

**PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

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**PART 819 - SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

**819.000 Scope of part.**

This subpart sets forth the Department of Veterans Affairs small business program including section 8(a) contracts with the Small Business Administration (SBA) and unilateral set-asides. It establishes responsibility for making such determinations, reviewing determinations and evaluation of the program.

**SUBPART 819.2 - POLICIES**

**819.201 General policy.**

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (00SB), is responsible for the overall supervision of the Department of Veterans Affairs Small and Disadvantaged Business Utilization program and will assist administrations and key staff officials in developing their respective small business programs.

(b) The Chief Facilities Management Officer will develop and coordinate the agency small business program, as it affects construction projects, with the OSDBU.

(c) The Director, Veterans Canteen Service (VCS), will designate an employee of his/her organization to serve as liaison between the VCS and the Office of Small and Disadvantaged Business Utilization on small business problems affecting the VCS.

(d) The Director, National Cemetery System; Under Secretary for Benefits; Chief Facilities Management Officer; Deputy Assistant Secretary for Administration; Director, Acquisition Operations and Analysis Service; Executive Director and Chief Operating Officer, VA National Acquisition Center; and Directors of field facilities with acquisition and materiel management activities will designate an employee of their respective organizations to serve as a small and small disadvantaged business specialist. This employee will be a full-time employee of the respective acquisition activity, will be familiar with the supplies and services purchased at the activity, and will be fully cognizant of the regulations implementing the Small Business Act. The principal duties will include assisting the Small Business Administration Procurement Center

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Representative (if assigned) in activities and functions relating to Sections 8 and 15 of the Small Business Act. The name, telephone number, and mailing symbol of each designee and any successor will be forwarded to the Director, Office of Small and Disadvantaged Business Utilization, through the Deputy Assistant Secretary for Acquisition and Materiel Management.

**819.202-5 Data collection and reporting requirements.**

Administration heads, staff office directors and heads of contracting activities will, in addition to the responsibilities designated in FAR 19.202-5, cooperate with the Office of Small and Disadvantaged Business Utilization in formulating specific socio-economic procurement goals and providing other data necessary for goal assessment.

(a) Each VA acquisition activity shall establish goals for expenditure of funds with preferred businesses within their projected annual budget. The preference programs supported by VA are listed in paragraph (c) of this section. OSDBU is responsible for Department-wide goals and accomplishments and will approve or adjust each acquisition activity's goals.

(b) A Procurement Preference Program Goals Report (Report Control Symbol 00-0427) shall be submitted annually by each acquisition activity to reach OSDBU by November 1. Each report shall contain total expenditure estimates and goals for the current fiscal year and explanations of the methods utilized to arrive at each proposed goal.

(c) All acquisition activities shall submit information and procurement preference goals identified in paragraphs (c)(1) through (c)(8) of this section. In addition, the Office of Acquisition and Materiel Management, the VA National Acquisition Center and the Office of Facilities Management shall submit the information identified in paragraphs (c)(1) through (c)(11) of this section. Goals shall be expressed in dollars and rounded to the nearest thousand.

(1) Estimate of total procurement dollar expenditures (excluding delivery orders against General Services Administration (GSA) FSS contracts).

(2) Small business awards (includes paragraphs (c)(3) through (c)(5) of this section).

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- (3) Minority business direct awards.
  - (4) SBA 8(a) awards.
  - (5) Women-owned business awards.
  - (6) Veteran-owned business awards (includes paragraphs (c)(8) and (c)(9) of this section).
  - (7) Vietnam era veteran-owned business awards (including disabled Vietnam era veterans).
  - (8) Disabled veteran-owned business awards (other than Vietnam era disabled veterans).
  - (9) Estimate of total dollar value of subcontracts to be awarded by reporting prime contractors.
  - (10) Subcontracts to be awarded to small business concerns by prime contractors.
  - (11) Subcontracts to be awarded to small disadvantaged business concerns by prime contractors.
- (d) Anticipated problems in the attainment of the proposed goal in any category shall also be identified. This information will be used in negotiating the Department goals with SBA.
- (e) As an addendum to the report, each acquisition activity shall provide a narrative explaining the reason(s) for any shortfall(s) in the achievement of any previous fiscal year goal category. This explanation shall be specific and will be used by OSDDBU to justify Department shortfalls.
- (f) Upon review by OSDDBU of the proposed goals, each acquisition activity will be notified of the acceptance of goals as submitted, or of any deficiencies. If the goals are not acceptable, the acquisition activity will be requested to submit further written justification for the goals submitted. Based on documents submitted, OSDDBU will make a final determination on the goal assignment.

