

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will not be effective until December 19, 2022 because it is a direct final rule.

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

**Adam Ortiz,**

*Regional Administrator, EPA Region III.*

[FR Doc. 2022–22578 Filed 10–17–22; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

##### 48 CFR Part 52

[FAC 2022–05; FAR Case 2021–008, Docket No. 2021–0008, Sequence No. 1]

RIN 9000–AO22

#### Federal Acquisition Regulation: Amendments to the FAR Buy American Act Requirements; Correction

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule; correction.

**SUMMARY:** DoD, GSA, and NASA are issuing a correction to FAC 2022–05;

FAR Case 2021–008; Amendments to the FAR Buy American Act Requirements; which published in the **Federal Register** at 87 FR 12780, on March 7, 2022. This correction makes an editorial change to correct amendatory instruction 21.b. to section 52.212–3.

**DATES:** Effective: October 25, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868 or by email at [mahruba.uddowla@gsa.gov](mailto:mahruba.uddowla@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAC 2022–05, FAR Case 2021–008; Correction.

#### SUPPLEMENTARY INFORMATION:

##### Correction

In rule FR Doc. 2022–04173, published in the **Federal Register** at 87 FR 12780, on March 7, 2022, make the following correction:

##### 52.212–3 [Corrected]

■ 1. On page 12795, in the first column, correct amendatory instruction number 21.b., to read as follows:

■ b. In paragraph (f)(1)(i) removing the word “product” from the end of the sentence, and adding the phrase “product and that each domestic end product listed in paragraph (f)(3) of this provision contains a critical component” in its place;

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

[FR Doc. 2022–22564 Filed 10–17–22; 8:45 am]

**BILLING CODE 6820–EP–P**

## 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:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing a final rule amending the VA Acquisition Regulation (VAAR). 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:** Effective November 17, 2022.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bogdan Vaga, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 810 Vermont Avenue NW, Washington, DC 20420, (202) 894–0686. (This is not a toll-free telephone number.)

#### SUPPLEMENTARY INFORMATION:

##### Background

VA published a proposed rule in the **Federal Register** at 87 FR 13598 on March 9, 2022, to amend the VAAR to implement and supplement the Federal Acquisition Regulation (FAR). VA provided a 60-day comment period for the public to respond to the proposed rule and submit comments. The public comment period closed on May 9, 2022. VA received no public comments.

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.

The VAAR has been revised to add new policy or regulatory requirements, to update existing policy, and to remove any redundant guidance where it may exist in affected parts, and to place guidance that is applicable only to VA’s internal operating processes or procedures in the VA Acquisition Manual (VAAM).

This rule adopts as a final rule the proposed rule published in the **Federal Register** on March 9, 2022, except for one technical non-substantive revision as described below.

##### Discussion and Analysis

#### Technical Non-Substantive Change to the Rule

This rule makes one non-substantive change to the rule to provide clarity, eliminate confusion, and to ensure compliance with the Federal Acquisition Regulation (FAR). Specifically, in section 819.7002, Applicability, VA is revising the term “commercial acquisitions” as used in the section to reflect “commercial products or commercial services” in alignment with FAR final rule, Federal Acquisition Regulation: Revision of Definition of “Commercial Item”, RIN 9000–AN76, effective December 6, 2021.

### 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 final 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 rule also contains collections 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, 852.219–70, and 853.219(b) is currently approved by OMB and has been assigned OMB control number 2900–0741.

Separately, a revised collection of information associated with this rulemaking is contained in 48 CFR 852.207–70, Report of Employment Under Commercial Activities, under OMB control number 2900–0590. This final rule removes 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).

Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval, including all comments received on the proposed information collections and any changes made in response to comments. There were no public comments received on the proposed rule or on the collection of information. OMB has reviewed and has not approved the revisions and removal

at this time. In accordance with 5 CFR part 1320, the revised information collection is not approved at this time. OMB has up to 30 days to approve the request after the final rule publishes.

If OMB does not approve the revised collection of information as requested, VA will immediately take action to reinstate the information collection or take such other action as is directed by OMB.

### Regulatory Flexibility Act

The Secretary hereby certifies that this final 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 final 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. However, VA has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

a. *Statement of the need for, and the objectives of, the rule. A description of the reasons why action by VA is being considered.*

*Response:* VA is issuing a final rule to implement updated requirements to 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 were implemented in advance of this rulemaking through separate class deviations. This final rule also makes other necessary updates to the VAAR to bring current with the Federal Acquisition Regulation (FAR).

b. *Statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made to the rule as a result of such comments.*

*Response:* There were no public comments received on the proposed rule and accordingly no changes were made to the rule in response to the initial regulatory flexibility analysis.

