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# Federal Acquisition Regulation: Certification of Service-Disabled Veteran-Owned Small Businesses

A Rule by the [Defense Department](#), the [General Services Administration](#), and the [National Aeronautics and Space Administration](#) on [02/23/2024](#)

 Comments on this document are being accepted at [Regulations.gov](#).

DOCUMENT DETAILS

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| Printed version:   | PDF ( <a href="https://www.govinfo.gov/content/pkg/FR-2024-02-23/pdf/2024-02797.pdf">https://www.govinfo.gov/content/pkg/FR-2024-02-23/pdf/2024-02797.pdf</a> )                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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48 CFR 18

48 CFR 19

48 CFR 52

**Agency/Docket Numbers:**

FAC 2024-03, FAR Case 2022-009

Item I

Docket No. FAR-2022-0009

Sequence No. 1

**RIN:**9000-AO46 (<https://www.federalregister.gov/regulations/9000-AO46/federal-acquisition-regulation-far-far-case-2022-009-certification-of-service-disabled-veteran-owned>)**Document Number:**

2024-02797

**DOCUMENT DETAILS****PUBLISHED DOCUMENT****AGENCY:**

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

**ACTION:**

Interim rule.

**SUMMARY:**

DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement the final rules published by the Small Business Administration to implement sections of the National Defense Authorization Acts for Fiscal Years 2021 and 2022.

**DATES:**

*Effective date:* February 23, 2024.

*Comment date:* Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before April 23, 2024, to be considered in the formation of the final rule.

**ADDRESSES:**

Submit comments in response to FAC 2024-03, FAR Case

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2022-009 to the Federal eRulemaking portal at <https://www.regulations.gov> (<https://www.regulations.gov>) by searching for “FAR Case 2022-009”. Select the link “Comment Now” that corresponds with “FAR Case 2022-009”. Follow the instructions provided on the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2022-009” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov> (<https://www.regulations.gov>), call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*Instructions:* Please submit comments only and cite “FAR Case 2022–009” in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov> (<https://www.regulations.gov>), including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq> (<https://www.regulations.gov/faq>)). To confirm receipt of your comment(s), please check <https://www.regulations.gov> (<https://www.regulations.gov>), approximately two to three days after submission to verify posting.

## FOR FURTHER INFORMATION CONTACT:

For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571–300–5917, or by email at [carrie.moore@gsa.gov](mailto:carrie.moore@gsa.gov) (<mailto:carrie.moore@gsa.gov>). For information pertaining to status or publication schedules, or alternative instructions for submitting comments if <https://www.regulations.gov> (<https://www.regulations.gov>) cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov) (<mailto:GSARegSec@gsa.gov>). Please cite FAC 2024–03, FAR Case 2022–009.

## SUPPLEMENTARY INFORMATION:

### I. Background

This interim rule revises the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule to implement section 862 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283 (<https://www.govinfo.gov/link/plaw/116/public/283>); 15 U.S.C. 657f (<https://www.govinfo.gov/link/uscode/15/657f>)). Section 862 transfers the verification of small business concerns owned and controlled by veterans or service-disabled veterans from the Department of Veterans Affairs (VA) to SBA as of January 1, 2023, and creates a certification requirement for service-disabled veteran-owned small business (SDVOSB) concerns seeking sole-source and set-aside awards under the SDVOSB Program across the Federal Government. Section 862 provides for a one-year grace period after the transfer date for SDVOSBs to submit an application for certification to SBA. During the one-year grace period, SDVOSBs may continue to self-represent their socioeconomic status in the System for Award Management (SAM).

To implement section 862, SBA published a final rule on November 29, 2022, at 87 FR 73400 (/citation/87-FR-73400). SBA also issued a final rule on July 3, 2023, at 88 FR 42592 (/citation/88-FR-42592), to correct its final rule published on November 29, 2022, to modify the effect of a protest decision. In its final rule published on November 29, 2022, SBA removed SDVOSB requirements from 13 CFR part 125 (<https://www.ecfr.gov/current/title-13/part-125>) and established 13 CFR part 128 (<https://www.ecfr.gov/current/title-13/part-128>) to implement the requirement for SDVOSB concerns to be certified by SBA in order to be eligible for set-aside or sole-source awards under the SDVOSB Program. SBA's final rule also specifies that concerns that submit a complete application for certification to SBA on or before December 31, 2023, and represent their SDVOSB status in SAM are eligible for awards made under the SDVOSB Program until SBA makes a final eligibility determination. Beginning January 1, 2024, SDVOSBs that are not certified by SBA, and do not have a pending application for certification, will not be eligible to receive sole-source or set-aside awards under the SDVOSB Program but may continue to self-represent their status for awards outside of the SDVOSB Program.

When determining a concern's eligibility for a set-aside or sole-source award under the SDVOSB Program, contracting officers must review the concern's SAM record for its designation as an SDVOSB certified by SBA. If the concern's SAM record does not reflect an SDVOSB certification by SBA, contracting officers shall verify that the concern has represented that it is an SDVOSB concern and submitted an application for certification to SBA on or before December 31, 2023. Contracting officers will verify the concern's application status through SBA's Veteran Small Business Certification Program database. The need to check this database for pending applications is expected to diminish as SBA reviews and dispositions the applications received on or before the deadline. It is anticipated that the review of all such applications will be completed by the time this rule is finalized and, if they are, the requirement to check the SBA database for pending applications may be removed from the final rule.

As explained in SBA's final rule at 87 FR 73400 (/citation/87-FR-73400), concerns verified by VA prior to the transfer date are considered to be certified by SBA during the time that remains in the concern's three-year term of eligibility. In addition, the SBA Administrator may extend a participant's eligibility period up to one year. Further, to facilitate the transition of those concerns already verified by the VA prior to January 1, 2023, that have an eligibility period that expires within the first year of the SDVOSB certification program, SBA will extend the eligibility of those concerns for a period of up to one year.

As indicated in SBA's final rule and prior to the transfer of the certification program to SBA, veteran-owned small businesses (VOSBs) and SDVOSBs had to be verified by the VA's Center for Verification and Evaluation. There was no Governmentwide SDVOSB certification program, and firms seeking to be awarded SDVOSB sole-source or set-aside contracts with Federal agencies other than the VA were only required to self-represent their status in SAM; therefore, this rule amends the FAR to implement this Governmentwide SDVOSB certification program.

This interim rule also partially implements section 863 of the NDAA for FY 2022 (Pub. L. 117–81 (<https://www.govinfo.gov/link/plaw/117/public/81>); 15 U.S.C. 634(i) (<https://www.govinfo.gov/link/uscode/15/634>)), as implemented by SBA in its final rule published on April 27, 2023, at 88 FR 26164 (/citation/88-FR-26164). Section 863 requires that a small business concern update its status in SAM no later than two days after the date of a final determination that the concern does not meet the requirements of the status the concern claims to hold. Section 863 also requires that SBA update such a concern's status in SAM if the concern fails to do so. This interim rule implements this requirement for SDVOSB concerns. The implementation of section 863 for the other socioeconomic programs in FAR part 19 will be addressed in a separate case.

