



# VA ACQUISITION CIRCULAR

December 8, 2009

Number 2008-01

- 1. Material Transmitted:** The attached pages contain revisions to the Department of Veterans Affairs Acquisition Regulation (VAAR) Parts 802, 804, 808, 809, 813, 815, 817, 819, 828, and 852.
- 2. Summary of Changes:** This acquisition circular provides replacement pages for the loose-leaf version of the VAAR. It incorporates final rule RIN 2900-AM92, Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses, published in the Federal Register on December 8, 2009. RIN 2900-AM92 implements portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (the Act) and Executive Order 13360, providing opportunities for service-disabled veteran-owned small businesses (SDVOSB) to increase their Federal contracting and subcontracting. The Act and the Executive Order authorize the Department of Veterans Affairs (VA) to establish special methods for contracting with SDVOSBs and veteran-owned small businesses (VOSB). Under this final rule, a VA contracting officer may restrict competition to contracting with SDVOSBs or VOSBs under certain conditions. Likewise, sole source contracts with SDVOSBs or VOSBs are permissible under certain conditions.

This final rule implements these special acquisition methods as a change to the VA Acquisition Regulation (VAAR). This rule additionally amends SDVOSB/VOSB, Small Business Status Protests, where VA provided that VA would utilize the U.S. Small Business Administration (SBA) to consider and decide SDVOSB and VOSB status protests. This requires VA and SBA to execute an interagency agreement pursuant to the Economy Act. Negotiations of this interagency agreement have not yet been finalized. Therefore, VA has amended these regulations with an interim rule to provide that VA's Executive Director, Office of Small and Disadvantaged Business Utilization (OSDBU) shall consider and decide SDVOSB and VOSB status protests, and provides procedures there for, until such time as the interagency agreement is executed by the agencies.

### 3. Filing Instructions:

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4. **Effective date:** RIN 2900-AM92 is effective on January 7, 2010.

Jan R. Frye  
Deputy Assistant Secretary  
for Acquisition and Logistics

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**SUBCHAPTER A—GENERAL  
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802.101            Definitions

AUTHORITY: 38 U.S.C. 8127 AND 8128; 40 U.S.C. 121(C) AND (D); AND 48 CFR 1.301–1.304. |

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**SUBPART 802.1 – DEFINITIONS****802.101 Definitions.**

A/E means architect/engineer.

Chief Acquisition Officer means the Assistant Secretary for Management.

COTR means Contracting Officer's Technical Representative or Contracting Officer's Representative.

D&S Committee means the VA Debarment and Suspension Committee, a committee consisting of the Director, Acquisition Resources Service (chair), and representatives of the Office of Management, Office of Inspector General, and the program office to which the particular debarment or suspension case relates. A representative from OGC will serve as legal counsel to the D & S Committee.

Debarring official means the DSPE, who is also the Associate Deputy Assistant Secretary for Acquisitions. Authority to impose debarment is delegated to the SPE and is further delegated to the DSPE.

DSPE means the Deputy Senior Procurement Executive, who is also the Associate Deputy Assistant Secretary for Acquisitions. The DSPE must be career member of the Senior Executive Service.

FAR means the Federal Acquisition Regulation.

GAO means the Government Accountability Office.

HCA means the Head of the Contracting Activity, an individual appointed in writing by the DSPE under VA's Appointment of HCAs Program (see 801.695).

OGC means the Office of the General Counsel.

Resident Engineer has the same meaning as contracting officer's technical representative or contacting officer's representative (see 852.270-1).

Service-disabled veteran-owned small business concern (SDVOSB) has the same meaning as defined in the Federal Acquisition Regulation (FAR) part 2.101, except for acquisitions authorized by 813.106 and subpart 819.70. These businesses must then be listed as verified on the Vendor Information Pages (VIP) database at <http://www.vetbiz.gov>. In addition, some businesses may be owned and controlled by a surviving spouse.

Small business concern has the same meaning as defined in FAR 2.101.

SPE means the Senior Procurement Executive who is also the Deputy Assistant Secretary for Acquisition and Materiel Management. The SPE is responsible for the management direction of the VA acquisition system. The SPE may further delegate authority to the DSPE.

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

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

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

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) The date that is 10 years after the date of the veteran's death; or

(iv) The date on which the business concern is no longer small under federal small business size standards.

(3) The veteran must have had a 100 percent service-connected disability rating or the veteran died as a direct result of a service-connected disability.

Suspending official means the DSPE. Authority to impose suspension is delegated to the SPE and is further delegated to the DSPE.

VA means the Department of Veterans Affairs.

VAAR means the Department of Veterans Affairs Acquisition Regulation.

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



VISN means Veterans Integrated Service Network, an integrated network of VA facilities that are focused on pooling and aligning resources to best meet local needs in the most cost-effective manner and provide greater access to care.

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**SUBCHAPTER A—GENERAL  
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804.101 Contracting officer's signature.

804.1102 Vendor Information Pages (VIP) Database |

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

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**SUBPART 804.1 – CONTRACT EXECUTION**

**804.101 Contracting officer's signature.**

(a) If a contracting officer's name and title has been typed, stamped, or printed on the contract, and that contracting officer is not available to sign the contract, another contracting officer, as specified in 801.602, may sign the contract.

(b) The contracting officer who signs the contract must have contracting authority to cover the contract to be signed and must annotate his or her name and title below his or her signature.

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

Prior to January 1, 2012, all VOSBs and SDVOSBs must be listed in the VIP database, available at <http://www.VetBiz.gov>, and also must be registered in the Central Contractor Registration (CCR) (see 48 CFR subpart 4.11) to receive contract awards under VA's Veteran-owned Small Business prime contracting and subcontracting opportunities program. After December 31, 2011, all VOSBs, including SDVOSBs, must be listed as verified in the VIP database, and also must be registered in the CCR to be eligible to participate in order to receive new contract awards under this program.

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**SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING  
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808.802           Policy.

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

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**808.002 Priorities for use of Government supply sources.**

(a) Supplies. (1) As used in FAR 8.002(a)(1)(i), the term “agency inventories” includes Supply Fund Stock and VA Excess.

(2) A national committed use contract awarded by the VA National Acquisition Center has a priority between wholesale supply sources (FAR 8.002(a)(1)(v)) and mandatory Federal Supply Schedules (FAR 8.002(a)(1)(vi)).

(3) Federal Supply Schedule contracts awarded by the VA National Acquisition Center in Federal Supply Classification (FSC) Groups 65 and 66 shall be mandatory for use by VA and shall have the same order of priority as mandatory Federal Supply Schedules (FAR 8.002(a)(1)(vi)). VA contracting officers must place orders against Federal Supply Schedules contracts awarded by the VA National Acquisition Center in FSC Groups 65 and 66 in the following descending order of priority:

(i) Nationally awarded Blanket Purchase Agreements (BPAs), issued by the VA National Acquisition Center against Federal Supply Schedules.

(ii) Multi-VISN, single-VISN, or locally awarded BPAs, issued by VISN, regional, or local VA contracting officers against Federal Supply Schedules.

(iii) Federal Supply Schedules without BPAs.

(4) Indefinite delivery indefinite quantity (IDIQ) contracts, awarded by VISN, regional, or local facility VA contracting officers, for supplies not covered by national committed use contracts or Federal Supply Schedule contracts shall have an order of priority between optional use Federal Supply Schedules (FAR 8.002(1)(a)(vii)) and commercial sources (including educational and nonprofit institutions) (FAR 8.002(1)(a)(viii)). VA contracting officers must place delivery orders against IDIQ contracts, awarded by VISN, regional, or a local facility contracting officers, for supplies not covered by national committed use contracts or Federal Supply Schedule contracts in the following descending order of priority:

(i) VISN or regionally awarded contracts.

(ii) Locally awarded contracts.

(5) Open market purchases (purchases not falling within any of the higher priorities in paragraphs (a)(2) through (4) of this section) have the

same priority as commercial sources (including educational and nonprofit institutions) (FAR 8.002(1)(a)(viii)).

(b) Unusual or compelling urgency. The contracting officer may use a source lower in priority than as specified in paragraph (a) when the need for supplies or services is of an unusual or compelling urgency (see FAR 6.302-2). The Contracting Officer must include a justification for each deviation in the procurement file.

(c) Eligible Beneficiaries. (1) A contracting Officer may authorize an acquisition from the Veterans Canteen Service or a commercial source when a VA healthcare official (e.g., social worker, physician) determines that personal selection of shoes, clothing, and incidentals will result in a therapeutic benefit to an eligible beneficiary.

