



**Department of
Veterans Affairs**

Memorandum

Date: June 22, 2016

From: Executive Director, Small and Veteran Business Programs (00SB)

Subj: FY 2016 Small Business Procurement Review Program Policy

To: Chief Acquisition Officer (003)
Senior Procurement Executive (003A)
Heads of Contracting Activity
See Distribution List

1. Purpose.

This memorandum establishes VA's Small Business Program procurement review policy and process and complements the Small Business Operating Plans prepared in accordance with VAAR 819.202-70.

The review procedure is effective as of the date of this memorandum. This memorandum supersedes and replaces OSDBU Small Business Procurement Review Policy memorandum dated May 20, 2016, as well as any previous memoranda on the procurement review process. This memorandum remains in effect until superseded.

2. Background

The Office of Small and Disadvantaged Business Utilization (OSDBU), in accordance with Section 15(k) of the Small Business Act (15 U.S.C. § 644(k)), is required to review proposed acquisition strategies and to make recommendations with respect to their anticipated impact on small business participation as prime and subcontractors. In the Department of Veterans Affairs (VA), these responsibilities are conducted within the context of VA's hierarchy of small business program preferences, established by section 8127(i) of Title 38, United States Code (the Veterans First Contracting Program). This law requires VA to consider preferences for verified Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) first, then preferences for verified Veteran-Owned Small Businesses (VOSBs). They are followed by certified HUBZone firms, 8(a) participants, and certified Woman-Owned Small Businesses (WOSB) (in no particular order of precedence); then Small Business, and finally full and open competitions (unrestricted). Small business program reviews are intended to ensure that Veteran-owned small businesses are considered in procurement strategies based on adequate market research.

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3. Procurement Reviews.

For the purposes of this memorandum, “small business set-aside” refers to all set-asides prescribed in Federal Acquisition Regulation (FAR) Part 19, FAR Part 8, and VA Acquisition Regulation (VAAR) Part 819. Small business set-asides must be considered for acquisitions in all industry sectors. OSDBU is required by statute to make recommendations regarding procurements based on review of market research. While, as noted in paragraph 2, OSDBU has a statutory mandate to review procurements for small business set-aside opportunities, bundling considerations, and related issues, this memorandum delegates review of some procurements in order to focus OSDBU’s heightened efforts on those procurements most likely to be appropriate for small business participation. This limited delegation of review authority will also reduce paperwork burdens and procurement lead times for procurement actions less relevant to small businesses.

OSDBU reserves the right to review any procurement to ensure compliance with legal or program requirements, regardless of previous delegation. In determining whether to review a particular procurement, OSDBU will consider the totality of the circumstance, including organizational performance in meeting socioeconomic goals, market research, assignment of NAICS codes, effects on competition, results of engagement on Integrated Product Team (IPTs), and other relevant considerations. In order to avoid unnecessary delays in the procurement process, procurements should be submitted for review as early in the process as possible. Procurements submitted after a solicitation has been issued can create needless delays.

Procurements set aside for Veteran-owned small businesses do not require OSDBU review. Procurements not set-aside for Veteran-owned small businesses shall be reviewed as outlined in this memorandum. Procurements considered for review fall into three broad categories:

- (1) Procurements to be reviewed by OSDBU,
 - (2) Procurement reviews delegated to Small Business specialists/liaisons in the component organizations, and
 - (3) Procurements for which OSDBU delegates review authority to the HCAs, to be conducted in accordance with their approved Small Business Operating Plans.
- a. **OSDBU Procurement Reviews:** OSDBU will review all proposed procurements that are not set-aside for Veteran-owned small businesses within the Small Business Focus Categories (SBFC) outlined below, with the exception of items listed below in paragraph 3(d). The SBFC represent NAICS subsectors within industries that have historically provided substantial opportunities for small business. VA Form 2268 will be submitted to OSDBU for all procurements that meet the following parameters:

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- i. **Estimated contract value is greater than Simplified Acquisition Threshold and the assigned NAICS code begins with these three digits:**

