

Procurement Preferences for Small Business Concerns Owned and Controlled by Service-Disabled Veterans

“SERVING THOSE WHO SERVED”

VETERANS BUSINESS SUCCESS



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On December 16, 2003, the **Veterans Benefits Act of 2003** (Public Law 108-183) was enacted amending the Small Business Act (15 U.S.C. 631 et seq.) to establish a procurement program for Small Business Concerns owned and controlled by service-disabled veterans.

Section 308 of that law provides that contracting officers may award a sole source or set-aside contract to Service-Disabled Veteran Owned Small Business Concerns (SDVOSBC), if certain conditions are met. Specifically, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if –

- such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity;
- the anticipated award price of the contract (including options) will not exceed –
 - \$5.0M in the case of a contract opportunity assigned a North American Industry Classification System code for manufacturing; or
 - \$3.0M in the case of any other contract opportunity;
- in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

Additionally, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.

Frequently Asked Questions

Q. Is a formal certification required from the SBA, or any other federal agency, to participate in the SDVOSBC procurement program?

No. The Veterans Benefits Act of 2003 does not require a program to formally certify concerns as SDVOSBCs. A SDVOSBC will be able to “self-represent” its status as a SDVOSBC to the contracting activity as part of its offer. However, for sole source procurements, the SBA or the contracting officer may protest the proposed awardee’s service-disabled veteran status, and for competitive set-asides, any interested party may protest the apparent successful offeror’s SDVOSBC status.

Q. What are the basic requirements for business concerns to participate in the SDVOSBC procurement program?

- The SDVOSBC must be a small business;
- 51 percent of the SDVOSBC must be unconditionally and directly owned by one or more service-disabled veterans; and
- The management and daily business operations of the SDVOSBC must be controlled by one or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or a permanent caregiver of such veteran).

Q. What is SBA's definition of a small business concern?

A small business is a concern that is organized for profit, with a place of business in the United States, and which operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. Further, the concern cannot be dominant in its field, on a national basis. Finally, the business concern's size can not exceed the size standard established for its industry in the North American Industrial Classification System (NAICS) code. The most common size standards are as follows:

- **Construction** – General building and heavy construction contractors have a size standard of \$28.5 million in average annual receipts. Special trade construction contractors have a size standard of \$12 million.
- **Manufacturing** – For approximately 75 percent of the manufacturing industries, the size standard is 500 employees. A small number have a 1,500 employee size standard and the balance have a size standard of either 750 or 1,000 employees.
- **Mining** – All mining industries, except mining services, have a size standard of 500 employees.
- **Retail Trade** – Most retail trade industries have a size standard of \$6 million in average annual receipts. A few, such as grocery stores, department stores, motor vehicle dealers and electrical appliance dealers, have higher size standards. None are above \$24.5 million.
- **Services** – For the service industries, the most common size standard is \$6 million in average annual receipts. Computer programming, data processing and systems design have a size standard of \$21 million. Engineering and architectural services have different size standards, as do a few other service industries. The highest annual receipts size standard in any service industry is \$30 million. Research and development and environmental remediation services are the only service industries with size standards stated in number of employees.

- **Wholesale Trade** – When acting as a dealer on Federal contracts the small business size standard is 500 employees. In addition, on procurement set-aside for small business over \$25,000, the firm must deliver the product of a small domestic manufacturer, as set forth in SBA’s non-manufacturer rule, unless waived by the SBA for a particular class of product. However, for those procurements made under the Simplified Acquisition Procedures of the FAR and where the purchase does not exceed \$25,000, the non-manufacturer may deliver the goods of any domestic manufacturer.
- **Other Industries** – Other industry divisions include: Agriculture; transportation, communications, electric, gas, and sanitary services; and finance, insurance and real estate. Because of wide variation in the structure of the industries in these divisions, there is no common pattern of size standards. For specific size standards refer to the size regulations in 13 CFR § 121.201 or the table of small business size standards.

Q. Who is a service-disabled veteran?

A service-disabled veteran is a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable, and whose disability was incurred or aggravated in line of duty in the active military, naval, or air service.

The definitions of the terms “veteran” and “service-disabled veteran” are derived from Title 38 U.S.C. § 101.

Q. What percentage of a concern must be owned by a service-disabled veteran for it to be qualified as a SDVOSBC?

At least 51 percent of the small business concern must be directly and unconditionally owned by service-disabled veteran(s).

In the case of a small business concern which is a partnership, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more service-disabled veterans. The ownership must be reflected in the small business concern's partnership agreement.