(2) The contracting officer must cite Federal Prison Industries, Inc., clearance No. 1206 in the purchase document for any purchase from a commercial source of dress shoes similar to Federal Prison Industries, Inc., Style No. 86-A.

## **SUBPART 808.4 – FEDERAL SUPPLY SCHEDULES**

### **808.402 General.**

The Executive Director and Chief Operating Officer, VA National Acquisition Center, advertises, negotiates, awards, administers, and issues the Federal Supply Schedules for Federal Supply Classification Groups 62, 65, and 89 and for cost-per-test services under Group 66.

### **808.405-5 Ordering procedure for services requiring a statement of work.**

When placing an order or establishing a BPA for supplies or services requiring a statement of work, the ordering activity, when developing the statement of work and any evaluation criteria in addition to price, shall adhere to and apply the evaluation factor commitments at 815.304–70.

## **SUBPART 808.6 – ACQUISITIONS FROM FEDERAL PRISON INDUSTRIES, INC. (FPI)**

### **808.603 Purchase Priorities.**

Contracting officers may purchase supplies and services produced or provided by FPI from eligible service-disabled veteran-owned small businesses and veteran-owned small businesses, in accordance with procedures set forth in subpart 819.70, without seeking a waiver from FPI, in accordance with

38 U.S.C. 8128, Small business concerns owned and controlled by veterans:  
Contracting priority.

**SUBPART 808.8 – ACQUISITION OF PRINTING AND RELATED SUPPLIES**

**808.802 Policy.**

The Director, Publications Staff, Office of Acquisition and Materiel Management, VA Central Office, is the Central Printing Authority for VA (see FAR 8.802(b)).

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**SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING  
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AUTHORITY: 38 U.S.C. 8127 and 8128; 40 U.S.C. 121(c) and (d); and 48 CFR 1.301–1.304.

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(4) Whether the contractor timely reported to appropriate Government officials any suspected or possible violations of law in connection with Government contracts or any other irregularities in connection with such contracts.

**809.406-2 Cause for debarment.**

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

(b) Any deliberate violation of the limitation on subcontracting clause requirements for acquisitions under subpart 819.70 may result in action taken by VA officials to debar any service-disabled veteran-owned, veteran-owned small business concern or any large business concern involved in such action.

**809.406-3 Procedures.**

(a) Any individual may submit a recommendation to debar a contractor to the DSPE. The recommendation to debar must be supported with evidence of a cause for debarment listed in FAR 9.406-2. When the DSPE receives a recommendation for debarment, he or she will refer the matter to the D&S Committee. If the reporting individual is a VA employee and the recommendation to debar is based on possible criminal or fraudulent activities, the VA employee must report the circumstances to the VA Office of Inspector General before making a recommendation to the DSPE.

(b) When the D&S Committee finds evidence of a cause for debarment, as listed in FAR 9.406-2, with or without a recommendation, it will conduct a fact-finding and present facts to the debarring official.

(c) If the debarring official finds a basis for proposing a contractor for debarment, the D&S Committee will prepare a notice of proposed debarment under FAR 9.406-3(c) for the signature of the debarring official. The signed notice of proposed debarment will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested. In the case of a business, the D&S Committee may send the notice of proposed debarment to any partner, principal, officer, director, owner or co-owner, or joint venture. The D&S Committee concurrently must post notice of proposed debarment to the General Services Administration Excluded Parties List System pending a debarment decision.

(d) If VA does not receive a reply from the contractor within 45 calendar days of sending the notice of proposed debarment, the D&S Committee will

prepare a recommendation and refer the case to the debarring official for a decision on whether or not to debar based on the information available.

(e) If VA receives a reply from the contractor within 45 calendar days of sending the notice of proposed debarment, the D&S Committee must consider the information in the reply before the D&S Committee makes its recommendation to the debarring official.

(f) The D&S Committee, upon the request of the contractor proposed for debarment, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S Committee to present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript. The D&S Committee shall prepare a report of the proceeding for the debarring official.

(g) If the D&S Committee finds that the contractor's submission in opposition to the debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil judgment, then the D&S Committee shall submit to the debarring official the information establishing the dispute of material facts. If the debarring official agrees that there is a genuine dispute of material facts, the debarring official shall refer the dispute to a designee for resolution pursuant to 809.470.

(h) If there are no disputes over material facts, the debarment action is based on a conviction or civil judgment, or all disputes over material facts have been resolved pursuant to 809.470, the debarring official will make a decision on the basis of all information available, including findings of facts and oral or written arguments presented or submitted to the D&S Committee by the contractor. The D&S Committee must update the status of the action on the General Services Administration Excluded Parties List System.

#### **809.406-4 Period of debarment.**

(a) Except in an unusual circumstance, the period of debarment will not exceed 3 years. The debarring official will base the period of debarment on the circumstances surrounding the cause for debarment.

(b) The DSPE may remove a debarment, amend its scope, or reduce the period of debarment based on a D&S Committee recommendation if:

(1) VA has debarred the contractor;

(2) The action is indicated after the DSPE reviews documentary evidence submitted by or on behalf of the contractor setting forth the



appropriate grounds for granting relief. Appropriate grounds include newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, elimination of the cause for which debarment was imposed, or any other appropriate grounds.

### **809.407 Suspension.**

#### **809.407-1 General.**

(a) As provided in FAR 9.407-1(d), authority to determine whether to continue business dealings between VA and a suspended contractor is delegated to the SPE and is further delegated to the DSPE.

(b) For the purposes of FAR 9.407-1, the DSPE is the suspending official under the Federal Management Regulation at 41 CFR 102-117.295.

#### **809.407-3 Procedures.**

(a) Any individual may submit a recommendation to suspend a contractor to the DSPE. The recommendation to suspend must be supported with evidence of a cause for suspension listed in FAR 9.407-2. When the DSPE receives a recommendation for suspension, he or she will refer the matter to the D&S Committee. If the reporting individual is a VA employee and the recommendation to suspend is based on possible criminal or fraudulent activities, the VA employee must report the circumstances to the VA Office of Inspector General before making a recommendation to the DSPE.

(b) When the D&S Committee finds evidence of a cause for suspension, as listed in FAR 9.407-2, with or without a recommendation, it will conduct a fact-finding and present facts and recommendations to the suspending official.

(c) If the suspending official finds a basis for suspending a contractor, the D&S Committee will prepare a notice of suspension under FAR 9.407-3(c) for the signature of the suspending official. The signed notice of suspension will be sent to the last known address of the contractor, the contractor's counsel, or agent for service of process, by certified mail, return receipt requested. In the case of a business, the D&S Committee may send the notice of suspension to any partner, principal, officer, director, owner or co-owner, or joint venture. The D&S Committee concurrently must post notice of suspension to the General Services Administration Excluded Parties List System pending completion of investigation and any ensuing legal proceedings.

(d) If VA receives a reply from the contractor within 45 calendar days of sending the notice of suspension, the D&S Committee must consider the information in the reply before the Committee makes further recommendations to

the suspending official. The D&S Committee, upon the request of a suspended contractor, must, as soon as practicable, allow the contractor an opportunity to appear before the D&S Committee to present information or argument in person or through a representative. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript. The D&S Committee shall prepare a report of the proceeding for the suspending official.

(e) In actions not based on an indictment, if the D&S Committee finds that the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, the D&S Committee shall submit to the suspending official the information establishing the dispute of material facts. However, the D&S Committee must first coordinate any further proceeding regarding the facts in dispute with the Department of Justice or with a State prosecuting authority in a case involving a State jurisdiction. VA will take no further action to determine disputed material facts pursuant to this section or 809.470 if the Department of Justice or a State prosecuting authority advises VA that additional proceedings to make such a determination would prejudice Federal or State legal proceedings.

(f) If the suspending official agrees that there is a genuine dispute of material facts, the suspending official shall refer the dispute to the designee for resolution pursuant to 809.470.

#### **809.470 Fact-finding procedures.**

The provisions of this section constitute the procedures to be used to resolve genuine disputes of fact pursuant to 809.406-3 and 809.407-3 of this chapter. The DSPE shall appoint a designee to conduct the fact-finding. OGC shall represent VA at any fact-finding hearing and may present witnesses for VA and question any witnesses presented by the contractor. The hearings shall be conducted in Washington, DC. The proceedings before the fact-finder will be limited to a finding of the facts in dispute, as determined by the debarring or suspending official. The fact-finder will establish the date for the fact-finding hearing, normally to be held within 45 working days of the submission of the dispute.

(a) The Government's representative and the contractor will have an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative at the fact-finding hearing. The contractor may submit documentary evidence, present witnesses, and confront any person the agency presents.

