

## DEPARTMENT OF VETERANS AFFAIRS

**48 CFR Parts 802, 807, 808, 810, 813, 819, 832, 852, and 853**

**RIN 2900-AR06**

### **VA Acquisition Regulation: Acquisition Planning; Required Sources of Supplies and Services; Market Research; and Small Business Programs**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. This rulemaking revises coverage concerning Acquisition Planning, Required Sources of Supplies and Services, Market Research, and Small Business Programs, as well as affected parts to include Definitions of Words and Terms, Simplified Acquisition Procedures, Contract Financing, Solicitation Provisions and Contract Clauses, and Forms.

**DATES:** Comments must be received on or before May 9, 2022 to be considered in the formulation of the final rule.

**ADDRESSES:** Comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov). Comments received will be available at [regulations.gov](http://regulations.gov) for public viewing, inspection, or copies.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rafael Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 810 Vermont Avenue NW, Washington, DC 20420, (202) 714-8560. (This is not a toll-free telephone number.)

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures.

Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

#### **Discussion and Analysis**

VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authorities that are removed from the VAAR will be included in the VA Acquisition Manual (VAAM) as internal agency guidance. These changes seek to streamline and align the VAAR with the FAR, remove outdated and duplicative requirements, and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency procedural guidance. VA will rewrite certain parts of the VAAR and draft new internal VAAM parts, and as VAAR parts are rewritten, will publish them in the **Federal Register**. VA will combine related topics, as appropriate. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the rulemaking process as they are internal VA procedures and guidance. Therefore, the VAAM will not be finalized until corresponding VAAR parts are finalized, and the corresponding VAAM parts or sections related to this rule is not yet available online.

#### *VAAR Part 802—Definition of Words and Terms*

We propose to revise the authority citation by removing the dash in 48 CFR 1.301-1.305 and adding the word, "through."

In 802.101 we propose adding four new definitions and revising three existing definitions as discussed below. We propose adding the following definitions:

*Public Law (Pub. L. 109-461)* means the Veterans Benefits, Health Care and Information Technology Act of 2006, as codified in 38 U.S.C. 8127 and 8128, which authorizes the Veterans First Contracting Program.

*SDVOSB/VOSB* when used as an initialism means a service-disabled veteran-owned small business (SDVOSB) and/or veteran-owned small business (VOSB) that has been found by VA eligible to participate in the Veterans First Contracting Program implemented at subpart 819.70 and listed in the Vendor Information Pages. The term is synonymous with VA or VIP verified small business concerns owned and controlled by Veterans.

*VA Rule of Two* means the determination process mandated in 38 U.S.C. 8127(d)(1) whereby 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. For purposes of this VA specific rule, a service-disabled veteran-owned small business (SDVOSB) or a veteran-owned small business (VOSB), must meet the eligibility requirements in 38 U.S.C. 8127(e), (f) and VAAR 819.7003 and be listed as verified in the Vendor Information Pages (VIP) database maintained by the VA Office of Small and Disadvantaged Business Utilization (OSDBU), Center for Verification and Evaluation (CVE). It is distinguished from the FAR part 19 "Rule of Two" contracting determination requirement for general small business set-asides.

*Veterans First Contracting Program (VFCP)* means the program authorized by Public Law 109-461 (38 U.S.C. 8127 and 8128), as implemented in subpart 819.70. This program applies to all VA contracts (see FAR 2.101 for the definition of contracts) including orders against Blanket Purchase Agreements (BPAs), Basic Ordering Agreements (BOAs), and orders against the Federal

Supply Schedules (FSS), unless otherwise excluded by law.

In 802.101 we propose revising the following three definitions that already exist in the VAAR:

*Service-disabled veteran-owned small business (SDVOSB)*—the definition remains substantially the same as a service-disabled veteran-owned small business concern defined in FAR 2.101, except that for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program, these businesses must be listed as verified in the VIP database. In addition, some SDVOSBs listed in the VIP database may be owned and controlled by a surviving spouse. See definition of surviving spouse in 802.101.

*Vendor Information Pages (VIP) database*—this expands the definition currently in the VAAR, indicating that the VA Office of Small and Disadvantaged Business Utilization (OSDBU) office, through its Center for Verification and Evaluation (CVE), is responsible for maintaining the SDVOSB/VOSB list, and provides an updated website address for the database: <https://www.vetbiz.va.gov/vip/>. This site's database lists businesses that VA CVE has verified and determined eligible for the Veterans First Contracting Program.

*Veteran-owned small business (VOSB)*—the definition remains substantially the same as a *veteran-owned small business concern* defined in FAR 2.101, except that for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program, these businesses must be listed as verified in the VIP database. SDVOSBs, including businesses whose SDVOSB status derive from ownership and control by a surviving spouse, are also considered VOSB, as long as they are listed as eligible in VIP.

#### VAAR Part 807—Acquisition Planning

We propose removing the entirety of part 807—Acquisition Planning, including subpart 807.1—Acquisition Plans, and 807.103, Agency-head responsibilities. This identifies internal procedures of VA that do not have a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)). The information in this section will be moved to the VAAM.

We propose removing subpart 807.3—Contractor Versus Government Performance, and 807.300, Scope of subpart, and 807.304–77, Right of first refusal. This addresses contracting for commercial services under OMB A–76 and VA's cost comparison process. It is proposed for removal because the

material is outdated. The clause was used in conjunction with OMB Circular A–76, Performance of Commercial Activities or with VA's cost comparison process. The VA Directive that implemented VA's cost comparison process, VA Directive 7100, Competitive Sourcing, has been rescinded, which renders the guidance in this subpart and the clause obsolete. VA does not currently have policy guidance in place that supplements the OMB Circular A–76. Current FAR coverage is sufficient pending any changes to the program via the FAR or OMB directives.

#### VAAR Part 808—Required Sources of Supplies and Services

We propose revising the authority citations pertaining to part 808 to standardize how it is referenced in other VAAR parts. The authority, which now reads “38 U.S.C. 8127 and 8128” would be changed to read: “38 U.S.C. 8127–8128.”

We propose removing reference to paragraph (d) in the 40 U.S.C. 121 citation because it is unnecessary; only paragraph (c) will be reflected. This comports with the FAR. 40 U.S.C. 121(c) provides that the Administrator of the General Services Administration may prescribe regulations to carry out responsibilities under the Federal Property and Administrative Services subtitle of Title 40, and, additionally, that the head of each executive agency shall issue orders and directives that the agency head considers necessary to carry out the prescribed regulations issued by the Administrator. The VAAR, which supplements and implements the FAR, and its internal operational procedures, is a part of the orders and directives as authorized under this authority.

We propose including a reference to Title 41 U.S.C. 1121(c)(3), which speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

And finally, we also propose revising the part 808 authorities to add 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA's Chief Acquisition Officer. We are removing the dash in 48 CFR 1.301–1.304 and adding the word “through.” Any other proposed changes to authorities are shown under the individual parts as described in the preamble.

We propose adding 808.000, Scope of part, to clarify that the part deals with

prioritizing sources of supplies and services for use by the Government based on unique VA statutory programs, as well as use of the General Services Administration (GSA) Federal Supply Schedules program including the GSA delegated VA Federal Supply Schedule program.

We propose adding 808.001, General, with no text as a header, and section 808.001–70, Definitions, to provide a definition for the Veterans Affairs Federal Supply Schedule (“VA FSS”). The definition of VA Federal Supply Schedule was added because “VA FSS” is used throughout part 808.

We propose revising 808.002 to implement the requirements of the Department of Veterans Affairs Contracting Preference Consistency Act of 2020 (the Act), Pubic Law 116–155, amending 38 U.S.C. 8127, which became effective on August 8, 2020. In summary, the legislation requires a contracting officer of the Department to procure covered products and services on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), from a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled, as required by 41 U.S.C. chapter 85 and associated regulations prescribed under that chapter. This is referred to as the AbilityOne program. This requirement shall not apply in the case of a covered product or service for which a contract was awarded to an SDVOSB/VOSB under the authority of 38 U.S.C. 8127(d)(1) using restricted competition after December 22, 2006 and in effect on the day before the enactment of the Act, *i.e.*, August 7, 2020. In such case, these covered products and services shall continue under VA's unique SDVOSB/VOSB set-aside program using restricted competition as provided in VAAR 819.7006 and 819.7007. When these SDVOSB/VOSB contracts are terminated or expire, the Secretary, as delegated to the Head of the Contracting Activity or designee, is required to make a determination that the VA Rule of Two cannot be met before the requirement can be procured under the AbilityOne program. The legislation provides a definition of covered products and services and an exception which the VA implemented through Class Deviation from VA Acquisition Regulation Part 808, Required Sources of Supplies and Services, approved on July 20, 2021.

We propose revising VAAR 808.002 to comport with changes to FAR 8.002 based on FAC 2005–72, December 31, 2013, effective January 30, 2014 and reflects VA's implementation of FAR

8.002. The FAR final rule amended FAR part 8 to clarify that use of General Services Administration (GSA) Federal Supply Schedules (FSS) is not mandatory.

With this proposed rule, the VA is amending VAAR section 808.002 to set forth conforming amendments to its acquisition regulation as the result of legislation which requires contracting officers to give priority in the award of covered products and services under the AbilityOne program along with considering the requirements of the Veterans First Contracting Program set forth in subpart 819.70 as further described below. VA is also implementing related technical amendments as set forth below including adding citation references back to 808.002 in VAAR part 819.

In general, we propose amending section 808.002, by adding paragraph (a) and (b) and removing paragraph (c). Paragraph (a) would state that contracting activities shall satisfy requirements for supplies and services from or through the mandatory sources listed in descending order of priority and aligns with FAR 8.002. Under (a)(1) and the underlying subparagraphs, the priorities for Supplies are established as—

- VA inventories including the VA supply stock program and VA excess.
- Excess from other agencies.
- Federal Prison Industries, Inc.
- Supplies that are on the

Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7).

- Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101–26.3), the Defense Logistics Agency (see 41 CFR 101–26.6), the Department of Veterans Affairs (see 41 CFR 101–26.704), and military inventory control points.

Under paragraph (a)(2), the priority is established for Services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7).

In 808.002, Priorities for use of mandatory Government sources, in order to implement the new Act, we added paragraphs (a)(1)(iv) and (a)(2) to reflect the new legislative mandate concerning products and services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, required to be procured through the AbilityOne Program, to:

- Add definitions for a “covered product” or “covered service” which means a product or service that is included on the Procurement List prescribed under FAR 8.002 and was included on such procurement list on or before December 22, 2006, or is a product or service that is a replacement for a product or service and that essentially meets the same requirement as the product or service being replaced; and the contracting officer determines such product or service meets the quality standards and delivery schedule requirements of VA.

- Establish AbilityOne as a priority mandatory Government source within certain limitations applicable to the Veterans First Contracting Program and to require that contracting officers shall procure a covered product or service that is on the Procurement List through the AbilityOne Program as set forth in VAAR 808.002(a)(1)(iv) and (a)(2), respectively, with one exception.

- Identify the exception for covered products or services previously awarded to SDVOSBs/VOSBs. Specifically, if a product or service contract action was previously awarded under 38 U.S.C. 8127 to a VIP-listed SDVOSB or VOSB after December 22, 2006 and in effect on the day before the enactment of the Act, *i.e.*, August 7, 2020, the requirement shall continue to be procured as a SDVOSB/VOSB set-aside provided the contracting officer made a VA Rule of Two determination in accordance with 38 U.S.C. 8127(d)(1) and subpart 819.70.

- Restore AbilityOne as a priority mandatory source for covered products and services on the Procurement List on certain previously awarded SDVOSB/VOSB contracts if the VA Rule of Two is not met. Specifically, section 808.002 would require that, in the event the conditions of the exception are satisfied at the termination or expiration of a contract for covered products or services previously awarded under 38 U.S.C. 8127(d)(1) to SDVOSBs or VOSBs, AbilityOne remains a priority mandatory Government source. This requires a determination, which the Secretary delegates to the Head of the Contracting Activity or designee, that there is not a reasonable expectation that two or more SDVOSBs/VOSBs will submit offers and that award can be made at a fair and reasonable price that offers best value to the United States.

We also propose removing 808.002, paragraph (c), Eligible beneficiaries, because internal procedures are more appropriately located in the VAAM. We propose adding paragraph (b), Unusual and compelling urgency, to comport with the FAR. The contracting officer may use a source other than those listed

in 808.002, paragraph (a) when the need for supplies or services is of an unusual and compelling urgency. We added in a reference to FAR 6.302–2, 8.405–6, 13.106–1 and VAAR part 806 for justification requirements.

We propose adding 808.004, Use of other sources, and 808.004–70, Use of other priority sources. This provides that contracting officers shall award contracts, Blanket Purchase Agreements (BPAs), and orders against VA and GSA Federal Supply Schedules (FSS), providing priority in the awarding of such contracts, agreements, and orders to VIP-listed SDVOSBs first, then VOSBs. This section also sets policy for VA strategic sourcing priorities and application of the VA Rule of Two. To provide medical supplies in Federal Supply Classification (FSC) groups 65 and 66 efficiently and effectively the VA, through previous reform initiatives, has implemented key strategic sourcing contract vehicles (*e.g.*, prime-vendor, national contracts, VA FSS). If these strategic sourcing contracts were subject to the VA Rule of Two, they may be determined mandatory by the head of the contracting activity. Contracting officers shall consider these priority contract vehicles before using other existing contract vehicles. This comports with FAR 8.002 which encourages agencies to consider satisfying requirements from or through non-mandatory sources. VA balances this requirement carefully with the consideration of VA-specific strategic sourcing vehicles that permit VA to more effectively and efficiently meet its mission for those FSC groups delegated by GSA to VA—FSC Group 65 and 66 for supplies, and FSC Group 621, for medical services, in addition to those other strategic sourcing vehicles supporting this core VA mission.

In subpart 808.4, Federal Supply Schedules:

We propose revising 808.402, General, to identify the GSA delegation to VA implementing FAR 8.402(a), whereby GSA has delegated authority to the VA to procure medical equipment, supplies, services, and pharmaceuticals under the VA Federal Supply Schedule (FSS) program. The VA FSS program includes medical supplies in Federal Supply Classification (FSC) Groups 65 and 66 and services in FSC 621 for Professional and Allied Healthcare Staffing Services and Medical Laboratory Testing and Analysis Services. We propose to remove outdated FSC groups that are no longer delegated.

We propose adding 808.404, Use of Federal Supply Schedules, and 808.404–70, Use of Federal Supply Schedules—the Veterans First

Contracting Program. Contracting officers, when establishing a BPA or placing an order against the FSS, shall ensure that priorities for Veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences in subpart 819.70. Specifically, the contracting officer must consider preferences for verified SDVOSBs first, then preferences for verified VOSBs. These priorities are followed by preferences for other small businesses in accordance with 819.7005. This also supplements FAR 8.404 and provides that if contracting officers are unable to satisfy requirements for supplies and services from the mandatory sources in 808.002 and 808.004–70, they may consider commercial sources in the open market (see FAR 8.004(b)) if an open market acquisition is most appropriate (see FAR 8.004) and a VA Rule of Two determination is made (see subpart 819.70). This section also requires that when the servicing agency will award contracts under an interagency agreement on behalf of the VA, the contracting officer shall ensure the interagency acquisition complies with FAR subpart 17.5 and VAAR subpart 817.5, and includes terms requiring compliance with the VA Rule of Two, to the maximum extent feasible—see VAAR subpart 817.5.

We propose removing 808.405–2, Ordering procedure for services requiring a statement of work as the language is outdated.

We propose adding 808.405, Ordering procedures for Federal Supply Schedules, as a section heading with no text, and 808.405–70, Set-aside procedures for VA and GSA Federal Supply Schedules. This requires contracting officers to use the supplemental ordering procedures of this section when establishing a BPA or placing an order for supplies or services under this subpart. This includes posting requirements and the required use of evaluation preferences for SDVOSBs/VOSBs when a set-aside is not pursued in accordance with the market research and documentation requirements set forth.

We propose adding 808.405–570, Small business set-asides and preferences—Veterans First Contracting Program clauses. This includes the prescription that requires the contracting officer, when setting aside an order pursuant to 808.405–70 (a), the applicable clause prescribed in 819.7011 for SDVOSB/VOSB set-asides shall be used. It also prescribes in paragraph (b) that when an SDVOSB/VOSB set-aside is not feasible, the ordering activity shall use the clause at

852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs, for task orders, delivery orders or BPAs using evaluation preferences other than price. And in paragraph (c), it requires the ordering activity to insert the clause at 852.208–71, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders or BPAs, in request for quotes and resulting orders that include clause 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.