- 236 – Construction of Buildings
(Procurements under \$20 million)
- 237 – Heavy and Civil Engineering Construction (procurements under \$20 million)
- 238 – Specialty Trade Contractors
- 327 – Nonmetallic Mineral Product Manufacturing
- 333 – Machinery Manufacturing
- 334 – Computer and Electronic Equipment Manufacturing
- 337 – Furniture & Related Product Manufacturing
- 339 – Miscellaneous Manufacturing
- 511 – Publishing Industries (except Internet)
- 532 – Rental and Leasing Services
- 541 – Professional, Scientific, and Technical Services
- 561 – Administrative and Support Services
- 611 – Educational Services
- 621 – Ambulatory Health Care Services
- 811 – Repair & Maintenance

- ii. **Multiple Award Contracts:** Task orders against multiple award contracts that have both large and small business awardees, where the assigned NAICS code for the award level (parent) contract and/or any individual task order is within the SBFC identified above shall be submitted via VA Form 2268 to OSDBU for review to ensure proper consideration is afforded to small businesses at the task order level. . Single award IDIQ do not require OSDBU review at the task order level.
- iii. **Contract Bundling Review:** OSDBU review is required on all acquisitions not set aside for small businesses (regardless of NAICS code) valued above the Simplified Acquisition Threshold that meet the definition of a consolidated or bundled contract in accordance with FAR 2.101. Bundled requirements will require submission of both VA Form 2268 and 2268a, Contract Bundling Checklist, with required justifications and review, per FAR 7.107.
- iv. **IPT Acquisitions:** Contracting officer shall include OSDBU staff on IPT as a voting member. VA form 2268 is required for all IPTs regardless of NAICS code, dollar threshold, or acquisition strategy unless set aside for Veteran-owned small business. Advance notification of pending IPT will enable OSDBU staff to assist in the development of the market research to determine the viability of the procurement for Veteran-owned small business participation. Early engagement will promote

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appropriate acquisition strategy and enable more efficient review of VA Form 2268, as the OSDDBU representative to the IPT may review and concur on market research and the acquisition strategy by signing VA Form 2268 as part of IPT process. The signed VA form 2268 will be submitted IAW paragraph 4 below.

b. Procurements under the Simplified Acquisition Threshold (SAT):

Legislation and FAR Part 19.502-2 requires that all procurements under the Simplified Acquisition Threshold (SAT) are to be set aside for small businesses, unless the rationale for not doing so is properly documented. While OSDDBU does not have the authority to waive this requirement, procurement actions under the SAT in the Small Business Focus Categories (SBFC) do not require review by the program SES or HCA. Procurements in this category not set aside for Veteran-owned small businesses shall be reviewed by the cognizant small business liaison (SBL) or small business specialist (SBS) attached to the contracting activity under delegated authority from OSDDBU. The SBL shall assess a concurrence or nonconcurrence based on the information presented. If the SBL concurs on the procurement action, no further review is necessary from OSDDBU. Should the SBL nonconcur, and the contracting officer wish to continue with the action despite the nonconcurrence, the supervisor in the program office where the requirement was generated shall sign the 2268 with the statement in paragraph 6(b) (in lieu of the Program Office SES). The 2268 will be forwarded to the Director of Contracting (DOC) (in VHA) or to an acquisition manager designated by the HCA (non-VHA) for final review. Should the DOC or HCA designee agree the procurement should continue, s/he will sign the 2268 (in lieu of the HCA) and forward the signed copy to the CO and the SBL. The CO shall place the 2268 in the contract file. The SBL shall provide a report of all such actions to OSDDBU.

c. Delegation to HCAs: OSDDBU authorizes HCAs to establish the internal review processes for all NAICS categories not specifically identified for OSDDBU review in this memorandum as part of their approved Small Business Operating Plans. This delegation does not relieve the contracting activity from reviewing procurements for Veteran-owned small business opportunities. Procurement reviews delegated to HCA shall be documented in accordance with Small Business Operations Plans. In the event of a conflict between this memorandum and the Small Business Operating Plan, this memorandum takes precedence.