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**Part 809—Contractor Qualifications**

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(b) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceedings and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(c) The proceedings shall be transcribed and a copy of the transcript shall be made available at cost to the contractor upon request, unless the contractor and the fact-finder, by mutual agreement, waive the requirement for a transcript.

(d) The fact-finder shall determine the disputed fact(s) by a preponderance of the evidence. As required by FAR 9.406-3(d)(2)(i) and 9.407-3(d)(2)(i), written findings of fact shall be prepared by the fact-finder. A copy of the findings of fact shall be provided to the debarring or suspending official, the Government's representative, and the contractor.

### **SUBPART 809.5 – ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST**

#### **809.503 Waiver.**

The HCA is delegated authority to waive any general rule or procedure of FAR Subpart 9.5. As provided at FAR 9.503, this authority may not be redelegated.

#### **809.504 Contracting officer responsibilities.**

(a) A contracting officer must determine whether awarding a contract will result in an actual or potential conflict of interest for the contractor.

(1) The contracting officer will make a conflict of interest determination after reviewing information submitted by offerors, evaluating information gathered under FAR 9.506, and exercising his or her own judgment.

(2) In evaluating possible organizational conflicts of interest, the contracting officer may obtain the advice of legal counsel and the assistance of technical specialists.

(b) If the contracting officer determines that there is no way to avoid or mitigate an organizational conflict of interest arising from a contract award, the contracting officer may disqualify the offeror from award under FAR 9.504(e).

(c) Even if awarding a contract will result in an organizational conflict of interest, the contracting officer may request a waiver from his or her HCA if awarding the contract is in the best interests of the Government.

(1) Before granting a waiver request under this paragraph, the HCA must obtain the concurrence of OGC.

(2) If the HCA grants a waiver request, the contracting officer may set contract terms and conditions to reduce any organizational conflict of interest to the greatest extent possible.

(d) In any solicitation for the services addressed at FAR 9.502, the contracting officer must require that each offeror submits a statement with its offer disclosing all facts relevant to an existing or potential organizational conflict of interest involving the contractor or any subcontractor during the life of the contract (see 809.507-1(b) and 852.209-70).

### **809.507 Solicitation provisions and contract clause.**

#### **809.507-1 Solicitation provisions.**

(a) While conflicts of interest may not presently exist, award of certain types of contracts may create potential future organizational conflicts of interest (see FAR 9.508 for examples). If a solicitation may create a potential future organizational conflict of interest, the contracting officer shall insert a provision in the solicitation imposing an appropriate restraint on the contractor's eligibility for award of contracts in the future. Under FAR 9.507-1, the restraint must be appropriate to the nature of the conflict and may exclude the contractor from award of one or more contracts in the future.

(b) The clause at 852.209-70, Organizational conflicts of interest, must be included in any solicitation for the services addressed in FAR 9.502.

**SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING**  
**PART 810—MARKET RESEARCH**

Sec.

810.001 Market research policy.

810.002 Market research procedures

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

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**810.001 Market research policy.**

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

**810.002 Market research procedures.**

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

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**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**  
**PART 813—SIMPLIFIED ACQUISITION PROCEDURES**

**Subpart 813.1 – Procedures**

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| 813.106    | Soliciting competition, evaluation of quotations or offers, award and documentation. |
| 813.106-3  | Award and documentation.   |
| 813.106-70 | Oral purchase orders.  |

**Subpart 813.2 – Actions at or Below the Micro-Purchase Threshold**

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**Subpart 813.3 – Simplified Acquisition Methods**

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

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**SUBPART 813.1 – PROCEDURES****813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.**

(a) Contracting officers may use other than competitive procedures to enter into a contract with a SDVOSB or VOSB when the amount exceeds the micropurchase threshold up to \$5 million.

(b) Requirements exceeding \$25,000 must be synopsized in accordance with FAR Part 5.

**813.106-3 Award and documentation.**

The contracting officer may record a quotation on an Abstract of Offers (SF 1409 or 1419), the purchase request if space permits, or other supplemental sheet or form, such as VA Form 10-2237b, Request for Dietetic Supplies.

**813.106-70 Oral purchase orders.**

When advantageous to VA, the contracting officer may use an oral purchase order for transactions not in excess of \$3,000. This limitation does not apply to delivery orders against existing contracts, e.g., delivery orders against Federal Supply Schedule contracts. The contracting officer must assign a purchase order number to the transaction. A copy of any electronically generated purchase order may be used as a property voucher and receiving report to document receipt.

**SUBPART 813.2 – ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD****813.202 Purchase guidelines.**

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

**SUBPART 813.3 – SIMPLIFIED ACQUISITION METHODS****813.302 Purchase orders.****813.305-5 Clauses.**

When using the VA Form 90-2138 or 90-2138-ADP for maintenance contracts involving services performed on Government property that have the potential for property damage and liability claims, the contracting officer shall

insert in the purchase order the Contractor's Responsibilities clause found at 852.237-70. Applicable maintenance contracts include, but are not limited to, window washing, pest control, and elevator maintenance.

**813.307 Forms.**

(a) The following forms provide a purchase or delivery order, vendor's invoice, and receiving report:

- (1) VA Form 90-2138, Order for Supplies or Services.
- (2) VA Form 90-2139, Order for Supplies or Services (Continuation).
- (3) VA Form 90-2138-ADP, Purchase Order for Supplies or Services.
- (4) VA Form 2139-ADP, Order for Supplies and Services (Continuation).

(b) The contracting officer may use the forms specified in paragraphs (a)(1) through (a)(4) of this section instead of OF 347, Order for Supplies or Services, OF 348, Order for Supplies or Services Schedule—Continuation, and SF 1449, Solicitation/Contract/Order for Commercial Items.

(c) The contracting officer or other properly delegated official (see 801.670-3) may use the following order forms when ordering the indicated medical, dental, and ancillary services totaling up to \$10,000 per authorization when such services are not available under existing contracts:

- (1) VA Form 10-7078, Authorization and Invoice for Medical and Hospital Services.
- (2) VA Form 10-7079, Request for Outpatient Medical Services.
- (3) VA Form 10-2570d, Dental Record Authorization and Invoice for Outpatient Service.

(d) In authorizing patient travel as set forth in VA manual MP-1, Part II, Chapter 3, the contracting officer or other properly delegated official (see 801.670-3) may use VA Form 10-2511, Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, as provided by that manual.

(e) The contracting officer must use SF 182, Request, Authorization, Agreement, and Certification of Training, for procurement of training.

Part 813—Simplified Acquisition Procedures

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(f) The contracting officer must use VA Form 10-2421, Prosthetics Authorization for Items or Services, for indicated services not in excess of \$300.

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**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES  
PART 815—CONTRACTING BY NEGOTIATION**

**Subpart 815.3 – Source Selection**

Sec.

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| 815.303    | Responsibilities.                              |
| 815.304    | Evaluation factors and significant subfactors. |
| 815.304-70 | Evaluations factor commitments.                |
| 815.304-71 | Solicitation provision and clause.             |

**Subpart 815.4 – Contract Pricing**

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| 815.404   | Proposal analysis.                        |
| 815.404-1 | Proposal analysis techniques.             |
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**Subpart 815.6 – Unsolicited Proposals**

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| 815.604   | Department points of contact. |
| 815.606   | Department procedures.        |
| 815.606-1 | Receipt and initial review.   |

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

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**SUBPART 815.3 – SOURCE SELECTION****815.303 Responsibilities.**

The authority of the Secretary to appoint an individual other than the contracting officer to serve as the source selection authority for a particular acquisition or group of acquisitions is delegated to the SPE and is further delegated to the DSPE. If an HCA wishes to designate an individual other than the delegated contracting officer as the source selection authority for a particular acquisition or group of acquisitions, the HCA shall prepare a request and justification and shall submit the request through channels to the DSPE for approval.

**815.304 Evaluation factors and significant subfactors.**

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

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

**815.304-70 Evaluation factor commitments.**

(a) VA contracting officers shall:

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

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

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

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

(b) If an offeror proposes to use an SDVOSB or VOSB subcontractor in accordance with 852.215–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, the contracting officer shall

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Part 815—Contracting by Negotiation

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ensure that the offeror, if awarded the contract, actually does use the proposed subcontractor or another SDVOSB or VOSB subcontractor for that subcontract or for work of similar value.

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

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

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

**SUBPART 815.4 – CONTRACT PRICING****815.404 Proposal analysis.****815.404-1 Proposal analysis techniques.**

(a) Contracting officers are responsible for the technical and administrative sufficiency of the contracts they enter into. Contracting officers must ensure that contracts undergo all applicable legal and technical reviews. (See 801.602-70.)