In subpart 808.6, Acquisition from Federal Prison Industries, Inc., we propose revising the title to remove “(FPI)” to comport with the title in the FAR.

In 808.603, Purchase priorities, we add language that contracting officers may purchase supplies and services produced or provided by Federal Prison Industries (FPI) from eligible SDVOSBs and VOSBs, in accordance with procedures set forth in subpart 819.70, without seeking a waiver from FPI. We are correcting the previous title that had been codified at 808.603 from “Purchasing priorities” to “Purchase priorities” to align with the FAR.

We propose to remove and reserve 808.8, Acquisition of Printing and Related Supplies and the underlying section 808.802, Policy. This is internal policy that will be removed to the VAAM.

#### *VAAR Part 810—Market Research*

We propose revising the authority citations pertaining to part 810 to standardize how it is referenced in other VAAR parts. The authority, which now reads “38 U.S.C. 8127 and 8128,” would be changed to read: “38 U.S.C. 8127–8128.”

We propose removing reference to paragraph (d) in the 40 U.S.C. 121 citation because it is unnecessary; only paragraph (c) will be reflected. This comports with the FAR. 40 U.S.C. 121(c) provides that the Administrator of the General Services Administration may prescribe regulations to carry out responsibilities under the Federal Property and Administrative Services subtitle of Title 40, and, additionally, that the head of each executive agency shall issue orders and directives that the agency head considers necessary to carry out the prescribed regulations issued by the Administrator. The VAAR, which supplements and implements the FAR, and its internal operational procedures, is a part of the orders and directives as authorized under this authority.

We propose including a reference to Title 41 U.S.C. 1121(c)(3), which speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

And finally, we also propose revising part 810 authorities to add 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA’s Chief Acquisition Officer. We are removing the dash in 48 CFR 1.301–1.304 and adding the word “through.” Any other proposed changes to authorities are shown under the individual parts as described in the preamble.

We propose revising part 810, Market Research, to add 810.000, Scope of part, which provides that the Veterans First Contracting Program in subpart 819.70 applies to contract actions under this part and takes precedence over other small business programs referenced in FAR part 10 and FAR part 19.

We propose revising, redesignating, and renumbering the current 810.001, Market research policy, and retitling it so it now reads: 810.001–70, Market research policy—use of VA Vendor Information Pages. This corrects the error during original codification in the VAAR when published originally as a proposed and final rule and which currently is reflected in the eCFR as “810.001, Market research policy,” and which then should have reflected: 810.001, Policy. This provides an updated Vendor Information Pages (VIP) website address and require contracting officers to review the VIP database as mandated by VAAR subpart 819.70, the Veterans First Contracting Program. It also requires more specifically that contracting officers search the VIP database by applicable North American Industry Classification System (NAICS) codes to determine whether two or more verified service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs), in the appropriate NAICS code, are listed as verified in the VIP database. The contracting officer is required to determine, among other things as the requirement dictates, whether VIP-listed SDVOSBs or VOSBs identified as a result of market research are capable of performing the work, are likely to submit an offer/quote, and whether award can be made at a fair and reasonable price that offers best value to the Government. The contracting officer must use the market research for acquisition planning purposes, and as

set forth in VAAR subpart 819.70, conduct a VA Rule of Two determination in accordance with the contracting order of priority (see 819.7006 and 819.7007)

We also propose removing 810.002, Market research procedures. This identifies internal procedures of VA that do not have a significant effect beyond the internal operating procedures of the VA (see FAR 1.301(b)). The information in this section will be moved to the VAAM.

#### *VAAR Part 813—Simplified Acquisition Procedures*

We propose revising the title of 813.003–70, Policy, to “General policy” to reflect it is supplementing the FAR at 813.003 and to comport with standard FAR conventions. We also propose adding a sentence in paragraph (a) that provides a pointer back to 808.002 for VA policy regarding mandatory Government sources. In the following paragraphs we propose updating references to 819 sections as a result of the renumbering of VAAR part 819 sections as follows:

In paragraph (c)(1) references to 819.7005 and 819.7006 are revised to 819.7006 and 819.7007, respectively, and a reference to 819.7009 is revised to 819.7011.

In paragraph (c)(2) a reference to 815.304 is revised to 815.304–70 to reflect a change at that section in VAAR part 815.

And in paragraph (d), a reference pointer to 819.7004 and 819.7011 are added to the end of the sentence.

In subpart 813.1, Procedures, we add references to new relevant VAAR part 806 sections to section 813.106–70, Soliciting competition, evaluation of quotations or offers, award and documentation—the Veterans First Contracting Program. In paragraph (b), we add a reference to 806.302–570(a) and (b) pertaining to justification for procurements under the simplified acquisition threshold, and in paragraph (c), we add a reference to 806.302–570(a) and (c), above the simplified acquisition threshold.

#### *VAAR Part 819—Small Business Programs*

We propose adding authority citations for 15 U.S.C. 631 *et seq.* to denote the authority for small business programs at Federal agencies, as well as moving 15 U.S.C. 637(d)(4)(E) earlier in the list of authorities to reflect authority for an agency to develop incentives for increasing subcontracting plan opportunities which is under the auspices of the Office of Small and

Disadvantaged Business Utilization (OSDBU).

We propose revising the authority citations pertaining to part 819 to standardize how it is referenced in other VAAR parts. The authority, which now reads “38 U.S.C. 8127 and 8128,” would be changed to read: “38 U.S.C. 8127–8128.”

We propose removing reference to paragraph (d) in the 40 U.S.C. 121 citation because it is unnecessary; only paragraph (c) will be reflected.

We propose revising the authority citations pertaining to part 819 to include a reference to 41 U.S.C. 1121(c)(3), which speaks to the authority of an executive agency under another law to prescribe policies, regulations, procedures, and forms for procurement that are subject to the authority conferred in the cited section, as well as other sections of Title 41 as shown therein.

We also propose revising part 819 authorities to add 41 U.S.C. 1303, which reflects additional authority of the VA as an executive agency to issue regulations that are essential to implement Governmentwide policies and procedures in the agency, as well as to issue additional policies and procedures required to satisfy the specific needs of the VA.

We also propose adding 41 U.S.C. 1702, which addresses overall direction of procurement policy, acquisition planning and management responsibilities of VA’s Chief Acquisition Officer. Any other proposed changes to authorities are shown under the individual parts as described in the preamble. We are removing the dash in 48 CFR 1.301–1.304 and adding the word “through.”

We propose adding 819.000, Scope of part, indicating that 819 supplements FAR 19 and implements provisions of title 38 U.S.C. 8127 and 8128, as well as Executive Order 13360 and the Small Business Act (15 U.S.C. 631 *et seq.*) as applied to VA. This part also covers goals, priorities, and preferences for using SDVOSBs, VOSBs, and SBs, as well as subcontracting compliance.

In subpart 819.2, Policies, the text is revised and updated to align more appropriately with FAR subpart 19.2 and to expand on VA policy regarding the Veterans First Contracting Program. New text in section 819.201 describes VA’s small business policy consistent with the VA’s legislation and its legislative history and is now aligned with the most recent FAR paragraph lettering/numbering. In the proposed revisions to 819.201, General policy, the realigned section contains revisions as follows: Paragraph (a) provides a policy

statement regarding priority for veteran owned small businesses and establishment of goals consistent with VA’s legislative mandate and key points in the Supreme Court Kingdomware decision regarding goals; paragraph (c) assigns OSDBU concurrent responsibility for the Veterans First Contracting Program, in addition to those legislative mandates in FAR; and paragraph (d) covers the appointment of small business specialists by the HCA in coordination with OSDBU.

We propose revising 819.202, Specific policies to align with the FAR coverage for OSDBU recommendation on set-asides. It implements the FAR section and expands coverage to the Veterans First Contracting Program in subpart 819.70. The section also covers, in very broad terms, the VA Form 2268, Small Business Program and Contract Bundling Review process.

We propose deleting 819.202–1, Encouraging small business participation in acquisitions. Existing contract financing language here is removed from the VAAR as redundant to the FAR, and certain internal procedural guidance is included in VAAM subpart 832.4. The current VAAR text provides that payments of less than 30 days are allowed, but the contracting officer and the local fiscal officer must agree on the negotiated payment terms before awarding the contract. Note: This requirement may have been overtaken by the accelerated payments provisions recently added to FAR part 32.

We propose removing coverage in sections 819.202–1, 819.202–5, 819.202–70, and 819.202–71. Current VAAR coverage under these sections are no longer necessary or were moved to other sections. Internal procedures are removed and moved to the VAAM.

In 819.202–72, Order of precedence, the section is removed, and the language moved to a new section 819.203–70, Priority for SDVOSB/VOSB contracting preferences, to supplement more appropriately FAR 19.203.

We propose adding 819.203, Relationship among small business programs, as a section header with no text.

We proposed adding 819.203–70, Priority for SDVOSB/VOSB contracting preferences. This proposed supplement to FAR 19.203 cites the legislative authority for VA to establish special acquisition methods and priorities which shall be considered by VA contracting officers before other priorities and preferences in FAR 19.203. It also covers legislative requirements in 38 U.S.C. 8128 to provide SDVOSB/VOSB preference

under any other small business program.

In subpart 819.3, Determination of Small Business Status for Small Business Programs, we propose revising the title to comport with the updated FAR title so that it reads: Determination of Small Business Size and Status for Small Business Programs.

We propose revising existing section at 819.307, SDVOSB/VOSB Small Business Status Protests, to change the title to comport with the FAR so that it reads: "Protesting a firm's status as a service-disabled veteran-owned small business concern." There is no text under this section heading. The text previously under this section is moved to a new 819.307–70 as described below.

We propose adding 819.307–70, SDVOSB/VOSB status protests, to reflect that it provides VA policy supplementing FAR 19.307. Paragraph (a) from the existing CFR is modified as a single paragraph. The other paragraphs in the previous text at 819.307 are removed. The proposed modified section reiterates a FAR requirement that protests, challenging whether an SDVOSB/VOSB is a "small business" for the purposes of any Federal program, are subject to FAR subpart 19.3 and must be filed in accordance with that part. It also implements legislative requirements contained in section 1832 of the National Defense Authorization Act for FY 2017, Public Law 114–328, to place responsibility for all SDVOSB/VOSB status protests with the SBA Office of Hearings and Appeals, including those related to VIP inclusion.

We propose revising subpart 819.5, to change the title from "Set-Asides for Small Businesses" to "Small Business Total Set-Asides, Partial Set-Asides, and Reserves" to comport with an updated title in the FAR.

We propose adding 819.501, General, as a section header with no text.

We propose adding 819.501–70, General principles for setting aside VA acquisitions. A new section is created as a supplement to FAR 19.501, General, providing small business set aside principles and priorities that apply to VA set asides. The FAR provides a preference to the socioeconomic programs in FAR 19.202 before small business set-asides but does not provide coverage for VOSB set-asides. Nor does it require verification of SDVOSBs for set-asides covered under FAR subpart 19.14. Moreover, the SDVOSB program in FAR is discretionary and not mandatory as it is for VA. The new section covers VA priorities and preferences for SDVOSBs/VOSBs, both

above and below the simplified acquisition threshold in accordance with subpart 819.70. These priorities also apply to all VA acquisitions under this subpart including orders and BPAs under multiple award contracts, GSA Federal Supply Schedule contracts and Multi-Agency Contracts (MACs) awarded by another agency. It also provides that when a procurement requirement is not set aside for SDVOSBs/VOSBs in accordance with subpart 819.70, the contracting officer shall consider using evaluation preferences, as set forth in 808.405–70 or 815.304–70. It also adds coverage indicating that contracting officers may provide in the solicitation for the use of tiered evaluations. Note: Since other Federal agencies, including GSA, are not subject to Public Law 109–461, and/or ownership and control verification, the section reiterates that the requirements in this section apply to all VA competitive acquisitions under this subpart, including orders and BPAs under multiple award contracts, GSA Federal Supply Schedule contracts and Multi-Agency Contracts (MACs) awarded by another agency. It also provides that a set-aside restricted to SDVOSBs/VOSBs pursuant to VAAR subpart 819.70 satisfies competition requirements in FAR part 6, as well as fair opportunity requirements for orders under multiple-award contracts (see FAR 16.505(b)(2)(i)(F)).

Under section 819.502, Setting aside acquisitions, we propose adding an underlying section 819.502–1, Requirements for setting aside acquisitions. This new section is created to supplement FAR 19.502–1(b) with the VA policy for mandatory Government sources. The FAR section provides that small business set-asides do not apply to purchases from required sources under part 8 (e.g., Committee for Purchase From People Who are Blind or Severely Disabled). As a result of Public Law 116–155, the new VAAR section refers contracting officers to VAAR 808.002 for the VA policy regarding priorities for use of SDVOSBs/VOSBs and mandatory Government sources as VA has different requirements with respect to FAR 8.002 based on Public Law 116–155.

In 819.502–2, Total small business set-asides, we propose adding new coverage at 819.502–2(a) to indicate that VA contracting officers, rather than withdrawing an SDVOSB/VOSB set-aside and resoliciting, may follow tiered evaluation procedures, as provided in the March 22, 2018 VA Class Deviation from Federal Acquisition Regulation 19.502–2, Total small business set-asides.

We propose removing 819.502–3, Partial set-asides. Coverage is no longer required because the FAR adequately covers this topic.

We propose adding 819.507, Solicitation provisions and contract clauses, as a new section header with no text.

We propose adding 819.507–70, Additional VA solicitation provisions and contract clauses. This proposed new section refers contracting officers to VAAR subpart 808.4 (Federal Supply Schedules); VAAR subpart 815.3 (Source Selection); and VAAR subpart 819.70 (Veterans First Contracting Program) for VA specific requirements and clauses applicable to VA veteran-owned and small business contracting programs.

We propose removing subpart 819.6, Certificates of Competency and Determinations of Responsibility. The FAR-redundant language is removed and information that is internal and procedural in nature is moved to the VAAM.

In subpart 819.7—The Small Business Subcontracting Program, we propose removing 819.704, Subcontracting plan requirements; the language will be moved to a new section, retitled and revised as discussed below.

We propose adding 819.704–70, VA subcontracting plan requirements, as a supplement to the FAR. This language contains some previous coverage at 819.704. This proposed new language directs contracting officers to ensure any subcontracting plans submitted by offerors include goals for SDVOSBs and VOSBs that are commensurate with the annual VA SDVOSB and VOSB subcontracting goals, rather than the prime contracting goals as previously included in this section. The proposed new language cautions contractors that only firms registered and verified through the VIP data base will count towards their SDVOSB/VOSB subcontracting goals; and that subcontracting plan achievement reports will be reviewed to ensure the subcontract was awarded to a business concern that is eligible to be counted toward meeting the goal, as provided in subpart 819.70.

Section 819.704–70, paragraph (b) requires goals to be expressed as a percentage of total dollars to be subcontracted unless otherwise stated in the solicitation. Paragraph (c) provides that if an offeror proposes to use an SDVOSB/VOSB subcontractor for the purpose of receiving SDVOSB/VOSB evaluation factors credit pursuant to 808.405–70 or 815.304–70, the contracting officer shall ensure that the offeror, if awarded the contract, uses the



proposed subcontractor or another SDVOSB/VOSB for that subcontract or for work of similar value, in accordance with clause 852.208–70 or 852.215–71, Evaluation Factor Commitments.

Paragraph (d) provides that pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB or VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business.

We propose removing 819.705, Appeal of contracting officer decisions. Relevant subcontracting-related language is incorporated into 819.704–70. Unrelated language regarding set-aside decisions is removed because it is not applicable to subcontracting.

We propose renumbering 819.709, Contract clause, as 819.708, Contract clauses, to align with FAR clause coverage on small business subcontracting plans. It requires the contracting officer to 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. In addition, the section refers readers to new subpart 819.72 for other required provisions and clauses.

In subpart 819.8, Contracting With the Small Business Administration (The 8(a) Program), we propose revising the title to correct a minor capitalization error to comport with the FAR so that it reads: “Contracting With the Small Business Administration (the 8(a) Program).”

