern.

“May” vs. “Shall”

FAR 19-1305 HUBZone set aside procedures read “the contracting officer **SHALL** set aside all acquisition exceeding the simplified acquisition threshold for competition restricted to HUBZone small business when the requirements of paragraph 19.1305(b) of this section are satisfied. TFVE believes that the law was created to ensue that SDVOSBs can compete in free enterprise on an equal footing with other special programs. As you are aware, President Bush throughout his presidency has promoted his beliefs in the free enterprise system that promotes liberty. He further noted that the “government’s role is not one of handouts or entitlements instead, government’s role is to ensure that the playing field is level for all involved.” Yet our ability to provide the government with the products they need is being threatened by the very people we serve. The TFVE request that the final rules eliminate the word “may” and replace it with “shall.” The TFVE points out that this is a right that has been **earned** by SDVOSBs by virtue of military service, and being injured by said service to country. Clearly, offering such discretion has and will continue to result in empowering agency procurement decisions that are inconsistent with congressional intent under PL108-186.

Parity/Self Market

A common misconception that we have identified among decision-makers and contractors around the country is that all 8(a) and HUBZone set aside goals must be completely satisfied before contracts are set-aside for SDVOSBs. We have also heard that many contracting officers are fearful that a sole source to a SDVOSB would draw too many complaints from other groups. In effect, SDVOBs should NOT be confused with presumptive or protected classes by virtue of race, sex or national origin.

Section 308 of the Veterans Benefits Act of 2003, Procurement Program for Small Business Concerns Owned and Controlled by Service-Disabled Veterans (P. L. 108-183) states:

“The Small Business Act (15 U.S.C. 631 et seq.) is amended by redesignating section 36 <<NOTE: 15 USC 631 note.>> as section 37 and by inserting after section 35 the following new section:

“SEC. 36. <<NOTE: 15 USC 657f.>> PROCUREMENT PROGRAM FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.

“(a) Sole Source Contracts.--In accordance with this section, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if--

“(1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity;

“(2) the anticipated award price of the contract (including options) will not exceed--

“(A) \$5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

“(B) \$3,000,000, in the case of any other contract opportunity; and

“(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

“(b) Restricted Competition.--In accordance with this section, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.”

However, FAR Case 2004-002 changed the wording to state:

“The law provides for set-aside and sole source procurement authority for service-disabled veteran-owned small business (SDVOSB) concerns. This interim rule is published in conjunction with the interim rule proposed by the Small Business Administration.” In fact, PL 108-183 establishes a right and expectation. Thus, this policy dramatically differs from the intent of the 8(a) program.

FAR Part 19 is modified by the interim rule. That modification states:

19.1405 Service-disabled veteran-owned small business set-aside procedures.

- (a) The contracting officer may set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to service-disabled veteran-owned small business concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider service-disabled veteran-owned small business set-asides before considering service-disabled veteran-owned small business sole source awards (see 19.1406).
- (b) To set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the contracting officer must have a reasonable expectation that--
 - (1) Offers will be received from two or more service-disabled veteran-owned small business concerns; and
 - (2) Award will be made at a fair market price.

- (c) If the contracting officer receives only one acceptable offer from a service-disabled veteran-owned small business concern in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from service-disabled veteran-owned small business concerns, the service-disabled veteran-owned set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see Subpart 19.5)."

Congress did not use the words "set-aside." They did provide for "Restricted Competition" if the contracting officer has a **reasonable expectation** that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price." Congress did not require that a *set-aside* must first be achieved.

FAR Case 2004-002 requires a SDVOSB set-aside before a sole-source can be awarded. The reason why congress used "Restricted Competition" is because of a belief that service-disabled veteran-owned concerns must be at the *same level* of competition as 8(a) concerns. An 8(a) concern can market federal agencies and, if the 8(a) convinces the federal customer and contracting officer that they can perform the service or obtain the product required, the contracting officer can award a non-competitive (sole source) award without announcing the requirement or using a set-aside for the requirement. In order for a contracting officer to award a contract over \$100,000 from a SDVOB, the contracting officer is required to announce the requirement as a SDVOB set-aside. Ten days or more is required for the purchase. If a SDVOB has marketed to the extent that the agency wants to purchase from **that SDVOB** they must announce a set-aside when the contracting officer knows there will not be another SDVOB capable of meeting the same requirements. This is the advantage of the 8(a) non-competitive sole-source. The new FAR puts the 8(a) at a different level. This is neither right, nor is it actually derived from a fair reading of the statute. Therefore this section should be eliminated!