(b) Contracting officers determine the level of technical analyses necessary for initial and revised pricing of all negotiated prime contracts, including subcontract pricing under them, and contract modifications. Contracting officers must request technical analyses of the proposals from the appropriate technical personnel. The technical analyses must address, as a minimum, the items set forth in FAR 15.404-1(e)(2).

(c) The contracting officer must document the results of such analyses in the contract file and make the results available to the auditor performing the pre-award audit.

**815.404-2 Information to support proposal analysis.**

In evaluating start-up and other non-recurring costs, the contracting officer must determine the extent to which these costs are included in the proposed price and the intent to absorb or recover the costs in any future noncompetitive procurement or other pricing action. The contracting officer must ensure, with the assistance of the Assistant Inspector General for Policy, Planning, and Resources, as required or considered necessary, that VA will not pay the costs

twice. For example, the cost of equipment that the Government pays for through a setup or connection agreement must not be included in depreciation cost of a subsequently negotiated agreement.

### **SUBPART 815.6 – UNSOLICITED PROPOSALS**

#### **815.604 Department points of contact.**

A VA employee who receives an unsolicited proposal or inquiries from a potential offeror of an unsolicited proposal must refer the proposal or inquiries to the following:

- (a) Facility level unsolicited proposals must be referred to the HCA for the field facility.
- (b) Proposals to the VA National Acquisition Center must be referred to the Executive Director and Chief Operating Officer, VA National Acquisition Center.
- (c) Proposals to VA Central Office must be referred to the Director, Acquisition Operations Service (049A3).

#### **815.606 Department procedures.**

- (a) The VA contact point will do the following:
  - (1) Determine the nature of the potential proposal and which technical/professional disciplines within VA to consult to determine the need for the proposal and the likelihood that a formal proposal would earn favorable review.
  - (2) In consultation with such technical/ professional offices, the VA contact point will furnish the potential offeror the information specified in FAR 15.604 and any other information that might be of assistance to the potential offeror.
- (b) The contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.
- (c) The contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.605. If required information is not submitted, the contact point will:
  - (1) Determine if FAR 15.604 requires advance guidance;

(2) Determine whether a comprehensive evaluation prescribed by FAR 15.606-2 is appropriate and, if so, request that the offeror provide the necessary information; and,

(3) Establish an estimated due date for completion of the review process.

**815.606-1 Receipt and initial review.**

(a) When the VA contact point determines a proposal warrants a comprehensive evaluation (i.e., the proposal complies with the requirements in FAR 15.606-1(a) and is related to VA's mission), the contact point must contact the offeror to ensure that all data that should be restricted in accordance with FAR 15.609 has been identified.

(b) The contact point must maintain a log of all unsolicited proposals to be evaluated. The log must indicate the following:

(1) The date the proposal was received.

(2) The date that the unsolicited proposal was determined to warrant a comprehensive evaluation.

(3) A description of the proposal.

(4) The offices requested to evaluate the proposal and the date the offices are requested to return their evaluations.

(5) The date the reviewing offices finalize their respective evaluations.

(6) The final disposition of the proposal.

(c) The contact point must advise each office assigned responsibility for reviewing an unsolicited proposal of the need to evaluate the proposal against the criteria set forth in FAR 15.607(a)(1) through (4). If the reviewers determine that the proposal fails to meet any of the criteria, the contact point must be advised. The contact point must return the proposal to the offeror, citing the reasons therefore.

(d) The contact point must obtain approval of the DSPE (049A5) before the contact point, if warranted as a contracting officer, or an appropriate contracting officer begins negotiation on proposals. The contact point must provide the DSPE (049A5) all necessary documentation supporting the noncompetitive negotiation, including any justification and approval required by FAR Subpart 6.3 and the results of any synopsis required by FAR Subpart 5.2. The DSPE

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(049A5) will consult the appropriate VA Central Office program official(s) and return the final decision to the contact point.

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**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES  
PART 817—SPECIAL CONTRACTING METHODS**

**Subpart 817.1 – Multi-Year Contracting**

Sec.  
817.105 Policy.  
817.105-1 Uses.

**Subpart 817.2 – Options**

817.202 Use of options.  
817.204 Contracts.

**Subpart 817.4 – Leader Company Contracting**

817.402 Limitations.

**Subpart 817.5 – Interagency Acquisitions Under the Economy Act**

817.502 General.

AUTHORITY: 38 U.S.C. 8127.

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(2) Documentation that the contracting officer has considered and addressed the limitations specified in FAR 17.202(b) and (c).

(b) Solicitations that require technical review in accordance with 801.602-71 through 801.602-73 shall be submitted for review concurrently as provided therein.

#### **SUBPART 817.4 – LEADER COMPANY CONTRACTING**

##### **817.402 Limitations.**

(a) Except as provided in paragraph (b) of this section, the Government shall not initiate or execute leader company contracts.

(b) The DSPE may designate a contracting officer to enter into a leader company contract for the benefit of VA and the Government. The DSPE must designate a contracting officer by name for a specific contract. The named contracting officer will submit the proposed contract, with a determination and finding, for legal review in accordance with 801.602-75.

#### **SUBPART 817.5 – INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT**

##### **817.502 General.**

(a) After December 31, 2008, any contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods and services, shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of 38 U.S.C. 8127 and 8128, as implemented by the VA Acquisition Regulation, in acquiring such goods or services.

(b) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 et seq.).

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## **SUBCHAPTER D—SOCIOECONOMIC PROGRAMS PART 819—SMALL BUSINESS PROGRAMS**

### **Subpart 819.2 – Policies**

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- 819.201 General policy.
- 819.202 Specific policies.
- 819.202-1 Encouraging small business participation in acquisitions.
- 819.202-5 Data collection and reporting requirements.
- 819.202-70 HCA responsibilities.
- 819.202-71 Additional contracting officer responsibilities.
- 819.202-72 [Reserved.]

### **Subpart 819.3 – Determination of Small Business Status for Small Business Programs**

- 819.307 SDVOSB/VOSB Small Business Status Protests.

### **Subpart 819.5 – Set-Asides for Small Business**

- 819.502 Setting aside acquisitions.
- 819.502-2 Total small business set-asides.
- 819.502-3 Partial set-asides.

### **Subpart 819.6 – Certificates of Competency and Determinations of Responsibility**

- 819.602 Procedures.
- 819.602-3 Resolving differences between VA and the Small Business Administration.

### **Subpart 819.7 – The Small Business Subcontracting Program**

- 819.704 Subcontracting plan requirements.
- 819.705 Appeal of Contracting Officer Decisions.
- 819.709 Contract clause.

### **Subpart 819.8 – Contracting with the Small Business Administration (the 8(a) Program)**

- 819.800 General.

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

- 819.7001 General.
- 819.7002 Applicability.
- 819.7003 Eligibility.
- 819.7004 Contracting Order of Priority.
- 819.7005 Service-disabled veteran-owned small business set-aside procedures.

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- 819.7006 Veteran-owned small business set-aside procedures.
- 819.7007 Sole source awards to service-disabled veteran-owned small business concerns.
- 819.7008 Sole source awards to veteran-owned small business concerns.
- 819.7009 Contract Clauses.

**Subpart 819.71 – VA Mentor-Protégé Program**

- 819.7101 Purpose.
- 819.7102 Definitions.
- 819.7103 Non-affiliation.
- 819.7104 General policy.
- 819.7105 Incentives for mentor participation.
- 819.7106 Eligibility of Mentor and Protégé firms.
- 819.7107 Selection of Protégé firms.
- 819.7108 Application process.
- 819.7109 VA review of application.
- 819.7110 Developmental assistance.
- 819.7111 Obligations under the Mentor-Protégé Program
- 819.7112 Internal controls.
- 819.7113 Reports.
- 819.7114 Measurement of program success.
- 819.7115 Solicitation provisions.

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

**SUBPART 819.2 – POLICIES****819.201 General policy.**

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

**819.202 Specific policies.****819.202-1 Encouraging small business participation in acquisitions.**

Contracting officers may negotiate payment terms of less than 30 calendar days to encourage small business participation. A period of less than 7 days may not be prescribed (see FAR 32.908(c)(2)). The contracting officer and the local fiscal officer must be in agreement on the negotiated payment terms before awarding the contract.

**819.202-5 Data collection and reporting requirements.**

(a) Administration heads, staff office directors, and HCAs must, in addition to the responsibilities designated in FAR 19.202-5, cooperate with OSDDBU in formulating specific small business program goals and providing other data necessary for goal assessment.