## II. Discussion and Analysis

The changes to the FAR and the rationale are summarized as follows:

- Update the definition of SDVOSB concern in parts 2 and 52, in applicable provisions and clauses, and add that the service-disabled veteran is registered in the Beneficiary Identification and Records Locator Subsystem; update the definition of veteran-owned small business concerns to clarify that such a concern is not less than 51 percent owned “and controlled” by one or more veterans; add a definition for SDVOSB concern eligible under the SDVOSB Program to specify that a concern must: (1) be designated in SAM as certified by SBA; or (2) represent in SAM that it is an ☐ SDVOSB concern and have submitted a complete application for certification to SBA on or before December 31, 2023, in order to be eligible for awards made pursuant to the SDVOSB Program; and add a definition for the SDVOSB Program;

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- Modify FAR part 19 to update citations to SBA's regulations regarding SDVOSB concerns from 13 CFR part 125 (<https://www.ecfr.gov/current/title-13/part-125>) to 13 CFR parts 128 (<https://www.ecfr.gov/current/title-13/part-128>) and 134 (<https://www.ecfr.gov/current/title-13/part-134>);
- Modify FAR parts 6, 9, 18, and 19 to update SDVOSB Program terminology and clarify the eligibility of SDVOSB concerns for set-asides under the SDVOSB Program;
- Modify 19.307 to: (1) add a definition of “interested party” to align with SBA's regulations at 13 CFR 134.1002(b) ([https://www.ecfr.gov/current/title-13/section-134.1002#p-134.1002\(b\)](https://www.ecfr.gov/current/title-13/section-134.1002#p-134.1002(b))); (2) ([https://www.ecfr.gov/current/title-13/section-134.1002#p-134.1002\(2\)](https://www.ecfr.gov/current/title-13/section-134.1002#p-134.1002(2))) update SDVOSB protest procedures in accordance with SBA's regulations at 13 CFR part 128 (<https://www.ecfr.gov/current/title-13/part-128>) and 13 CFR 134.1001 (<https://www.ecfr.gov/current/title-13/section-134.1001>) through 134.1013 (<https://www.ecfr.gov/current/title-13/section-134.1013>); (3) ([https://www.ecfr.gov/current/title-13/section-134.1013#p-134.1013\(3\)](https://www.ecfr.gov/current/title-13/section-134.1013#p-134.1013(3))) require a concern to remove its designation as an SDVOSB in SAM within two days of a SBA Office of Hearings and Appeals (OHA) decision that the concern is not an eligible SDVOSB concern, and notify concerns that SBA will update the concern's status in SAM if the concern fails to do so; and (4) upon receipt of an OHA decision that a concern is not an eligible SDVOSB concern, specify that the concern shall not submit an offer as an SDVOSB concern, or an SDVOSB concern eligible under the SDVOSB Program, until the concern is certified by SBA; and (5) remove SDVOSB status protest appeals in accordance with SBA's regulations at 13 CFR 134.1013 (<https://www.ecfr.gov/current/title-13/section-134.1013>);
- Modify FAR subpart 19.14 to: (1) implement SBA's regulations regarding SDVOSB certification requirements and joint venture eligibility requirements at 13 CFR part 128 (<https://www.ecfr.gov/current/title-13/part-128>); and (2) notify contracting officers of the requirement to verify SDVOSB eligibility for sole-source or set-aside awards under the SDVOSB Program;
- Modify FAR provision 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, FAR clause 52.219–28, Post-Award Small Business Program Representation, and FAR provision 52.219–1, Small Business Program Representations, to revise definitions and add a representation for an SDVOSB joint venture eligible under the SDVOSB Program to align with the changes to FAR subpart 19.14;
- Modify FAR clause 52.219–8, Utilization of Small Business Concerns, to revise definitions, and remove the specification that a joint venture qualifies as a service-disabled veteran-owned small business concern if it complies with the requirements in 13 CFR part 125 (<https://www.ecfr.gov/current/title-13/part-125>);
- Modify FAR clause 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside, to revise definitions and specify SDVOSB certification requirements;
- Modify FAR clause 52.219–28, Post-Award Small Business Program Representation, to add a representation for SDVOSB joint ventures eligible under the SDVOSB program; and
- Make other changes to correct typographical errors and revise the title of FAR 19.302 to clarify that the section provides procedures for small business size protests.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-The-Shelf (COTS) Items) or for Commercial Services**

This rule amends the following provisions and clauses at FAR: 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services; 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services; 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services); 52.219–1, Small Business Program Representations; 52.219–8, Utilization of Small Business Concerns; 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside; 52.219–28, Post-Award Small Business Program Rerepresentation; and 52.244–6, Subcontracts for Commercial Products and Commercial Services. These provisions and clauses continue to apply to acquisitions at or below the SAT and to acquisitions for commercial products, including COTS items, and commercial services.

This rule applies section 862 of the NDAA for FY 2021 and section 863 of the NDAA for FY 2022, as implemented by this interim rule, to contracts at or below the SAT and/or for commercial products (including COTS items) or commercial services.

#### **A. Applicability to Contracts at or Below the Simplified Acquisition Threshold**

The statute at 41 U.S.C. 1905 (<https://www.govinfo.gov/link/uscode/41/1905>) governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulation (FAR) Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council has made a determination to apply this statute to acquisitions at or below the SAT.

#### **B. Applicability to Contracts for the Acquisition of Commercial Products and Commercial Services, Including Commercially Available Off-The-Shelf (COTS) Items**

The statute at 41 U.S.C. 1906 (<https://www.govinfo.gov/link/uscode/41/1906>) governs the applicability of laws to contracts for the acquisition of commercial products and commercial services, and is intended to limit the applicability of laws to contracts for the acquisition of commercial products and commercial services. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services.

The statute at 41 U.S.C. 1907 (<https://www.govinfo.gov/link/uscode/41/1907>) states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items. The FAR Council has made a determination to apply this statute to acquisitions for commercial products and commercial services. The Administrator for Federal Procurement Policy has made a determination to apply this statute to acquisitions for COTS items.

## IV. Expected Impact of the Rule

This interim rule is expected to impact Government and contractor operations.

As a result of this interim rule, effective January 1, 2024, contracting officers will be required to check SAM to verify that a concern is designated as an SDVOSB certified by SBA for sole-source or set-aside awards under the SDVOSB Program. If the concern is not designated in SAM as a certified SDVOSB, the contracting officer will be required to check SBA's Veteran Small Business Certification Program database to determine if the concern submitted an application for certification to SBA ☐ on or before December 31, 2023. If a concern submitted an application for certification to SBA on or before December 31, 2023, and represented its status as an SDVOSB concern in SAM, contracting officers may rely on a concern's representation in SAM.

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A small business concern that pursues a sole-source or set-aside award under the SDVOSB program will be required to be certified by SBA effective January 1, 2024, or the concern must have both submitted a complete application for certification to SBA on or before December 31, 2023, and represented its status as an SDVOSB concern in SAM. A small business concern that submits a complete application for certification to SBA on or before December 31, 2023, may continue to represent its status as an SDVOSB in SAM until SBA makes its final eligibility determination. This interim rule will not impact current participants in the VA's VIP Verification Program as the requirements for the new SBA certification program are nearly identical to those of the VA. The only change that will impact small businesses is the certification requirement for SDVOSB concerns. As indicated in SBA's final rule, SBA does not anticipate the requirement for SBA certification to significantly impact small business concerns seeking SDVOSB certification. To minimize the potential impact on small businesses, SDVOSB concerns previously certified by the VA are reflected as certified in the SBA Veteran Small Business Certification Program database during the time that remains in the firm's three-year term of eligibility. To facilitate the transition of those firms already verified by the VA prior to the transfer date that have an eligibility period that expires in the first year of the Program, SBA extended the eligibility of those verified firms for an additional period of one year. The one-year grace period allows concerns that are not yet certified by the SBA to continue to represent their status as an SDVOSB in SAM while preparing their applications for SDVOSB certification. Furthermore, SBA did not change the documentation requirements for certification. Additionally, firms that represent their status in SAM likely have the documentation necessary for certification as that documentation is necessary to be able to represent their status as an SDVOSB in SAM. Therefore, concerns will only have to enter the information already in hand to apply to be included in SBA's Veteran Small Business Certification Program database.

The public cost associated with obtaining SDVOSB certification is accounted for under SBA's final rule implementing the certification requirements (87 FR 73400 (/citation/87-FR-73400)). SBA's final rule advises concerns that, effective January 1, 2024, only a certified SDVOSB or a concern that has submitted a complete application for certification to SBA on or before December 31, 2023, may seek a set-aside or sole-source award under the SDVOSB Program. SBA estimates it will take a concern approximately one hour to complete the application process.