We propose revising 819.800, General. Paragraphs (a), (b), and (c) are deleted as obsolete. New paragraph (e) is created to refer to the SBA/VA Partnership Agreement (PA), which delegates contracting execution authority to VA contracting officers. The PA sets forth the delegation of authority and establishes the basic procedures for expediting the award of 8(a) contract requirements. The actual PA and related basic procedures will be addressed in VAAM subpart M819.8. The PA is now permanent (as opposed to a yearly agreement) but is subject to cancellation by SBA. The new language provides that contracting officers must follow the alternate procedures in the Partnership Agreement and this subpart, as applicable, to award an 8(a) contract and that in the event no Partnership Agreement is in effect, the procedures in FAR subpart 19.8 will be followed.

We propose adding 819.811, Preparing the contracts, as a section header with no text.

We propose adding 819.811–370, VA/SBA Partnership Agreement and contract clauses, for direct 8(a) awards. The new language prescribes clauses 852.219–18, Notification of Competition Limited to Eligible 8(a) Participants, and 852.219–71, Notification of Section 8(a) Direct Award.

In subpart 819.70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Acquisition Program, we propose revising the title of the subpart to reflect the well-known and public name of the program: The VA Veterans First Contracting Program, typically referred to as the Veterans First Contracting Program.

We propose revising 819.7001, General, to provide background and legislative authority for the Veterans First Contracting Program consistent with legislative requirements in 38 U.S.C. 8127 and 8128 and the June 16, 2016 decision of the U.S. Supreme Court in *Kingdomware Technologies, Inc. v. United States* (No. 14–916) (136 S.Ct. 1969 (2016)). In the *Kingdomware* decision dated June 16, 2016, the Supreme Court held that 38 U.S.C. 8127(d) applies to all competitively awarded contracts, including orders placed against Federal Supply Schedule (FSS) contracts. The Court also held the Rule of Two contracting procedures in section 8127(d) are not limited to those contracts necessary to fulfill the Secretary's goals. The “VA Rule of Two” as VA's implementing policy defined in VAAR 802.101 via Class Deviation issued on July 25, 2016 (and subsequent minor amendments), after the *Kingdomware* case, refers to the legislative requirement in § 8127(d) that “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.” Paragraph (b) is revised to state that eligible SDVOSBs qualify for VOSB preferences under VAAR subpart 819.70. Paragraphs (c) and (d) provide the legislative basis for VA contracting officers to make awards to VIP-listed SDVOSBs/VOSBs using set-asides, other than full and open competition (sole source), as well as to provide SDVOSBs/VOSBs priority in the awarding of contracts and subcontracts through the use of evaluation preferences. Paragraph (d)

provides that while contracting officers shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans as provided in 819.7006 and 819.7007, when appropriate, the contracting officer may also use other SDVOSB/VOSB preferences in this subpart, including sole source awards. Paragraph (e) provides that a contract awarded under this subpart is subject to the SBA limitations on subcontracting requirements in 13 CFR 125.6, provided that a firm must be VIP-listed. Additional information is provided as to who is considered similarly situated. Paragraph (f) states that the attainment of goals or the use of interagency vehicles or Governmentwide contract vehicles (*i.e.*, Federal Supply Schedules (FSS)) does not relieve the contracting officer from using SDVOSB/VOSB set-asides and other preferences as provided in subpart 819.70. It also requires that if the VA enters into a contract, agreement, or other arrangement with any Governmental entity to acquire goods or services, the entity acting on behalf of the VA through such an interagency acquisition or other agreement will comply, to the maximum extent feasible, with the provisions of the Veterans First Contracting Program as set forth in this subpart. Paragraph (g) requires contracting officers to ensure awards are made using the VA hierarchy of SDVOSB/VOSB preferences in this subpart. Specifically, the contracting officer will consider preferences for eligible SDVOSBs first, then preferences for other eligible VOSBs. And paragraph (h) would provide that when an offer of an SDVOSB/VOSB prime contractor includes a proposed team of small business subcontractors and specifically identifies the first-tier subcontractor(s) in the proposal, the contracting officer must consider the capabilities, past performance, and experience of each first tier subcontractor that is part of the team as the capabilities, past performance, and experience of the small business prime contractor if the capabilities, past performance, and experience of the small business prime does not independently demonstrate capabilities and past performance necessary for award.

We propose revising 819.7002, Applicability, to reiterate that this subpart applies to VA contracting activities and to all contract actions. In addition, this subpart applies to VA contractors and 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. It includes a reference to VAAR 808.002 to ensure the public and VA contracting officers understands to refer to 808.002 for applicability and VA policy regarding priorities for use of mandatory Government sources.

We propose revising 819.7003, Eligibility. Most of the original structure and language regarding eligibility of SDVOSBs and VOSBs is retained but updated to reflect new legislative requirements regarding eligibility under the program and alignment with SBA regulations, including the applicability of limitations on subcontracting and the transfer of eligibility challenges to the SBA as a result of Public Law 114–328, enacted December 23, 2016 and subsequent legislative and regulatory changes. For example, new language has been added to clarify joint venture eligibility as a result of recent SBA regulatory changes, and a new paragraph is added to address the limitations on subcontracting certification requirements in Public Law 116–183, August 19, 2020. In addition, a new paragraph is added consistent with a 2012 amendment to Public Law 109–461, stating that willful and intentional misrepresentation of SDVOSB/VOSB status is subject to debarment from contracting with the Department for a period of not less than five years.

We propose adding 819.7004, Limitations on subcontracting compliance requirements. This new section is created to address the limitations on subcontracting certification requirements in Public Law 116–183, August 19, 2020. Specifically, contracting officers may award a contract under this subpart only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirements described in the solicitation and required under the resultant contract. The section also deals with legislative mandates that require OSDBU and Chief Acquisition Officer (CAO) to monitor and refer potential violations to the OIG for potential criminal violations. Note: As a result of this new section, the numbering in subsequent sections is changed to reflect the corresponding numerical sequence.

We propose renumbering the existing 819.7004, Contracting order of priority, to 819.7005. Most of the original language regarding eligibility of SDVOSBs and VOSBs is removed, and the text updated to reflect the contracting order of priority established in 38 U.S.C. 8127(h). New simpler language is added to track the order of

preference set forth in 38 U.S.C. 8127(h). As a result of this new section, the numbering in subsequent sections is changed to reflect the corresponding numerical sequence.

We propose revising 819.7005, Service-disabled veteran-owned small business set-aside procedures, renumbering it as 819.7006, and retitling it as “VA service-disabled veteran-owned small business set-aside procedures.” Most of the existing language is retained with a few updates consistent with legislative requirements. The section provides that the contracting officer must consider SDVOSB set-asides before considering VOSB set-asides and the conditions to be met to make this determination. New language is added to reflect that the set-asides are only applicable above the micro-purchase threshold.

We propose revising 819.7006, Veteran-owned small business set-aside procedures, renumbering it as 819.7007 and retitling it as “VA veteran-owned small business set-aside procedures.” Most of the existing language is retained with a few updates consistent with legislative requirements. The section provides that the contracting officer must consider VOSB set-asides after SDVOSB, and the conditions to be met to make the determination. New language is added to reflect that the set-asides are only applicable above the micro-purchases.

We propose revising 819.7007, Sole source awards to service-disabled veteran-owned small business concerns, renumbering it as 819.7008 and retitling it as “Sole source awards to verified service-disabled veteran-owned small businesses.” Existing language in paragraphs (a) and (d) is retained. Existing paragraph (b) is broken up into (b) and (c) and revised as follows: Paragraph (b) retains existing language recognizing the discretionary nature of this sole source authority; however, it adds that to ensure opportunities are available to the broadest number of SDVOSBs this authority is to be used only to the extent necessary to meet procurement goals and/or when in the best interest of the agency. Paragraph (c) is added providing that in accordance with FAR 6.302–5, contracts awarded using this authority shall be supported by the written justifications and approvals described in FAR 6.303 and 6.304. And lastly, paragraph (e) is added indicating that a procurement estimated to exceed \$5 million shall not be split or subdivided to permit the use of this sole source authority.

We propose revising 819.7008, Sole source awards to a verified veteran-owned small business concerns,

renumbering it as 819.7009 and retitling it as “Sole source awards to verified veteran-owned small businesses.” We propose making similar changes as noted for the proposed language in 819.7008, but as it applies to Veterans other than SDVOSBs (*i.e.*, verified veteran-owned small businesses). Note: The existing section at 819.7009, Contract clauses, is moved to 819.7011 as discussed below.

We propose adding 819.7010, Tiered set-aside evaluation. This new section is proposed to implement FAR Class Deviation (VAIQ 7867323) and PPM 2018–04 Guidance and Procedures regarding use of Tiered Evaluations for use in solicitations set-aside in accordance with the VA Rule of Two. The section introduces the concept of tiered set-aside evaluations. It also defines and establishes the basis for the program, as implemented by VA. This is necessary because currently there is no guidance in the FAR for such a process.

We propose revising 819.7009, Contract clauses, by renumbering it to 819.7011. The section prescribes set-aside clauses for solicitations and contracts. The names of the clauses are changed slightly to further differentiate from those in FAR and the numbering scheme is changed to comply with FAR drafting guidelines. In addition, the actual content of the clauses is updated. Two new clauses have been created to address the limitations on subcontracting certification requirements in Public Law 116–183, August 19, 2020. The legislation requires that before an award is made under the Veterans First Contracting Program, offerors must submit a certification of compliance with the Limitation on Subcontracting requirements and the Nonmanufacturer rule. This is discussed further under Part 852.

We propose removing and reserving subpart 819.71, VA Mentor-Protégé Program. The underlying sections 819.7101 through 819.7115 are accordingly also removed. The VA Mentor-Protégé Program is inactive. It was replaced with the Small Business Administration’s Small Business Mentor Protégé Programs established pursuant to the Small Business Jobs Act of 2010 and the National Defense Authorization Act of 2013. If VA does create a program specific to VA, the proposed language will be in a separate VAAR case for public comment.

#### *VAAR Part 832—Contract Financing*

We propose removing subpart 832.9, Prompt Payment, and the underlying section 832.904–70 Determining payment due dates for small businesses.



As a result of a FAR class deviation issued ahead of FAR rulemaking, the VAAR must remove language that VA had enacted timely but is now redundant to the FAR class deviation.

*VAAR Part 852—Solicitation Provisions and Contract Clauses*

We propose removing 852.207–70, Report of Employment Under Commercial Activities, which is no longer required.

We propose adding 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs, to reflect the clause prescribed by 808.405–570. Rather than relying on a clause under FAR part 15, this clause is specific to its use under FAR subpart 8.4 and the GSA FSS program. The clause provides that in an effort to increase contracting opportunities for veterans, depending on the evaluation factors included in the solicitation, VA will evaluate responses received based on the schedule Contractor's VIP verified service-disabled veteran-owned small business/veteran-owned small business (SDVOSB/VOSB) status; and/or their proposed use of SDVOSB/VOSB as subcontractors or teaming partners. This new language proposes that in order to receive credit under this clause a contractor or subcontractor must be listed, at time of submission of offer/quotes and at time of award, as an eligible SDVOSB/VOSB in the Vendor Information Pages (VIP) database at <https://www.vetbiz.va.gov/vip/>. VIP listed service-disabled veteran-owned schedule holders will receive full credit, and those listed in VIP as veteran-owned small businesses will receive partial credit for the SDVOSB/VOSB status evaluation factor. It also requires the offeror proposing to use VIP listed SDVOSBs/VOSBs as subcontractors or teaming partner must provide in their proposals information regarding the proposed SDVOSBs or VOSBs such as names and contact information of the VIP-listed SDVOSBs/VOSBs, a description of the proposed teaming arrangement, the approximate dollar value of the proposed teaming arrangements or subcontract(s), and evidence of teaming partner/subcontractor's VIP database registration and verification.

We propose adding 852.208–71, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders and BPAs, as prescribed in 808.405–570. The proposed language provides that if a contractor is selected on the basis of SDVOSB or VOSB status, the contractor agrees to comply with the

eligibility requirements in subpart 819.70, including the limitation on subcontracting requirements at 13 CFR 125.6. The clause also requires that if the contractor is selected for award on the basis of teaming/subcontracting in accordance with 852.208–70, the contractor agrees to use the evaluated firm(s) as proposed or to substitute one or more VIP verified SDVOSB/VOSB for work of the same or similar value. Such substitution must be for cause and approved by the contracting officer. It also includes language that pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

In 852.219–9, VA Small Business Subcontracting Plan Minimum Requirements, we propose renumbering it to 852.219–70 to comport with FAR drafting guidelines and numbering conventions. We propose revising language to reflect updated policy with the implementation of 38 U.S.C. 8127–8128 at the VA. We propose emphasizing the requirement to utilize VA verified SDVOSBs/VOSBs in subcontracting plans, when previously this was not specifically addressed. The use of VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Business, is specified. And we provide language that pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

We propose removing 852.219–10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside and 852.219–11, VA Notice of Total Veteran Owned Small Business Set-Aside, as the names of the clauses will be changed and renumbered to 852.219–73 and 852.219–74, in order to differentiate from those in the FAR. A discussion is provided where the new numbered clauses are mentioned in this preamble.

We propose removing 852.219–71, VA Mentor-Protégé Program and 852.219–72, Evaluation Factor for Participation in the VA Mentor-Protégé Program because the VA Mentor-Protégé Program is inactive. It was replaced with the Small Business Administration's Small Business Mentor Protégé Programs established pursuant to the Small Business Jobs Act of 2010 and the

National Defense Authorization Act of 2013.

We propose adding 852.219–71, Notification of Competition Limited to Eligible 8(a) Participants, which would be used in conjunction with FAR clause 52.219–18, Notification of Competition Limited to Eligible 8(a) Participants, and state that any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror. Although SBA is not identified as such in the award form, SBA is still the prime contractor.

We propose adding 852.219–72, Notification of Section 8(a) Direct Award, which would provide further information about the Partnership Agreement between the VA and the Small Business Administration.

We propose adding 852.219–73, VA Notice of Total Set-Aside for Verified Service-Disabled Veteran-Owned Small Businesses, and 852.219–74, VA Notice of Total Set-Aside for Verified Veteran-Owned Small Businesses, which were previously numbered as 852.219–10 and 852.219–11. The actual content of the clauses is updated to address new legislative requirements on limitations on subcontracting requirements.

We propose adding 852.219–75, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction. This new clause addresses the limitations on subcontracting certification requirements in Public Law 116–183, August 19, as it is applied to services and construction. The legislation requires that before an award is made under the Veterans First Programs, offeror must submit a certification of compliance with the Limitations in Subcontracting requirements, currently required by SBA at 13 CFR 125.6.

We propose adding 852.219–76, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products. This new clause addresses the limitations on subcontracting certification requirements in Public Law 116–183, August 19, 2020 as it applies to supplies and products.

*VAAR Part 853—Forms*

In subpart 853.2—Prescription of Forms, we propose adding 853.219, Small business forms, and to add the following forms referenced in the VAAR dealing with Small Business Programs under VAAR part 819 under the auspices of the Office of Small and Disadvantaged Business Utilization: VA Form 2268, Small Business Program and Contract Bundling Review, which is prescribed in 819.202. Contracting

officers shall use VA Form 2268, Small Business Program and Contract Bundling Review, to document actions related to small business, market research and consideration of the VA Rule of Two. VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Business, which is utilized by contractors when proposing subcontracting to SDVOSB/VOSBs.

#### Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

#### Paperwork Reduction Act

This proposed rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). This proposed rule also contains collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that are already approved by OMB. The collection of information for 48 CFR 819.704–70, 852.219–9, and 853.219(b) is currently approved by the Office of Management and Budget (OMB) and has been assigned OMB control number 2900–0741. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking containing the revised collection of information to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. If OMB does not approve the collection(s) of information as requested, VA will immediately remove the provisions containing the

collection(s) of information or take such other action as is directed by OMB.