(b) Each VA acquisition activity shall establish goals for the expenditure of funds with preferred businesses within their projected annual budget. OSDDBU is responsible for Department-wide goals and accomplishments and will approve or adjust each acquisition activity's goals.

(c) A Procurement Preference Program Goals Report (Report Control Symbol 00-0427) shall be submitted annually by each acquisition activity to reach OSDDBU by November 1. Each report shall contain total expenditure estimates and goals for the current fiscal year and explanations of the methods utilized to arrive at each proposed goal. Anticipated problems in the attainment of the proposed goal in any category shall also be identified. This information will be used in negotiating the Department goals with the Small Business Administration (SBA).

(d) As an addendum to the report, each acquisition activity shall provide a narrative explaining the reason(s) for any shortfall(s) in the achievement of any previous fiscal year goal category.

(e) Upon review by OSDBU of the proposed goals, each acquisition activity will be notified of the acceptance of goals as submitted, or of any deficiencies. If the goals are not acceptable, the acquisition activity will be requested to submit further written justification for the goals submitted. Based on documents submitted, OSDBU will make a final determination on the goal assignment.

(f) Accomplishment of goals will be determined by OSDBU from data reported by acquisition activities into the Federal Procurement Data System-Next Generation (FPDS-NG).

### **819.202-70 HCA responsibilities.**

An HCA must perform the following functions in support of the small business program. These functions cannot be delegated without written approval of the Director, OSBDU:

(a) Develop, on an annual basis, a plan of operation to increase the share of contracts and purchase orders awarded to the small business programs prescribed in FAR Part 19. This plan must also include veteran-owned and service-disabled veteran-owned small business concerns.

(b) Promote goals for the small business programs set forth in FAR Part 19. This must also include veteran-owned and service-disabled veteran-owned small business concerns.

(c) Review the types and classes of items and services to be purchased to determine the applicability of individual small business set-asides.

(d) Review class set-asides, established in accordance with criteria in FAR 19.503, at least annually to determine whether items or services procured under a unilateral or joint set-aside should be modified or withdrawn.

(e) Maintain updated lists of acquisitions reserved for small business on a class basis.

(f) If the acquisition activity is assigned to an SBA Procurement Center Representative, assure that the representative is provided logistical support, cooperation, and access to all reasonably obtainable contract information directly pertinent to the SBA Procurement Center Representative's official duties.

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Part 819—Small Business Programs

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(g) Encourage technical personnel and end-users to participate in discussions with veteran-owned and service-disabled veteran-owned small business concerns.

(h) Attend conferences and meetings publicizing small business programs. This responsibility may be delegated without the written approval of the Director, OSBDU.

**819.202-71 Additional contracting officer responsibilities.**

In addition to the duties designated in FAR 19.202 through 19.202-6, contracting officers must perform the following functions in support of the small business program:

- (a) Make maximum use of small business source lists.
- (b) Assure that small business firms are identified on solicitation mailing lists and bid abstracts.
- (c) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent possible.
- (d) Assist and counsel small business firms with individual problems.
- (e) Provide for counseling non-responsive or non-responsible small business bidders to help qualify them for future awards.
- (f) Submit informational copies of all small business protests and appeals to the Director, OSBDU, at the same time they are submitted to the SBA.

**819.202-72 [Reserved].****SUBPART 819.3 – DETERMINATION OF SMALL BUSINESS STATUS FOR SMALL BUSINESS PROGRAMS****819.307 SDVOSB/VOSB Small Business Status Protests.**

(a) All protests relating to whether an eligible VOSB or SDVOSB is a “small” business for the purposes of any Federal program are subject to 13 CFR Part 121 and must be filed in accordance with that part. For acquisitions under the authority of subpart 819.70, upon execution of an interagency agreement between VA and the SBA pursuant to the Economy Act (31 U.S.C. 1535), regarding service-disabled veteran-owned or veteran-owned small business status, contracting officers shall forward all status protests to the Director, Office of Government Contracting (D/GC), U.S. Small Business Administration (ATTN:

VAAR Part 819 SDVOSB/VOSB Small Business Status Protests), 409 3rd Street, SW., Washington, DC 20416, for disposition. Except for ownership and control issues to be determined in accordance with 38 CFR Part 74, protests shall follow the procedures set forth in FAR 19.307 for both service-disabled veteran-owned and veteran-owned small business status. However, contracting officers shall be solely responsible for determining VOSB and SDVOSB compliance with VAAR 804.1102.

(b) If SBA sustains a service-disabled veteran-owned or veteran-owned small business status protest and the contract has already been awarded, then the contracting officer cannot count the award as an award to a VOSB or SDVOSB and the concern cannot submit another offer as a VOSB or SDVOSB on a future VOSB or SDVOSB procurement under this part, as applicable, unless it demonstrates to VA that it has overcome the reasons for the determination of ineligibility.

(c) Until execution of the interagency agreement referenced in subsection (a), for acquisitions under the authority of subpart 819.70, the Executive Director, VA Office of Small and Disadvantaged Business Utilization (OSDBU) shall decide all protests on service-disabled veteran-owned or veteran-owned small business status whether raised by the contracting officer or an offeror. Ownership and control shall be determined in accordance with 38 CFR Part 74. The Executive Director's decision shall be final.

(1) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a service-disabled veteran-owned or veteran-owned small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. An offeror must deliver their protest in person, by facsimile, by express delivery service, or by the U.S. Postal Service within the applicable time period to the contracting officer.

(2) An offeror's protest must be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Any protest received after these time limits is untimely. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(3) If the Executive Director sustains a service-disabled veteran-owned or veteran-owned small business status protest and the contract has already been awarded, then the contracting officer cannot count the award as an award to a VOSB or SDVOSB and the concern cannot submit another offer as a VOSB or SDVOSB on a future VOSB or SDVOSB



procurement under this part, as applicable, unless it demonstrates to VA that it has overcome the reasons for the determination of ineligibility.

### **SUBPART 819.5 – SET-ASIDES FOR SMALL BUSINESS**

#### **819.502 Setting aside acquisitions.**

##### **819.502-2 Total small business set-asides.**

(a) When a total small business set-aside is made, one of the following statements, as applicable, will be included in the solicitation for bids:

(1) Notice of total small business set-aside, page \_\_\_\_\_, applies to all items in this solicitation.

(2) Notice of total small business set-aside, page \_\_\_\_\_, applies to items \_\_\_\_\_ through \_\_\_\_\_ in this solicitation.

(b) Contracting officers must ensure that the appropriate product or service classification and the related size standard are included in each solicitation.

##### **819.502-3 Partial set-asides.**

When, in accordance with the provisions of FAR 19.502-3, the contracting officer determines that a particular procurement will be partially set aside for small business participation, the solicitation for bids shall include the appropriate product or service classification and appropriate size standard, and the following statement shall be placed on the face page:

Notice of partial set-aside, page \_\_\_\_\_, applies to item \_\_\_\_\_ through item \_\_\_\_\_ in this solicitation.

### **SUBPART 819.6 – CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF RESPONSIBILITY**

#### **819.602 Procedures.**

##### **819.602-3 Resolving differences between VA and the Small Business Administration.**

The Director, OSDBU, is the VA liaison with the SBA. Information copies of correspondence sent to the SBA seeking a certificate of competency determination must be concurrently provided to the Director, OSDBU. Before appealing a certificate of competency, the HCA must seek concurrence from the Director, OSDBU.

**SUBPART 819.7 – THE SMALL BUSINESS SUBCONTRACTING PROGRAM****819.704 Subcontracting plan requirements.**

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

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

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

**819.705 Appeal of Contracting Officer Decisions.**

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

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

(c) Prime contractors submitting businesses declared ineligible for credit in SDVOSB and/or VOSB subcontracting plans may appeal to the Executive Director, Office of Small and Disadvantaged Business Utilization and Center for Veterans Enterprise (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, within 5 working days of receipt of information declaring their subcontractor ineligible. The Executive Director shall

have 5 working days to respond. The decision of the Executive Director may be appealed to the Senior Procurement Executive (SPE) within 5 working days. The SPE shall have 15 working days to respond and that decision shall be final.

**819.709 Contract clause.**

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

**SUBPART 819.8 – CONTRACTING WITH THE SMALL BUSINESS  
ADMINISTRATION (THE 8(A) PROGRAM)**

**819.800 General.**

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of VA are appropriate for inclusion in this program, the contracting officer will make this fact known to proper officials of the SBA regional office servicing his/her area. However, when projects funded from minor construction appropriation (between \$400,000 and \$2 million) are proposed for 8(a) acquisition, the Director, OSDDBU (00SB), shall be contacted by telephone or notified in writing in order to afford the OSDDBU an opportunity to identify possible 8(a) sources prior to apprising SBA officials. If the certification required by paragraph (a) of this section is received, the VA contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to VA, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between VA and SBA and will be administered by VA.