d. Exemptions from OSDDBU Review: In addition to procurements using NAICS Codes not listed in SBFC, the following items are exempt from OSDDBU review. Small Business Operating Plans shall include guidance on procurement review processes for actions in the following categories:

- i. Orders against Pharmacy Prime Vendor
- ii. Orders against Subsistence Prime Vendor

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- iii. Orders against Medical/Surgical Prime Vendor (MSPV). However, establishment of BPA medical supply contracts are subject to OSDBU review.
- iv. Orders against High Tech Medical Equipment National Contracts for Imaging & Radiation Therapy,
- v. Orders against NAC FSS contracts where only large businesses are listed within the Category/SIN
- vi. Specific Prosthetic Implants: Artificial Hips, Artificial knees, Pacemakers/ICDs, Aortic Valves, and Stents . This delegation does not extend to national or Network-level contracts for prosthetics. OSDBU reserves the right to review establishment of indefinite delivery or indefinite quantity contracts not specific to implantation in or on a particular patient.
- vii. Wheelchairs
- viii. Blood & Blood Products
- ix. Nursing Homes, including Hospice, and Alzheimer's Disease care
- x. Wireless telecommunications services
- xi. Utilities
- xii. Orders for express and ground small package and express heavyweight shipment delivery (other than courier services)
- xiii. Parking for employees (DC Metro area only)
- xiv. Dun & Bradstreet Subscription Service
- xv. Postage Awards to US Postal Service and use of postage meters
- xvi. Contracts made by another federal agency under an Interagency Agreement (IAA). OSDBU reserves the right to review establishment of the IAA itself, to ensure implementation of Veterans First requirements as required by law (38 U.S.C. 8127(j)).
- xvii. Supplies or Services currently on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled (AbilityOne)
- xviii. Noncompetitive Health Care Resources Contracts, as defined in paragraph 6.h of VA Directive 1663, relating to sole-source acquisition of health care resources from Affiliates.
- xix. Awards to Federal Prison Industries
- xx. Awards made to Federally Funded Research & Development Centers (FFRDC) IAW FAR part 35 and VA Governance Plan on the use of the Center for Enterprise Modernization, dated September 11, 2008.
- xxi. Bronze Cemetery Plaques
- xxii. Hotels and Accreditation Agencies
- xxiii. FSS 621i task orders for Temporary Coverage of Physician Services

4. Selection of NAICS Code.

Acquisition personnel are required to assign an appropriate NAICS code to all solicitations above the micro purchase threshold in accordance with FAR 19.303. Identification of the best NAICS code for a requirement will result in more accurate

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market research results and prevent delays resulting from appeals. OSDDBU can assist with NAICS determinations and vendor research. Follow-on acquisitions should utilize the NAICS code assigned to the previous acquisition unless that code is determined to have been incorrect or inappropriate. If a change in NAICS code is proposed for any requirement, and the original NAICS was within one of the SBFC identified in Paragraph 2, a VA Form 2268 must be submitted to OSDDBU with an explanation as to the necessity for the change, if the procurement is not set-aside for VOSB. (SAT level purchases shall be submitted to the cognizant SBL).

5. Procurement Review Process and Electronic Contract Management System (eCMS).

All OSDDBU procurement reviews will be conducted using VA Form 2268. All Forms 2268, regardless of review authority, will be placed in the contract file in eCMS.

- a. **Use of eCMS:** Requests for OSDDBU procurement reviews shall be submitted within eCMS.
- b. **Instructions for submission:** Instructions for submitting VA Form 2268 to OSDDBU via eCMS can be found at <http://vaww.va.gov/osdbu/ast/2268.asp>
- c. **Required Documentation:** In order for OSDDBU to conduct a review, the following documents must be available via eCMS or included with the submitted VA Form 2268:
 - i. Market research report and all supporting documentation (including copies of Sources Sought Notices and all responses)
 - ii. Acquisition Plan (if required)
 - iii. Statement of Work (SOW) or other appropriate work description
 - iv. Independent Government Cost Estimate (IGCE).

Analysis provided must clearly demonstrate the consideration of small businesses and the rationale for an unrestricted acquisition strategy. Additional information may be requested.