Comments on the revised collection(s) of information contained in this rulemaking should be submitted through [www.regulations.gov](http://www.regulations.gov). Comments should indicate that they are submitted in response to “RIN 2900–AR06; VA Acquisition Regulation: Acquisition Planning; Required Sources of Supplies and Services; Market Research; and Small Business Programs” and should be sent within 60 days of publication of this rulemaking. The information collection(s) associated with this rulemaking can be reviewed at: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

OMB is required to make a decision concerning the collection(s) of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on new collection(s) of information in—

- Evaluating whether the new collection(s) of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department’s estimate of the burden of the new collection(s) of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection(s) of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The removed collection of information associated with this rulemaking is contained in 48 CFR 852.207–70, Report of Employment Under Commercial Activities, under OMB control # 2900–0590. This proposed rule would remove one of the existing information collection requirements associated with this action at 48 CFR 852.207–70 to reflect the discontinuation of 852.207–70, as well as the related prescriptions for the clause at 807.304–77 and 873.110,

paragraph (f). The removal of VAAR clause 852.207–70 from this OMB control number will remove 15 estimated annual burden hours and an annual cost savings to respondents of \$428.85 that are currently reflected in the OIRA/OMB information collection inventory. However, due to the fact this OMB control number contains two additional VAAR clauses, as well as the increase of the Bureau of Labor Statistics (BLS) hourly rate in May 2020, the net decrease of public burden cost for this OMB control number is \$268.85.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612).

The overall impact of the proposed rule would be of benefit to small businesses owned by Veterans or service-disabled Veterans as the VAAR is being updated to remove extraneous procedural information that applies only to VA’s internal operating processes or procedures. VA estimates no increased or decreased costs to small business entities. This rulemaking clarifies VA’s policy regarding the contracting order of priority for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) as a result of the U.S. Supreme Court’s decision in *Kingdomware Technologies, Inc. vs. the United States*, July 25, 2018, (*Kingdomware*) only as it pertains to the application of the VA Rule of Two in accordance with Public Law 109–461 as codified at 38 U.S.C. 8127–8128, and via the original Final Rule—VA Acquisition Regulation: Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses, published in the **Federal Register** at 74 FR 64619, on December 9, 2009, and effective January 7, 2010.

This regulation seeks to simplify and streamline VA guidance regarding its small business program. The impact on small business overall is positive, as VA continues to implement its small business policies in accordance with legislative mandates pertaining to the Department of Veterans Affairs in 38 U.S.C. 8127–8128 to ensure that that small business owned and controlled by Veterans receive a fair share of contracting opportunities at the Department. VA’s hierarchy of contracting preferences, established by law, mandates VA Vendor Information Pages (VIP)-listed SDVOSBs first, then VOSBs, prior to other small business preferences. While consistent with VA’s

legislation and mission to serve Veterans, this mandate necessarily makes achievement of other small business goals more challenging that fall in a statutorily based lower contracting order of priority, *e.g.*, awards in the general small business category. Through renewed emphasis on the program in 2016 post the U.S. Supreme Court decision in *Kingdomware Technologies, Inc.*, and through increased training and revised implementing policy and procedures issued to VA contracting officers, VA has successfully achieved specific SDVOSB, VOSB, and small business goals for FY 2020 as discussed below.

This rulemaking does not change VA's overall policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

a. *A description of the reasons why action by VA is being considered.*

*Response:* This proposed rule is part of VA's initiative to revise and streamline the VAAR in phased increments. It is necessary specifically with this case, to implement updated requirements the Department of Veterans Affairs' (VA) policy and procedures pertaining to 38 U.S.C. 8127–8128 (Pub. L. 109–461), known as the Veterans First Contracting Program, as well as additional legislative amendments and statutory changes to 38 U.S.C. 8127 as a result of Public Law 116–155, the Department of Veterans Affairs Contracting Preference

Consistency Act of 2020, which had an effective date of August 8, 2020, and Public Law 116–183, Protecting Business Opportunities for Veterans Act of 2019, enacted October 30, 2020, which have been implemented in advance of this proposed rulemaking through separate class deviations. This rulemaking provides the proposed changes to the CFR for public comments on the updates to key related parts.

b. *A succinct statement of the objectives of, and legal basis for, the rule.*

*Response:* The objectives of this proposed rule are to implement statutory requirements and make other necessary updates to the VAAR to bring current with the Federal Acquisition Regulation (FAR) and with specific statutory amendments to 38 U.S.C. 8127. In addition to other programmatic updates, VA is addressing in this rule Public Law 116–155, the Department of Veterans Affairs Contracting Preference Consistency Act of 2020, enacted August 8, 2020, and Public Law 116–183, Protecting Business Opportunities for Veterans Act of 2019, enacted October 30, 2020.

c. *A description of and, where feasible, an estimate of the number of small entities to which the rule would apply.*

*Response:* This rulemaking is not expected to have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

To determine the number of potential affected small businesses and other entities, VA examined the data in the Federal Procurement Data System

(FPDS) to estimate the number of small business entities that will be affected by this rule. Based on preliminary data from Fiscal Year 2021, there were 80,148 SDVOSB coded contract actions, and 143,452 coded contract actions to VOSBs. In addition to specific SDVOSB/VOSB contract actions, in FY 2021 there were a total of 219,301 small business contract actions in FPDS. Note: SDVOSBs may also be coded in addition to the SDVOSB category as both a small business and VOSB award. VA analysis indicates that in FY 2021 VA exceeded its goals for SDVOSB, VOSB and small businesses. In FY 2020, VA exceeded—(1) its SDVOSB goal of 15% with a 23.9% achievement; (2) its VOSB goal of 17% with a 24.4% achievement; and (3) its overall small business goal of 28.45% with a 30.3% achievement, even during the midst of the declared national emergency on COVID–19. Considering VA had to make critical and urgent emergency procurements under other authorities, including sole source, of Personal Protective Equipment (PPE) and other related medical supplies and services in support of continuity of its core mission to provide Veterans' healthcare and as part of its overarching pandemic response in support of the declared national emergency, the VA acquisition workforce worked diligently hand-in-hand with its program/project offices to continue to comply with the requirements of 38 U.S.C. 8127–8127 in priority awards to SDVOSBs, then VOSBs. These table below provides the referenced data and successful small business program goal achievements in these categories.

PRELIMINARY FISCAL YEAR 2021 SMALL BUSINESS GOALING DATA

Fiscal year 2021	Total contract dollars and actions	Small business	SDVOSB	VOSB
Goal .....	.....	28.45%	15.0%	17.0%
Actual Performance .....	.....	30.3%	23.9%	24.4%
Dollars awarded by VA .....	\$34,351,110,891	\$10,307,742,213	\$8,144,793,570	\$8,365,441,281
Total Contract Awards .....	1,833,460	219,301	80,148	143,452

Source: Federal Procurement Data System. Dataset downloaded on December 9, 2021.

This proposed rule should help small businesses continue to receive a fair share of the VA contracting dollars.

d. *A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which would be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

*Response:* This rule does not impose any new reporting, recordkeeping or other compliance requirements for small entities.

e. *An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.*

*Response:* This rule does not duplicate, overlap, or conflict with any other Federal rules.

f. *A description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.*

*Response:* VA is unable to identify any significant alternatives that would accomplish the requirements of this proposed rule and update of the VAAR. In accordance with 41 U.S.C. 1707, VA must provide for public comment any

proposed revisions to the VAAR, some of which were implemented as class deviations to ensure compliance with legislation or in accordance with mandates of the Federal courts, to include the U.S. Supreme Court. Through this rule, the public will have an opportunity to provide public comment prior to publication of a final rule. VA considered initially issuing a complete revision to the VAAR in one case, but given ongoing litigation and legislative initiatives, as well as the complexity of the various VAAR parts, the phased incremental approach permitted the public to be able to focus on specific topics and parts of interest and allow them to timely submit public comments which may have been more onerous if the complete VAAR were revised at one time. By updating the VAAR, it will increase transparency and furthers the consistent implementation of any new or revised policy and ensures wide dissemination to both the VA acquisition workforce, the public, interested parties, and affected small entities such as SDVOSBs, VOSBs, and small businesses, including AbilityOne participating entities. Small entities cannot be exempted from coverage under this rule as the VAAR applies to all potential offerors, large or small.

The rule is not expected to have a significant economic impact to SDVOSBs or VOSBs since the VA Rule of Two will continue to apply to VA's unique Veterans First Contracting Program that was first implemented in the VAAR in 2009, and which was subsequently revised consistent with revised policy and procedures issued by class deviations as a result of court cases and new legislative amendments.

VA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments or on the private sector.

#### List of Subjects

48 CFR Part 802, 807, 808, 810, 813, 832, and 853

Government procurement.

#### 48 CFR Part 819

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small business, Veterans.

#### 48 CFR Part 852

Government procurement, Reporting and recordkeeping requirements.

#### Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 15, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

#### Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 48 CFR, chapter 8 as follows:

#### PART 802—DEFINITIONS OF WORDS AND TERMS

- 1. Revise the authority citation for part 802 to read as follows:

**Authority:** 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

- 2. Amend section 802.101 by adding definitions for “Public Law (Public Law) 109–461”, “SDVOSB/VOSB”, “VA Rule of Two”, and “Veterans First Contracting Program”, and by revising the definitions for “Service-disabled veteran-owned small business (SDVOSB)”, “Vendor Information Pages (VIP) or VIP database”, and “Veteran-owned small business (VOSB)” in alphabetical order to read as follows:

#### 802.101 Definitions.

*Public Law (Pub. L.) 109–461* means the Veterans Benefits, Health Care and Information Technology Act of 2006, as codified in 38 U.S.C. 8127 and 8128.

*SDVOSB/VOSB* when used as an initialism means a service-disabled veteran-owned small business (SDVOSB) and/or veteran-owned small business (VOSB) that has been found by VA eligible to participate in the Veterans First Contracting Program implemented at subpart 819.70 and listed in the Vendor Information Pages. The term is synonymous with VA or VIP-verified small business concerns owned and controlled by Veterans.

*Service-disabled veteran-owned small business (SDVOSB)* or small business concern owned and controlled by Veterans with service-connected disabilities has the same meaning as *service-disabled veteran-owned small business concern* defined in FAR 2.101, except that for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program, these businesses must be listed as verified in the VIP database. In addition, some SDVOSB listed in the VIP database may be owned and controlled by a surviving spouse. See definition of *surviving spouse* in 802.101.

*VA Rule of Two* means the determination process mandated in 38 U.S.C. 8127(d)(1) whereby 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. For purposes of this VA specific rule, a service-disabled veteran-owned small business (SDVOSB) or a veteran-owned small business (VOSB), must meet the eligibility requirements in 38 U.S.C. 8127(e), (f) and VAAR 819.7003 and be listed as verified in the Vendor Information Pages (VIP) database.

*Vendor Information Pages (VIP) or VIP database* means the Department of Veterans Affairs Office of Small and Disadvantaged Business Utilization (OSDBU) Center for Verification and Evaluation (CVE) Vendor Information Pages (VIP) database at <https://www.vetbiz.va.gov/vip/>. This site's database lists businesses that VA CVE has determined eligible for the Veterans First Contracting Program.

*Veteran-owned small business (VOSB)* has the same meaning as *veteran-owned small business concern* defined in FAR 2.101, except that for acquisitions authorized by 38 U.S.C. 8127 and 8128 for the Veterans First Contracting Program, these businesses must be listed as verified in the VIP database. SDVOSBs, including businesses whose SDVOSB status derive from ownership and control by a surviving spouse, are also considered VOSBs, as long as they are listed as eligible in VIP.

*Veterans First Contracting Program* means the program authorized by Public Law 109–461 (38 U.S.C. 8127 and 8128), as implemented in subpart 819.70. This

program applies to all VA contracts (see FAR 2.101 for the definition of contracts) as well as Blanket Purchase Agreements (BPAs), Basic Ordering Agreements (BOAs), and orders against the Federal Supply Schedules (FSS), unless otherwise excluded by law.

\* \* \* \* \*

## **PART 807 [Removed and Reserved]**

- 3. Remove and reserve part 807.
- 4. Revise part 808 to read as follows:

## **PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

Sec.

808.000 Scope of part.

808.001 General.

808.001–70 Definitions.

808.002 Priorities for use of mandatory Government sources.

808.004 Use of other sources.

808.004–70 Use of other priority sources.

### **Subpart 808.4—Federal Supply Schedules**

808.402 General.

808.404 Use of Federal Supply Schedules.

808.404–70 Use of Federal Supply Schedules—the Veterans First Contracting Program.

808.405 Ordering procedures for Federal Supply Schedules.

808.405–70 Set-aside procedures for VA and GSA Federal Supply Schedules.

808.405–570 Small business set-asides and preferences—Veterans First Contracting Program clauses.

### **Subpart 808.6—Acquisition from Federal Prison Industries, Inc.**

808.603 Purchase priorities.

### **Subpart 808.8—[Reserved]**

**Authority:** 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

### **808.000 Scope of part.**

This part deals with prioritizing sources of supplies and services for use by the Government based on unique VA statutory programs, as well as requirements when using the General Services Administration (GSA) Federal Supply Schedules program including the GSA delegated VA Federal Supply Schedule program.

### **808.001 General.**

#### **808.001–70 Definitions.**

As used in this part—

*Veterans Affairs (VA) Federal Supply Schedule (FSS) or “VA FSS”* means FSS contracts awarded by the VA National Acquisition Center, under authority delegated by the General Services Administration (GSA) per FAR 8.402(a). VA FSS contracts include medical, dental, pharmacy and veterinary equipment and supplies in Federal

Supply Classification (FSC) Group 65, instruments and laboratory equipment in FSC Group 66 and health care services in FSC Group 621.

### **808.002 Priorities for use of mandatory Government sources.**

(a) *Priorities.* Contracting activities shall satisfy requirements for supplies and services from or through the mandatory sources listed below in descending order of priority:

(1) *Supplies.* (i) VA inventories including the VA supply stock program (41 CFR 101–26.704) and VA excess.

(ii) Excess from other agencies (see FAR subpart 8.1).

(iii) Federal Prison Industries, Inc. (see 808.603). Prior to considering award of a contract to Federal Prison Industries, Inc., contracting officers shall apply the VA Rule of Two to determine whether a requirement should be awarded to veteran-owned small businesses under the authority of 38 U.S.C. 8127–28, by using the preferences and priorities in subpart 819.70. If an award is not made to a VIP-listed and verified service-disabled veteran-owned small business (SDVOSB)/veteran-owned small business (VOSB) as provided in subpart 819.70, FPI remains a mandatory source in accordance with FAR 8.002.

(iv) Supplies that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7). Supplies that are on the Procurement List but which do not meet the definition of a covered product are only required to be procured from a mandatory source in accordance with FAR 8.002 if an award is not made to a VIP-listed and verified SDVOSB/VOSB after following the procedures set forth in subpart 819.70.

(A) *Definition.* As used in this paragraph—

*Covered product* means a product that—

(1) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see FAR 8.703) and was included on the Procurement List on or before December 22, 2006; or

(2) Meets the following criteria—

(i) Is a replacement for a product under this paragraph;

(ii) Is essentially the same and meeting the same requirement as the product being replaced; and

(iii) The contracting officer determines the product meets the quality standards and delivery schedule requirements of VA.

(B) *Policy.* Except as provided in paragraph (a)(1)(iv)(C) and (D),

contracting officers shall procure covered products that are on the Procurement List through the AbilityOne Program as set forth in FAR subpart 8.7. Contracting officers shall not procure products that are on the Procurement List, but which do not meet the definition of a covered product using the procedures set forth in FAR subpart 8.7, unless award cannot be made to a VIP-listed and verified SDVOSB/VOSB pursuant to the procedures set forth in subpart 819.70.

(C) *Exception for certain contracts awarded in accordance with the Veterans First Contracting Program in subpart 819.70.* If a contract for a covered product awarded under the authority of 38 U.S.C. 8127(d)(1) to a VIP-listed SDVOSB or VOSB was in effect as of August 7, 2020, the requirement shall continue as an SDVOSB/VOSB set-aside in accordance with 819.7006 and 819.7007.

(D) *Termination or expiration of excepted contracts.* When a contract previously awarded as set forth in paragraph (a)(1)(iv)(C) of this section is terminated or expires, contracting officers shall procure such covered product through the AbilityOne Program as a priority mandatory Government source (see (a)(1)(iv)(B) of this section), provided the head of the contracting activity or designee determines there is no reasonable expectation that—

(1) Two or more SDVOSBs/VOSBs will submit offers; and

(2) Award can be made at a fair and reasonable price that offers best value to the United States.

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101–26.3), the Defense Logistics Agency (see 41 CFR 101–26.6), the Department of Veterans Affairs (see 41 CFR 101–26.704), and military inventory control points.

