



**DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR ACQUISITION AND LOGISTICS
WASHINGTON DC 20420**

**IL 001AL-09-06
August 17, 2009**

OFFICE OF ACQUISITION AND LOGISTICS INFORMATION LETTER

TO: Under Secretaries for Health, Benefits, and Memorial Affairs; Assistant Secretary for Management; Veterans Integrated Service Network Directors; Directors, VA Medical Center Activities, Directors, Denver Distribution Center, and the Executive Director and Chief Operating Officer, VA National Acquisition Center

ATTN: Heads of Contracting Activities (HCAs) and Contracting Officers (COs)

SUBJ: Applicability of 38 United States Code (U.S.C.) § 8127-8128 (Sections 502 and 503 of Public Law (P.L.) 109-461, "Veterans Benefits, Health Care, and Information Technology Act of 2006") to Department of Veterans Affairs (VA) Ammunition Acquisitions

I. PURPOSE

This Information Letter (IL) provides amplifying guidance for adherence to the requirements of 38 U.S.C. § 8127-8128 when procuring ammunition requirements above the micro-purchase threshold (currently \$3000) and below \$25,000. The Non-Manufacturer Rule is applicable to acquisitions at or above \$25,000.

II. SCOPE

During fiscal year 2008, 14 specific ammunition procurement actions above the micro-purchase threshold and below \$25,000 were executed within the VA enterprise, all of which should have been executed in accordance with the appropriate provisions of 38 U.S.C. § 8127-8128 and IL 049-07-08, Veterans First Contracting Program. Pertinent extracts of sections 8127 and 8128 of Title 38 containing specific guidance for awarding contracts to small business concerns owned and controlled by Veterans are as follows:

A. Section 8127 subsections (b) through (e).

- 1. Use of Noncompetitive Procedures for Certain Small Contracts.** For purposes of meeting the goals for contracting opportunities for small business concerns owned and controlled by Veterans and small business concerns owned and controlled by Veterans with service-connected disabilities, and in accordance with this section, in entering into a contract with a small business concern owned and controlled by Veterans for an amount less than the simplified acquisition

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[as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. § 403)], a CO of the Department may use procedures other than competitive procedures.

- 2. Sole Source Contracts for Contracts Above Simplified Acquisition Threshold.** For purposes of meeting the goals for contracting opportunities for small business concerns owned and controlled by Veterans and small business concerns owned and controlled by Veterans with service-connected disabilities, and in accordance with this section, a CO of the Department may award a contract to a small business concern owned and controlled by Veterans using procedures other than competitive procedures if: (1) such concern is determined to be a responsible source with respect to performance of such contract opportunity; (2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold [as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. § 403)] but will not exceed \$5 million; and (3) in the estimation of the CO, the contract award can be made at a fair and reasonable price that offers best value to the United States Government.
- 3. Use of Restricted Competition.** Except as provided in sections 1 and 2 above, for purposes of meeting the goals under subsection (a) (contracting opportunities for small business concerns owned and controlled by Veterans and small business concerns owned and controlled by Veterans with service-connected disabilities), and in accordance with this section, a CO of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by Veterans if the CO has a reasonable expectation that two or more small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States Government.
- 4. Eligibility of Small Business Concerns.** A small business concern may be awarded a contract under this section only if the small business concern and the Veteran owner of the small business concern are listed in the database of Veteran-owned businesses maintained by the Secretary.

B. Section 8128.

1. Contracting Priority. In procuring goods and services pursuant to a contracting preference under this title or any other provision of law, the Secretary shall give priority to a small business concern owned and controlled by Veterans, if such business concern also meets the requirements of that contracting preference.

2. Definition. For purposes of this section, the term “small business concern owned and controlled by Veterans” means a small business concern that is included in the small business database maintained by the Secretary under section 8127(f) of this title.

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III. POLICY

Therefore, effective immediately, in order to ensure appropriate business opportunities are properly afforded to both small business concerns owned and controlled by Veterans and to small business concerns owned and controlled by Veterans with service-connected disabilities, all COs must adhere to the authorities and requirements of 38 U.S.C. § 8127-8128 as outlined above when advertising and awarding contracts for the replenishment of VA Police Force ammunition.

As stated above, for acquisitions pursuant to this authority, a determination of price reasonableness is still required for any contract award. In making such a determination, the CO may consider such factors as the government estimate, the procurement history for the solicited services, the current market climate, and a "courtesy bid" of an otherwise ineligible large business offeror. (*Nutech Laundry & Textiles, Inc.*, B -291739, Feb. 10, 2003, 2003 CPD ¶ 34 at 4; *see also*, guidance in Federal Acquisition Regulation (FAR) sections 19.202 -6, 15.404 -1(b)).

Furthermore, in view of the congressional policy favoring veteran small businesses under 38 U.S.C. § 8127-8128, contracts may be awarded under these procedures to Veteran small business firms at premium prices, so long as those prices are not unreasonable. (*Hardcore DuPont Composites, LLC*, B -278371, Jan. 20, 1998, 98 -1 CPD ¶ 28 at 3. The determination of whether a Veteran small business' price premium is unreasonable must have a rational basis and is primarily within the discretion of the CO (*Olsen Env'tl. Servs., Inc.*, B -241475, Feb. 6, 1991, 91 -1 CPD ¶ 126 at 2 -3), and cancellations have been determined to be proper where the small businesses price exceeded the government estimate by as little as 7.2 percent (see *Building Maint. Specialists, Inc.*, B -186441, Sept. 10, 1976, 76 -2 CPD ¶ 233 at 4).

IV. POINT OF CONTACT

Questions regarding this policy should be directed to the Office of Acquisition and Logistics, Logistics Policy Division, at (202) 461-6927.

/S/

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Acquisition and Logistics Programs and Policy