- d. **Actions on system outage:** In the event eCMS appears to be non-operational, contracting officers will confirm with their eCMS coordinator to determine system outage, and once confirmed, may submit requests directly to OSDDBU by using the OSDDBU 2268 submission email box, 2268@va.gov.
- e. **Processing time:** OSDDBU will complete reviews no later than five (5) business days after receipt, unless extension requested by submitting organization to enable discussion and modification. Upon notification of an emergency or urgent requirement, OSDDBU will seek to complete the review within two (2) business days, but no later than three (3) business days.

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- f. **Modifications:** Corrected or modified VA Forms 2268 may be resubmitted for OSDBU review. Select "Modification" as the Review Type in Item 3 of VA Form 2268.

6. **OSDBU Non-Concurrence.**

OSDBU does not approve or disapprove procurements. It provides recommendations on most appropriate acquisition strategy considering small business, based on market research.

- a. **Reasons for non-concurrence:** OSDBU will concur or non-concur with the selected acquisition strategy based on the documentation provided in eCMS. Reasons for non-concurrence decisions include the following:
 - i. Supporting documentation is missing or insufficient.
 - ii. Submitting activity fails to demonstrate appropriate rationale (market research) for the proposed acquisition strategy.
 - iii. The assigned NAICS code is not appropriate in accordance with FAR 19.303.
 - iv. An acquisition strategy has already been publicly announced on the Federal Business Opportunities (FBO) website, or GSA E-Buy.
 - v. Subcontracting goals are not appropriate or supported unless submitted in accordance with 5(f).
 - vi. Rule of Two for Veteran-owned small business set aside not applied in accordance with Kingdomware Technologies vs. United States.
- b. **Actions on non-concurrence:** All OSDBU non-concurrence decisions will be provided directly to originating contract official and associated Small Business Liaison. Should the activity decide to proceed with the proposed acquisition strategy, notwithstanding OSDBU non-concurrence, the cognizant Program Office Senior Executive Service (SES) official shall review and indicate mission necessity precludes consideration of Veteran-owned small businesses by signing in Item 24 (comments section) of VA Form 2268 with the statement: "I have reviewed this procurement and determined that program mission requirements preclude setting this procurement aside for VOSB, OSDBU non-concurrence notwithstanding."
 - i. HCAs shall review all OSDBU non-concurrences and shall have final review authority over all procurements receiving a non-concurrence by OSDBU. The contracting officer shall provide a copy of the VA Form 2268 with the Program Office Senior Executive override and HCA determination to OSDBU before publishing the solicitation.
 - ii. CO shall include the VA Form 2268 in contract file.

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7. Subcontracting Considerations.

In accordance with FAR subpart 19.7, any large business contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. The Secretary establishes the overall subcontracting goals for the Department and for component organizations. Contracting Officers should seek to increase subcontracting goals in those procurements that present additional opportunities for small businesses.

The contracting official will indicate the proposed subcontracting goals in Item 29 of VA Form 2268. In accordance with FAR 19.705-2(c), if a determination is made that subcontracting opportunities are not available, the written justification, approved one level above the Contracting Officer, must be provided by attachment. If minimum goals are not appropriate, written justification must be provided in the comments section (Item 24 of VA Form 2268) or by attachment.

OSDBU will review all subcontracting considerations for small business as outlined in the submitted Acquisition Plan or noted on VA Form 2268. Contracting Officials are encouraged to incorporate the utilization of evaluation factors related to the strength of a vendor's Subcontracting Plan or the vendor's past performance in meeting subcontracting goals as a means to increase opportunities for small business.

8. OSDBU Assistance.

VA organizations are encouraged to engage SBLs and OSDBU staff in any acquisitions where a Veteran-owned small business set-aside appears unlikely. Program offices and contract staff are encouraged to contact OSDBU at the earliest opportunity for assistance in determining suitability of a procurement for small businesses. OSDBU will provide assistance to the program and acquisition communities as follows:

- a. Market Research assistance, upon request, subject to availability of resources. Market Research for all NAICS included in the SBFC can be found at the OSDBU intranet site:
<http://vawww.va.gov/osdbu/ast/marketResearch.asp>;
- b. Small Business outreach activity support, to include, Direct Access events, Advanced Program Briefings to Industry, Pre-solicitation Conferences, Industry Day events, and other small business outreach activities.