(2) Services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled, through the AbilityOne Program (FAR subpart 8.7). Services that are on the Procurement List, but which do not meet the definition of a covered service are only required to be procured from a mandatory source in accordance with FAR 8.002 if an award is not made to a VIP-listed and verified SDVOSB/VOSB after following the procedures set forth in subpart 819.70.

(i) *Definition.* As used in this paragraph—

*Covered service* means a service that—

(A) Is included on the Procurement List as authorized under 41 U.S.C. 8503(a) (see FAR 8.703) and was included on the Procurement List on or before December 22, 2006; or

(B) Meets the following criteria—

- (1) Is a replacement for a service under this paragraph;
- (2) Is essentially the same and meeting the same requirement as the service being replaced; and
- (3) The contracting officer determines the service meets the quality standards and delivery schedule requirements of VA.

(ii) *Policy.* Except as provided in paragraph (a)(2)(iii) and (iv) of this section, contracting officers shall procure covered services that are on the Procurement List through the AbilityOne Program as set forth in FAR subpart 8.7. Contracting officers shall not procure services that are on the Procurement List, but which do not meet the definition of a covered service using the procedures set forth in FAR subpart 8.7, unless award cannot be made to a VIP-listed and verified SDVOSB/VOSB pursuant to the procedures set forth in subpart 819.70.

(iii) *Exception for certain contracts awarded in accordance with the Veterans First Contracting Program in subpart 819.70.* If a contract for a covered service awarded under the authority of 38 U.S.C. 8127(d)(1) to a VIP-listed SDVOSB or VOSB was in effect as of August 7, 2020, the requirement shall continue as an SDVOSB/VOSB set-aside in accordance with 819.7006 and 819.7007.

(iv) *Termination or expiration of certain excepted contracts.* When a contract previously awarded as set forth in paragraph (a)(2)(iii) of this section is terminated or expires, contracting officers shall procure such covered service through the AbilityOne Program as a priority mandatory Government source (see (a)(2)(ii) of this section), provided the head of the contracting activity or designee determines there is no reasonable expectation that—

- (A) Two or more SDVOSBs/VOSBs will submit offers; and
- (B) Award can be made at a fair and reasonable price that offers best value to the United States.

(b) *Unusual and compelling urgency.* The contracting officer may use a source other than those listed in paragraph (a) of this section when the need for supplies or services is of an unusual and compelling urgency (see FAR 6.302–2, 8.405–6, 13.106–1 and part 806 for justification requirements).

#### **808.004 Use of other sources.**

##### **808.004–70 Use of other priority sources.**

(a) *Veterans contracting priority.* In order to fulfill the requirements of 38 U.S.C. 8127–8128 (see subpart 819.70), contracting officers shall award contracts (see FAR 2.101 for the definition of contracts), as well as Blanket Purchase Agreements (BPAs), and orders against VA and GSA Federal Supply Schedules (FSS), providing priority in the awarding of such contracts to VIP-listed SDVOSBs first, then VOSBs.

(b) *Strategic sourcing priorities and application of the VA Rule of Two.* To provide medical supplies in Federal Supply Classification (FSC) groups 65 and 66 efficiently and effectively the VA, through previous reform initiatives, has implemented key strategic sourcing contract vehicles (e.g., prime-vendor, national contracts, VA FSS). If these strategic sourcing contracts were subject to the VA Rule of Two, they may be determined mandatory by the head of the contracting activity. Contracting officers shall consider these priority contract vehicles before using other existing contract vehicles.

#### **Subpart 808.4—Federal Supply Schedules**

##### **808.402 General.**

(a) GSA has delegated authority to the VA to procure medical equipment, supplies, services and pharmaceuticals under the VA Federal Supply Schedule (FSS) program. The VA FSS program includes medical supplies in Federal Supply Classification (FSC) Groups 65 and 66 and services in FSC 621 for Professional and Allied Healthcare Staffing Services and Medical Laboratory Testing and Analysis Services.

##### **808.404 Use of Federal Supply Schedules.**

##### **808.404–70 Use of Federal Supply Schedules—the Veterans First Contracting Program.**

(a) The Veterans First Contracting Program, implemented in subpart 819.70 pursuant to 38 U.S.C 8127–8128, applies to BPAs, and orders under FAR subpart 8.4 and has precedence over other small business programs.

(b) Contracting officers, when establishing a BPA or placing an order against the FSS, shall ensure that priorities for veteran-owned small businesses are implemented within the VA hierarchy of small business program preferences in subpart 819.70. Specifically, the contracting officer will consider preferences for verified SDVOSBs first, then preferences for

verified VOSBs. These priorities will be followed by preferences for other small businesses in accordance with 819.7005.

(c) If unable to satisfy requirements for supplies and services from the mandatory sources in 808.002 and 808.004–70, contracting officers may consider commercial sources in the open market (see FAR 8.004(b)) if an open market acquisition is most appropriate (see FAR 8.004) and a VA Rule of Two determination is made (see subpart 819.70).

(d) When the servicing agency will award contracts under an interagency agreement on behalf of the VA, the contracting officer shall ensure the interagency acquisition complies with FAR subpart 17.5 and subpart 817.5 and includes terms requiring compliance with the VA Rule of Two (see 817.501).

##### **808.405 Ordering procedures for Federal Supply Schedules.**

##### **808.405–70 Set-aside procedures for VA and GSA Federal Supply Schedules.**

To satisfy VA legislative requirements, contracting officers shall use the supplemental ordering procedures of this section when establishing a BPA or placing an order for supplies or services under this subpart as follows:

(a) *When market research supports set-asides.* Pursuant to 38 U.S.C. 8127, contracting activities shall set-aside BPAs and orders for VIP-listed SDVOSBs or VOSBs when, based on research, the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by Veterans or owned and controlled by Veterans with service-connected disabilities will submit offers and that award can be made at a fair and reasonable price that offers best value to the United States. When the VA Rule of Two is met:

(1) The set-aside requirements as provided in 819.7006 and 819.7007 are mandatory.

(2) The requirements in FAR 8.405–1, 8.405–2, and 8.405–3, apply, except only quotes received from verified (i.e., VIP-listed) and eligible SDVOSBs or VOSBs will be considered.

(3) The eligibility requirements of 819.7003, 819.7006, and 819.7007 apply, including the requirement for offerors to be VIP-listed at the time they submit offers/quotes as well as at the time awards are made.

(4) The contracting officer shall notify potential offerors of the unique VA verification requirements by including in the solicitation the applicable set-aside clause prescribed at 819.7011.

(b) *When market research does not support set-asides.* Pursuant to 38



U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside in either FSS or the open market, the contracting activity shall give priority in the award of orders placed under this part to VIP-listed SDVOSBs/VOSBs through the use of evaluation preferences giving priority to SDVOSBs first, then to a lesser extent VOSBs, and finally to any firm that proposes to use SDVOSBs/VOSBs as subcontractors. Contracting officers must use the clause prescribed in 808.405–570(b).

(c) *SDVOSB/VOSB eligibility requirements.* The SDVOSB and VOSB eligibility requirements in 819.7003 apply, including current SDVOSB and VOSB VIP-listed status at the time of submission of offer/quote and at time of award. The offeror must also represent that it meets the small business size standard for the assigned NAICS as well as other small business requirements (including completing the certification found in 852.219–75 or 852.219–76.

**808.405–570 Small business set-asides and preferences—Veterans First Contracting Program clauses.**

(a) When setting aside an order pursuant to 808.405–70(a), the applicable clause prescribed in 819.7011 for SDVOSB/VOSB set-asides shall be used.

(b) When an SDVOSB/VOSB set-aside is not feasible, the ordering activity shall use the clause at 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs, for task orders, delivery orders or BPAs using evaluation factors other than price alone.

(c) The ordering activity shall insert the clause at 852.208–71, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders or BPAs, in request for quotes and resulting orders that include clause 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.

**Subpart 808.6—Acquisition from Federal Prison Industries, Inc.**

**808.603 Purchase priorities.**

A waiver from Federal Prison Industries is not needed when comparable supplies and services are procured in accordance with subpart 819.70.

**Subpart 808.8 [Reserved]**

■ 5. Part 810 is revised to read as follows:

**PART 810—MARKET RESEARCH**

Sec.

810.000 Scope of part.

810.001 Policy.

810.001–70 Market research policy—use of VA Vendor Information Pages.

**Authority:** 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**810.000 Scope of part.**

The Veterans First Contracting Program in subpart 819.70 applies to contract actions under this part and takes precedence over other small business programs referenced in FAR part 10 and FAR part 19.

**810.001 Policy.**

**810.001–70 Market research policy—use of VA Vendor Information Pages.**

When performing market research, contracting officers shall review the Vendor Information Pages (VIP) database at <https://www.vetbiz.va.gov/vip/> as required by subpart 819.70. The contracting officer will search the VIP database by applicable North American Industry Classification System (NAICS) codes to determine whether two or more verified service-disabled veteran-owned small businesses (SDVOSBs) and/or veteran-owned small businesses (VOSBs), with the appropriate NAICS code, are listed as verified in the VIP database. The contracting officer will determine, among other things as the requirement dictates, whether VIP-listed SDVOSBs or VOSBs identified as a result of market research are capable of performing the work, are likely to submit an offer/quote, and whether an award can be made at a fair and reasonable price that offers best value to the Government. The contracting officer shall use the market research for acquisition planning purposes, and as set forth in VAAR subpart 819.70, conduct a VA Rule of Two determination in accordance with the contracting order of priority (see 819.7005 and 819.7006).

**PART 813—SIMPLIFIED ACQUISITION PROCEDURES**

■ 6. The authority citation for part 813 continues to read as follows:

**Authority:** 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1702 and 48 CFR 1.301 through 1.304.

■ 7. Revise section 813.003–70 to read as follows:

**813.003–70 General policy.**

(a) The Veterans First Contracting Program in subpart 819.70 applies to VA contracts, orders and BPAs under this

part and has precedence over other small business programs referenced in FAR parts 13 and 19. For VA policy regarding mandatory Government sources, refer to 808.002.

(b) Notwithstanding FAR 13.003(b)(2), the contracting officer shall make an award utilizing the priorities for veteran-owned small businesses as implemented within the VA hierarchy of small business program preferences, the Veterans First Contracting Program in subpart 819.70. Specifically, the contracting officer shall consider preferences for verified service-disabled veteran-owned small businesses (SDVOSBs) first, then preferences for verified veteran-owned small businesses (VOSBs). These priorities will be followed by preferences for other small businesses in accordance with 819.7005.

(c) When using competitive procedures, the preference for restricting competition to verified SDVOSBs/VOSBs in accordance with paragraph (b) of this section is mandatory whenever market research provides a reasonable expectation of receiving two or more offers/quotes from eligible, capable and verified firms, and that an award can be made at a fair and reasonable price that offers best value to the Government.

(1) Pursuant to 38 U.S.C. 8127, contracts under this part shall be set-aside for SDVOSBs/VOSBs, in accordance with 819.7006 or 819.7007 when supported by market research. Contracting officers shall use the applicable set-aside clause prescribed at 819.7011.

(2) Pursuant to 38 U.S.C. 8128 and to the extent that market research does not support an SDVOSB or VOSB set-aside, the contracting officer shall include evaluation factors as prescribed at 815.304–70 and the evaluation criteria clause prescribed at 815.304–71(a).

(d) The SDVOSB and VOSB eligibility requirements in 819.7003 apply, including verification of the SDVOSB and VOSB status of an offeror, and other small business requirements in 13 CFR part 121 and 13 CFR 125.6 (e.g., small business representation, nonmanufacturer rule, and subcontracting limitations (see 819.7004 and 819.7011)).

**Subpart 813.1—Procedures.**

■ 8. Revise section 813.106 to read as follows:

**813.106 Soliciting competition, evaluation of quotations or offers, award and documentation.****813.106–70 Soliciting competition, evaluation of quotations or offers, award and documentation—the Veterans First Contracting Program.**

(a) When using competitive procedures under this part, the contracting officer shall use the Veterans First Contracting Program in subpart 819.70 and the guidance set forth in 813.003–70.

(b) Pursuant to 38 U.S.C. 8127(b), contracting officers may use other than competitive procedures to enter into a contract with a verified SDVOSB or VOSB for procurements below the simplified acquisition threshold, as authorized by FAR 6.302–5 and 806.302–570(a) and (b).

(c) For procurements above the simplified acquisition threshold, pursuant to 38 U.S.C. 8127(c), contracting officers may also award a contract under this part to a firm verified under the Veterans First Contracting Program at subpart 819.70, using procedures other than competitive procedures, as authorized by FAR 6.302–5 and 806.302–570(a) and (c), and in accordance with 819.7008 and 819.7009.

■ 9. Part 819 is revised to read as follows:

**PART 819—SMALL BUSINESS PROGRAMS**

Sec.

819.000 Scope of part.

**Subpart 819.2—Policies.**

819.201 General policy.

819.202 Specific policies.

819.203 Relationship among small business programs.

819.203–70 Priority for SDVOSB/VOSB contracting preferences.

**Subpart 819.3—Determination of Small Business Size and Status for Small Business Programs**

819.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.

819.307–70 SDVOSB/VOSB status protests.

**Subpart 819.5—Small Business Total Set-Asides, Partial Set-Asides, and Reserves**

819.501 General.

819.501–70 General principles for setting aside VA acquisitions.

819.502 Setting aside acquisitions.

819.502–1 Requirements for setting aside acquisitions.

819.502–2 Total small business set-asides.

819.507 Solicitation provisions and contract clauses.

819.507–70 Additional VA solicitation provisions and contract clauses.

**Subpart 819.6—[Reserved]****Subpart 819.7—The Small Business Subcontracting Program**

819.704–70 VA subcontracting plan requirements.

819.708 Contract clauses.

**Subpart 819.8—Contracting With the Small Business Administration (the 8(a) Program)**

819.800 General.

819.811 Preparing the contracts.

819.811–370 VA/SBA Partnership Agreement and contract clauses.

**Subpart 819.70—The VA Veterans First Contracting Program**

819.7001 General.

819.7002 Applicability.

819.7003 Eligibility.

819.7004 Limitations on subcontracting compliance requirements.

819.7005 Contracting order of priority.

819.7006 VA service-disabled veteran-owned small business set-aside procedures.

819.7007 VA veteran-owned small business set-aside procedures.

819.7008 Sole source awards to verified service-disabled veteran-owned small businesses.

819.7009 Sole source awards to verified veteran-owned small businesses.

819.7010 Tiered set-aside evaluation.

819.7011 Contract clauses.

**Subpart 819.71—[Reserved]**

**Authority:** 15 U.S.C. 631, *et seq.*; 15 U.S.C. 637(d)(4)(E); 38 U.S.C. 8127–8128; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303, 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**819.000 Scope of part.**

(a) This part supplements FAR part 19 and implements the service-disabled veteran-owned small business (SDVOSB), veteran-owned small business (VOSB) and small business provisions of title 38 U.S.C. 8127 and 8128, Executive Order 13360 and the Small Business Act (15 U.S.C. 631 *et seq.*) as applied to the Department of Veterans Affairs (VA). This part also covers—

(1) Goals for using SDVOSBs, and VOSBs;

(2) Priorities and preferences for using SDVOSBs/VOSBs;

(3) SDVOSB/VOSB eligibility and contract compliance;

(4) Setting aside acquisitions for SDVOSBs/VOSBs;

(5) Sole-source awards to SDVOSBs and VOSBs; and

(6) Evaluation preferences and contract clauses.

**Subpart 819.2—Policies****819.201 General policy.**

(a) It is VA policy that small business concerns owned and controlled by

veterans shall have maximum practicable opportunity to participate in VA acquisitions, consistent the priorities and preferences prescribed under the Veterans First Contracting Program in subpart 819.70.

(1) To carry out this policy the Secretary shall establish annual SDVOSB and VOSB contracting goals.

(2) In support of these goals, each administration and staff office shall in turn establish annual goals for each subordinate contracting activity that present, for that activity, the maximum practicable opportunity for small business concerns, and particularly SDVOSBs/VOSBs, to participate in the performance of the activity's contracts and subcontracts.

(3) The attainment of these goals or the use of interagency acquisition vehicles does not limit the applicability of the Veterans First Contracting Program and priorities in subpart 819.70.

(c) In addition to the duties and responsibilities in FAR 19.201(c), the Executive Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for overseeing implementation of the Veterans First Contracting Program under subpart 819.70.

