

Program History

The Veterans Entrepreneurship and Small Business Development Act of 1999 (P.L. 106-50) established an annual Government-wide goal of not less than 3 percent of the total value of all prime contract and subcontract awards for participation by small business concerns owned and controlled by service-disabled veterans.

The Veterans Benefits Act (VBA) of 2003 (P.L. 108-183) added, in addition to other provisions, a contracting mechanism to enable agencies to reach the 3% prime contracting goal established in 1999.



Service Disabled Veteran Owned Small Business

Program Eligibility Requirements

- Adjudication
- Size
- Ownership & Control
- Highest Position Held



Service Disabled Veteran Owned Small Business

- The SDV must have a service-connected disability that has been determined by the **Department of Veterans Affairs or Department of Defense**
- The SDVO SBC must be **small** under the North American Industry Classification System (NAICS) code assigned to the procurement
- The SDV must **unconditionally own 51%** of the SDVO SBC
- The SDVO must control the management and **daily operations** of the SDVO SBC
- The SDV must hold the **highest officer position** in the SDVO SBC



Service Disabled Veteran Owned Small Business

CONTROL

FAR 2 “Service-disabled veteran-owned small business concern”

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.**



Service Disabled Veteran Owned Small Business

CONTROL

- 13 CFR 125.10: Who does SBA consider to control an SDVOSBC?
- (a) General. To be an eligible SDVO SBC, the management and daily business operations of the concern must be controlled by one or more service-disabled veterans.
- Control by one or more service-disabled veterans means that both the long-term decision making and the day-to-day management and administration of the business operations must be conducted by one or more service-disabled veterans.



Service Disabled Veteran Owned Small Business

CONTROL

The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse of permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran with a disability that is service-connected.

13 CFR 125.9: Who does SBA consider to own an SDVO SBC?

(a) Ownership must be direct. Ownership by one or more service disabled veterans must be direct ownership.

A concern owned principally by another business entity that is in turn owned and controlled by one or more service-disabled veterans does not meet this requirement.



Service Disabled Veteran Owned Small Business

SET-ASIDE REQUIREMENTS

- A Contracting Officer (CO) may set-aside requirements if:
 1. The requirement is not exempted from SDVO contracting, the CO considers setting aside the requirement for 8(a), HUBZone, or SDVO SBC participation before considering setting aside the requirement as a small business set-aside.
 2. There is a reasonable expectation that at least two responsible SDVO SBC will submit offers; and
 3. The award can be made at a fair market price.

SET-ASIDE EXEMPTIONS

A contracting activity may not make a requirement available for a SDVO contract if:

- The requirement would be fulfilled through the award of Federal Prison Industries, Inc. or Javits-Wagner-O'Day Act participating non-profit agencies for the blind and severely disabled.
- The requirement is currently being performed by an 8(a) participant or SBA has accepted that requirement for performance under the authority of the Section 8(a) Program.



Service Disabled Veteran Owned Small Business

SOLE SOURCE CONTRACTS

A CO may award a sole source contract if:

1. If the requirement is not exempted from SDVO contracting and cannot be set-aside.
2. The CO does not have a reasonable expectation that at least two responsible SDVO SBCs will submit offers.
3. The anticipated award price of the contract, including options, will not exceed:
 4. -\$5.0M for manufacturing requirements
 5. -\$3.0M for all other requirements
6. Award can be made at a fair market price.



Service Disabled Veteran Owned Small Business

SIMPLIFIED ACQUISITION THRESHOLD

If the requirement is at or below the simplified acquisition threshold, the CO may set-aside the requirement for consideration among SDVO SBCs using simplified acquisition procedures or may award a sole source Contract to a SDVO SBC. A sole source award is only permissible where there is only one SDVO SBC that perform the contract in accordance with Federal Acquisition Regulations § 19.406 (a)(3).



