

# FEDERAL CONTRACTING OPPORTUNITIES FOR SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESSES

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—Teaming with Today's Business—

# Why is veteran or service-disabled veteran status helpful in federal government contracting?

- **The Small Business Act, as amended**

- Prime and Subcontracting Goals for SDVOSBs (3%)
- Veterans First Contracting Program for SDVOSBs/VOSBs

- **Competitive Advantages**

- Set-Aside Contracts – contracts set-aside for competition exclusively among SDVOSBs/VOSBs
- Sole-Source award contracts – awards without competition
- Evaluation preferences

- **Subcontracting**

- Large prime contractors must establish SDVOSB and VOSB subcontracting goals

# Eligibility Criteria

- **Size**

- Company must be “small”
- Determined by the Small Business Administration

- **Status**

- Company must be owned and controlled by a “Veteran” or “Service-Disabled Veteran”
- Governed by either the Veterans Administration rules or the Small Business Administration rules

# How does a company qualify as “small”?

- SBA rules apply to all determinations regarding the small business “size” of a company
- Company must fall within “size standards” published by SBA
- Size standards relate to NAICS
- Standards expressed in terms of
  - Average annual number of employees
  - Average net receipts over prior three fiscal years
- Company self-certifies its size in CCR/ORCA/Bid/Proposal
- Size representation may be protested and reviewed by SBA

# How does a company qualify as “small” (continued)?

- Size determination includes any “affiliated” companies
- Affiliates include any company that controls or has the power to control another company or a third company controls or has the power to control both companies
- May be affirmative or negative
  - Common ownership
  - Negative controls by minority shareholders
  - Newly organized concerns

# Subcontracting to Non-Veteran Firms

- **Limitations on subcontracting rule:** In a contract set-aside for small businesses, the prime contractor must perform at least 50% of the labor with its own employees (15% for construction contracts).
- **Non-manufacturer rule:** In a procurement for manufactured products, a prime contractor that is not the manufacturer must supply products manufactured by a small business, unless a waiver applies.
- **Ostensible subcontractor rule:** A subcontractor that is proposed to perform the primary and vital requirements of the contract is deemed “affiliated” with the prime contractor.

# How does a company qualify for preferential *veteran* contracting programs?

- **SBA** rules apply to
  - determinations of SDVOSB “status”
  - for federal procurements *other than VA procurements*
  - SBA permits the offeror to self-certify its SDVOSB status.
- **VA’s** “Veterans First Contracting Program” rules apply to
  - determinations of SDVOSB *and* VOSB status
  - *for VA procurements only*
  - VA “verifies” veteran-owned status and lists on [vetbiz.gov](http://vetbiz.gov).
  - Only VA provides specific prime contracting preferences for VOSBs

# Which veterans are eligible for these preferential contracting programs?

- Veteran
- Service-Disabled Veteran - The disability must be “service-connected” – i.e., the disability was incurred or aggravated in the line of duty in the active military, naval, or air service
  - SBA requires written proof from either the VA, DoD or the Archives that the veteran has a service-connected disability



# Which veteran businesses are eligible to participate in these programs?

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- Unconditional **ownership** by veteran
- Veteran **control** over operations and long term strategy
- Adequate managerial **experience** by veteran

# Which veteran businesses are eligible to participate in these programs (continued)?

- **Ownership**

- The company must be directly owned by one or more veterans; cannot be a subsidiary company
- One or more veterans must own at least 51% of each class of stock, LLC or partnership interest
- Stock options and similar rights are treated as if they have been exercised (“present effect” rule)
- Under VA Veterans First, veteran must receive at least 51% of the profits

# Which veteran businesses are eligible to participate in these programs (continued)?

- **Control**

- One or more veterans must control long-term decision-making and
- One or more veterans must exercise day-to-day management and administration of the business operations of the company
  - The veteran(s) must have sufficient voting power to overcome any “supermajority” voting requirements
  - Veteran must be Managing member of LLC

# Which veteran businesses are eligible to participate in these programs (continued)?

- **Control (cont.)**

- Exception for spouse of SDVO with a permanent and severe disability
- Differences in time devoted to business, full time v. part time
- Must hold highest-officer position
- Must be most highly-compensated employee (VA)

# Which veteran businesses are eligible to participate in these programs (continued)?

- **Experience**

- The veteran must have managerial experience of the extent and complexity needed to run the company
- The veteran need not have the technical expertise or the required licenses, provided the veteran has ultimate managerial and supervisory control over those who do

# SBA/SDVOSB Contracting Advantages

- **Set-Aside Procurements Exclusively for SDVOSBs**
  - If not already set-aside for blind/prison industries
  - If not already being performed within 8(a) Program
  - If “Rule of Two” satisfied
    - Applies above \$100,000 (“Simplified Acquisition Threshold”)
    - Market research must show that there are two or more SDVOSBs that can perform work at a fair and reasonable price
- **Sole Source Awards**
  - If does not fall within categories above
  - And if below \$3.5M (services) and \$6M (supplies)

# Veterans First Contracting Advantages

- **Set-Aside Procurements Exclusively for SDVOSBs *and* VOSBs**
  - If “Rule of Two” satisfied
  - SDVOSBs before VOSBs; VOSBs before other small business categories
- **Sole Source Awards**
  - Can be done in lieu of set-asides, but SDVOSBs before VOSBs
  - And if below \$5M

# Other Programs

- **VA Mentor-Protégé Program**

- Allows large business to mentor SDVOSB/VOSB
- Must apply to VA
- Affiliation exception
- No government-wide SDVOSB/VOSB mentor-protégé program – yet

- **Joint Ventures**

- Allowed in both VA and SBA programs, but must meet certain rules in order to be exempt from affiliation
- VA requires separate entity and separate verification



# How are the SBA and VA rules enforced?

- Status and size protests
- Investigations and enforcement actions by agency Inspectors General and the Department of Justice
- Congressional investigations (including the Government Accountability Office)
- Media/watchdog groups
- VA's verification program/Vendor Information Page of [vetbiz.gov](http://vetbiz.gov)

# Practical Advice

- Do not permit a non-veteran to exercise affirmative or negative control of the company
- Do not enter into “side agreements” with “other-than-small or non-veteran individuals or companies
- The veteran should attend significant meetings, sign contracts and significant correspondence and generally interface with customers
- Consult with a specialist before you submit a proposal for a SDVOSB contract or apply to VA for certification

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**Questions?**