(d) Each organization with contracting authority shall designate small business specialists/technical advisors in coordination with the OSDBU Director.

**819.202 Specific policies.**

OSDBU is responsible for reviewing procurement strategies, establishing thresholds for such reviews and making recommendations to assist contracting officers in the implementation of this part. These responsibilities shall be conducted within the VA hierarchy of small business program preferences established by 38 U.S.C. 8127(h) (see subpart 819.70), which requires VA to consider preferences for VIP-listed SDVOSBs first, then preferences for VIP-listed VOSBs. Contracting officers shall use VA Form 2268, Small Business Program and Contract Bundling Review, to document actions and recommendations.

**819.203 Relationship among small business programs.****819.203–70 Priority for SDVOSB/VOSB contracting preferences.**

(a) 38 U.S.C. 8127 and 8128 require the VA to provide priority and establish special acquisition methods to increase contracting opportunities for SDVOSBs/VOSBs. These priorities and special acquisition methods are set forth in subpart 819.70 and shall be applied by contracting officers before other

priorities and preferences in FAR 19.203.

(b) Pursuant to 38 U.S.C. 8128, contracting officers shall give priority to SDVOSBs/VOSBs if such business concern(s) also meet the requirements of that contracting preference. This requirement applies even when using a contracting preference under FAR part 19 (for example, a women-owned small business set-aside).

### **Subpart 819.3—Determination of Small Business Size and Status for Small Business Programs**

#### **819.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.**

#### **819.307-70 SDVOSB/VOSB status protests.**

All protests relating to size, status and/or whether an SDVOSB or a VOSB is a "small business" are subject to the Small Business Administration (SBA) regulations at 13 CFR part 121 and must be filed in accordance with SBA guidelines at 13 CFR part 134 (see FAR subpart 19.3). Pursuant to Public Law 114-328, SBA will hear cases related to size and status, including ownership and control challenges under the VA Veterans First Contracting Program (see 38 U.S.C. 8127(f)(8)).

### **Subpart 819.5—Small Business Total Set-Asides, Partial Set-Asides, and Reserves**

#### **819.501 General.**

#### **819.501-70 General principles for setting aside VA acquisitions.**

(a) The following principles apply to VA acquisitions under this subpart:

(1) Before setting aside or reserving an acquisition for small businesses under FAR subpart 19.5, contracting officers shall refer to 808.002, 819.203-70 and subpart 819.70 for VA SDVOSB/VOSB priorities and preferences.

(2) Set-asides under the Veterans First Contracting Program in subpart 819.70 (see 819.7006 and 819.7007) have precedence over other small business set-asides authorized in FAR part 19, both above and below the simplified acquisition threshold (SAT). An SDVOSB/VOSB set-aside satisfies the legislative requirement to reserve actions below the SAT for small business.

(3) Pursuant to 38 U.S.C. 8127(d), set-asides for SDVOSBs/VOSBs are mandatory whenever a contracting officer has a reasonable expectation of receiving two or more offers/quotes from eligible, capable and verified firms, and that an award can be made at a fair and reasonable price that offers best

value to the Government. (VA Rule of Two).

(b) The set-aside principles in this section apply to VA acquisitions even when a procuring activity is meeting its goals or is planning the use of an interagency agreement, Federal Supply Schedule, or a multiple award contract, including a Governmentwide contract vehicle.

(c) The requirements in this subsection apply to all VA acquisitions under this subpart, including reserves, orders and BPAs under multiple award contracts, GSA Federal Supply Schedule contracts and Multi-Agency Contracts (MACs) awarded by another agency. A set-aside restricted to SDVOSBs/VOSBs pursuant to subpart 819.70 satisfies competition requirements in FAR part 6, as well as fair opportunity requirements for orders under multiple-award contracts (see FAR 16.505(b)(2)(i)(F)).

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

##### **819.502-1 Requirements for setting aside acquisitions.**

(b) Contracting officers shall refer to 808.002 for the VA policy regarding priorities for use of SDVOSBs/VOSBs and mandatory Government sources.

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

(a) If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis or, if permitted in the solicitation, the contracting officer will follow the tiered set-aside evaluation procedures in 819.7010, Tiered evaluation, and proceed to the next eligible tier in the evaluation process.

#### **819.507 Solicitation provisions and contract clauses.**

##### **819.507-70 Additional VA solicitation provisions and contract clauses.**

For contracts, orders or BPAs to be issued as SDVOSB/VOSB reserve, tiered evaluation, set-aside or sole source, see 819.7011. Also see subparts 808.4, 815.3, and 819.203-70 for requirements and clauses applicable to VA small business set-asides.

### **Subpart 819.6—[Reserved]**

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

#### **819.704-70 VA subcontracting plan requirements.**

(a) VA's current subcontracting goals, at a minimum, shall be inserted into all solicitations which contain FAR clause

52.219-9. To the maximum extent possible, the contracting officer shall ensure that individual subcontracting plans submitted by offerors subject to clause 852.219-70, VA Small Business Subcontracting Plan Minimum Requirements, include SDVOSB/VOSB goals that are commensurate with the annual VA SDVOSB/VOSB subcontracting goals (see 819.708).

(1) Only firms listed as verified on the Vendor Information Pages (VIP) database (see subpart 819.70) will count towards SDVOSB and VOSB goals.

(2) A contractor may reasonably rely on a subcontractor's status as shown in the VIP database as of the date of subcontract award, provided the contractor retains records of the results of the VIP database query.

(3) In furtherance of 38 U.S.C. 8127(a)(4), contractors shall submit subcontracting plan reports to OSDDBU as set forth in clause 852.219-70, VA Small Business Subcontracting Plan Minimum Requirements. Unless otherwise directed by OSDDBU, VA Form 0896A, Report of Subcontracts to Small and Veteran Owned Business, shall be used to submit the required information.

(b) Subcontracting goals should be expressed as a percentage of total dollars to be subcontracted unless otherwise stated in the solicitation.

(c) If an offeror proposes to use an SDVOSB/VOSB subcontractor for the purpose of receiving SDVOSB/VOSB evaluation factors credit pursuant to 808.405-70 or 815.304-70, the contracting officer shall ensure that the offeror, if awarded the contract, actually uses the proposed subcontractor or another SDVOSB/VOSB for that subcontract or for work of similar value, in accordance with clause 852.208-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs or 852.215-71, Evaluation Factor Commitments.

(d) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB or VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business (see 809.406-270, Additional causes for debarment).

#### **819.708 Contract clauses.**

(b) The contracting officer shall insert clause 852.219-70, 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.**

(e) The Small Business Administration (SBA) and the Department of Veterans Affairs (VA) have entered into a Partnership Agreement delegating SBA's contract execution and administrative functions to VA. Contracting officers shall follow the alternate procedures in the Partnership Agreement and this subpart, as applicable, to award an 8(a) contract. In the event the Partnership Agreement ceases to be in effect, contracting officers shall follow the procedures in FAR subpart 19.8.

**819.811 Preparing the contracts.****819.811–370 VA/SBA Partnership Agreement and contract clauses.**

(a) Before placing new requirements under the 8(a) program, the contracting officer must determine whether an SDVOSB/VOSB set-aside is mandated under the VA Rule of Two (see 802.101, Definitions). If the determination does not result in an SDVOSB/VOSB set-aside, the contracting officer may consider the 8(a) program.

(b) The Partnership Agreement provides that SBA can release procurements already in the program whenever an SDVOSB or VOSB set-aside is feasible.

(c) When an 8(a) acquisition is processed pursuant to the Partnership Agreement, the contracting officer shall:

(1) For competitive solicitations and awards, use the clause at 852.219–71, VA Notification of Competition Limited to Eligible 8(a) Participants, substituting paragraph (c) of FAR 52.219–18 Notification of Competition Limited to Eligible 8(a) Participants, with the paragraph (c) contained in 852.219–71.

(2) For noncompetitive solicitations and awards insert the clause at 852.219–72, Notification of Section 8(a) Direct Awards, instead of the prescribed FAR clauses at 52.219–11, Special 8(a) Contract Conditions; 52.219–12, Special 8(a) Subcontract Conditions; and 52.219–17, Section 8(a) Award.

(3) In all instances, contracting include the clause at FAR 52.219–14, Limitations on Subcontracting, or if applicable 52.219–33 Nonmanufacturer Rule.

**Subpart 819.70—The VA Veterans First Contracting Program****819.7001 General.**

(a) Sections 502 and 503 of Public Law 109–461, the Veterans Benefits, Health Care, and Information

Technology Act of 2006, as amended (38 U.S.C. 8127–8128), authorizes a VA specific program to increase contracting opportunities for eligible small business concerns owned and controlled by Veterans with service-connected disabilities and small business concerns owned and controlled by Veterans. Once ownership and control by these veterans is verified, these businesses are referred to as service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs) or collectively SDVOSB/VOSB for ease of reference.

(b) The program as implemented in this subpart shall be known as the Veterans First Contracting Program. The purpose of the program is to increase contracting opportunities and provide for priority in the award of contracts and subcontracts to SDVOSBs/VOSBs so they can fully participate in the VA contracting process. Eligible SDVOSBs qualify for any VOSB preferences under this subpart.

(c) 38 U.S.C. 8127 (b), (c), and (d) provide the authority for VA contracting officers to make awards to SDVOSBs/VOSBs using restricted competition, as well as other than full and open competition (sole source), as set-forth in this subpart. 38 U.S.C. 8128 provides the authority for VA to give SDVOSBs/VOSBs priority in the awarding of contracts and subcontracts using evaluation preferences.

(d) Contracting officers shall award contracts by restricting competition to eligible SDVOSBs/VOSBs as provided in 819.7006 and 819.7007. The contracting officer may use other preferences in this subpart as appropriate and in accordance with procuring activity guidelines.

(e) Pursuant to 38 U.S.C. 8128, contracting officers shall give priority to SDVOSBs/VOSBs if such business concern(s) also meet the requirements of that contracting preference. In carrying out this responsibility, contracting officers shall include the clauses prescribed at 808.405–570 and 815.304–71 in competitive solicitations and contracts that are not set-aside for SDVOSB/VOSB, including those under FAR part 12. This requirement applies even when using a contracting preference under FAR part 19 (for example, a women-owned small business set-aside).

(f) The attainment of goals or the use of interagency vehicles or Governmentwide contract vehicles (*i.e.*, Federal Supply Schedules (FSS)) does not relieve the contracting officer from using SDVOSB/VOSB set-asides and other preferences as provided in subpart 819.70. Moreover, if the VA enters into

a contract, agreement, or other arrangement with any Governmental entity to acquire goods or services, the entity acting on behalf of the VA through such an interagency acquisition or other agreement will comply, to the maximum extent feasible, with the provisions of the Veterans First Contracting Program as set forth in this subpart.

(g) Contracting officers shall ensure awards are made using the VA hierarchy of SDVOSB/VOSB preferences in this subpart. Specifically, the contracting officer will consider preferences for eligible SDVOSBs first, then preferences for other eligible VOSBs.

(h) When an offer of an SDVOSB/VOSB prime contractor includes a proposed team of small business subcontractors and specifically identifies the first-tier subcontractor(s) in the proposal, the contracting officer must consider the capabilities, past performance, and experience of each first tier subcontractor that is part of the team as the capabilities, past performance, and experience of the small business prime contractor if the capabilities, past performance, and experience of the small business prime does not independently demonstrate capabilities and past performance necessary for award.

**819.7002 Applicability.**

Unless otherwise exempted by law, this subpart applies to VA contracting activities and contracts (see FAR 2.101, Definitions) including BPAs and orders under FAR subpart 8.4 and commercial acquisitions under FAR part 12. In addition, this subpart applies to VA contractors, their subcontractors and to any Government entity that has a contract, agreement, or other arrangement with the VA to acquire goods and services on behalf of the VA (see 817.502). For applicability and VA policy regarding priorities for use of mandatory Government sources, see 808.002.

**819.7003 Eligibility.**

(a) SDVOSB/VOSB size eligibility, challenges and appeals are governed by the Small Business Administration (SBA) regulations at 13 CFR parts 121, 125, and 134, except where directed otherwise by this part or 38 CFR part 74, Veterans Small Business Regulations.

(b) At the time of submission of offers/quotes, and at the time of award of any contract, the offeror must represent to the contracting officer that it is a—

(1) SDVOSB or VOSB eligible under this subpart;

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

(3) Listed as a verified SDVOSB/VOSB on the VA's Vendor Information Pages (VIP) at <https://www.vetbiz.va.gov/vip/>.

(c) A joint venture may be considered eligible if it meets the requirements in 13 CFR part 125; and the joint venture is listed in the VIP database.

(d) To receive a benefit under the Veterans First Contacting Program, an otherwise eligible SDVOSB/VOSB must also meet SBA requirements at 13 CFR part 121, Small Business Size Regulations and 13 CFR part 125, Government Contracting Programs, including the nonmanufacturer rule requirements at 13 CFR 121.406(b) and limitations on subcontracting at 13 CFR 125.6. The nonmanufacturer rule (see 13 CFR 121.406) and the limitations on subcontracting requirements apply to all SDVOSB and VOSB set-aside and sole source contracts above the micro-purchase threshold. An offeror shall submit a certification of compliance to be considered eligible for any award under this part (see 819.7004).

(e) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment from contracting with the Department for a period of not less than five years. This includes the debarment of all principals in the business. See 809.406–270, Additional causes for debarment.

#### **819.7004 Limitations on subcontracting compliance requirements.**

(a) A contract awarded under this subpart is subject to the SBA limitations on subcontracting requirements in 13 CFR 125.6, provided that—

(1) Only VIP-listed SDVOSBs are considered eligible and/or “similarly situated” under an SDVOSB sole source or set-aside.

(2) A VOSB is subject to the same limitations on subcontracting that apply to an SDVOSB.

(3) Any VIP-listed SDVOSB/VOSB is considered eligible and/or “similarly situated” under a VOSB sole source or set-aside.

(b) Pursuant to the authority of 38 U.S.C. 8127(k)(2), a contracting officer may award a contract under this subpart only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirement as provided in the solicitation and which shall be included in the resultant contract (see 819.7011).

(1) The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal.

(2) The Government will not consider offers for award from offerors that do not provide the certification with their bid, quotation, or proposal, and all such responses will be deemed ineligible for evaluation and award.

(c) An otherwise eligible first tier subcontractor must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded.

(d) An SDVOSB/VOSB awarded a contract on the basis of a set-aside, sole source, or an evaluation preference is required to comply with the limitations on subcontracting either by—

(1) The end of the base term, and then by the end of each subsequent option period; or, by the end of the performance period for each order issued under the contract, at the contracting officer's discretion; and

(2) For an order set aside for SDVOSB/VOSB as described in 808.405 and FAR 16.505(b)(2)(i)(F), or for an order issued directly to an SDVOSB/VOSB in accordance with FAR 19.504(c)(1)(ii), by the end of the performance period for the order.

(e) The contracting officer may also, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance of the contract, and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(f) Pursuant to Public Law 116–183, the Office of the Small and Disadvantaged Business Utilization (OSDBU) and Chief Acquisition Officer (CAO), will implement a process to monitor compliance with the requirement in this section. The OSDBU and CAO shall jointly refer any violations or suspected violations to the VA Office of Inspector General. This referral obligation does not relieve contracting officers of their obligation to report suspected violations of law to the OIG.

(1) If the Secretary or designee determines in consultation with the Inspector General that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith with respect to the requirements described in 819.7003 paragraph (d),

such SDVOSB/VOSB shall be subject to any or all of the following—

(i) Referral to the VA Suspension and Debarment Committee;

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating section 1001 of title 18.

(2) The Inspector General shall report to the Congress annually on the number of referred violations and suspected violations, and the disposition of such violations, including the number of small business concerns suspended or debarred from federal contracting or referred for Department of Justice prosecution.

#### **819.7005 Contracting order of priority.**

(a) In determining the acquisition strategy applicable to a procurement requirement not otherwise covered under 808.002, the contracting officer shall observe the order of contracting preferences in 38 U.S.C. 8127(h).

(b) Specifically, preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

(1) Contracts awarded to small business concerns owned and controlled by Veterans with service-connected disabilities as provided in this subpart.

(2) Contracts to small business concerns owned and controlled by Veterans that are not covered by paragraph (a)(1) of this section as provided in this subpart.