Small business concerns will also be required to update SAM within two days of an SBA determination of ineligibility. Small business concerns are already required to update representations in SAM at least annually and ensure that representations are current, accurate, and complete. SBA's final rule published on April 27, 2023, at 88 FR 26164 (/citation/88-FR-26164), advised small business concerns of the requirement to remove their designation from SAM within two days of an SBA decision regarding ineligibility.

Given SBA's notice to small business concerns, the cost to the public associated with the FAR implementation of SBA's final rules is de minimis and is limited to the cost of regulatory familiarization.

## V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (/executive-order/13563) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

## VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2) (<https://www.govinfo.gov/link/uscode/5/804>).

## VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612 (<https://www.govinfo.gov/link/uscode/5/601>), because this rule simply implements the requirements of SBA's regulations and does not impose any additional compliance burden on applicable small business entities. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published on November 29, 2022, at 87 FR 73400 (/citation/87-FR-73400), and a correction published on July 3, 2023, at 88 FR 42592 (/citation/88-FR-42592), to implement section 862 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283 (<https://www.govinfo.gov/link/plaw/116/public/283>); 15 U.S.C. 657f (<https://www.govinfo.gov/link/uscode/15/657f>)); and April 27, 2023, at 88 FR 26164 (/citation/88-FR-26164) to implement section 863 of the NDAA for FY 2022 (Pub. L. 117–81 (<https://www.govinfo.gov/link/plaw/117/public/81>); 15 U.S.C. 634 (<https://www.govinfo.gov/link/uscode/15/634>)).

The objective of this rule is to implement SBA's Governmentwide certification program for SDVOSB concerns, update SDVOSB protest procedures, and to require an SDVOSB concern determined ineligible by SBA to update its status in the System for Award Management (SAM) within two days of the eligibility determination. Promulgation of the FAR is authorized by 40 U.S.C. 121(c) (<https://www.govinfo.gov/link/uscode/40/121>); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016 (<https://www.govinfo.gov/link/uscode/10/3016>)); and 51 U.S.C. 20113 (<https://www.govinfo.gov/link/uscode/51/20113>). The legal basis for this rule is as stated in the preceding paragraph.



This interim rule impacts small business concerns that seek a sole-source or set-aside award under the SDVOSB Program. Effective January 1, 2024, an SDVOSB concern must be certified as an SDVOSB concern by SBA, or have both represented that it is an SDVOSB concern in SAM and submitted a complete application for certification to SBA on or before December 31, 2023, in order to be eligible for these types of awards. SBA has minimized the impact on SDVOSB concerns by accepting verifications of eligibility already determined by the Department of Veterans Affairs (VA). SBA granted a one-year extension on certification for VA verified firms and by providing firms that represent their status in SAM a one-year grace period to apply for certification. In addition, this rule impacts SDVOSB concerns that SBA determines are not eligible for SDVOSB certification, as these concerns will be ineligible for set-aside and sole-source awards under the SDVOSB Program. A concern determined ineligible for SDVOSB certification, however, may continue to represent its SDVOSB status in SAM and be eligible for set-aside and sole-source awards outside of the SDVOSB Program.

The cost to concerns seeking SDVOSB certification should be de minimis because the eligibility documentation requirements currently exist under the VA's verification program. In addition, the initial application, program examination, and recertification requirement will remain the same under SBA's management of the program. Firms likely have the documentation required for application, examination, and recertification through the transferred program because either such documentation was already required for certification through the VA's verification program, or such documentation is likely needed for a firm to represent its status as an SDVOSB in SAM. Further, SBA anticipates that the application process should only require one hour of the concern's time. The cost to concerns to update their status in SAM is de minimis as concerns are already responsible for maintaining their representations in SAM to ensure that they are current, accurate, and complete.

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According to SAM, there are 32,284 concerns registered as SDVOSBs. Of the 32,284 SDVOSB concerns registered in SAM, 10,635 are already verified SDVOSBs in VA's verification program, which leaves 21,649 SDVOSB concerns that represent their socioeconomic status in SAM. Of the 21,649 that represent their socioeconomic status as an SDVOSB in SAM, 181 are veteran-owned small business concerns that are SDVOSB certified in the VA's certification database. Therefore, there are 21,468 SDVOSBs that represent their status in SAM that are not currently in the VA's verification program and that may submit an application for certification to SBA. However, the number of SDVOSB concerns that will submit applications for certification is unknown as is the number of potential new SDVOSB entrants; therefore, the number of small business entities impacted by this rule may be greater than or less than the 21,468 SDVOSBs that currently represent their status in SAM.

Effective January 1, 2024, this interim rule requires small business concerns that submit an offer for a set-aside or sole-source requirement under the SDVOSB Program to either be certified by SBA, or have both submitted an application for certification to SBA on or before December 31, 2023, and represented their SDVOSB status in SAM. Concerns found ineligible to be a certified SDVOSB by SBA must update their status in SAM within two days of the eligibility determination. SDVOSB protests will be decided by OHA instead of SBA's Director of Government Contracting.

SBA implemented a certification and information collection platform that replicates the VA's Center for Verification and Evaluation currently approved information collection and recordkeeping requirements under OMB Control Number 2900-0675.

The interim rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the interim rule which would accomplish the stated objectives of the applicable statutes and which would minimize any significant economic impact of this interim rule on small entities, as the economic impact is not anticipated to be significant.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610 (<https://www.govinfo.gov/link/uscode/5/610>). Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (<https://www.govinfo.gov/link/uscode/5/610>) (FAR Case 2022–009), in correspondence.

## **VIII. Paperwork Reduction Act**

This interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521 (<https://www.govinfo.gov/link/uscode/44/3501>)). These changes to the FAR do not impose additional information collection requirements to the associated paperwork burdens previously approved under Office of Management and Budget (OMB) Control Numbers 2900–0675, VETBIZ Vendor Information Pages Verification Program; 9000–0136, Commercial Acquisitions; FAR Sections Affected: 52.212–3(b)(2); 9000–0034, Examination of Records by Comptroller General and Contract Audit; FAR Section(s) Affected: 52.212–5(d), 52.214–26, 52.215–2; and 9000–0163, Small Business Size Rerepresentation; FAR Sections Affected: 19.301 and 52.219–28.

## **IX. Determination To Issue an Immediately Effective Interim Rule**

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule effective immediately without prior opportunity for public comment, see 41 U.S.C. 1707(d) (<https://www.govinfo.gov/link/uscode/41/1707>). This action is necessary because section 862 of the William M. (Mac) Thornberry National Defense Authorization Act for FY 2021 (Pub. L. 116–283 (<https://www.govinfo.gov/link/plaw/116/public/283>); 15 U.S.C. 657f (<https://www.govinfo.gov/link/uscode/15/657f>)): (1) transferred the responsibility for verifying the status of small business concerns owned and controlled by veterans or service-disabled veterans from the Department of Veterans Affairs (VA) to the Small Business Administration (SBA) as of January 1, 2023; and (2) established a Governmentwide certification requirement for service-disabled veteran-owned small businesses (SDVOSB) concerns seeking sole-source and set-aside contract awards under the SDVOSB Program beginning on January 1, 2024. The transfer of this responsibility also requires that all SDVOSB protests now be decided by a judge.

SBA published a final rule on November 29, 2022, and a correction to its final rule on July 3, 2023, to implement section 862 and codify these requirements in their agency regulations at title 13 of the Code of Federal Regulations (<https://www.ecfr.gov/current/title-13>). SBA's rule was published for public comment and SBA considered those public comments in the drafting of their final rule. As of January 1, 2023, SBA is processing applications for SDVOSB certification in accordance with their regulations.

Beginning January 1, 2024, contracting officers can only award set-aside or sole-source contracts to SDVOSB concerns that have been certified by SBA, or have both submitted a complete application for certification to SBA on or before December 31, 2023, and represented their SDVOSB status in SAM. For these types of awards, contracting officers will no longer be able to accept an offeror's representation in SAM that they are an SDVOSB concern. Additionally, all SDVOSB protests will be handled in accordance with SBA's updated regulations, which require SBA's Office of Hearings and Appeals (OHA) to decide SDVOSB protests.