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(g) Accomplishment of goals identified in paragraphs (c)(1) through (c)(8) of this section will be determined by OSDBU from data reported by acquisition activities into the VA Federal Procurement Data System (FPDS).

(h) Achievement of subcontracting goals shall be reported by Office of Facilities Management, the Office of Acquisition and Materiel Management, and the VA National Acquisition Center on a semiannual basis, to be received by OSDBU not later than April 30 for the period ending March 31, and November 1 for the period ending September 30.

**819.202-70 Additional responsibilities.**

In addition to the duties designated in FAR 19.202, VA contracting officers will perform the following function in furtherance of the small business program:

(a) Develop a plan of operation to increase the share of contracts and purchase orders awarded to small business, including veteran, and Vietnam era and disabled veteran-owned concerns.

(b) Promote the disadvantaged business program through the SBA 8(a) procedures set forth in Subpart 819.8.

(c) Review the types and classes of items and services to be purchased to determine the applicability of individual small business set-asides. Class set-asides, established in accordance with criteria in FAR 19.503, shall be reviewed at least annually to determine whether items or services procured under a unilateral or joint set-aside should be modified or withdrawn. Updated lists of acquisitions reserved for small business on a class basis shall be maintained by heads of the contracting activities.

(d) Make maximum utilization of the SBA small business source list (i.e., Procurement Automated Source System) when considering the disposition of all procurement requirements. On an annual basis, VA acquisition personnel shall request a Procurement Automated Source System (PASS) listing of veteran-owned, including Vietnam era and disabled, and woman-owned businesses capable of meeting identified requirements. Acquisition personnel will utilize PASS as a primary source file. Firms identified on the PASS list shall be included on solicitation mailing lists. Small business source lists are available through the SBA regional offices.

(e) Assure that small business firms are identified on bid abstracts.

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- (f) Assure that specifications are not unduly restrictive, thereby enabling small business participation to the maximum extent feasible.
- (g) Assist and counsel small business firms with individual problems.
- (h) Provide for counseling nonresponsive or nonresponsible small business bidders to help qualify them for future awards.
- (i) Attend conferences and meetings publicizing the small business program.
- (j) Promote the award of research contracts to small business firms.
- (k) Promote goals for small business, small business set-asides, small business subcontracting, 8(a) procurements, and purchases from women-owned businesses.
- (l) Review all urgent and sole source procurements to determine that they are sparingly made, thoroughly documented and approved by the head of the contracting activity.
- (m) If the acquisition activity is assigned an SBA Procurement Center Representative (PCR), assure that the representative is provided logistical support, cooperation, and access to all reasonably obtainable contract information directly pertinent to the PCR's official duties.
- (n) Encourage technical and requirements personnel to identify veteran-owned and women-owned small business sources.
- (o) Assure that plans are forwarded as specified in FAR 19.705-6(b)

**SUBPART 819.5 - SET-ASIDES FOR SMALL BUSINESS**

**819.502-2 Total 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.

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

(b) Contracting officers must ensure that appropriate product or service classification and the related size standard are included in each solicitation.

(c) All proposed procurement for construction anticipated to cost between \$10,000 and \$3 million and all proposed procurements for architect-engineer services for construction projects of \$3 million and less will be considered as though SBA had initiated a set-aside request. Determinations of the need to deviate from this policy made by the head of a contracting activity will require review by the Director, Office of Small and Disadvantaged Business Utilization. :::(See 819.502.71).:::

**819.502-3 Partial set-asides.**

When, in accordance with the provisions of FAR 19.502-3, it is determined that a particular procurement will be partially set aside for exclusive small business participation, the solicitation for bids shall state the appropriate product or service classification and appropriate size standard and the following statement shall be placed on the face page:

Notice of partial small business set-aside, page \_\_\_\_\_, applies to Item \_\_\_\_\_ through Item \_\_\_\_\_ in this solicitation.