(3) Contracts awarded pursuant to—

(i) Section 8(a) of the Small Business Act (15 U.S.C. 637(a) as provided in FAR subpart 19.8—Contracting with the Small Business Administration (The 8(a) Program); or

(ii) Section 31 of the Small Business Act (15 U.S.C. 657a) as provided in FAR subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program.

(4) Contracts awarded pursuant to any other small business set aside contracting preference, with due deference to the priority for awarding to Women-owned small businesses as provided in FAR 19.203(b) through (e) and FAR subpart 19.15.

#### **819.7006 VA 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 808.002, 813.106, 819.7007, and 819.7008, the contracting officer shall set-aside a contract action exceeding the micro-purchase threshold

for competition restricted to VIP-listed SDVOSB upon a reasonable expectation based on market research that—

(1) Offers/quotations will be received from two or more eligible VIP-listed SDVOSBs; and

(2) Award can be made at a fair and reasonable price that offers the best value to the Government.

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

(1) Offerors are registered and verified as eligible in the VIP database at the time of submission of offers and at time of award; and

(2) Offerors affirmatively represent their SDVOSB and small business status based on the size standard corresponding to the North American Industrial Classification System (NAICS) code assigned to the solicitation/contract, as set forth in 819.7003(b) or (c).

(c) If the contracting officer receives only one acceptable offer at a fair and reasonable price from an eligible VIP-listed SDVOSB, the contracting officer may make an award to that concern. If the contracting officer receives no acceptable offers from eligible SDVOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for VOSB competition if warranted or otherwise procured using the most appropriate strategy based on the results of market research.

**819.7007 VA 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 808.002, 813.106, 819.7007, and 819.7008, the contracting officer shall set aside a contract action exceeding the micro-purchase threshold for competition restricted to VIP-listed VOSBs upon a reasonable expectation based on market research that—

(1) Offers/quotations will be received from two or more VIP-listed VOSBs; and

(2) Award can be made at a fair and reasonable price that offers the best value to the Government.

(b) When conducting VOSB set-asides, the contracting officer shall ensure that—

(1) Offerors are registered and verified as eligible in the VIP database at the time of submission of offers and at time of award; and

(2) Offerors affirmatively represent their SDVOSB/VOSB and small business status based on the size standard corresponding to the NAICS code assigned to the solicitation/contract (see 819.7003(b) and (c)).

(c) If the contracting officer receives only one acceptable offer at a fair and

reasonable price from an eligible VIP-listed VOSB in response to a VOSB set-aside, the contracting officer may make an award to that concern. If the contracting officer decides not to make an award to the single acceptable offer received, or if the contracting officer receives no acceptable offers from eligible VOSBs, the set-aside shall be withdrawn and the requirement, if still valid, set aside for other small business programs in accordance with 819.7005 or otherwise procured using the most appropriate strategy based on the results of market research.

**819.7008 Sole source awards to verified service-disabled veteran-owned small businesses.**

(a) A contracting officer may award a contract to a VIP-listed service-disabled veteran-owned small business (SDVOSB) using other than competitive procedures provided—

(1) The anticipated award price of the contract (including options) will not exceed \$5 million;

(2) The requirement is synopsisized and the required justification pursuant to FAR 6.302–5(c)(2)(ii) is posted in accordance with FAR part 5;

(3) The SDVOSB has been determined to be a responsible contractor with respect to performance; and

(4) In the estimation of the contracting officer contract award can be made at a fair and reasonable price that offers best value to the Government.

(b) The contracting officer's determination to make a sole source award is a business decision wholly within the discretion of the contracting officer. To ensure that opportunities are available to the broadest number of SDVOSBs, this authority is to be used only when in the best interest of the Government.

(c) A determination that only one SDVOSB can meet the requirement is not required. However, in accordance with FAR 6.302–5(c)(2)(ii), contracts awarded using this authority shall be supported by a written justification and approval described in FAR 6.303 and 6.304, as applicable.

(d) When conducting a SDVOSB sole source acquisition, the contracting officer shall ensure the business meets eligibility requirements in 819.7003.

(e) A procurement requirement estimated to exceed the legislative threshold of \$5 million shall not be split or subdivided to permit the use of this SDVOSB sole source authority.

**819.7009 Sole source awards to verified veteran-owned small businesses.**

(a) A contracting officer may award a contract to a VIP-listed veteran-owned

small business (VOSB) using other than competitive procedures provided—

(1) The anticipated award price of the contract (including options) will not exceed \$5 million;

(2) The requirement is synopsisized and the required justification pursuant to 6.302–5(c)(2)(ii) is posted in accordance with FAR part 5;

(3) The VOSB has been determined to be a responsible contractor with respect to performance;

(4) In the estimation of the contracting officer contract award can be made at a fair and reasonable price that offers best value to the Government; and

(5) No responsible SDVOSB has been identified.

(b) The contracting officer's determination to make a sole source award is a business decision wholly within the discretion of the contracting officer. To ensure that opportunities are available to the broadest number of VOSBs, this authority is to be used only when in the best interest of the Government.

(c) A determination that only one VOSB can meet the requirement is not required. However, in accordance with FAR 6.302–5(c)(2)(ii), contracts awarded using this authority shall be supported by a written justification and approval described in FAR 6.303 and 6.304, as applicable.

(d) When conducting a VOSB sole source acquisition, the contracting officer shall ensure the business meets eligibility requirements in 819.7003.

(e) A procurement requirement estimated to exceed the legislative threshold of \$5 million shall not be split or subdivided to permit the use of this VOSB sole source authority.

**819.7010 Tiered set-aside evaluation.**

(a) Pursuant to the authority of 38 U.S.C. 8127 and under limited circumstances as set forth in this section, contracting officers may consider using a tiered set-aside evaluation approach to minimize delays in the re-solicitation process.

(b) Tiered evaluation of offers is a procedure that may be used in competitive negotiated acquisitions, including construction and acquisitions for commercial products and commercial services when the VA Rule of Two determination indicates a set-aside is required, but other circumstances preclude a confident conclusion that an award can be made at the SDVOSB or VOSB tier. The contracting officer—

(1) Solicits and receives offers from targeted tiers of small business groups, with SDVOSB as the first tier and VOSB as the second tier;



(2) Establishes a tiered order of priority for evaluating offers that is specified in the solicitation; and

(3) If no award can be made at the first tier, evaluates offers at the next lower tier, until award can be made.

(c) Market research, which shall be conducted and documented in advance of issuing the solicitation, will inform which of the following types of tiers will be included in the solicitation:

(1) Tiered evaluations limited to SDVOSBs or VOSBs;

(2) Tiered evaluations including 8(a) and HUBZone small businesses; or

(3) Tiered evaluations including all other small business concerns.

(d) The tiered order of priority shall be consistent with 819.7005. Consideration shall be given to HUBZone and 8(a) small business concerns before evaluating offers from other small business concerns.

#### **819.7011 Contract clauses.**

(a) The contracting officer shall insert clause 852.219–73, VA Notice of Total Set-Aside for Verified Service-Disabled Veteran-Owned Small Businesses, or clause 852.219–74, VA Notice of Total Set-Aside for Verified Veteran-Owned Small Businesses, as applicable, in solicitations, orders and contracts that are set-aside, reserved, evaluated or awarded under this subpart. This includes sole source awards as well as multiple-award contracts when orders may be set aside for SDVOSBs/VOSBs as described in 808.405 and FAR 19.504(c)(1)(ii).

(b) The contracting officer shall insert the clause at 852.219–75, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction, in solicitations and contracts for services and construction, including BPAs, BOAs, and orders, for acquisitions that are evaluated, set-aside, or awarded on a sole source basis under this subpart. This includes orders awarded under multiple-award contracts to SDVOSBs/VOSBs.

(c) The contracting officer shall insert the clause at 852.219–76, VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products, in solicitations and contracts for supplies or products, including BPAs, BOAs, and orders, for acquisitions that are to be awarded on the basis of an SDVOSB/VOSB set-aside, sole source, or an evaluation preference under this subpart. This includes orders awarded under multiple-award contracts to SDVOSBs/VOSBs. The contracting officer shall appropriately tailor the clause as set forth in paragraph (a)(2)(iii) of this section.

#### **Subpart 819.71—[Reserved]**

#### **PART 832—CONTRACT FINANCING**

■ 10. The authority citation for part 832 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 41 U.S.C. 1303, 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

#### **Subpart 832.9 [Removed and Reserved]**

■ 11. Remove and reserve subpart 832.9.

#### **PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 12. Revise the authority citation for part 852 to read as follows:

**Authority:** 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

#### **Subpart 852.2—Text of Provisions and Clauses**

##### **852.207–70 [Removed and Reserved]**

■ 13. Remove and reserve section 852.207–70.

■ 14. Add Section 852.208–70 to read as follows:

##### **852.208–70 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders or BPAs.**

As prescribed in 808.405–570, insert the following clause:

##### **SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTORS—ORDERS OR BPAs (DATE)**

(a) In an effort to increase contracting opportunities for Veterans, depending on the evaluation factors included in the solicitation, VA will evaluate responses received based on the schedule Contractor's VIP-verified service-disabled veteran-owned small business/veteran-owned small business (SDVOSB/VOSB) status; and/or their proposed use of VIP-listed SDVOSB/VOSB as subcontractors or teaming partners.

(b) To receive credit under this clause a contractor or subcontractor must be listed, at time of submission of offer/quotes and at time of award, as an eligible SDVOSB/VOSB in the Vendor Information Pages (VIP) database at <https://www.vetbiz.va.gov/vip/>.

(c) A VIP-listed SDVOSB schedule holder will receive full credit, and a VIP-listed VOSB schedule holder will receive partial credit for the SDVOSB/VOSB status evaluation factor.

(d) Offerors other than SDVOSBs or VOSBs proposing to use VIP-listed

SDVOSBs/VOSBs as subcontractors/teaming partners, will receive some consideration under this evaluation factor. To receive consideration, offerors must provide in their proposals:

(1) The name(s) and contact information of the VIP-listed SDVOSB(s)/VOSB(s) with whom they intend to team or subcontract.

(2) A brief description of the proposed team or subcontractor(s) arrangement.

(3) The approximate dollar value of the proposed teaming arrangements or subcontract(s).

(4) Evidence of teaming partner/subcontractor's VIP database registration and verification.

(e) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

■ 15. Add section 852.208–71 to read as follows:

##### **852.208–71 Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factor Commitments—Orders and BPAs.**

As prescribed in 808.405–570, insert the following clause:

##### **SERVICE-DISABLED VETERAN-OWNED AND VETERAN-OWNED SMALL BUSINESS EVALUATION FACTOR COMMITMENTS—ORDERS AND BPAs (DATE)**

(a) The Contractor agrees, if selected on the basis of service-disabled veteran-owned small business (SDVOSB) or veteran-owned small business (VOSB) status, to comply with the eligibility requirements in subpart 819.70, including the limitation on subcontracting requirements at 13 CFR 125.6.

(b) The Contractor agrees, if selected for award on the basis of teaming/subcontracting in accordance with 852.208–70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors—Orders and BPAs, to use the evaluated firm(s) as proposed or if approved by contracting officer to substitute one or more VIP-verified SDVOSB/VOSB for work of the same or similar value.

(c) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

#### **852.219–9 [Removed]**

- 16. Remove Section 852.219–9.
- 17. Add section 852.219–70 to read as follows:

#### **852.219–70 VA Small Business Subcontracting Plan Minimum Requirements.**

As prescribed in 819.708, insert the following clause:

#### **VA SMALL BUSINESS SUBCONTRACTING PLAN MINIMUM REQUIREMENTS (DATE)**

(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 VA verified service-disabled veteran-owned small business and veteran-owned small business SDVOSB/VOSB shall be at least commensurate with the Department's annual SDVOSB/VOSB subcontracting goals.

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

(d) To be credited toward goal achievements, SDVOSB/VOSBs must be verified as eligible in the VA's Vendor Information Pages (VIP) database at <https://www.vetbiz.va.gov/vip/>. A contractor may reasonably rely on a subcontractor's status as shown in the VIP database as of the date of subcontract award, provided the contractor retains records of the results of the VIP database query.

(e) The Contractor shall annually submit a listing of SDVOSB/VOSB (for which credit toward goal achievement is to be applied) for review by personnel in the Office of Small and Disadvantaged Business Utilization. Use VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Business.

(f) Pursuant to 38 U.S.C. 8127(g), any business concern that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB/VOSB status is subject to debarment for a period of not less than five years. This includes the debarment of all principals in the business.

(End of clause)

- 18. Revise section 852.219–71 to read as follows:

#### **852.219–71 Notification of Competition Limited to Eligible 8(a) Participants.**

As prescribed in 819.811–370, when FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Participants, is utilized, use this clause in conjunction with the FAR clause.

#### **NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(a) PARTICIPANTS (DATE)**

Substitute paragraph (c) in FAR Clause 52.219–18 as follows:

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror. Although SBA is not identified as such in the award form, SBA is still the Prime Contractor. Contractor shall comply with the limitations on subcontracting as provided in 13 CFR 125.6 and other 8(a) program requirements, as set forth in 13 CFR part 124.

(End of clause)

- 19. Revise section 852.219–72 to read as follows:

#### **852.219–72 Notification of Section 8(a) Direct Award.**

As prescribed in 819.811–370, paragraph (a), insert the following clause:

#### **NOTIFICATION OF SECTION 8(a) DIRECT AWARD (DATE)**

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program. By submission of its offer, the Offeror represents that it is in good standing and that it meets all of the criteria for participation in the program in accordance with 13 CFR part 124.

(b) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror. Although SBA is not identified as such in the award form, SBA is still the Prime Contractor.

(c) This contract is issued as a direct award between the contracting activity and the 8(a) Contractor pursuant to the Partnership Agreement (PA) between the Small Business Administration (SBA) and the Department of Veterans Affairs.

(d) SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and providing counseling and assistance to the 8(a) Contractor under the 8(a) program. The cognizant SBA district office is:

*[To be completed by the Contracting Officer at the time of award]*

- (e) The contracting activity is responsible for administering the

contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall obtain SBA's approval prior to processing any novation agreement(s). The contracting activity may assign contract administration functions to a contract administration office.

(f) The Contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern.

(2) Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(3) It will adhere to the requirements of 52.219–14, Limitations of Subcontracting and other requirements in 13 CFR part 124 and 13 CFR 125.6, as applicable

(g) Any proposed joint venture involving an 8(a) Participant must be approved by SBA before contracts are awarded.

(End of clause)

#### **852.219–10 [Removed]**

- 20. Remove section 852.219–10.
- 21. Add section 852.219–73 to read as follows:

#### **852.219–73 VA Notice of Total Set-Aside for Verified Service-Disabled Veteran-Owned Small Businesses.**

As prescribed in 819.7011, insert the following clause:

#### **VA NOTICE OF TOTAL SET-ASIDE FOR VERIFIED SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESSES (DATE)**

(a) *Definition.* For the Department of Veterans Affairs, “*Service-disabled Veteran-owned small business concern or SDVOSB*”:

(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 (see VAAR 802.201, Surviving Spouse definition);

(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;

(iv) The business has been verified for ownership and control pursuant to 38 CFR part 74 and is listed in VA's Vendor Information Pages (VIP) database at <https://www.vetbiz.va.gov/vip/>; and

(v) The business will comply with VAAR subpart 819.70 and Small Business Administration (SBA) regulations regarding small business size and government contracting programs at 13 CFR part 121 and 125, provided that any reference therein to a service-disabled veteran-owned small business concern or SDVO SBC, is to be construed to apply to a VA verified and VIP-listed SDVOSB, unless otherwise stated in this clause.

(2) The term "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).

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

(4) The term "small business concern owned and controlled by Veterans with service-connected disabilities" has the meaning given the term "*small business concern owned and controlled by service-disabled veterans*" under section 3(q)(2) of the Small Business Act (15 U.S.C. 632(q)(2)), except that for a VA contract the firm must be listed in the VIP database (see paragraph (a)(1)(iv) above).

(b) *General.* (1) Offers are solicited only from VIP-listed SDVOSBs. Offers received from entities that are not VIP-listed SDVOSBs at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made to a VIP-listed SDVOSB who is eligible at the time of submission of offer(s) and at the time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as an SDVOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation.* Pursuant to 38 U.S.C. 8127(e), only VIP-listed SDVOSBs are considered eligible to

receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible SDVOSB as defined in this clause, 38 CFR part 74, and VAAR subpart 819.70.