In the case of a small business concern which is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more service-disabled veterans.

In the case of a small business concern which is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more service-disabled veterans.

Stock options, held by non service-disabled veterans, are given present effect. Any unexercised stock options or similar agreements held by service-disabled veterans will be disregarded. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by non-service-disabled veterans will be treated as exercised.

Q. Who does SBA considered to control a SDVOSBC?

Control is not the same as ownership, although both may reside in the same person. Control is regarded as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. A SDVOSBC's management and daily business operations must be conducted by one or more service-disabled veterans, or in the case of a veteran with a permanent and severe disability, the spouse or permanent caregiver of such veteran.

Service-disabled veterans managing the service-disabled veteran owned small business concern must have managerial experience of the extent and complexity needed to run the service-disabled veteran owned small business. However, a service-disabled veteran individual need not have the technical expertise or possess a required license to control a service-disabled veteran owned small business concern if he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise.

Finally, a service-disabled veteran, or in the case of a veteran with a permanent and severe disability, the spouse or permanent caregiver of such veteran, must hold the highest officer position in the concern.

- Control over a partnership – in the case of a partnership, one or more service-disabled veterans, or in the case of a veteran with a permanent and severe disability, the spouse or permanent caregiver of such veteran, must serve as general partners with control over all partnership decisions.
- Control over a limited liability company – in the case of a limited liability company, one or more service-disabled veterans, or in the case of a veteran with a permanent and severe disability, the spouse or permanent caregiver of such veteran, must serve as managing members with control over all decisions of the limited liability company.
- Control over a corporation – in the case of a corporation, one or more service-disabled veterans, or in the case of a veteran with a permanent and severe disability, the spouse or permanent caregiver of such veteran, must control the Board of Directors.

Q. How does SBA view the management and daily business operations of a SDVOSBC controlled by the spouse or permanent caregiver of a veteran with permanent and severe disability?

The management and daily business operations of an SDVOSBC may be controlled by a spouse or permanent caregiver (the spouse, or an individual, 18 years of age or older, who is legally designated, in writing, to undertake responsibility for managing the well-being of the service-disabled veteran) of a service-disabled veteran with a permanent and severe disability (a veteran with a service-connected disability that has been determined by the U.S. Department of Veterans Affairs to have a permanent and total disability for purposes of receiving disability compensation or a disability pension).

Q. What documentation should I have to confirm my status as a service-disabled veteran?

Contact the National Archives and Records Administration at <http://www.archives.gov> to request certified copies of your Department of Defense discharge papers that demonstrates a serve-incurred disability. Additionally, if you have been adjudicated by the Department of Veterans Affairs as having a service-connected disability, contact your local VA regional office for appropriate documentation.

Available Procurement Assistance for SDVOSBC

- Register your SDVOSBC in the **Central Contractor Registration** data base at <http://www.ccr.gov>
 - **Procurement Technical Assistance Program (PTAP)**, administered by the Defense Logistics Agency, on behalf of the Secretary of Defense, provide assistance to business firms in marketing products and services to the Federal, state and local governments. Web Site: <http://www.dla.mil/db/procurem.html>
 - SBA's **Procurement Center Representatives**, located in area offices, review and evaluate the small business programs of federal agencies and assist small businesses in obtaining federal contracts and subcontracts. Web Site: <http://www.sba.gov/GC/pcr.html>
 - **SBA's Commercial Market Representatives (CMR's)**, located in area offices, conduct compliance reviews of prime contractors, counsel small businesses on how to obtain subcontracts, conduct matchmaking activities to facilitate subcontracting to small business, and provide orientation and training on the Subcontracting Assistance Program for both large and small businesses. Web Site: <http://www.sba.gov/GC/indexcontacts-cmrs.html>
 - **Offices of Small & Disadvantaged Business Utilization (OSDBU)** OSDBU's were established under the authority of Public Law 95-507. They are responsible for promoting the use of small, small disadvantaged, (8a), HUBZone, veteran-owned, service disabled veteran-owned small firms, and women-owned small businesses in compliance with federal laws, regulations, and policies. They also assist such firms in obtaining contracts and subcontracts with federal agencies and their prime contractors. Web Site: <http://www.osdbu.gov/Listofmembers.html>
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Points of Contact for Assistance and Guidance:

SBA's Office of Veterans Business Development – 202-205-6773

Web Site -- <http://www.sba.gov/VETS/>

SBA's Veterans Business Outreach Centers:

- The Research Foundation of the State University of New York

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- The University of West Florida in Pensacola

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- The University of Texas - Pan American

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