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9. Connecting with OSDBU.

OSDBU strives to provide prompt and valuable assistance to our program and acquisition partners through the following: Acquisition Support Help Line - 202-632-5378 Email: OSDBUAcqSupport@va.gov.

10. Thank you for your support of Veterans and Veteran-Owned Small Businesses..

/s/

Thomas J. Leney

Distribution List:

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**Department of
Veterans Affairs**

Memorandum

Date: January 18, 2018

From: Executive Director, Small and Veteran Business Programs (00SB)

Subj: Addendum A to FY 2016 Small Business Procurement Review Program Policy (June 22, 2016)

To: Chief Acquisition Officer (003)
Senior Procurement Executive (003A)
Heads of Contracting Activity
See Distribution List

The FY 2016 Small Business Procurement Review Program Policy, issued June 22, 2016, is amended by adding the following new material at the end:

A-1. Other OSDDBU Statutory Mandates.

Recent amendments to the Small Business Act have imposed additional responsibility on OSDDBU with respect to contracting with small business concerns. In most cases, these create a liaison responsibility to assist with resolving certain problems. These issues, and the OSDDBU process for addressing them, are as follows:

a. Obtaining Payments (Small Business Act, section 15(k)(6)). Whenever OSDDBU receives a request for assistance in obtaining payment from the Government or from a prime contractor, OSDDBU will review the documentation received. OSDDBU will take no action on payment matters involving a contract dispute, which must be resolved as prescribed in the FAR. OSDDBU will submit other matters to the cognizant Small Business Liaison (SBL) at the contracting activity. SBLs are requested to investigate and facilitate prompt resolution of the matter, in consultation with the contracting officer. In the case of payment by a prime contractor to a subcontractor, the SBL and the contracting officer will notify the prime contractor of the matter and request resolution.

b. Conversion of Activity Provided by Small Business Contractor to In-house Performance by Federal Employee (Small Business Act, section 15(k)(11)). Whenever a contracting officer receives notice from a program office that an existing contract performed by a small business will be allowed to expire and no new award is contemplated due to a decision to convert the requirement to in-house performance, the contracting officer shall notify OSDDBU. OSDDBU may

Addendum A to FY 2016 Small Business Procurement Review Program Policy
(June 22, 2016)

provide market research or assist with outreach events to enable the program office to determine if this approach provides the best business solution. OSDBU's role is advisory and the program office is ultimately responsible for this decision.

c. Unsolicited Proposals (Small Business Act, section 15(k)(14)). Whenever OSDBU receives an unsolicited proposal, OSDBU will refer it to the cognizant program office or contracting activity, if one can be identified. Unsolicited proposals must conform to the definition in FAR 15.603. Advertising material, commercial item offers, or contributions (i.e., concepts), or routine correspondence on technical issues, are not unsolicited proposals and will not be forwarded. Contractors should consider copyrighting unsolicited proposal material and mark it as protected business proprietary information, to obtain the protections of FAR 15.608.

d. Unduly Restrictive Solicitations (Small Business Act, section 15(k)(17)). Whenever OSDBU receives notification from a prospective offeror that a solicitation has been released that includes product or service descriptions, geographic constraints, unduly short response times, or other factors that unnecessarily limit competition and preclude offerors from responding, OSDBU will review the documentation submitted. The prospective offeror bears the burden of demonstrating how and why the solicitation is unduly restrictive; general, vague, or unsupported assertions will not be considered. If the prospective offeror has provided sufficiently specific information, OSDBU will provide it to the contracting officer and the competition advocate for the contracting activity for response.

This process is not a substitute for a properly and timely submitted protest of the terms of the solicitation. Submission of a notification to OSDBU will not preserve the prospective offeror's protest rights nor prevent lapse of deadlines for submittal of a protest.

/s/

Thomas J. Leney

Addendum A to FY 2016 Small Business Procurement Review Program Policy
(June 22, 2016)

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