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 rule should help small businesses continue to receive a fair share of VA contracting dollars. VA exceeded its small business goal of 28.45% in Fiscal Year 2021, achieving 30.3%, valued at \$10,307,742,213, while awards to SDVOSBs were valued at \$8,144,793,570.

*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. 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:* There are no known significant alternative approaches to the final rule. VA is unable to identify any significant alternatives that would accomplish the requirements of this rule. Through the proposed rule, the public had 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. VA received no comments on the proposed rule.

VA has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

**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 final rule would have no such effect on State, local, and tribal governments or on the private sector.

**Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

**List of Subjects**

48 CFR Parts 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 September 23, 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.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons set forth in the preamble, VA amends 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:
  - a. Adding definitions in alphabetical order for “Public Law (Pub. L.) 109–461” and “SDVOSB/VOSB”;
  - b. Removing the definition of “Service-disabled veteran-owned small business concern (SDVOSB)” and adding the definition “Service-disabled veteran-owned small business (SDVOSB)” in its place;
  - c. Adding a definition in alphabetical order for “VA Rule of Two”;
  - d. Removing the definitions of “Vendor Information Pages (VIP)” and “Veteran-owned small business concern (VOSB)” and adding the definitions “Vendor Information Pages (VIP) or VIP database” and “Veteran-owned small business (VOSB)” in their places, respectively; and
  - e. Adding a definition in alphabetical order for “Veterans First Contracting Program”.

The additions 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 this section.

\* \* \* \* \*

*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. Under the authority of 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 1303, and 1702; and 48 CFR 1.301 through 1.304, 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 VVSmall 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 in paragraphs (a)(1) and (2) of this section 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 (see 802.101) 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 in paragraph (a)(1)(iv)(A) of this section 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 (a)(1)(iv), *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 (a)(1)(iv);

(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 paragraphs (a)(1)(iv)(C) and (D) of this section, 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 paragraph (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.* 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). For services that are on the Procurement List, but which do not meet the definition of a covered service in paragraph (a)(2)(i) of this section 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 (a)(2)—

*Covered service* means a service 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 service under this paragraph (a)(2);

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

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

(ii) *Policy.* Except as provided in paragraphs (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 paragraph (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, and 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 (see 802.101), 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 (see 802.101) 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 (see 802.101) 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 North American Industry Classification System (NAICS) code 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 subpart 819.70, conduct a VA Rule of Two (see 802.101) 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 813.106–70 to read as follows:

##### 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 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. The requirement in this paragraph (b) 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 and 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 (see 802.101))

(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 section 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 and 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).

**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). 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 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) VA's program is codified at 38 U.S.C. 8127(b), (c), and (d), and provides 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. Additionally, 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. The requirement in this paragraph (e) 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) including BPAs and orders under FAR subpart 8.4 and acquisition of commercial products or commercial services 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.

(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 Contracting Program, an otherwise eligible SDVOSB/VOSB must also meet SBA requirements at 13 CFR parts 121 and 125, 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.

#### **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 Office of the Inspector General (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(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 18 U.S.C. 1001.

(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 (b)(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; or

(ii) Section 31 of the Small Business Act (15 U.S.C. 657a) as provided in FAR subpart 19.13.

(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 FAR 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 (see 802.101) 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 tailor clause 852.219–76, and paragraph (a)(2)(iii) of the clause, as appropriate.

#### **Subpart 819.71—[Reserved]**

#### **PART 832—CONTRACT FINANCING**

■ 10. Revise the authority citation for part 832 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 (Nov 2022)**

(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 (Nov 2022)**

(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, 852.219–10, and 852.219–11 [Removed]**

■ 16. Remove sections 852.219–9, 852.219–10, and 852.219–11.

■ 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 (NOV 2022)**

(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 (NOV 2022)**

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 (NOV 2022)**

(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)

■ 20. 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 (NOV 2022)**

(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 parts 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) of this clause).

(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 parts 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)

■ 21. 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 (NOV 2022)**

(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 parts 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 parts 121 and 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 parts 121 and 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)

■ 22. 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 (NOV 2022)**

(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)

■ 23. 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 (NOV 2022)**

(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

■ 24. The authority citation for part 853 continues 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

■ 25. 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) *Availability.* Forms are available at <https://www.va.gov/vaforms>.

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