**SUBPART 819.70 – SERVICE-DISABLED VETERAN-OWNED AND  
VETERAN-OWNED SMALL BUSINESS ACQUISITION PROGRAM**

**819.7001 General.**

(a) Sections 502 and 503 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (38 U.S.C. 8127–8128), created an acquisition program for small business concerns owned and controlled by service-disabled veterans and those owned and controlled by veterans for VA.

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

**819.7002 Applicability.**

This subpart applies to VA contracting activities and to its prime contractors. Also, this subpart applies to any government entity that has a contract, memorandum of understanding, agreement, or other arrangement with VA to acquire goods and services for VA in accordance with 817.502.

**819.7003 Eligibility.**

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

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

(1) SDVOSB concern or VOSB concern;

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

(3) Verified for eligibility in the VIP database.

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

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

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

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

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

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

**819.7004 Contracting Order of Priority.**

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

- (a) To SDVOSBs;
- (b) To VOSB, including but not limited to SDVOSBs;
- (c) Pursuant to—
  - (1) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or
  - (2) The Historically-Underutilized Business Zone (HUBZone) Program (15 U.S.C. 657a); and
- (d) Pursuant to any other small business contracting preference.

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

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 813.106, 819.7007 and 819.7008, the contracting officer shall set-aside an acquisition for competition restricted to SDVOSB concerns upon a reasonable expectation that,

- (1) Offers will be received from two or more eligible SDVOSB concerns; and
- (2) Award will be made at a fair and reasonable price.

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

- (1) Eligibility is extended to businesses owned and operated by surviving spouses; and
- (2) Businesses are registered and verified as eligible in the VIP database prior to making an award.

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible SDVOSB concern in response to a SDVOSB set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSB concerns,

the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition, if appropriate.

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

(a) The contracting officer shall consider SDVOSB set-asides before considering VOSB set-asides. Except as authorized by 813.106, 819.7007 and 819.7008, the contracting officer shall set aside an acquisition for competition restricted to VOSB concerns upon a reasonable expectation that:

- (1) Offers will be received from two or more eligible VOSB concerns;  
and
- (2) Award will be made at a fair and reasonable price.

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

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

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

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

- (1) The anticipated award price of the contract (including options) will not exceed \$5 million;
- (2) The requirement is synopsisized in accordance with FAR part 5;
- (3) The SDVOSB concern has been determined to be a responsible contractor with respect to performance; and
- (4) Award can be made at a fair and reasonable price.

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting

officer. A determination that only one SDVOSB concern is available to meet the requirement is not required.

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

**819.7008 Sole Source Awards to veteran-owned small business concerns.**

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

- (1) The anticipated award price of the contract (including options) will not exceed \$5 million;
- (2) The requirement is synopsisized in accordance with FAR part 5;
- (3) The VOSB concern has been determined to be a responsible contractor with respect to performance;
- (4) Award can be made at a fair and reasonable price; and
- (5) No responsible SDVOSB concern has been identified.

(b) The contracting officer's determination whether to make a sole source award is a business decision wholly within the discretion of the contracting officer. A determination that only one VOSB concern is available to meet the requirement is not required.

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

**819.7009 Contract clauses.**

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

**SUBPART 819.71 – VA MENTOR-PROTÉGÉ PROGRAM****819.7101 Purpose.**

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

**819.7102 Definitions.**

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

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

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

(d) *Protégé* means a SDVOSB or VOSB, as defined in 802.101, which meets federal small business size standards in its primary NAICS code and which is the recipient of developmental assistance pursuant to a Mentor-Protégé agreement.

**819.7103 Non-affiliation.**

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



**819.7104 General policy.**

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

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

**819.7105 Incentives for prime contractor participation.**

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

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

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

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

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

(d) OSDBU Mentoring Award. A nonmonetary award will be presented annually to the mentoring firm providing the most effective developmental

support to a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the OSDBU Director.

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

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

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

(a) Eligibility. A Mentor:

(1) May be either a large or small business entity and either a prime contractor or subcontractor;

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

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

(b) Eligibility. A Protégé:

(1) Must be a SDVOSB or VOSB as defined in 802.101;

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

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

(d) A protégé firm shall self-represent to a mentor firm that it meets the requirements set forth in paragraph (b) of this section. Mentors shall confirm eligibility by documenting the verified status of the protégé in the VetBiz.gov VIP database. Protégés must maintain verified status throughout the term of the Mentor-Protégé Agreement. Failure to do so shall result in cancellation of the Agreement.

#### **819.7107 Selection of Protégé firms.**

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

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

(c) The selection of protégé firms by mentor firms may not be protested, except that any protest regarding the size or eligibility status of an entity selected by a mentor shall be handled in accordance with the FAR and SBA regulations.

#### **819.7108 Application process.**

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

(b) The Mentor-Protégé Agreement must contain:

- (1) Names, addresses, phone numbers, and e-mail addresses (if available) of the mentor and protégé firm(s) and a point of contact for both mentor and protégé who will oversee the agreement;
- (2) A statement from the protégé firm that the firm is currently eligible as a SDVOSB or VOSB to participate in VA's Mentor-Protégé Program;
- (3) A description of the mentor's ability to provide developmental assistance to the protégé and the type of developmental assistance that

will be provided, to include a description of the types and dollar amounts of subcontract work, if any, that may be awarded to the protégé firm;

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

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

(6) A schedule with milestones for providing assistance;

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

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

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

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

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

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

(13) Signatures and date(s).

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

**819.7109 VA review of application.**

(a) VA OSDBU will review the information to establish the mentor and protégé eligibility and to ensure that the information that is in VAAR 819.7108 is included. If the application relates to a specific contract, then OSDBU will consult with the responsible contracting officer on the adequacy of the proposed Agreement, as appropriate. OSDBU will complete its review no later than 30 calendar days after receipt of the application or after consultation with the

contracting officer, whichever is later. There is no charge to apply for the Mentor-Protégé Program.

(b) After OSDBU completes its review and provides written approval, the mentor may execute the Agreement and implement the developmental assistance as provided under the Agreement. OSDBU will post a copy of the Mentor-Protégé Agreements to a VA Web site to be accessible to VA contracting officers for review for any VA contracts affected by the Agreement.

(c) If the application is disapproved, the mentor may provide additional information for reconsideration. OSDBU will complete review of any supplemental material no later than 30 days after its receipt. Upon finding deficiencies that VA considers correctable, OSDBU will notify the mentor and protégé and request correction of deficiencies to be provided within 15 days.

**819.7110 Developmental assistance.**

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

- (a) Guidance relating to—
  - (1) Financial management;
  - (2) Organizational management;
  - (3) Overall business management/planning;
  - (4) Business development; and
  - (5) Technical assistance.
- (b) Loans.
- (c) Rent-free use of facilities and/or equipment.
- (d) Property.
- (e) Temporary assignment of personnel to a Protégé for training.
- (f) Any other types of permissible, mutually beneficial assistance.

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

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

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

**819.7112 Internal Control.**

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

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

(2) Reviewing bi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the plan submitted in the approved Agreement;

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

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

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

**819.7113 Reports.**

(a) Mentor and protégé entities shall submit to VA's OSDBU bi-annual reports on progress under the Mentor-Protégé Agreement. VA will evaluate reports by considering the following:

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

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

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

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

(5) Input from the protégé on the nature of the developmental assistance provided by the mentor.

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

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

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

#### **819.7114 Measurement of program success.**

The overall success of the VA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

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

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

**819.7115 Solicitation provisions.**

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

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



**SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS  
PART 828—BONDS AND INSURANCE**

**Subpart 828.1 – Bonds and Other Financial Protections**

Sec.

- 828.101 Bid guarantees.
- 828.101-2 Solicitation provision or contract clause.
- 828.101-70 Safekeeping and return of bid guarantee.
- 828.106 Administration.
- 828.106-6 Furnishing information.
- 828.106-70 Bond premium adjustment.
- 828.106.71 Assisting service-disabled veteran-owned and veteran-owned small businesses in obtaining bonding.
- 828.106.72 Contract provision.

**Subpart 828.2 – Sureties and Other Security for Bonds**

- 828.203 Acceptability of individual sureties.
- 828.203-7 Exclusion of individual sureties.

**Subpart 828.3 – Insurance**

- 828.306 Insurance under fixed-price contracts.

