Increase Opportunities to More
Service Disabled Veteran Owned Small Businesses (SDVOSB)

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Key Issue: Insufficient contract opportunities for SDVOSBs

Recommendation: Utilize Existing Sole Source rules for contracting to SDVOSBs

As a Service Disabled Veteran Owned Small Business (SDVOSB) owner of an Environmental Engineering firm since 2007, I have been perplexed by the lack and variety of opportunities afforded specifically to the SDVOSBs through the Department of Defense (DoD) especially since SDVOSBs are veterans. For purposes of this topic, I will discuss the U.S. Army Corps of Engineers (USACE) as it deals specifically with SDVOSBs since they often manage the work required by the DoD. When asked about not meeting goals, the standard responses from USACE are; 1) lack of qualified SDVOSBs, or 2) they have met the goal and are trending upward.

Regarding the lack of qualified SDVOSBs, the USACE does not utilize the Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) where SDVOSBs have been fully vetted. I have personally attended several USACE Industry Days for SDVOSBs and on the topic of set-asides the USACE openly complains that when an award is made it is almost always protested, and by other veterans. The USACE states that veterans are the ones that are denying opportunities to other veterans by protesting and hence the reluctance and low percentage of set asides for SDVOSBs. Actually, it is the Department of Defense that is denying veterans by not using a database where thousands of SDVOSBs have been vetted and have met the requirements of the Small Business Administration (SBA) and Federal Acquisition Regulations (FAR) and the chance for protest is greatly minimalized. The issue of there not being enough qualified SDVOSBs is inaccurate. As of this writing, there are 5,925 CVE Verified SDVOSBs in the database (source: www.vip.vetbiz.gov). USACE will further state that they are not required to use the CVE database, however there is no law or rule that prevents them from using the CVE to database, they conscientiously choose not to do so.

With regards to the trending upward data, the USACE is awarding extraordinarily high dollar contracts to a very few number of SDVOSBs. The “mega-million” dollar contract awards (>$10M) allow the USACE to boost the percentage based on dollar amounts awarded and then claim that they are meeting their set-aside goals for SDVOSBs however, the vast majority of SDVOSBs cannot meet the deliverables for such large contracts. On the outside, it would appear that USACE is meeting their goals when behind the scenes the overwhelming majority of Service Disabled Veteran Owned Small Business are not given a chance to work for the Department of Defense because the contract values are extraordinarily high.

These positions ultimately limit competition and force the smallest SDVOSB companies to remain very small and thus fulfill USACE’s points on available SDVOSBs when they have the ability to improve on the issue instead. Further, FAR requirements regarding Limitations on Subcontracting require that the SDVOSBs provide in-house labor to meet 50% of service contracts, 25% of Specialty Contracts, and 15% of Construction Contracts. Therefore, mega-million-dollar contracts to SDVOSBs become questionable as to how much is truly being performed by the veteran owned company. This argument is supported by a recent USACE SDVOSB set-aside solicitation ($30M) that encouraged large businesses to find SDVOSBs to team with. This could certainly tempt large companies and SDVOSBs to commit fraud.

The SBA established the criteria to be used in federal contracting to determine service-disabled veteran status; business ownership and control requirements; guidelines for establishing sole source and set-aside procurement opportunities; and protest and appeal procedures for SDVOSBC procurements. All of which has been done in the VA's CVE program.

The purpose of the Service-Disabled Veteran-Owned Small Business Procurement Program was 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 as per Code of Federal Regulations (CFR) 13 C.F.R. § 125.8-125.10. This is not being done.

Due to the lack of real opportunities with the USACE, the Department of Veterans Affairs (VA) Veterans First Contracting Program continues to attract more and more veteran-owned small businesses (VOSBs) and service-disabled veteran-owned small businesses (SDVOSBs). The ability to gain access to VA contracts set aside for VOSBs and SDVOSBs remains an incredibly popular tool among small businesses in the veteran contracting community.

