

## Federal Acquisition Regulation

19.1406

(1) Federal Prison Industries, Inc. (*see* Subpart 8.6);

(2) AbilityOne participating non-profit agencies for the blind or severely disabled (*see* Subpart 8.7);

(b) Orders under indefinite-delivery contracts (*see* subpart 16.5). (But *see* 16.505(b)(2)(i)(F) for discretionary set-asides of orders);

(c) Orders against Federal Supply Schedules (*see* subpart 8.4). (But *see* 8.405–5 for discretionary set-asides of orders); or

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program.

[69 FR 25278, May 5, 2004, as amended at 70 FR 14955, Mar. 23, 2005; 76 FR 68035, Nov. 2, 2011; 79 FR 24202, Apr. 29, 2014]

### **19.1405 Service-disabled veteran-owned small business set-aside procedures.**

(a) The contracting officer—

(1) Shall comply with 19.203 before deciding to set aside an acquisition under the SDVOSB Program;

(2) May set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to SDVOSB concerns when the requirements of paragraph (b) of this section can be satisfied; and

(3) Shall consider SDVOSB set-asides before considering SDVOSB sole source awards (*see* 19.1406) or small business set-asides (*see* subpart 19.5).

(b) To set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more service-disabled veteran-owned small business concerns; and

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

(c) If the contracting officer receives only one acceptable offer from a service-disabled veteran-owned small business concern 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 service-disabled veteran-

owned small business concerns, the service-disabled veteran-owned set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (*see* 19.203).

(d) The procedures at 19.202–1 and, except for acquisitions not exceeding the simplified acquisition threshold, at 19.402 apply to this section. When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, *see* 19.402(a)) to set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer's notice of rejection. Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and compelling circumstances, which significantly affect the interests of the Government, exist. Within 15 working days of SBA's notification to the contracting officer, SBA shall file its formal appeal with the head of the contracting activity, or that agency may consider the appeal withdrawn. The head of the contracting activity shall reply to SBA within 15 working days of receiving the appeal. The decision of the head of the contracting activity shall be final.

[69 FR 25278, May 5, 2004, as amended at 71 FR 36927, June 28, 2006; 76 FR 14568, Mar. 16, 2011; 77 FR 12932, Mar. 2, 2012]

### **19.1406 Sole source awards to service-disabled veteran-owned small business concerns.**

(a) A contracting officer shall consider a contract award to a SDVOSB concern on a sole source basis (*see* 6.302–5(b)(6)), before considering small business set-asides (*see* 19.203 and subpart 19.5) provided none of the exclusions of 19.1404 apply and—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or