**Subpart 828.71 – Indemnification of Contractors, Medical Research or  
Development Contracts**

- 828.7100 Scope of subpart.
- 828.7101 Approval for indemnification.
- 828.7102 Extent of indemnification.
- 828.7103 Financial protection.

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

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**SUBPART 828.1 – BONDS AND OTHER FINANCIAL PROTECTIONS****828.101 Bid guarantees.****828.101-2 Solicitation provision or contract clause.**

When a bid bond is required for supplies or services, the phrase “any cost of acquiring the work” in paragraph (e) of the Bid Guarantee clause in FAR 52.228-1 may be modified to refer to the cost of “supplies,” “services,” etc.

**828.101-70 Safekeeping and return of bid guarantee.**

(a) The contracting officer must retain, in a safe, certified checks or other negotiable security provided as bid security for the three lowest acceptable bids. After the contract and contract bonds have been signed and approved, the contracting officer must return the certified checks or other negotiable securities either:

- (1) In person to the bidder who provides a proper receipt; or
- (2) By any method that will provide evidence that the bidder received the security.

(b) The contracting officer should promptly return certified checks or other negotiable security furnished in support of bids, other than those determined to be the three lowest acceptable bids, to the respective bidders either:

- (1) In person to the bidder who provides a proper receipt; or
- (2) By any method that will provide evidence that the bidder received the security.

(c) The contracting officer will not return commercial bid bonds unless specifically requested to do so by the bidders. If any of the three low bidders request the return of a commercial bid bond, the contracting officer will not return those bid bonds until the contract and contract bonds have been executed by the successful bidder and approved by the contracting officer or all bids have been rejected.

**828.106 Administration.****828.106-6 Furnishing information.**

The contracting officer for the applicable contract will furnish copies of payment bonds to a requestor under the provisions of FAR 28.106-6(c).

**828.106-70 Bond premium adjustment.**

When performance and payment bonds or payment protection are required, the contract must contain the clause in 852.228-70, Bond premium adjustment.

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

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

**828.106-72 Contract provision.**

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

**SUBPART 828.2 – SURETIES AND OTHER SECURITY FOR BONDS****828.203 Acceptability of individual sureties.****828.203-7 Exclusion of individual sureties.**

The DSPE may make the determinations referenced in FAR 28.203-7:

- (a) To exclude individuals from acting as surety on bonds; and
- (b) To accept bonds from individuals named on the Excluded Parties List System.

**SUBPART 828.3 – INSURANCE****828.306 Insurance under fixed-price contracts.**

(a) Term contracts, or contracts of a continuing nature, for ambulance, automobile and aircraft service, must contain the provision in 852.228-71, Indemnification and insurance.

(b) Paragraph (a) of this section does not apply to emergency or sporadic ambulance service authorized by VA Manual MP-1, Part II, Chapter 3, or other emergency or sporadic vehicle or aircraft services if both of the following conditions exist:

(1) The service is not used solely for the purpose of avoiding entering into a continuing contract.

(2) The services will be obtained from firms known to carry insurance coverage in accordance with State or local requirements.

**SUBPART 828.71 – INDEMNIFICATION OF CONTRACTORS, MEDICAL RESEARCH OR DEVELOPMENT CONTRACTS**

**828.7100 Scope of subpart.**

(a) This subpart sets forth the policies and procedures concerning indemnification of contractors performing contracts covering medical research or development that involve risks of an unusually hazardous nature, as authorized by 38 U.S.C. 7317.

(b) The authority to indemnify the contractor under this subpart does not create any rights to third parties that would not otherwise exist by law.

(c) As used in this subpart, the term “contractor” includes subcontractors of any tier under a contract containing an indemnification provision under 38 U.S.C. 7317. (38 U.S.C. 7317)

**828.7101 Approval for indemnification.**

(a) The Secretary of Veterans Affairs will make the approval determinations for the indemnification of contractors.

(b) Contracting officers must submit requests for approval, together with all available information, to the DSPE for submission to the SPE, who will forward the request to the Secretary for approval. (38 U.S.C. 7317)

**828.7102 Extent of indemnification.**

(a) A contract for medical research or development authorized by 38 U.S.C. 7303, may provide that the Government will indemnify the contractor against losses or liability specified in paragraphs (b) and (c) of this section if all of the following apply:

(1) The contract work involves a risk of an unusually hazardous nature.

(2) The losses or liability arise out of the direct performance of the contract.

(3) The losses or liability are not covered by the financial protection required under 828.7103.

(b) The Government may indemnify a contractor for liability (including reasonable expenses of litigation or settlement) to third persons for death, bodily injury, or loss of or damage to property from a risk that the contract defines as unusually hazardous. The indemnification will not cover liability under State or Federal worker's injury compensation laws to employees of the contractor who are both:

(1) Employed at the site of the contract work; and

(2) Working on the contract for which indemnification is granted.

(c) The Government may indemnify the contractor for loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(d) A contract that provides for indemnification in accordance with this subpart must also require that:

(1) The contractor must notify the contracting officer of any claim or suit against the contractor for death, bodily injury, or loss of or damage to property; and

(2) The Government may choose to control or assist in the defense of any suit or claim for which indemnification is provided in the contract. (38 U.S.C. 7317)

### **828.7103 Financial protection.**

(a) A contractor must have and maintain an amount of financial protection to cover liability to third persons and loss of or damage to the contractor's property that meets one of the following:

(1) The maximum amount of insurance available from private sources.

(2) A lesser amount that the Secretary establishes after taking into consideration the cost and terms of private insurance.

(b) Financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination that provides the maximum amount required. If a contractor elects to self-insure, the contractor must provide the contracting officer, before award,

Part 828—Bonds and Insurance

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proof of financial responsibility up to the maximum amount required.  
(38 U.S.C. 7317)

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**SUBCHAPTER H—CLAUSES AND FORMS**  
**PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**Subpart 852.1 – Instructions for Using Provisions and Clauses**

Sec.

- 852.101 Using Part 852.  
 852.102 Incorporating provisions and clauses.

**Subpart 852.2 – Text of Provisions and Clauses**

- 852.203-70 Commercial advertising.  
 852.203-71 Display of Department of Veterans Affairs hotline poster.  
 852.207-70 Report of employment under commercial activities.  
 852.209-70 Organizational conflicts of interest.  
 852.211-70 Service data manuals.  
 852.211-71 Special notice.  
 852.211-72 Technical industry standards.  
 852.211-73 Brand name or equal.  
 852.211-74 Liquidated damages.  
 852.211-75 Product specifications.  
 852.214-70 Caution to bidders – bid envelopes.  
 852.214-71 Restrictions on alternate item(s).  
 852.214-72 Alternate item(s).  
 852.214-73 Alternate packaging and packing.  
 852.214-74 Bid samples.  
 852.216-70 Estimated quantities.  
 852.215-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.  
 852.215-71 Evaluation Factor Commitments.  
 852.219-9 VA Small Business Subcontracting Plan Minimum Requirements  
 852.219-10 VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.  
 852.219-11 VA Notice of Total Veteran-Owned Small Business Set-Aside.  
 852.219-71 VA Mentor-Protégé Program.  
 852.219-72 Evaluation Factor for Participation in the VA Mentor-Protégé Program.  
 852.222-70 Contract Work Hours and Safety Standards Act – nursing home care contract supplement.  
 852.228-70 Bond premium adjustment.  
 852.228-71 Indemnification and insurance.  
 852.228-72 Assisting Service-Disabled Veteran-Owned and Veteran-Owned Small Businesses in Obtaining Bonds.  
 852.229-70 Sales or use taxes.  
 852.229-71 [Reserved].  
 852.233-70 Protest content/alternative dispute resolution.

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852.233-71	Alternate protest procedure.
852.236-70	[Reserved].
852.236-71	Specifications and drawings for construction.
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852.236-73	[Reserved].
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852.236-75	[Reserved].
852.236-76	Correspondence.
852.236-77	Reference to “standards.”
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852.236-80	Subcontracts and work coordination.
852.236-81	[Reserved].
852.236-82	Payments under fixed-price construction contracts (without NAS).
852.236-83	Payments under fixed-price construction contracts (including NAS).
852.236-84	Schedule of work progress.
852.236-85	Supplementary labor standards provisions.
852.236-86	Worker’s compensation.
852.236-87	Accident prevention.
852.236-88	Contract changes – supplement.
852.236-89	Buy American Act.
852.236-90	Restriction on submission and use of equal products.
852.236-91	Special notes.
852.237-7	Indemnification and medical liability insurance.
852.237-70	Contractor responsibilities.
852.246-70	Guarantee.
852.246-71	Inspection.
852.246-72	Frozen processed foods.
852.246-73	Noncompliance with packaging, packing and/or marking requirements.
852.246-74	Special warranties.
852.246-75	Warranties for construction – guarantee period services.
852.247-70	Determining transportation costs for bid evaluation.
852.252-70	Solicitation provisions or clauses incorporated by reference.
852.270-1	Representatives of contracting officers.
852.270-2	Bread and bakery products – quantities.
852.270-3	Purchase of shellfish.
852.271-70	Nondiscrimination in services provided to beneficiaries.
852.271-71	[Reserved].
852.271-72	Time spent by counselee in counseling process.
852.271-73	Use and publication of counseling results.
852.271-74	Inspection.