(d) *Agreement.* When awarded a contract action, including orders under multiple-award contracts, an SDVOSB agrees that in the performance of the contract, the SDVOSB shall comply with requirements in VAAR subpart 819.70 and SBA regulations on small business size and government contracting programs at 13 CFR part 121 and part 125, including the non-manufacturer rule and limitations on subcontracting requirements in 13 CFR 121.406(b) and 13 CFR 125.6. Unless otherwise stated in this clause, a requirement in 13 CFR part 121 and 125 that applies to an SDVO SBC, is to be construed to also apply to a VIP-listed SDVOSB. For the purpose of limitations on subcontracting, only VIP-listed SDVOSBs (including independent contractors) shall be considered eligible and/or "similarly situated" (*i.e.*, a firm that has the same small business program status as the prime contractor). An otherwise eligible firm further agrees to comply with the required certification requirements in this solicitation (see 852.219–75 or 852.219–76 as applicable). These requirements are summarized as follows:

(1) *Services.* In the case of a contract for services (except construction), the SDVOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance to firms that are not VIP-listed SDVOSBs (excluding direct costs to the extent they are not the principal purpose of the acquisition and the SDVOSB/VOSB does not provide the service, such as airline travel, cloud computing services, or mass media purchases). When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

(2) *Supplies/products.* (i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), the SDVOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not VIP-listed SDVOSBs. When a contract includes both supply and services, the 50 percent limitation shall apply only to the supply portion of the contract.

(ii) In the case of a contract for supplies from a non-manufacturer, the SDVOSB prime contractor will supply the product of a domestic small

business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) has been granted. Refer to 13 CFR 125.6(a)(2)(ii) for guidance pertaining to multiple item procurements.

(3) *General construction.* In the case of a contract for general construction, the SDVOSB prime contractor will not pay more than 85% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not VIP-listed SDVOSBs.

(4) *Special trade construction contractors.* In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, may be paid to firms that are not VIP-listed SDVOSBs.

(5) *Subcontracting.* An SDVOSB must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed SDVOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction contracts, the cost of materials is excluded and not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the portion of the contract with the preponderance of the expenditure upon which the assigned NAICS is based. For information and more specific requirements, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period.* An SDVOSB shall comply with the limitations on subcontracting as follows:

[Contracting Officer check as appropriate.]

— By the end of the base term of the contract or order, and then by the end of each subsequent option period; or

— By the end of the performance period for each order issued under the contract.

(f) *Joint ventures.* A joint venture may be considered eligible as an SDVOSB if the joint venture is listed in VIP and complies with the requirements in 13 CFR 125.18(b), provided that any requirement therein that applies to an SDVO SBC is to be construed to apply to a VIP-listed SDVOSB. A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

(g) *Precedence*. The VA Veterans First Contracting Program, as defined in VAAR 802.101, subpart 819.70 and this clause, takes precedence over any inconsistencies between the requirements of the SBA Program for SDVO SBCs, and the VA Veterans First Contracting Program.

(h) *Misrepresentation*. Pursuant to 38 U.S.C. 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's SDVOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR 809.406–2 Causes for Debarment).

(End of clause)

#### 852.219–11 [Removed]

■ 22. Remove section 852.219–11.

■ 23. Add section 852.219–74 to read as follows:

#### 852.219–74 VA Notice of Total Set-Aside for Verified Veteran-Owned Small Businesses.

As prescribed in 819.7011, insert the following clause:

##### VA NOTICE OF TOTAL SET-ASIDE FOR VERIFIED VETERAN-OWNED SMALL BUSINESSES (DATE)

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

(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 Veteran(s);

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

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

(iv) The business has been verified for ownership and control pursuant to 38 CFR part 74 and is listed in VA's Vendor Information Pages (VIP) database at: <https://www.vetbiz.va.gov/vip/>; and

(v) The business will comply with VAAR subpart 819.70 and Small Business Administration (SBA) regulations regarding small business size and government contracting programs at 13 CFR part 121 and 125, provided that any requirement therein that applies to a service-disabled veteran-owned small business concern or SDVO SBC, is to be construed to also apply to a VA verified and VIP-listed

VOSB, unless otherwise stated in this clause.

(vi) The term VOSB includes VIP-listed service-disabled veteran-owned small businesses (SDVOSB).

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

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

(4) The term “*small business concern owned and controlled by Veterans*” has the meaning given that term under section 3(q)(3) of the Small Business Act (15 U.S.C. 632(q)(3)), except that for a VA contract the firm must be listed in the VIP database (see paragraph a)(1)(iv) of this clause).

(b) *General*. (1) Offers are solicited only from VIP-listed VOSBs, including VIP-listed SDVOSBs. Offers received from entities that are not VIP-listed at the time of offer shall not be considered.

(2) Any award resulting from this solicitation shall be made only to a VIP-listed VOSB who is eligible at the time of submission of offer(s) and at time of award.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as a VOSB, including set-asides, sole source awards, and evaluation preferences.

(c) *Representation*. Pursuant to 38 U.S.C. 8127(e), only VIP-listed VOSBs are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible VOSB as defined in this clause, 38 CFR part 74, and VAAR subpart 819.70.

(d) *Agreement*. When awarded a contract action, including orders under multiple-award contracts, a VOSB agrees that in the performance of the contract, the VOSB shall comply with requirements in VAAR subpart 819.70 and SBA regulations on small business size and government contracting programs at 13 CFR part 121 and part 125, including the non-manufacturer rule and limitations on subcontracting requirements in 13 CFR 121.406(b) and 125.6. Unless otherwise stated in this clause, any requirement in 13 CFR part 121 and part 125 that applies to an SDVO SBC, is to be construed to also apply to a VIP-listed VOSB. For the purpose of the limitations on subcontracting, only VIP-listed VOSB, (including independent contractors) is considered eligible and/or “similarly situated” (i.e., a firm that has the same small business program status as the prime contractor). An otherwise eligible firm further agrees to comply with the

required certification requirements in this solicitation (see 852.219–75 and/or 852.219–76 as applicable). These requirements are summarized as follows:

(1) *Services*. In the case of a contract for services (except construction), the VOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance to firms that are not VIP-listed VOSBs (excluding direct costs to the extent they are not the principal purpose of the acquisition and the SDVOSB/VOSB does not provide the service, such as airline travel, cloud computing services, or mass media purchases). When a contract includes both services and supplies, the 50 percent limitation shall apply only to the service portion of the contract.

(2) *Supplies/products*. (i) In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), the VOSB prime contractor will not pay more than 50% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not VIP-listed VOSBs. When a contract includes both supply and services, the 50 percent limitation shall apply only to the supply portion of the contract.

(ii) In the case of a contract for supplies from a non-manufacturer, the VOSB prime contractor will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) has been granted. Refer to 13 CFR 125.6(a)(2)(ii) for guidance pertaining to multiple item procurements.

(3) *General construction*. In the case of a contract for general construction, the VOSB prime contractor will not pay more than 85% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, to firms that are not VIP-listed VOSBs.

(4) *Special trade construction contractors*. In the case of a contract for special trade contractors, no more than 75% of the amount paid by the government to the prime for contract performance, excluding the cost of materials, may be paid to firms that are not VIP-listed VOSBs.

(5) *Subcontracting*. A VOSB must meet the NAICS size standard assigned by the prime contractor and be listed in VIP to count as similarly situated. Any work that a first tier VIP-listed VOSB subcontractor further subcontracts will count towards the percent of subcontract amount that cannot be exceeded. For supply or construction

contracts, the cost of materials is excluded and not considered to be subcontracted. When a contract includes both services and supplies, the 50 percent limitation shall apply only to the portion of the contract with the preponderance of the expenditure upon which the assigned NAICS is based. For information and more specific requirements, refer to 13 CFR 125.6.

(e) *Required limitations on subcontracting compliance measurement period.* A VOSB shall comply with the limitations on subcontracting as follows:

[Contracting Officer check as appropriate.]

- By the end of the base term of the contract or order, and then by the end of each subsequent option period; or
- By the end of the performance period for each order issued under the contract.

(f) *Joint ventures.* A joint venture may be considered eligible as a VOSB if the joint venture is listed in VIP and complies with the requirements in 13 CFR 125.18(b), provided that any requirement therein that applies to an SDVO SBC is to be construed to also apply to a VIP-listed VOSB. A joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the joint venture participants.

(g) *Precedence.* The VA Veterans First Contracting Program, as defined in VAAR 802.10, subpart 819.70 and this clause, takes precedence over any inconsistencies between the requirements of the SBA Program for SDVO SBCs and the VA Veterans First Contracting Program.

(h) *Misrepresentation.* Pursuant to 38 U.S.C. 8127(g), any business concern, including all its principals, that is determined by VA to have willfully and intentionally misrepresented a company's VOSB status is subject to debarment from contracting with the Department for a period of not less than five years (see VAAR 809.406–2 Causes for Debarment).

(End of clause)

■ 24. Add section 852.219–75 to read as follows:

**852.219–75 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Services and Construction.**

As prescribed in 819.7011(b), insert the following clause:

**VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SERVICES AND CONSTRUCTION (DATE)**

(a) Pursuant to 38 U.S.C. 8127(k)(2), the offeror certifies that—

(1) If awarded a contract (see FAR 2.101 definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: [*Contracting Officer check the appropriate box below based on the predominant NAICS code assigned to the instant acquisition as set forth in FAR 19.102.*]

(i) ☐ *Services.* In the case of a contract for services (except construction), the contractor will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219–73 or VOSBs as set forth in 852.219–74. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Other direct costs may be excluded to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service as set forth in 13 CFR 125.6.

(ii) ☐ *General construction.* In the case of a contract for general construction, the contractor will not pay more than 85% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219–73 or VOSBs as set forth in 852.219–74. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 85% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(iii) ☐ *Special trade construction contractors.* In the case of a contract for special trade contractors, the contractor will not pay more than 75% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219–73 or VOSBs as set forth in 852.219–74. Any work that a similarly situated subcontractor further subcontracts will count towards the 75% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(2) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further acknowledges that this certification is subject to Title 18, United States Code,

Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(3) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

(i) Referral to the VA Suspension and Debarment Committee;

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating section 1001 of title 18.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract. Contracting officers may, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance with the limitations on subcontracting requirement. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/ fill-in required. The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

**Certification**

I hereby certify that if awarded the contract, [*insert name of offeror*] will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of [*insert name of offeror*].

Printed Name of Signee:

Printed Title of Signee: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Company Name and Address: \_\_\_\_\_

(End of clause)

■ 25. Add section 852.219–76 to read as follows:

**852.219–76 VA Notice of Limitations on Subcontracting—Certificate of Compliance for Supplies and Products.**

As prescribed in 819.7011(c), insert the following clause. The contracting officer shall tailor the clause in paragraph (a)(2)(iii) as appropriate:

**VA NOTICE OF LIMITATIONS ON SUBCONTRACTING—CERTIFICATE OF COMPLIANCE FOR SUPPLIES AND PRODUCTS (DATE)**

(a) Pursuant to 38 U.S.C. 8127(k)(2), the offeror certifies that—

(1) If awarded a contract (see FAR 2.101 definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows: *[Offeror check the appropriate box]*

(i) ☐ In the case of a contract for supplies or products (other than from a non-manufacturer of such supplies), it will not pay more than 50% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219–73 or VOSBs as set forth in 852.219–74. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

(ii) ☐ In the case of a contract for supplies from a nonmanufacturer, it will supply the product of a domestic small business manufacturer or processor, unless a waiver as described in 13 CFR 121.406(b)(5) is granted. The offeror understands that, as provided in 13 CFR 121.406(b)(7), such a waiver has no effect on requirements external to the Small Business Act, such as the Buy American Act or the Trade Agreements Act.

(2) Manufacturer or nonmanufacturer representation and certification. *[Offeror fill-in—check each applicable box below. The offeror must select the applicable provision below, identifying*

*itself as either a manufacturer or nonmanufacturer]:*

(i) ☐ *Manufacturer or producer.* The offeror certifies that it is the manufacturer or producer of the end item being procured, and the end item is manufactured or produced in the United States, in accordance with paragraph (a)(1)(i).

(ii) ☐ *Nonmanufacturer.* The offeror certifies that it qualifies as a nonmanufacturer in accordance with the requirements of 13 CFR 121.406(b) and paragraph (a)(1)(ii). The offeror further certifies it meets each element below as required in order to qualify as a nonmanufacturer. *[Offeror fill-in—check each box below.]*

☐ The offeror certifies that it does not exceed 500 employees (or 150 employees for the Information Technology Value Added Reseller exception to NAICS code 541519, which is found at 13 CFR 121.201, footnote 18).

☐ The offeror certifies that it is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied.

☐ The offeror certifies that it will take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice.

(iii) ☐ The offeror certifies that it will supply the end item of a small business manufacturer, processor, or producer made in the United States, unless a waiver as provided in 13 CFR 121.406(b)(5) has been issued by SBA. *[Contracting Officer fill-in or removal (see 13 CFR 121.1205). This requirement must be included for a single end item. However, if SBA has issued an applicable waiver of the nonmanufacturer rule for the end item, this requirement must be removed in the final solicitation or contract.]*

or *[Contracting officer tailor clause to remove one or other block under subparagraph (iii).]*

☐ If this is a multiple item acquisition, the offeror certifies that at least 50% of the estimated contract value is composed of items that are manufactured by small business concerns. *[Contracting Officer fill-in or removal. See 13 CFR 121.406(d) for multiple end items. If SBA has issued an applicable nonmanufacturer rule waiver, this requirement must be removed in the final solicitation or contract.]*

(3) The offeror acknowledges that this certification concerns a matter within the jurisdiction of an Agency of the United States. The offeror further

acknowledges that this certification is subject to Title 18, United States Code, Section 1001, and, as such, a false, fictitious, or fraudulent certification may render the offeror subject to criminal, civil, or administrative penalties, including prosecution.

(4) If VA determines that an SDVOSB/VOSB awarded a contract pursuant to 38 U.S.C. 8127 did not act in good faith, such SDVOSB/VOSB shall be subject to any or all of the following:

(i) Referral to the VA Suspension and Debarment Committee;

(ii) A fine under section 16(g)(1) of the Small Business Act (15 U.S.C. 645(g)(1)); and

(iii) Prosecution for violating section 1001 of title 18.

(b) The offeror represents and understands that by submission of its offer and award of a contract it may be required to provide copies of documents or records to VA that VA may review to determine whether the offeror complied with the limitations on subcontracting requirement specified in the contract or to determine whether the offeror qualifies as a manufacturer or nonmanufacturer in compliance with the limitations on subcontracting requirement. Contracting officers may, at their discretion, require the contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract if the information regarding such compliance is not already available to the contracting officer. Evidence of compliance includes, but is not limited to, invoices, copies of subcontracts, or a list of the value of tasks performed.

(c) The offeror further agrees to cooperate fully and make available any documents or records as may be required to enable VA to determine compliance. The offeror understands that failure to provide documents as requested by VA may result in remedial action as the Government deems appropriate.

(d) Offeror completed certification/ fill-in required. The formal certification must be completed, signed and returned with the offeror's bid, quotation, or proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

**Certification**

I hereby certify that if awarded the contract, *[insert name of offeror]* will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute



this certification on behalf of *[insert name of offeror]*.  
Printed Name of Signee: \_\_\_\_\_  
Printed Title of Signee: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Company Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
(End of clause)

**PART 853—FORMS**

■ 26. Revise the authority citation for part 853 to read as follows:

**Authority:** 40 U.S.C. 121(c); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

**Subpart 853.2—Prescription of Forms**

■ 27. Add section 853.219 to read as follows:

**853.219 Small business forms.**

(a) *VA Form 2268, Small Business Program and Contract Bundling Review.* VA Form 2268 is prescribed for use to

document actions and recommendations related to small business, as specified in 819.202.

(b) *VA Form 0896A, Report of Subcontracts to Small and Veteran-Owned Businesses.* VA Form 0896A is prescribed for use to submit subcontracting information, as specified in 819.704–70.

(c) Forms are available at: *https://www.va.gov/vaforms.*

[FR Doc. 2022–03677 Filed 3–8–22; 8:45 am]

**BILLING CODE 8320–01–P**