

819.202-71 Additional contracting officer responsibilities.

In addition to the duties designated in FAR 19.202 through 19.202-6, contracting officers must perform the following functions in support of the small business program:

- (a) Make maximum use of small business source lists.
- (b) Assure that small business firms are identified on solicitation mailing lists and bid abstracts.
- (c) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent possible.
- (d) Assist and counsel small business firms with individual problems.
- (e) Provide for counseling non-responsive or non-responsible small business bidders to help qualify them for future awards.
- (f) Submit informational copies of all small business protests and appeals to the Director, OSBDU, at the same time they are submitted to the SBA.

819.202-72 Order of precedence. [Reserved]

Subpart 819.3—Determination of Small Business Status for Small Business Programs

819.307 SDVOSB/VOSB Small Business Status Protests.

- (a) All protests relating to whether a Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) is a “small” business for the purposes of any Federal program are subject to 13 CFR part 121 and must be filed in accordance with that part. SDVOSB and VOSB status shall be determined in accordance with 38 CFR part 74.
- (b) A contracting officer or an interested party may protest the apparently successful offeror’s SDVOSB or VOSB status. “Interested party” for the purpose of filing a status protest is an actual offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
- (c) All status protests shall be in writing and shall state all specific grounds for the protest. Assertions that a protested concern is not an

SDVOSB or VOSB concern, without setting forth specific facts or allegations, are insufficient. An interested party must submit its status protest to the contracting officer by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). An interested party must deliver their protest in person, by electronic mail, by facsimile, by express delivery service, or by the U.S. Postal Service within the applicable time period to the contracting officer. Any status protest received after these time limits is untimely. Any status protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester. Except for premature status protests, the contracting officer must forward to the Director, Center for Verification and Evaluation (CVE), any status protest received.

(d) The Director, CVE, will notify the protester and the contracting officer of the date the status protest was received by CVE and whether the status protest will be processed or dismissed for lack of timeliness or specificity.

(e) The Director, CVE, will determine the SDVOSB or VOSB status of the protested concern based upon the totality of circumstances within 21 business days after receipt of the status protest. If the Director, CVE, does not contact the contracting officer within 21 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has granted the Director, CVE, an extension. The contracting officer may award the contract after receipt of a status protest if the contracting officer determines in writing that an award must be made to protect the public interest. The contracting officer shall document this determination for the contract file.

(f) A denial decision by the Director, CVE, that is based on the failure to meet any service-disabled Veteran or Veteran criterion as defined in 38 CFR 74.1 is not subject to an appeal to the Executive Director, Office of Small and

Disadvantaged Business Utilization (OSDBU), and is a final decision.

(g) The Director, CVE, will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by the Executive Director, OSDBU. The determination may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

(h) If the Director, CVE, sustains an SDVOSB or VOSB status protest and the contract has already been awarded, then the awarded contract shall be deemed void ab initio and the contracting officer shall rescind the contract and award the contract to the next SDVOSB or VOSB in line for the award. The ineligible SDVOSB or VOSB concern shall not be permitted to submit another offer as a SDVOSB or VOSB on a future SDVOSB or VOSB procurement under this part, unless it successfully appeals the determination of the Director, CVE, to the Executive Director, OSDBU, or unless it applies for and receives verified SDVOSB or VOSB status in accordance with 38 CFR part 74.

(i) Except as provided in subsection (f), the protestor or the protested SDVOSB or VOSB concern may file an appeal of the status protest determination with the Executive Director, OSDBU. The Executive Director must receive the appeal no later than 5 business days after the date of receipt of the status protest determination. The Executive Director will dismiss any appeal received after the 5-day period. “Filing” means a document is received by the Executive Director by 5:30 p.m., Eastern Standard Time, on that day. Documents may be filed by hand delivery, mail, commercial carrier, or facsimile transmission. Hand delivery and other means of delivery may not be practicable during certain periods due to, for example, security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt by the Executive Director, OSDBU. Submit appeals to: Executive Director, OSDBU (00VE), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

(j) The appeal must be in writing. The appeal must identify the status protest determination being appealed and must set forth a full and specific statement as to why the decision was based on clear error of fact or law.

(k) The party appealing the determination must provide notice of the appeal to the contracting officer. The Executive Director will decide all appeals under this subpart solely on a review of the evidence in the written protest file, arguments made in the appeal petition and response(s) filed thereto.

(l) The Executive Director will make a decision within 10 business days of the receipt of the appeal, if practicable, and will base the decision only on the information and documentation in the protest record as supplemented by the appeal. The Executive Director will provide a copy of the decision to the contracting officer and the protested SDVOSB or VOSB concern. The Executive Director’s decision, if received before the award, will apply to the pending acquisition. If the Executive Director decides in favor of the appealing party and the decision is received after the award, the contracting officer may terminate the contract or not exercise the next option. The Executive Director’s decision is the final decision. The decision may be sent by mail, commercial carrier, facsimile transmission, or other electronic means.

[78 FR 59865, Sept. 30, 2013]

Subpart 819.5—Set-Asides for Small Business

819.502 Setting aside acquisitions.

819.502–2 Total small business set-asides.

(a) When a total small business set-aside is made, one of the following statements, as applicable, will be included in the solicitation for bids:

(1) Notice of total small business set-aside, page ____, applies to all items in this solicitation.

(2) Notice of total small business set-aside, page ____, applies to items ____ through ____ in this solicitation.

(b) Contracting officers must ensure that the appropriate product or service classification and the related size