Service Disabled Veteran Owned Small Business

ADDITIONAL CONTRACT REQUIREMENTS

- Limitations on Subcontracting
- Joint Ventures
- Non-Manufacturers



Service Disabled Veteran Owned Small Business

ADDITIONAL CONTRACT REQUIREMENTS

LIMITATIONS ON SUBCONTRACTING

SDVO SBC Prime or Sub-contractor can subcontract for:

SERVICES CONTRACTS (EXCEPT CONSTRUCTION)

50% of the contract performance incurred for SDVO SBC personnel

SUPPLY CONTRACT:

50% of the cost of manufacturing the supplies

GENERAL CONSTRUCTION:

15% of the contract performance incurred for SDVO SBC personnel

CONSTRUCTION BY SPECIAL TRADE:

25% of the contract performance incurred for SDVO SBC personnel



Service Disabled Veteran Owned Small Business

- Non-manufacturers
 - The SDVO SBC does not exceed 500 employees
 - Is primarily engaged in the retail trade
 - Sells to the general public, and
 - Supplies the end item of a small business (unless requirement is waived by the SBA Administrator)



Service Disabled Veteran Owned Small Business

- Joint Ventures
 - 1 or more other small business concern (SBC)
 - Each SBC is small under the contract's NAICS code
 - SDVO SBC must manage the venture
 - JV must perform applicable percentage of work

PROTEST PROCEDURES

- **WHAT IS A PROTEST?**

A challenge to either:

- SIZE STATUS, in accordance with 13 C.F.R. § 121
- ELIGIBILITY STATUS, in accordance with 13 C.F.R. § 125

Proof of Adjudication
Ownership
Control



Service Disabled Veteran Owned Small Business

- PROTEST PROCEDURES
 - WHAT?
 - WHO?
 - WHEN?
 - WHERE?
 - HOW?



Service Disabled Veterans Owned Small Business

PROTEST PROCEDURES

- **WHO** MAY SUBMIT A PROTEST?
- Sole Source Requirements
 - Small Business Administration
 - Contracting Officer
- Competitive Set- Asides
 - Any interested party



Service Disabled Veterans Owned Small Business

PROTEST PROCEDURES

WHEN ARE PROTESTS SUBMITTED?

- Negotiated Procurements:

By Close of Business on the 5th Business Day after Notification of the Apparent Successful Offeror, no later than 5 p.m. geographical location

- Sealed Bid Acquisitions:

By Close of Business on the 5th Business Day after Bid Opening, no later than 5 p.m. est. 5 p.m. geographical location

- Any protest Submitted After the Time Limit is untimely, unless submitted by the CO or SBA
- Any Protest Submitted Prior to Bid Opening or Notification is Premature.



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- WHEN WILL THE JUDGE ISSUE THE DECISION?
 - Within 15-22 days after the appeal is filed.

Individuals serviced with an appeal has 7 days to respond



Service Disabled Veteran Owned Small Business

- PROTEST PROCEDURES

- **WHERE** ARE PROTEST SUBMITTED?

CO or SBA submits protests to SBA Director for Government Contracting

Any Concern that submits an offer submits protest to the Contracting Officer



Service Disabled Veterans Owned Small Business

PROTEST PROCEDURES

- **HOW** ARE PROTESTS SUBMITTED?

FORMAT:

In writing

Be specific

Include information to determine timeliness and standing

State contract type, e.g., set-aside or sole source

Whether the protested concern was the apparent successful offeror

Date protested concern submitted its offer

State whether sealed bid or negotiated procurement

Due date of offerors

Date protest was submitted to the CO

Notice of intent to award date

Date of contract award, if applicable

Any additional information SBA may need to assist in making determination



Service Disabled Veteran Owned Small Business

PROTEST PROCEDURES

- **HOW ARE PROTESTS SUBMITTED?**

FILING

- BY FAX: (202) 205-6390
- EXPRESS DELIVERY SERVICE or
- U.S. MAIL (POSTMARKED WITH THE APPLICABLE TIME PERIOD)
 - The Director for Government Contracting
 - U.S. Small Business Administration
 - 409 Third Street, SW
 - Washington, DC 20416

Attn: Service-Disabled Veteran Status Protest

PROTEST DETERMINATION APPEAL PROCEDURES

WHO?

WHERE?

WHEN?

HOW?

WHO?

WHEN?



Service Disabled Veteran Owned Small Business

APPEAL PROCEDURES

WHO MAY SUBMIT AN APPEAL?

The Protested Concern
The Protester
The Respective Contracting Officer

WHERE IS AN APPEAL FILED?