Current guidance in the Federal Acquisition Regulation (FAR) regarding SDVOSB set-aside and sole-source requirements and SDVOSB protest procedures is not aligned with the current statute and SBA's regulations. The FAR permits contracting officers to accept an offeror's self-representation that they are an SDVOSB concern, which conflicts with section 862 and SBA's regulations, which impose the Governmentwide SDVOSB certification requirement on offerors and contract awards beginning January 1, 2024.

FAR guidance on SDVOSB protests and appeals is also not aligned with section 862 and SBA's regulations. Currently, the FAR advises contracting officers and offerors that SDVOSB status protests should be submitted to and will be decided by SBA's Director, Office of Government Contracting. This guidance conflicts with the SBA regulations that require OHA to now hear and decide these protests. The FAR also provides processes and procedures to offerors and contracting officers on SDVOSB status protest appeals; however, this guidance also conflicts with SBA's revised regulations, which do not have a process to appeal an SDVOSB status protest decision, as OHA's decisions are final, and no appeal process is available to protesters.

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Rulemaking is necessary to align the FAR with the statute and SBA's regulations; however, the rulemaking process cannot facilitate a proposed and final rule by the statutory deadline of January 1, 2024. To properly implement the statute, the rulemaking must be sequential. The SBA regulations must be implemented first, followed by FAR regulatory changes that reflect the requirements of SBA.

The consequences of missing the statutory deadline would be significant. If the FAR is not updated to implement the statute and SBA's regulations, individual agencies will implement the new requirements on their own. Having each agency implement its own interpretation of section 862 and SBA's SDVOSB regulations may result in an inconsistent application of these requirements across the Federal Government. Inconsistency in the application of these regulations will:

- (1) Put agencies at a high risk for protests of SDVOSB awards if an award is made to an SDVOSB that is no longer eligible for an award under SBA regulations, but appears eligible under FAR or agency guidance;
- (2) Negate, minimize, or put at risk SDVOSB status protest rights of interested parties through the dissemination of inaccurate or incomplete information;
- (3) Cause undue confusion and frustration for small businesses attempting to win an SDVOSB award, protest the SDVOSB status of an awardee, or appeal a protest decision of an awardee's SDVOSB status due to inconsistent application of the statute and regulations across the Federal Government;
- (4) Harm small businesses eligible for an SDVOSB set-aside or sole-source award through an increase in improper awards to entities no longer eligible for such awards, as well as the loss of opportunity, income, and experience that comes with a Federal contract;

(5) Jeopardize the ability of the Government to meet its mission needs and, for DoD, impact the ability to meet the needs of the warfighter to deter war and ensure the security of the United States, because an increase in granted protests of an awardee's SDVOSB status will delay contract awards due to the need for the Government to resolicit and re-evaluate offers; and

(6) Negatively impact agency small business goals due to improper awards and inconsistent application of statute, SBA regulations, FAR regulations, and agency guidance.

Issuing an interim rule will allow the Government to issue, in a timely manner, a single set of policies and procedures that accurately and thoroughly implement the SDVOSB certification requirement that takes effect on January 1, 2024, which will ensure consistent implementation across the entirety of the Federal Government. An interim rule will ensure the Government and small businesses avoid the negative impacts discussed above, while providing the public an opportunity to review and comment on the rule during its implementation.

The public reviewed and commented on SBA's implementation of section 862 and SBA considered those comments in finalizing their rule. This rule simply implements SBA's requirements, so there is little risk that the interim rule will impose a requirement on the public that they have not already had the opportunity to comment on. However, pursuant to 41 U.S.C. 1707 (<https://www.govinfo.gov/link/uscode/41/1707>) and FAR 1.501–3(b), the Department of Defense, General Services Administration, and National Aeronautics and Space Administration will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 2 (<https://www.ecfr.gov/current/title-48/part-2>), 6 (<https://www.ecfr.gov/current/title-48/part-6>), 9 (<https://www.ecfr.gov/current/title-48/part-9>), 18 (<https://www.ecfr.gov/current/title-48/part-18>), 19 (<https://www.ecfr.gov/current/title-48/part-19>), and 52 (<https://www.ecfr.gov/current/title-48/part-52>)**

- Government procurement

William F. Clark,

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 (<https://www.ecfr.gov/current/title-48/part-2>), 6 (<https://www.ecfr.gov/current/title-48/part-6>), 9 (<https://www.ecfr.gov/current/title-48/part-9>), 18 (<https://www.ecfr.gov/current/title-48/part-18>), 19 (<https://www.ecfr.gov/current/title-48/part-19>), and 52 (<https://www.ecfr.gov/current/title-48/part-52>) as set forth below:

1. The authority citation for 48 CFR parts 2 (<https://www.ecfr.gov/current/title-48/part-2>), 6 (<https://www.ecfr.gov/current/title-48/part-6>), 9 (<https://www.ecfr.gov/current/title-48/part-9>), 18 (<https://www.ecfr.gov/current/title-48/part-18>), 19 (<https://www.ecfr.gov/current/title-48/part-19>), and 52 (<https://www.ecfr.gov/current/title-48/part-52>) continues to read as follows:

**Authority:** 40 U.S.C. 121(c) (<https://www.govinfo.gov/link/uscode/40/121>); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016 (<https://www.govinfo.gov/link/uscode/10/3016>)); and 51 U.S.C. 20113 (<https://www.govinfo.gov/link/uscode/51/20113>).

## PART 2—DEFINITIONS OF WORDS AND TERMS

### 2. Amend section 2.101 by—

- a. Removing paragraphs (a) and (b) and adding introductory text in their place;
- b. Removing the definition of “Service-disabled veteran-owned small business concern” and adding the definition of “Service-disabled veteran-owned small business (SDVOSB) concern” in its place;
- c. Adding in alphabetical order the definitions of “Service-disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program” and “Service-disabled veteran-owned small business (SDVOSB) Program”; and
- d. Revising paragraph (1) of the definition “Veteran-owned small business concern”.

The revisions and additions read as follows:

#### 2.101 Definitions.

A word or a term, defined in this section, has the same meaning throughout this chapter (the Federal Acquisition Regulation (FAR)) unless the context in which the word or term is used clearly requires a different meaning or another FAR part, subpart, or section provides a different definition for the particular part or portion of the part. If a word or term that is defined in this section is defined differently in another part, subpart, or section of this chapter, the definition in this section includes a cross-reference to the other definitions and that part, subpart, or section applies to the word or term when used in that part, subpart, or section.

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*Service-disabled veteran-owned small business (SDVOSB) concern* means a small business concern—

(1)(i) Not less than 51 percent of which is owned and controlled 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; and

(ii) 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 veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran; or

(2) A small business concern eligible under the SDVOSB Program in accordance with 13 CFR part 128 (<https://www.ecfr.gov/current/title-13/part-128>) (see subpart 19.14).

(3) *Service-disabled veteran*, as used in this definition, means a veteran as defined in 38 U.S.C. 101(2) (<https://www.govinfo.gov/link/uscode/38/101>), with a disability that is service-connected, as defined in 38 U.S.C. 101(16) (<https://www.govinfo.gov/link/uscode/38/101>), and who is registered in the Beneficiary Identification and Records Locator Subsystem, or successor system that is maintained by the Department of Veterans Affairs' Veterans Benefits Administration, as a service-disabled veteran.

*Service-disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program* means an SDVOSB concern that— □

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(1) Effective January 1, 2024, is designated in the System for Award Management (SAM) as certified by the Small Business Administration (SBA) in accordance with 13 CFR 128.300 (<https://www.ecfr.gov/current/title-13/section-128.300>); or

(2) Has represented that it is an SDVOSB concern in SAM and submitted a complete application for certification to SBA on or before December 31, 2023.

*Service-disabled veteran-owned small business (SDVOSB) Program* means a program that authorizes contracting officers to limit competition, including award on a sole-source basis, to SDVOSB concerns eligible under the SDVOSB Program.