Much to the disappointment of many potentially eligible firms, the process of applying to the VA, Center for Verification and Evaluation (CVE) to be verified as an eligible VOSB or SDVOSB is still not a cakewalk, and for good reason. The VA has a legitimate interest in ensuring that VOSB and SDVOSB set-aside contracts are awarded to firms that are eligible to participate in the Veterans First Contracting Program, and eliminating fraud and abuse requires that VOSBs and SDVOSBs be thoroughly vetted by CVE.

On the other hand, USACE only requires that a SDVOSB be self-certified in the System for Awards Management (formerly Center for Contractor Registration). As a result, numerous SDVOSB set aside solicitations from USACE end up being protested and not awarded because of the huge potential for fraud which has been widely investigated and publicized by the Office of Inspector General. SDVOSBs that have gone through the gauntlet to become CVE verified know how intrusive the process is and how high the bar is set to become verified, and therefore dismayed by the Department of Defense's position to not use legitimate SDVOSBs.

The process of developing solicitations and scopes of work is time-consuming and to create smaller dollar solicitations and scopes that the majority of SDVOSBs can undertake and deliver would likely increase USACE workload, and this would appear to be the primary reason why USACE does not fully engage in creating set-asides for SDVOSBs. However, FAR 19.1406 provides all agencies with the ability to sole source awards to service-disabled veteran-owned small business concerns when the anticipated award price of the contract, including options, will not exceed $6.5 million for a requirement within the NAICS codes for manufacturing; or $4 million for a requirement within any other NAICS code and the SDVOSB concern has been determined to be a responsible contractor with respect to performance.

Just as 8(a) companies have been able to start, build, and grow their companies to be reliable service providers through sole source awards, USACE should provide SDVOSBs with the same opportunity to grow, especially since it would be veterans (DoD) helping veterans (SDVOSBs). USACE could utilize this tool to help SDVOSBs with various NAICES Codes to build their companies and in turn, provide USACE with a larger pool of SDVOSBs capable of providing deliverables on time and on scope.

Follow-up Communication (post-workshop)

I wanted to extend my appreciation for being a part of the panel discussion on the White Paper.

I want to be clear that my White Paper used the USACE as an example of how Self-Certification leads to SDVOSB protests and even to fraud, not as an indictment. In fact, I have the USACE to thank.

My only experience with this subject matter has been with the USACE ever since I started knocking at that door for business in 2007. No other reason for citing the USACE than that. I understand that USACE follows guidelines, I am not impugning their efforts rather I am calling out the SBA and the Self-Certification process that has led to USACE SDVOSB set asides being protested. This is equally frustrating for legitimately qualified SDVOSBs.

Consider for a moment the following logical defense. If an SDVOSB set aside is being protested because of Self-Certification and during the protest period it is determined that the SDVOSB was not qualified, then where in the law is the criteria to determine SDVOSB qualification? Why is this not used in place of the Self-Certification? This place the Contracting Officer in an impossible position.

In FAR 2.101 Definitions, a Service-Disabled Veteran Owned Small Business concerns is defined by 1) not less than 51% ownership by a service-disabled veteran, 2) management and daily business operations controlled by one or more service-disabled veteran(s), and 3) a service-disabled veteran means a veteran with a disability, as defined in 38 U.S.C. 101(2), is a veteran with a disability that is service related.

In the Federal Acquisition Regulations (FAR) Subpart 19.1402 SDVOSB Applicability – **the procedures in this subpart apply to all Federal agencies** that employ one or more contracting officers. Subpart 19.1403 procedures stipulate the same SDVOSB criteria as the FAR 2.101 definitions.

It is apparent to me that because the SBA has a Self-Certification requirement but the FAR requires the Contracting Officer to abide by Subpart 19.1402 and 19.1403 procedures, **there is a contradiction**. The SBA needs to eliminate the Self-Certification process.

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