It may be the FAR Council's opinion or belief that sole source procurements should be difficult to obtain, but that was not the intent of Public Law 108-183. Public Law 108-183 wording supports the belief that the contracting officers' "*reasonable expectation*" is sufficient.

FAR Part 19.1404 Exclusions go far beyond Public Law 108-183. Public Law 108-183 states:

“(c) Relationship to Other Contracting Preferences.--A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).”

FAR Part 19.1404 Exclusions, states:

“This subpart does not apply to--

2004-002-17

- (a) Requirements that can be satisfied through award to--
 - (1) Federal Prison Industries, Inc. (see Subpart 8.6);
 - (2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see Subpart 8.7);
- (b) Orders under indefinite delivery contracts (see Subpart 16.5);
- (c) Orders against Federal Supply Schedules (see Subpart 8.4);
- (d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program; or
- (e) Requirements for commissary or exchange resale items.”

The interim rule should not include the additional exclusions in subparagraphs (b), (c), (d) and (e) of FAR Part 19.1404. There is nothing in the statute that supports these exclusions.

Self-Certification

The Small Business Administration (SBA) has established certification processes for the Small Disadvantage Businesses and 8(a) small business programs. Public Laws 106-50 and 108-183 permit self-certification for SDVOB's. However, there have already been business concerns claiming to be SDVOB qualified but are not. The TFVE is concerned that without the Department of Veterans Affairs (DVA) and the Department of Defense (DoD) or federally recognized entity certifying a SDVOSB, the doors will be open for fraud and abuse. Indeed, the activities of the Association of Service Disabled Veterans (ASDV) stretch the bounds of certification requirements by implying that it offers such certifications.

The DVA and DoD are the only two government agencies authorized to grant service-connected disability status to veterans. Thus it would be quite natural for these agencies to issue a letter indicating a veterans' disability status. The DVA currently has a similar program where it issues a letter to a veteran certifying Civil Service Preference in seeking government employment. ASDV's attempt through its membership on the Task Force should be seen as an attempt to expand its business rather than act in the best interest of all SDVOBs. While such business efforts may be acceptable, private practice should and must not have a place in public policy.

Absence an official certifying letter, as to the owner(s) are in fact a service-connected disabled veteran, we are afraid that the system that is currently in place where a contract awardees' claim of SDVOSB can be challenged, is time consuming and an unnecessary

2004-002-17

burden. Under State of Massachusetts law, DVA and/or DoD certification is accepted as evidence of service eligibility for State programs for veteran entrepreneurs. No other certification is required under the State's omnibus legislation. I would encourage Federal rules to adopt this streamlined model as applicable and appropriate.

Sub Contracting SDVOSB Goals

As government contracts become larger, many SDVOSBs find that working as a subcontractor is their only chance of participating. Unfortunately, many prime contractors have not been following through with their plans for subcontracting to SDVOSBs, and the federal government is doing little about it. I oversee such a program where SDVOB interests are considered and agree with the Task Force's observation.

While SBA's reviews of contractor-reported data look at a range of important factors, such as management support and controls and actual performance, SBA's approach does not ensure that the highest risk contractors are adequately covered or that the officials responsible for monitoring contractor performance are aware of the results of reviews. Moreover, assessing the validity of SDVOSB subcontracting data government wide is difficult because SBA does not readily summarize the results of their reviews in terms that would allow government wide assessments and enforcement of contractor performance or lack thereof. Indeed, in related contracting areas, prime contractors are not held to such standards and/or such standards of scrutiny are not followed for non-SDVOSBs.

Therefore the TFVE makes the following recommendations to improve compliance with SDVOSB subcontracting plans:

- Base SBA contractor reviews on compliance risks, such as size of the contract, date of the last review, and previous ratings. This will ensure that the larger or previous violators are aware that their plans will be closely monitored.
- Send the results of the reviews to contracting officers, especially when the ratings are marginal. With a plan of enforcement, this will ensure that the government official responsible for the contract is kept abreast of compliance.
- To promote government wide oversight, the SBA should produce an annual list of prime contractors who meet their small business plans by category. The primes who fail to meet their plans for two consecutive years should be barred from federal contracting until a suitable corrective action plan is received and approved. Or, if this is not feasible, enforce FAR 52.219-16 -- "Liquidated Damages -- Subcontracting Plan."
- Those prime contractors who consistently meet their subcontracting plans should be rewarded by receiving priority in future contracts. FAR 52.219-10 -- Incentive Subcontracting Program should be vigorously used where applicable.

2004-002-17

Thank you for your consideration of these issues. Should you have any questions or require additional information, please contact me at 978-251-1927.

Sincerely,

David Palés
Task Force Member