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*Veteran-owned small business concern* \* \* \*

(1) Not less than 51 percent of which is owned and controlled by one or more veterans (as defined at 38 U.S.C. 101(2) (<https://www.govinfo.gov/link/uscode/38/101>)) 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 veterans; and

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## PART 6—COMPETITION REQUIREMENTS

### 3. Amend section 6.206 by—

- a. Revising the section heading; and
- b. Removing from paragraphs (a) and (b) “small business concerns” and adding “small business concerns eligible under the SDVOSB Program” in its place.

The revision reads as follows:

**6.206 Set-asides for service-disabled veteran-owned small business (SDVOSB) concerns eligible under the SDVOSB Program.**

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## PART 9—CONTRACTOR QUALIFICATIONS

### 4. Amend section 9.104–3 by revising paragraph (d)(2) to read as follows:

**9.104-3 Application of standards.**

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(d) \* \* \*

(2) *Limitations on subcontracting.* A small business that is unable to comply with the limitations on subcontracting may be considered nonresponsible (see 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award; 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns; 52.219-14, Limitations on Subcontracting; 52.219-27, Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program; 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns; and 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program). A small business that has not agreed to comply with the limitations on subcontracting may be considered nonresponsive.

**PART 18—EMERGENCY ACQUISITIONS****18.116 [Amended]**

5. Amend section 18.116 by removing “concerns on a sole” and adding “concerns eligible under the SDVOSB Program on a sole” in its place.

**PART 19—SMALL BUSINESS PROGRAMS****19.000 [Amended]**

6. Amend section 19.000 by removing from paragraph (a)(3) “veteran-owned small business concerns” and adding “veteran-owned small business (SDVOSB) concerns eligible under the SDVOSB Program” in its place.

**19.201 [Amended]**

7. Amend section 19.201 by removing from paragraph (c)(10) “subpart 19.14 as a” and “set-aside, or under subpart 19.15” and adding “subpart 19.14 as a set-aside for” and “(SDVOSB) concerns eligible under the SDVOSB Program, or under subpart 19.15” in their place, respectively.

8. Amend section 19.202-6 by revising paragraph (a)(4) to read as follows:

**19.202-6 Determination of fair market price.**

(a) \* \* \*

(4) Set-asides for SDVOSB concerns eligible under the SDVOSB Program ( *see* subpart 19.14); and

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9. Amend section 19.203 by—

a. In paragraph (a):

i. Adding a heading; and

ii. Removing the word “Procurement”; and

- b.** Removing from the end of paragraph (c) “125, and 126” and adding “126, 127, and 128” in its place.

The addition reads as follows:

**19.203 Relationship among small business programs.**

(a) *General.* \* \* \*

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**19.304 [Amended]**

- 10.** Amend section 19.304 by removing from paragraph (b) “52.212–3(c)(4)” and adding “52.212–3(c)(5)” in its place.

- 11.** Amend section 19.307 by—

- a.** Adding paragraph (a);
- b.** Revising paragraphs (b), (d)(1) introductory text, and (d)(1)(i);
- c.** Removing the period at the end of paragraph (d)(1)(iii) and adding “; or” in its place;
- d.** Adding paragraph (d)(1)(iv);
- e.** Removing from paragraph (d)(2) “SBA (see 13 CFR 125.25(b) ([<https://www.federalregister.gov/documents/2024/02/23/2024-02797/federal-acquisition-regulation-certification-of-service-disabled-veteran-owned-s...>](https://www.ecfr.gov/current/title-13/section-134.1005)”)” in its place;</a></b></li>
<li><b>f.</b> Revising the introductory text of paragraph (e)(1);</li>
<li><b>g.</b> Removing from the end of paragraph (e)(1)(i) “or”;</li>
<li><b>h.</b> Removing from the end of paragraph (e)(1)(ii) “offeror for negotiated acquisitions).” and adding “offeror (for negotiated acquisitions);” in its place;</li>
<li><b>i.</b> Adding paragraphs (e)(1)(iii) and (iv);</li>
<li><b>j.</b> Revising paragraph (e)(2);</li>
<li><b>k.</b> Adding a heading for paragraph (f);</li>
<li><b>l.</b> Revising paragraph (f)(1);</li>
<li><b>m.</b> Removing from the paragraph (f)(2) introductory text “SBA” and adding “OHA” in its place;</li>
<li><b>n.</b> Removing from paragraph (f)(2)(ii) “fax number,”;</li>
<li><b>o.</b> Removing from paragraph (f)(2)(vi) “offer” and adding “initial offer that included price” in its place;</li>
<li><b>p.</b> Revising paragraphs (g), (h), and (i); and</li>
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**q. Removing paragraphs (j) through (m).**

The revisions and additions read as follows:

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

(a) *Definition. Interested party*, as used in this section, has the meaning given in 13 CFR 134.1002(b) ([https://www.ecfr.gov/current/title-13/section-134.1002#p-134.1002\(b\)](https://www.ecfr.gov/current/title-13/section-134.1002#p-134.1002(b))).

(b) *General.* (1) For sole source acquisitions, the contracting officer, the Department of Veterans Affairs (VA), or SBA may protest the apparently successful offeror's service-disabled veteran-owned small business (SDVOSB) status. For all other acquisitions, any interested party may protest the apparently successful offeror's service-disabled veteran-owned small business status.

(2) SBA's protest regulations are found in 13 CFR 128.500 (<https://www.ecfr.gov/current/title-13/section-128.500>) and 13 CFR part 134 (<https://www.ecfr.gov/current/title-13/part-134>).

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(d) \* \* \* □

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(1) OHA will consider protests challenging the SDVOSB status or the ownership and control of a concern if—

(i) For status protests, the protester presents evidence supporting the contention that the owner(s) cannot provide documentation from the VA to show that they meet the definition of “service-disabled veteran” or “service-disabled veteran with a permanent and severe disability” as set forth in 13 CFR 128.102 (<https://www.ecfr.gov/current/title-13/section-128.102>); or

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(iv) For joint venture protests, the protester presents evidence that the managing SDVOSB joint venture partner does not meet the requirements at 13 CFR 128.402 (<https://www.ecfr.gov/current/title-13/section-128.402>).

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(e) \* \* \* (1) An interested party (except contracting officers should see paragraph (f)(1) of this section) shall submit its protest to the contracting officer—

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(iii) To be received by close of business on the fifth business day after notification by the contracting officer of the intended awardee for an order that is set aside for SDVOSBs under a multiple-award contract that was not totally or partially set aside or reserved for SDVOSB concerns. This paragraph (e)(1)(iii) does not apply to an order issued under a Federal Supply Schedule (FSS) contract; or

(iv) To be received by the close of the fifth business day after notification by the contracting officer of the intended awardee for a blanket purchase agreement that is set aside for SDVOSBs under a multiple-award contract that was not totally or partially set aside or reserved for SDVOSB

concerns. This paragraph (e)(1)(iv) does not apply to a blanket purchase agreement issued under a FSS contract.

(2) Any protest received after the designated time limits is untimely, except—

(i) The VA or SBA may file an SDVOSB status protest at any time; and

(ii) The contracting officer, SBA, or VA may file an SDVOSB status protest at any time after the apparent awardee has been identified or after bid opening, whichever applies.

(f) *Forwarding protests to SBA.* (1) The contracting officer shall forward all protests to the U.S. Small Business Administration, Office of Hearings and Appeals, 409 Third Street SW, Washington, DC 20416, or by email at [OHAfilings@sba.gov](mailto:OHAfilings@sba.gov) (*mailto:OHAfilings@sba.gov*), marked “Attn: SDVOSB Status Protest”.

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(g) *Notification by OHA.* OHA will notify the protester, the protested concern, SBA's Director of Government Contracting (D/GC), SBA Counsel, and the contracting officer of the date OHA received the protest.