SBA Office of Hearings and Appeals
Docketing Clerk
Office of Hearings and Appeals
U.S. Small Business Administration
409 Third Street, SW
Washington, DC 20416
Phone: (202) 401-8203
FAX: (202) 205-7059



Service Disabled Veteran Owned Small Business

- **WHEN MAY AN APPEAL BE FILED?**
 - Within 10 business days after protest determination is received

HOW IS AN APPEAL FORMATTED?

No Set Format

Must include:

Solicitation or contract number

Contracting Officer's contract information

Statement explaining why protest determination is alleged to be based on a clear error of fact or law, with supporting argument and Appellant's contact information.



Service Disabled Veteran Owned Small Business

APPEAL PROCEDURES

- WHO MUST AN APPELLANT SERVE?
 - SBA, Director Office of Government Contracting
 - The Respective Contracting Officer
 - The Protested Concern or the Protester
 - SBA, Office of General Counsel



Service Disabled Veteran Owned Small Business Concern

Referral to SBA

Is it timely, specific and protestable allegations?

Yes > Notify protestor. Protested concern has 10 business days to respond §125.127

No > Dismiss and send to Contracting Officer and protestor: untimely; nonspecific; nonprotestable §125.27 (b)



Service Disabled Veteran Owned Small Business Concern

Example of Non-Specific Allegations:

*“The merged company called ABC Company does not advertise on their web site or anywhere else that they are a Service-Disabled Veteran-Owned Small Business. Although it is possible that they just don’t display this fact, most companies do advertise it.” These statements contain no specific factual allegations bearing on ABC’s SDVO SBC status. The protest **lacks specificity** because it merely makes statements asserting that ABC is not a SDVO SBC without articulating any underlying factual basis for the statements. Contrary to the requirements of 13 C.F.R. 25.25(b) the protest therefore does not allege specific facts showing that the prospective awardee does not qualify as a SDVO SBC .*



Service Disabled Veteran Owned Small Business Concern

Example of Specific Allegations:

XYZ alleges that Company B was not at the time its proposal was submitted a validly constituted SDVOSB. In addition, XYZ alleges that Company B was formed from companies, which were not SDVO SBCs. When members of Company B realized that the RFP was a set aside for SDVO SBCs, it recruited at least three individuals to constitute their board of directors, which are listed in the Central Contractor's Registration (CCR). Also, it is alleged that none of these individuals are business owners or involved in leadership roles within Company B. Other allegations are that at least two of the three individuals were employees of other firms involved with Company B and one is retired from the Veterans Administration's San Diego Regional Office. The corporate and service addresses listed in the CCR for Company B belong to Ms. Jane Doe, a business owner who does not meet the criteria of a SDVO SBC.



Service Disabled Veteran Owned Small Business Concern

Appeal

Who can appeal? The protested concern, Contracting Officer and protestor. §125.28

If the contract has already been awarded and on appeal, the Office of Hearings and Appeals affirms that the SDVO SBC does not meet the status or ownership and control, the procuring agency cannot count the award as an award to a SDVO SBC. The protested concern cannot self-represent its status for another procurement until its has cured the eligibility issue.



Service Disabled Veteran Owned Small Business Concern

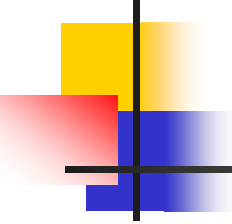
Grounds for Filing a SDVO SBC

- (a) Status – Service Connected Disability: Permanent and severe disability, or veteran status.

- (a) Ownership and Control. The Office of Government Contracting will consider a protest only if the protester presents credible evidence that the concern is not 51% owned and controlled.

Service Disabled Veteran Owned Small Business Concern

Frequently Asked Questions:

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- Q1. What is the purpose of the service-disabled veteran-owned small business program?**
- A1.** The purpose of the service-disabled veteran-owned small business concern procurement program is to provide procuring agencies with the authority to set acquisitions aside for exclusive competition among service-disabled veteran-owned small business concerns, as well as the authority to make sole source awards to service-disabled veteran-owned small business concerns if certain conditions are met. (See Code of Federal Regulations (CFR) 13 C.F.R. § 125.8-125.10).
- Q2. What defines a SDVO SBC?**
- A2.** The Small Business Act defines an SDVO SBC as a concern that is (1) at least 51% owned directly and unconditionally by a service-disabled veteran and (2) managed and controlled by a service-disabled veteran, or spouse or permanent caregiver of a service-disabled veteran with a permanent and severe disability. (See 13 C.F.R. § 125.8-125.10).
- Q3. What agency is responsible for size and SDVO protests?**
- A3.** All questions about a firm's service-disabled veteran-owned or size status must be referred to the U.S. Small Business Administration (SBA) for resolution (see Federal Acquisition Regulation (FAR) §19.307(h). Size protests are decided by the SBA's Government Contracting Area Office serving the geographical area where the protested firm is located (See 13 C.F.R.) §121.1002 and FAR §19.302(c) (1). SDVO status protests are decided by the SBA Director for Government Contracting, (See 13 C.F.R. §125.24(e) and FAR 19.307(c). Any questions concerning an apparent successful offeror's representation that it qualifies as an SDVO SBC including a challenge from a Contracting Officer must be forwarded to the SBA. (See 13 C.F.R. §125.8).
- Q4. What differentiates a size and service-disabled veteran-owned protest?**
- A4.** A size protest is a challenge to an offeror's representation that it does not exceed the size standard assigned to a solicitation. A service-disabled veteran-owned status protest involves an allegation that an offeror does not qualify as an SDVO SBC.



Service Disabled Veteran Owned Small Business Concern

Frequently Asked Questions:

- Q5. When will SBA accept an SDVO SBC protest?**
- A5. SBA will consider an SDVO SBC protest only if the protester presents credible evidence that the concern is not fifty-one percent (51%) owned/controlled, by a veteran with a service connected disability. (See 13 C.F.R. §125.26).
- Q6. What is SBA's timeline for processing an SDVO SBC protest?**
- A6. SBA has fifteen (15) working days to render a decision after receipt of a protest. The SBA may request an extension from the Contracting Officer if more time is needed. See 13 C.F.R. §125.127 (c).
- Q7. When is a SDVO SBC eligible for an award?**
- A7. In order to be eligible for award of an SDVO SBC set-aside contract, a firm must represent at the time of its offer that it is an eligible SDVO SBC. (See FAR §52.219-1 and §52.219-27).
- Q8. How does a joint venture qualify as a SDVO SBC?**
- A8. A joint venture's ability to qualify as an SDVO SBC primarily centers on control of the joint venture. The SDVO SBC must be the managing venturer, an employee of the SDVO SBC must be the project manager, 51% of the net profits of the joint venture must go to the SDVO SBC, and the SDVO SBC must retain the joint venture's original records. A joint venture of at least one SDVO SBC and one more other business concerns may submit an offer as a small business for a competitive SDVO SBC procurement so long as each concern is small under the size standard corresponding to the North American Industry Classification System code assigned to the contract. (See 13 C.F.R. §125.15).



Service Disabled Veteran Owned Small Business

Frequently Asked Questions:

Q.9 Is a Contracting Officer an interested party?

A9. A Contracting Officer is an interested party for purposes of filing SDVO status protests (See 13 C.F.R. § 125.25 (e)).

Q10. Does the Contracting Officer have the authority to reject a SDVO offeror?

A10. No Contracting Officer has the authority to reject an offeror based on his or her own SDVO status determination. SDVO status protests are decided by the SBA Director for Government Contracting. However, a solicitation may require bidders to provide proof that the veteran owner possess a service-connected disability that has been recognized by a cognizant authority (e.g. a copy of the veteran's DD-214 or a claim adjudication letter from the Department of Veterans Affairs) along with their proposals. When a bidder failed to provide such proof, a Contracting Officer may reject a bid as non-responsive. (See 13 C.F.R. § 125.8. and 13 C.F.R. § 125.8-125.10).

Q.11 Can a SDVO SBC decision be appealed?

A.11 Yes, but all appeals must be submitted to SBA's Office of Hearings and Appeals in writing within ten business days of the date of receipt of a determination (See 13 C.F.R. § 125.27).

Q12. Does the SBA adjudicate veteran-owned small business (VOSB) protests?

A12. The SBA does not adjudicate VOSB protests. A Contracting Officer with the Department of Veterans refers VOSB protests to the VA's Regional Office for a determination.



Service Disabled Veterans Owned Small Business

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