

38 U.S.C. 8127 and 8128

38 USC Sec. 8127

02/01/2010

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND
DOMICILIARY

FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL
PROPERTY

SUBCHAPTER II - PROCUREMENT AND SUPPLY

Sec. 8127. Small business concerns owned and controlled by veterans: contracting goals and preferences

-STATUTE-

(a) Contracting Goals. - (1) In order to increase contracting opportunities for small business concerns owned and controlled by veterans and small business concerns owned and controlled by veterans with service-connected disabilities, the Secretary shall -

(A) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans who are not veterans with service-connected disabilities in accordance with paragraph (2); and

(B) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans with service-connected disabilities in accordance with paragraph (3).

(2) The goal for a fiscal year for participation under paragraph (1)(A) shall be determined by the Secretary.

(3) The goal for a fiscal year for participation under paragraph (1)(B) shall be not less than the Government-wide goal for that fiscal year for participation by small business concerns owned and controlled by veterans with service-connected disabilities under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(4) The Secretary shall establish a review mechanism to ensure that, in the case of a subcontract of a Department contract that is counted for purposes of meeting a goal established pursuant to this section, the subcontract was actually awarded to a business concern that may be counted for purposes of meeting that goal.

(b) Use of Noncompetitive Procedures for Certain Small Contracts. - For purposes of meeting the goals under subsection (a), and in accordance with this section, in entering into a contract with a small business concern owned and controlled by veterans for an amount less than the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)), a contracting officer of the Department may use procedures other than competitive procedures.

(c) Sole Source Contracts for Contracts Above Simplified Acquisition Threshold. - For purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department may award a contract to a small business concern owned and controlled by veterans using procedures other than competitive procedures if -

(1) such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) but will not exceed \$5,000,000; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

(d) Use of Restricted Competition. - Except as provided in subsections (b) and (c), for purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.

(e) Eligibility of Small Business Concerns. - A small business concern may be awarded a contract under this section only if the small business concern and the veteran owner of the small business concern are listed in the database of veteran-owned businesses maintained by the Secretary under subsection (f).

(f) Database of Veteran-Owned Businesses. - (1) Subject to paragraphs (2) through (6), the Secretary shall maintain a database of small business concerns owned and controlled by veterans and the veteran owners of such business concerns.

(2) To be eligible for inclusion in the database, such a veteran shall submit to the Secretary such information as the Secretary may require with respect to the small business concern or the veteran.

(3) Information maintained in the database shall be submitted on a voluntary basis by such veterans.

(4) In maintaining the database, the Secretary shall carry out at least the following two verification functions:

(A) Verification that each small business concern listed in the database is owned and controlled by veterans.

(B) In the case of a veteran who indicates a service-connected disability, verification of the service-disabled status of such veteran.

(5) The Secretary shall make the database available to all Federal departments and agencies and shall notify each such department and agency of the availability of the database.

(6) If the Secretary determines that the public dissemination of certain types of information maintained in the database is inappropriate, the Secretary shall take such steps as are necessary to maintain such types of information in a secure and confidential manner.

(g) Enforcement Penalties for Misrepresentation. - Any business concern that is determined by the Secretary to have misrepresented the status of that concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans for purposes of this subsection shall be debarred from contracting with the Department for a reasonable period of time, as determined by the Secretary.

(h) Treatment of Businesses After Death of Veteran-Owner. - (1) Subject to paragraph (3), if the death of a veteran causes a small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business concern shall, for the period described in paragraph (2), be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a small business concern owned and controlled by veterans.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(A) The date on which the surviving spouse remarries.

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

(C) The date that is ten years after the date of the veteran's death.

(3) Paragraph (1) only applies to a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability.

(i) Priority for Contracting Preferences. - Preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

(1) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans with service-connected disabilities.

(2) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans that are not covered by paragraph (1).

(3) Contracts awarded pursuant to -

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

(B) section 31 of such Act (15 U.S.C. 657a).

(4) Contracts awarded pursuant to any other small business contracting preference.

(j) Applicability of Requirements to Contracts. - (1) If after December 31, 2008, the Secretary enters into a contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods or services, the Secretary 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 this section in acquiring such goods or services.

(2) 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.).

(k) Annual Reports. - Not later than December 31 each year, the Secretary shall submit to Congress a report on small business contracting during the fiscal year ending in such year. Each report shall include, for the fiscal year covered by such report, the following:

(1) The percentage of the total amount of all contracts awarded by the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(2) The percentage of the total amount of all such contracts awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(3) The percentage of the total amount of all contracts awarded by each Administration of the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(4) The percentage of the total amount of all contracts awarded by each such Administration during that fiscal year that were awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(l) Definitions. - In this section:

(1) The term "small business concern" has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term "small business concern owned and controlled by veterans" means a small business concern -

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

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

(B) not less than 51 percent of which is owned by one or more veterans with service-connected disabilities that are permanent and total who are unable to manage the daily business operations of such concern or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more such veterans.

-SOURCE-

(Added Pub. L. 109-461, title V, Sec. 502(a)(1), Dec. 22, 2006, 120 Stat. 3431; amended Pub. L. 110-389, title VIII, Sec. 806, Oct. 10, 2008, 122 Stat. 4189.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (j)(2), is Pub. L. 85-536, Sec. 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (Sec. 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the

Code, see Short Title note set out under section 631 of Title 15 and Tables.

-MISC1-

AMENDMENTS

2008 - Subsecs. (j) to (l). Pub. L. 110-389 added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (l), respectively.

EFFECTIVE DATE

Pub. L. 109-461, title V, Sec. 502(d), Dec. 22, 2006, 120 Stat. 3435, provided that: "This section [enacting this section and provisions set out as a note below] and the amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 22, 2006]."

TRANSITION RULE

Pub. L. 109-461, title V, Sec. 502(b), Dec. 22, 2006, 120 Stat. 3435, provided that: "A small business concern that is listed in any small business database maintained by the Secretary of Veterans Affairs on the date of the enactment of this Act [Dec. 22, 2006] shall be presumed to be eligible for inclusion in the database under subsection (f) of section 8127 of title 38, United States Code, as added by subsection (a), during the period beginning on the effective date of that section [see Effective Date note above] and ending one year after such effective date. Such a small business concern may be removed from the database during that period if it is found not to be a small business concern owned and controlled by veterans (as defined in subsection (k) of such section)."

38 USC Sec. 8127

UPDATE

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND
DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY

SUBCHAPTER II - PROCUREMENT AND SUPPLY

-COD-

Amended by Pub. L. 111-275, sec. 104(b)(1), 124 Stat. 2867.

Amended by Pub. L. 111-350, sec. 5(j)(7), 124 Stat. 3850.

New note added or amended generally by Pub. L. 111-275, sec. 104(b)(2), 124 Stat. 2868.

TITLE 38 - VETERANS' BENEFITS

PART VI - ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81 - ACQUISITION AND OPERATION OF HOSPITAL AND
DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY

SUBCHAPTER II - PROCUREMENT AND SUPPLY

Sec. 8128. Small business concerns owned and controlled by veterans: contracting
priority

-STATUTE-

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

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

-SOURCE-

(Added Pub. L. 109-461, title V, Sec. 503(a)(1), Dec. 22, 2006, 120 Stat. 3435.)

-MISC1-

EFFECTIVE DATE

Pub. L. 109-461, title V, Sec. 503(b), Dec. 22, 2006, 120 Stat. 3436, provided that:
"This section [enacting this section] and the amendments made by this section shall
take effect on the date that is 180 days after the date of the enactment of this Act [Dec.
22, 2006]."