(h) *Before OHA decision.* (1) After receiving a protest involving the apparent successful offeror's status as an SDVOSB concern, the contracting officer shall either—

(i) Withhold award of the contract until OHA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before OHA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest. The contracting officer shall notify OHA and SBA D/GC in writing of the determination and a copy shall be included in the contract file.

(2) OHA will determine the merits of the status protest.

(3) OHA does not have a standard timeline for issuing decisions.

(i) *After OHA decision.* OHA will notify the contracting officer, the protester, and the protested concern of its decision. The decision is effective immediately and is final.

(1) If the contracting officer has withheld contract award and OHA has determined that the protested concern is an eligible SDVOSB or dismissed all protests against the protested concern, then the contracting officer may award the contract to the protested concern.

(2) If the contracting officer has withheld contract award, and OHA has sustained the protest and determined that the concern is not an SDVOSB, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with paragraph (h)(1) of this section, the contract has been awarded, and the OHA decision to sustain the protest is received after award—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update FPDS to reflect the final OHA decision; and

(iii) The concern must remove its designation in the System for Award Management (SAM) as an SDVOSB concern within 2 days of the OHA decision. SBA will update the concern's SDVOSB status in SAM if the concern fails to do so. The concern shall not submit an offer as a SDVOSB concern or an SDVOSB concern eligible under the SDVOSB Program, until the concern is designated as an SDVOSB by SBA in the SBA Veteran Small Business Certification Program database at <https://veterans.certify.sba.gov> (<https://veterans.certify.sba.gov>).

(4) A concern found to be ineligible may not submit future offers as an SDVOSB concern until the concern is designated as an SDVOSB by SBA in the SBA Veteran Small Business Certification Program database at <https://veterans.certify.sba.gov> (<https://veterans.certify.sba.gov>).

#### **19.308 [Amended]**

**12.**Amended section 19.308 by removing from the introductory text of paragraph (i) “SBA's Office of Hearings and Appeals (OHA)” and adding “OHA” in its place.

#### **19.502–8 [Amended]**

**13.**Amend section 19.502–8 by removing from paragraph (b) “19.1405(d)” and adding “19.1405(e)” in its place.

**14.**Amend section 19.702 by revising the introductory text to read as follows:

#### **19.702 Statutory requirements.**

Any contractor receiving a contract with a value greater than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business (VOSB), service-disabled veteran-owned small business (SDVOSB), HUBZone small business, small disadvantaged business (SDB), and women-owned small business (WOSB) concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business, VOSB concerns, SDVOSB concerns, HUBZone small business concerns, SDB concerns, and WOSB concerns.

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**15.**Revise subpart 19.14 heading to read as follows:

### **Subpart 19.14—Service-Disabled Veteran-Owned Small Business Program**

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#### **19.1401 [Amended]**

**16.**Amend section 19.1401 by—

**a.** Removing from paragraph (a) “(SDVOSB) Procurement Program” and adding “(SDVOSB) Program” in its place; and

**b.** Removing from paragraph (b) “Service-Disabled Veteran-Owned □ Small Business Program” and adding “SDVOSB Program” in its place.

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**17.** Revise section 19.1403 to read as follows:

**19.1403 Status.**

(a) Status as an SDVOSB concern is determined by SBA in accordance with 13 CFR part 128 (<https://www.ecfr.gov/current/title-13/part-128>); also see 19.307.

(b) For an SDVOSB concern that seeks an SDVOSB set-aside or sole-source contract, the contracting officer shall verify that the offeror—

(1) Effective January 1, 2024, is designated in the System for Award Management (SAM) as an SDVOSB concern certified by SBA; or

(2) Has represented that it is an SDVOSB concern in SAM and submitted an application for certification to SBA on or before December 31, 2023. Pending applications for certification are in the SBA Veteran Small Business Certification Program database at <https://veterans.certify.sba.gov> (<https://veterans.certify.sba.gov>).

(c) If there is a decision issued by SBA as a result of a current eligibility examination finding that the concern did not qualify as an SDVOSB concern eligible under the SDVOSB Program or SBA denies a concern's application for SDVOSB certification, the concern must update its SDVOSB status in SAM within 2 days of SBA's final decision to reflect that the concern is not an eligible SDVOSB. SBA will update the concern's SDVOSB status in SAM within 2 days of the concern's failure to make the update.

(d) Effective January 1, 2024, a joint venture may be considered an SDVOSB concern eligible under the SDVOSB Program if—

(1) The joint venture qualifies as small under 19.301–1(a)(2)(i);

(2) The managing SDVOSB joint venture partner—

(i) Is designated in SAM as an SDVOSB concern certified by SBA; or

(ii) Has represented that it is an SDVOSB concern in SAM and submitted an application for certification to SBA on or before December 31, 2023. Pending applications for certification are in the SBA Veteran Small Business Certification database at <https://veterans.certify.sba.gov> (<https://veterans.certify.sba.gov>); and

(3) The joint venture complies with the requirements of 13 CFR 128.402 (<https://www.ecfr.gov/current/title-13/section-128.402>).

**18.** Amend section 19.1405 by—

- a.** Revising the section heading and paragraph (b);
- b.** Redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and adding a new paragraph (c);
- c.** Revising newly redesignated paragraph (d); and
- d.** Removing from the second sentence of newly redesignated paragraph (e) “service-disabled veteran-owned small business” and adding “SDVOSB” in its place.

The revisions and addition read as follows:

**19.1405 Set-aside procedures.**

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(b) A contracting officer may restrict competition to SDVOSB concerns eligible under the SDVOSB Program if there is a reasonable expectation based on market research that—

(1) Two or more SDVOSB concerns eligible under the SDVOSB Program will submit offers; and

(2) Award will be made at a fair market price.

(c) Effective January 1, 2024, the contracting officer shall—

(1) Verify that offers received are eligible for consideration for award by checking if the offeror—

(i) Is designated in SAM as an SDVOSB concern certified by SBA; or

(ii) Has represented that it is an SDVOSB concern in SAM and submitted an application for certification to SBA on or before December 31, 2023. Pending applications for certification are in the SBA Veteran Small Business Certification database at <https://veterans.certify.sba.gov> (<https://veterans.certify.sba.gov>);

(2) Proceed with the offer evaluation, if the offeror meets the criteria in paragraph (c)(1)(i) or (ii) of this section; or

(3) Remove the offeror from consideration, if the offeror does not meet the criteria in paragraph (c)(1)(i) or (ii) of this section, as the offeror is not eligible for award.

(d) If the contracting officer receives only one acceptable offer from an SDVOSB concern eligible under the SDVOSB Program in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from SDVOSB concerns eligible under the SDVOSB Program, the SDVOSB set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see 19.203).

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**19.** Amend section 19.1406 by—

- a.** Revising the section heading;

**b.** Redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b); and

**c.** Revising newly redesignated paragraph (c).

The revisions and addition read as follows:

19.1406

Sole-source awards.

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(b) Effective January 1, 2024, a contracting officer shall only award a sole-source contract to a concern that—

(1) Is designated in SAM as an SDVOSB concern certified by SBA; or

(2) Has represented that it is an SDVOSB concern in SAM and submitted an application for certification to SBA on or before December 31, 2023. Pending applications for certification are in the SBA Veteran Small Business Certification Program database at <https://veterans.certify.sba.gov> (*https://veterans.certify.sba.gov*).

(c) The SBA has the right to appeal the contracting officer's decision not to make an SDVOSB sole-source award.

**20.** Amend section 19.1408 by revising the first sentence of paragraph (a) to read as follows:

19.1408

Contract clauses.