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- 852.271-75 Extension of contract period.
- 852.273-70 Late offers.
- 852.273-71 Alternative negotiation techniques.
- 852.273-72 Alternative evaluation.
- 852.273-73 Evaluation – health-care resources.
- 852.273-74 Award without exchanges.
- 852.273-75 Security Requirements for Unclassified Information Technology Resources.
- 852.273-76 Electronic Invoice.

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

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**852.215-70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors.**

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

**SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS (DEC 2009)**

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

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

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

(End of Clause)

**852.215-71 Evaluation Factor Commitments.**

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

**EVALUATION FACTOR COMMITMENTS (DEC 2009)**

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

(End of Clause)

**852.216-70 Estimated quantities.**

As prescribed in 816.504(a), insert the following clause:

**ESTIMATED QUANTITIES (APR 1984)**

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles or services that may be ordered during the contract term, except as he/she otherwise indicates in his/her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. Bids offering less than 75 percent of the estimated requirement or which provide that the Government shall guarantee any definite quantity, will not be considered. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles or services that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

Alternate I (APR 1984). As prescribed in 816.504(b), insert the following clause:

**ESTIMATED QUANTITIES (APR 1984)**

The estimated requirements shown in this invitation for bids cover the requirements for the entire contract period. It is understood and agreed that during the period of this contract the Government may order and the contractor will haul such coal as may, in the opinion of the Government, be required, except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

Alternate II (APR 1984). As prescribed in 816.504(c), insert the following clause:

**ESTIMATED QUANTITIES (APR 1984)**

The supplies and/or services listed in the attached schedule will be furnished at such time and in such quantities as they are required.

(End of Clause)

Alternate III (JUL 1989). As prescribed in 816.504(d), insert the following clause:

**ESTIMATED QUANTITIES (JUL 1989)**

As it is impossible to determine the exact quantities that will be required during the contract term, each bidder whose bid is accepted wholly or in part will be required to deliver all articles that may be ordered during the contract term, except as he or she otherwise indicates in his or her bid and except as otherwise provided herein. Bids will be considered if made with the proviso that the total quantities delivered shall not exceed a certain specified quantity. The fact that quantities are estimated shall not relieve the contractor from filling all orders placed under this contract to the extent of his/her obligation. Also, the Department of Veterans Affairs shall not be relieved of its obligation to order from the contractor all articles that may, in the judgment of the ordering officer, be needed except that in the public exigency procurement may be made without regard to this contract.

(End of Clause)

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

As prescribed in subpart 819.709, insert the following clause:

**VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS (DEC 2009)**

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

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



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

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

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

(End of Clause)

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

As prescribed in 819.7009, insert the following clause:

**VA NOTICE OF TOTAL SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (DEC 2009)**

(a) *Definition.* For the Department of Veterans Affairs, "Service-disabled veteran-owned small business concern":

(1) Means a small business concern:

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans (or eligible surviving spouses);

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans (or eligible surviving spouses) or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran;

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document; and

(iv) The business has been verified for ownership and control and is so listed in the Vendor Information Pages database, (<http://www.VetBiz.gov>).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of Clause)

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

As prescribed in 819.7009, insert the following clause:

**VA NOTICE OF TOTAL VETERAN-OWNED SMALL BUSINESS SET-ASIDE (DEC 2009)**

(a) *Definition.* For the Department of Veterans Affairs, “Veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans;

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

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document; and

(iv) The business has been verified for ownership and control and is so listed in the Vendor Information Pages database, (<http://www.VetBiz.gov>).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(End of Clause)

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

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

**VA MENTOR-PROTÉGÉ PROGRAM (DEC 2009)**

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

(b) The program consists of:

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

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

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

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

(d) Large business prime contractors serving as mentors in the VA Mentor-Protégé Program are eligible for an incentive for subcontracting plan credit. VA will recognize the costs incurred by a mentor firm in providing assistance to a protégé firm and apply those costs for purposes of determining whether the mentor firm attains its subcontracting plan participation goals under a VA contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar-for-dollar basis and reported by the large business prime contractor via the Electronic Subcontracting Reporting System (eSRS).

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

(End of Clause)

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

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

**EVALUATION FACTOR FOR PARTICIPATION IN THE VA MENTOR-PROTÉGÉ PROGRAM  
(DEC 2009)**

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

(End of Clause)

**852.222-70 Contract Work-Hours and Safety Standards Act – nursing home care contract supplement.**

As prescribed in 822.305, for nursing home care requirements, insert the following clause:

**CONTRACT WORK HOURS AND SAFETY STANDARD ACT – NURSING HOME CARE  
CONTRACT SUPPLEMENT (JAN 2008)**

The following exemption to FAR clause 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, applies to this contract:

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A contractor and subcontractor under this contract will not be required to pay overtime wages to their employees for work in excess of 40 hours in any workweek, which would otherwise be a violation of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), provided:

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(a) The contractor or subcontractor is primarily engaged in the care of nursing home patients residing on the contractor's or subcontractor's premises;

(b) There is an agreement or understanding between the contractor or subcontractor and their employees, before performance of work, that a work period of 14 consecutive days is acceptable in lieu of a work period of 7 consecutive days for the purpose of overtime compensation;

(c) Employees receive overtime compensation at a rate no less than 1 1/2 times the employees' regular hourly rate of pay for work in excess of 80 hours in any 14 day period; and

(d) Pay is otherwise computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(End of Clause)

**852.228-70 Bond premium adjustment.**

As prescribed in 828.106-70, insert the following clause:

**BOND PREMIUM ADJUSTMENT (JAN 2008)**

When net changes in original contract price affect the premium of a Corporate Surety Bond by \$5 or more, the Government, in determining the basis for final settlement, will provide for bond premium adjustment computed at the rate shown in the bond.

(End of Clause)

**852.228-71 Indemnification and insurance.**

As prescribed in 828.306, insert the following clause:

**INDEMNIFICATION AND INSURANCE (JAN 2008)**

(a) Indemnification. The contractor expressly agrees to indemnify and save the Government, its officers, agents, servants, and employees harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the performance of work under this agreement. Further, it is agreed that any negligence or alleged negligence of the Government, its officers, agents, servants, and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servant, and employees is the sole, competent, and producing cause of such claims, loss,

damage, injury, and liability. At the option of the contractor, and subject to the approval by the contracting officer of the sources, insurance coverage may be employed as guaranty of indemnification.

(b) Insurance. Satisfactory insurance coverage is a condition precedent to award of a contract. In general, a successful bidder must present satisfactory evidence of full compliance with State and local requirements, or those below stipulated, whichever are the greater. More specifically, workers' compensation and employer's liability coverage will conform to applicable State law requirements for the service contemplated, whereas general liability and automobile liability of comprehensive type shall, in the absence of higher statutory minimums, be required in the amounts per vehicle used of not less than \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. State-approved sources of insurance coverage ordinarily will be deemed acceptable to the Department of Veterans Affairs installation, subject to timely certifications by such sources of the types and limits of the coverages afforded by the sources to the bidder. [Contracting Officer's Note: In those instances where airplane service is to be used, substitute the word "aircraft" for "automobile" and "vehicle" and modify coverage to require aircraft public and passenger liability insurance of at least \$200,000 per passenger and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.]

(End of Clause)

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

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

**ASSISTING SERVICE-DISABLED VETERAN-OWNED AND VETERAN OWNED SMALL  
BUSINESSES IN OBTAINING BONDS (JAN 2008)**

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

(End of Clause)

**852.229-70 Sales or use taxes.**

As prescribed in 829.302-70, insert the following provision:

**SALES OR USE TAXES (JAN 2008)**

This provision replaces paragraph (k) of Federal Acquisition Regulation clause 52.212-4, Contract Terms and Conditions—Commercial Items. The articles listed in this solicitation will be purchased from the personal funds of patients and prices submitted herein include any sales or use tax heretofore imposed by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, applicable to the material in this solicitation.

(End of Clause)

**852.229-71 [Reserved].**

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