(a) The contracting officer shall insert the clause at 52.219–27, Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program, in solicitations and contracts for acquisitions that are set aside or awarded on a sole-source basis to, service-disabled veteran-owned small business concerns under 19.1405 and 19.1406. \* \* \*

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**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**21.** Amend section 52.212–3 by—

- a.** Revising the date of the provision;
- b.** In paragraph (a):
  - i.** Removing the definition of “Service-disabled veteran-owned small business concern” and adding the definition of “Service-disabled veteran-owned small business (SDVOSB) concern” in its place;
  - ii.** Adding in alphabetical order the definitions of “Service-disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program” and “Service-disabled veteran-owned small business (SDVOSB) Program”; and
  - iii.** Removing from paragraph (1) in the definition of “Veteran-owned small business concern” the text “51 percent of which is owned” and adding the text “51 percent of which is owned and controlled” in its place;

**c.** Revising paragraph (c)(3);

**d.** Redesignating paragraphs (c)(4) through (10) as paragraphs (c)(5) through (11) and adding a new paragraph (c)(4);

**e.** Revising the note following newly redesignated paragraph (c)(8); and □

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**f.** In Alternate I:

**i.** Revising the date of the alternate; and

ii. Removing from the introductory text “(c)(11)” and adding “(c)(12)” in its place;

iii. Redesignating paragraph (c)(11) as paragraph (c)(12); and

iv. Removing from newly redesignated paragraph (c)(12) introductory text “(c)(4)” and adding “(c)(5)” in its place.

The revisions and additions read as follows:

**52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.**

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**Offeror Representations and Certifications—Commercial Products and Commercial Services (FEB 2024)**

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(a) \* \* \*

*Service-disabled veteran-owned small business (SDVOSB) concern* means a small business concern—

(1)(i) Not less than 51 percent of which is owned and controlled 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; and

(ii) 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 veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran; or

(2) A small business concern eligible under the SDVOSB Program in accordance with 13 CFR part 128 (<https://www.ecfr.gov/current/title-13/part-128>) (see subpart 19.14).

(3) *Service-disabled veteran*, as used in this definition, means a veteran as defined in 38 U.S.C. 101(2) (<https://www.govinfo.gov/link/uscode/38/101>), with a disability that is service-connected, as defined in 38 U.S.C. 101(16) (<https://www.govinfo.gov/link/uscode/38/101>), and who is

registered in the Beneficiary Identification and Records Locator Subsystem, or successor system that is maintained by the Department of Veterans Affairs' Veterans Benefits Administration, as a service-disabled veteran.

*Service-disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program* means an SDVOSB concern that—

(1) Effective January 1, 2024, is designated in the System for Award Management (SAM) as certified by the Small Business Administration (SBA) in accordance with 13 CFR 128.300 (<https://www.ecfr.gov/current/title-13/section-128.300>); or

(2) Has represented that it is an SDVOSB concern in SAM and submitted a complete application for certification to SBA on or before December 31, 2023.

*Service-disabled veteran-owned small business (SDVOSB) Program* means a program that authorizes contracting officers to limit competition, including award on a sole-source basis, to SDVOSB concerns eligible under the SDVOSB Program.

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(c) \* \* \*

(3) *SDVOSB concern.* [ *Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.*] The offeror represents that it ☐ is, ☐ is not an SDVOSB concern.

(4) *SDVOSB concern joint venture eligible under the SDVOSB Program.* The offeror represents that it ☐ is, ☐ is not an SDVOSB joint venture eligible under the SDVOSB Program that complies with the requirements of 13 CFR 128.402 (<https://www.ecfr.gov/current/title-13/section-128.402>). [ *Complete only if the offeror represented itself as an SDVOSB concern in paragraph (c)(3) of this provision.*] [ *The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.*]

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(8) \* \* \*

## Note to paragraphs (c)(9) and (10):

Complete paragraphs (c)(9) and (10) only if this solicitation is expected to exceed the simplified acquisition threshold.

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*Alternate I (FEB 2024).* \* \* \*

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**22.** Amend section 52.212–5 by—

**a.** Revising the date of the clause;



- b.** Removing from paragraph (b)(20) “(SEP 2023)” and adding “(FEB 2024)” in its place;
- c.** Revising paragraph (b)(25);
- d.** Removing from paragraph (b)(26)(i) “(SEP 2023)” and adding “(FEB 2024)” in its place;
- e.** Removing from paragraph (e)(1)(viii) “(SEP 2023)” and adding “(FEB 2024)” in its place; and
- f.** In Alternate II:
- i.** Revising the date of the alternate; and
- ii. Removing from paragraph (e)(1)(ii)(H) “(SEP 2023)” and adding “(FEB 2024)” in its place.

The revisions read as follows:

52.212–5

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

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Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (FEB 2024)

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(b) \* \* \*

(25) 52.219–27, Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program (FEB 2024) (15 U.S.C. 657f (<https://www.govinfo.gov/link/uscode/15/657f>)).

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Alternate II (FEB 2024). \* \* \*

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23.

Amend section 52.213–4 by—

- a.** Revising the date of the clause; and
- b.** Removing from paragraph (a)(2)(vii) “(DEC 2023)” and adding “(FEB 2024)” in its place.

The revision reads as follows:

52.213–4

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

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Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (FEB 2024)

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**24.** Amend section 52.219–1 by—

- a.** Revising the date of the provision;
- b.** In paragraph (a):
  - i.** Removing the definition of “Service-disabled veteran-owned small business concern” and adding the definition of “Service-disabled veteran-owned small business (SDVOSB) concern” in its place; and
  - ii.** Adding in alphabetical order the definitions of “Service-disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program” and “Service-disabled veteran-owned small business (SDVOSB) Program”;
- c.** Revising paragraphs (c)(6) and (7);
- d.** Redesignating paragraphs (c)(8) as paragraph (c)(9) and adding a new paragraph (c)(8);
- e.** Revising the introductory text of newly redesignated paragraph (c)(9); and
- f.** In Alternate I:
  - i.** Revising the date of the alternate;
  - ii.** Removing from the introductory text “(c)(9)” and adding “(c)(10)” in its place; and
  - iii.** Redesignating paragraph (c)(9) as paragraph (c)(10).

The revisions and additions read as follows:

**52.219–1            Small Business Program Representations.**

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**Small Business Program Representations (FEB 2024)**

(a) \* \* \*

*Service-disabled veteran-owned small business (SDVOSB) concern* means a small business concern—

(1)(i) Not less than 51 percent of which is owned and controlled 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; and

(ii) 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 veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran or;

(2) A small business concern eligible under the SDVOSB Program in accordance with 13 CFR part 128 (<https://www.ecfr.gov/current/title-13/part-128>) (see subpart 19.14).

(3) *Service-disabled veteran*, as used in this definition, means a veteran as defined in 38 U.S.C. 101(2) (<https://www.govinfo.gov/link/uscode/38/101>), with a disability that is ☐ service-connected, as defined in 38 U.S.C. 101(16) (<https://www.govinfo.gov/link/uscode/38/101>), and who is registered in the Beneficiary Identification and Records Locator Subsystem, or successor system that is maintained by the Department of Veterans Affairs' Veterans Benefits Administration, as a service-disabled veteran.

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*Service - disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program* means an SDVOSB concern that—

- (1) Effective January 1, 2024, is designated in the System for Award Management (SAM) as certified by the Small Business Administration (SBA) in accordance with 13 CFR 128.300 (<https://www.ecfr.gov/current/title-13/section-128.300>); or
- (2) Has represented that it is an SDVOSB concern in SAM and submitted a complete application for certification to SBA on or before December 31, 2023.

*Service-disabled veteran-owned small business (SDVOSB) Program* means a program that authorizes contracting officers to limit competition, including award on a sole-source basis, to SDVOSB concerns eligible under the SDVOSB Program.

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(c) \* \* \*

(6) *Veteran-owned small business concern*. [ *Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.* ] The offeror represents as part of its offer that it ☐ is, ☐ is not a veteran-owned small business concern.

(7) *SDVOSB concern*. [ *Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(6) of this provision.* ] The offeror represents as part of its offer that it ☐ is, ☐ is not an SDVOSB concern.

(8) *SDVOSB joint venture eligible under the SDVOSB Program*. [ *Complete only if the offeror represented itself as a SDVOSB concern in paragraph (c)(7) of this provision.* ] The offeror represents as part of its offer that it ☐ is, ☐ is not a SDVOSB joint venture eligible under the SDVOSB Program that complies with the requirements of 13 CFR 128.402 (<https://www.ecfr.gov/current/title-13/section-128.402>). [ *The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.* ]

(9) *HUBZone small business concern*. [ *Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.* ] The offeror represents, as part of its offer, that—

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*Alternate I (FEB 2024).* \* \* \*

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**25.** Amend section 52.219–8 by—

- a.** Revising the date of the clause;
- b.** In paragraph (a):
  - i.** Removing the definition of “Service-disabled veteran-owned small business concern” and adding the definition of “Service-disabled veteran-owned small business (SDVOSB) concern” in its place; and
  - ii.** Adding in alphabetical order the definitions of “Service-disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program” and “Service-disabled veteran-owned small business (SDVOSB) Program”;
  - iii.** Removing from paragraph (1) in the definition of “Veteran-owned small business concern” the text “51 percent of which is owned” and adding the text “51 percent of which is owned and controlled” in its place;
- c.** Adding to the end of paragraph (c)(1)(ii) “(See 13 CFR 125.9(d) ([\(https://www.ecfr.gov/current/title-13/section-125.9#p-125.9\(d\)](https://www.ecfr.gov/current/title-13/section-125.9#p-125.9(d)))).”; and
- d.** Revising paragraph (c)(2).

The revisions and additions read as follows:

**52.219–8 Utilization of Small Business Concerns.**

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**Utilization of Small Business Concerns (FEB 2024)**

(a) \* \* \*

*Service-disabled veteran-owned small business (SDVOSB) concern* means a small business concern—

(1)(i) Not less than 51 percent of which is owned and controlled 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; and

(ii) 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 veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran; or

(2) A small business concern eligible under the SDVOSB Program in accordance with 13 CFR part 128 (<https://www.ecfr.gov/current/title-13/part-128>) (see subpart 19.14).

(3) *Service-disabled veteran*, as used in this definition, means a veteran, as defined in 38 U.S.C. 101(2) (<https://www.govinfo.gov/link/uscode/38/101>), with a disability that is service-connected, as defined in 38 U.S.C. 101(16) (<https://www.govinfo.gov/link/uscode/38/101>), and who is

registered in the Beneficiary Identification and Records Locator Subsystem, or successor system that is maintained by the Department of Veterans Affairs' Veterans Benefits Administration, as a service-disabled veteran.

*Service - disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program* means an SDVOSB concern that—

- (1) Effective January 1, 2024, is designated in the System for Award Management (SAM) as certified by the Small Business Administration (SBA) in accordance with 13 CFR 128.300 (<https://www.ecfr.gov/current/title-13/section-128.300>); or
- (2) Has represented that it is an SDVOSB concern in SAM and submitted a complete application for certification to SBA on or before December 31, 2023.

*Service-disabled veteran-owned small business (SDVOSB) Program* means a program that authorizes contracting officers to limit competition, including award on a sole-source basis, to SDVOSB concerns eligible under the SDVOSB Program.

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(c) \* \* \*

- (2) A joint venture qualifies as a HUBZone small business concern if it complies with the requirements in 13 CFR 126.616(a) ([https://www.ecfr.gov/current/title-13/section-126.616#p-126.616\(a\)](https://www.ecfr.gov/current/title-13/section-126.616#p-126.616(a))) through (c) ([https://www.ecfr.gov/current/title-13/section-126.616#p-126.616\(c\)](https://www.ecfr.gov/current/title-13/section-126.616#p-126.616(c))).

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**26.**Revise section 52.219–27 to read as follows:

**52.219–27 Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program.**

As prescribed in 19.1408, insert the following clause:

**Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program (FEB 2024)**

(a) *Definition. Service-disabled veteran-owned small business (SDVOSB) concern* means a small business concern—

- (1)(i) Not less than 51 percent of which is owned and controlled 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; and
- (ii) 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 veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran; or
- (2) A small business concern eligible under the SDVOSB Program in accordance with 13 CFR part 128 (<https://www.ecfr.gov/current/title-13/part-128>) (see subpart 19.14).

(3) *Service-disabled veteran*, as used in this definition, means a veteran as defined in 38 U.S.C. 101(2) (<https://www.govinfo.gov/link/uscode/38/101>), with a disability that is service-connected, as defined in 38 U.S.C. 101(16) (<https://www.govinfo.gov/link/uscode/38/101>) and who is registered in the Beneficiary Identification and Records Locator Subsystem, or successor system that is maintained by the Department of Veterans Affairs' Veterans Benefits Administration, as a service-disabled veteran.

*Service-disabled veteran-owned small business (SDVOSB) concern eligible under the SDVOSB Program* means an SDVOSB concern that—

- (1) Effective January 1, 2024, is designated in the System for Award Management (SAM) as certified by the Small Business Administration (SBA) in accordance with 13 CFR 128.300 (<https://www.ecfr.gov/current/title-13/section-128.300>); or
- (2) Has represented that it is an SDVOSB concern in SAM and submitted a complete application for certification to SBA on or before December 31, 2023.

*Service-disabled veteran-owned small business (SDVOSB)-Program* means a program that authorizes contracting officers to limit competition, including award on a sole-source basis, to SDVOSB concerns eligible under the SDVOSB Program.

(b) *Applicability*. This clause applies only to—

- (1) Contracts that have been set aside for, or awarded on a sole-source basis to, SDVOSB concerns eligible under the SDVOSB Program;
- (2) Part or parts of a multiple-award contract that have been set aside for SDVOSB concerns eligible under the SDVOSB Program; □
- (3) Orders set aside for SDVOSB concerns eligible under the SDVOSB Program, under multiple-award contracts as described in 8.405–5 and 16.505(b)(2)(i)(F); and
- (4) Orders issued directly to SDVOSB concerns eligible under the SDVOSB Program, under multiple-award contracts as described in 19.504(c)(1)(ii).

(c) *General*. (1) Effective January 1, 2024, for SDVOSB set-aside or sole-source procurements, offers are solicited only from, and awards resulting from this solicitation will be made only to, concerns—

- (i) Designated in SAM as an SDVOSB concern certified by SBA; or
  - (ii) That have represented their status as an SDVOSB in SAM and submitted a complete application for certification to SBA on or before December 31, 2023.
- (2) Offers received from concerns that do not meet the criteria of paragraph (c)(1)(i) or (ii) of this clause, shall not be considered.

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(d) A joint venture may be considered an SDVOSB concern if the managing partner of the joint venture complies with the criteria defined in paragraph (a) of this clause and 13 CFR 128.402 (<https://www.ecfr.gov/current/title-13/section-128.402>).

(e) In a joint venture that complies with paragraph (d) of this clause, the SDVOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the SDVOSB party or parties to the joint venture must be more than administrative functions.

(End of clause)

**27.** Amend section 52.219–28 by—

- a.** Revising the date of the clause; and
- b.** Redesignating paragraph (h)(8) as paragraph (h)(9) and adding a new paragraph (h)(8).

The revision and addition read as follows:

**52.219–28 Post-Award Small Business Program Rerepresentation.**

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**Post-Award Small Business Program Rerepresentation (FEB 2024)**

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(h) \* \* \*

(8) *Service-disabled veteran-owned small business (SDVOSB) joint venture eligible under the SDVOSB Program.* The Contractor represents that it ☐ is, ☐ is not an SDVOSB joint venture eligible under the SDVOSB Program that complies with the requirements of 13 CFR 128.402 (<https://www.ecfr.gov/current/title-13/section-128.402>). [ *The Contractor shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.* ]

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**28.** Amend section 52.244–6 by—

- a.** Revising the date of the clause; and
- b.** Removing from paragraph (c)(1)(x) “(SEP 2023)” and adding “(FEB 2024)” in its place.

The revision reads as follows:

**52.244–6 Subcontracts for Commercial Products and Commercial Services.**

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**Subcontracts for Commercial Products and Commercial Services (FEB 2024)**

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[FR Doc. 2024–02797 (/d/2024-02797) Filed 2–22–24; 8:45 am]

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