**:::819.502-70 Documentation and record of procurement request review.**

(a) Each proposed procurement for construction anticipated to exceed \$10,000 and each proposed procurement of supplies or services anticipated to exceed \$10,000 and initial non set-aside determinations over \$2,500 shall be recorded on VA Form 90-2268, Records of Procurement Request Review. Exempt from the requirements are procurements or requisitions from the sources listed in FAR 8.001(a)(1) (i) through (vi) and 8.001(a)(2) (i) and (ii).

(b) VA Form 90-2268 shall be completed as follows:

(1) The information through part 1 shall be completed by the individual working up the procurement. The "Procurement Control

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No." block will contain the purchase authorization number or requisition number or for construction projects, the project number. Additionally, the resulting contract number or purchase order number will be referenced in this block when it is established.

(2) Part II shall be completed by the contracting officer unless the contracting officer is the person completing and signing part I, in which case part II may be disregarded.

(3) Part III shall be completed by the local SBA Procurement Center Representative, if one is assigned.

(4) Part IV shall be completed by the head of the contracting activity (see 802.100). In the event the head of the contracting activity overrules the recommendation specified in part I, the reason(s) will be set forth on the reverse of the form.

(c) Distribution of the original and copies of the completed VA Form 90-2268 shall be made as follows:

(1) *Original*. Maintained in purchase order file with purchase order, or in the contract file, as applicable.

(2) *Copy A*. Maintained in jacket file in the contracting activity for information purposes. The file should contain VA Form 90-2268 recorded in the current and previous fiscal year. Disposal should be made of older forms in accordance with appropriate agency records control schedules.

(3) *Copy B*. Submitted to the SBA Procurement Center Representative, if one is assigned. If an assigned SBA Procurement Center Representative is not available, this copy need not be made and the jacket file maintained in the contracting office will suffice for SBA review.:::

**:::819.502-71 Required review by the Director, Office of Small and Disadvantaged Business Utilization.**

(a) Transmittal of a copy of the pertinent VA Form 90-2268, justification and documentation will be made by covering memorandum signed by the head of the contracting activity directly to the Director, Office of Small and Disadvantaged Business Utilization (00SB), when the head of the

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contracting activity determines that any of the following proposed procurements are not suitable for small business set-aside:

- (1) Construction project under \$3 million.
  - (2) Any proposed procurement of architect-engineer services for construction projects of \$3 million, or less.
  - (3) Any proposed procurements for which there were predecessor contracts with small business firms, or two or more small business firms submitted bids or quoted prices on the prior procurement.
  - (4) Any proposed procurement for which there are two or more small business firms on the applicable bidders mailing or small purchase source list, i.e., who have submitted an SF 129, Solicitation Mailing List Application, or have otherwise indicated a desire to compete in supplying the requirements of the purchasing activity.
    - (i) Small business firms whose names have been supplied by SBA in response to a request by the purchasing activity should be contacted before placing such firms on the solicitation mailing list. The purpose of the contract is to ascertain the firm's intention to submit bids or quotations and its performance capabilities.
    - (ii) Non set-aside determinations based upon past unsatisfactory performance by small business concerns will contain or have attached thereto such documentation as will permit a review of the current ability of two or more small business concerns to perform satisfactorily.
- (b) In the case of proposed procurements subject to the review requirements of paragraph (a) of this section, no solicitation will be made pending notification of the results of the review.
- (c) Should circumstances exist which preclude the forwarding of VA Form 90-2268 by mail, telephone or telegraph communication is authorized.:::

**SUBPART 819.6 - CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF ELIGIBILITY**

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**819.602-3 Appealing Small Business Administration's decision to issue Certificates of Competency.**

Formal VA appeals of an initial concurrence by the SBA Central Office in an SBA Regional Office decision to issue a Certificate of Competency (CoC) will be processed as follows:

(a) When the contracting officer believes that VA should formally appeal the concurrence by the SBA Central Office in an SBA Regional Office decision to issue a CoC, the contracting officer will so notify the Deputy Assistant Secretary for Acquisition and Materiel Management (95B) in writing within five business days after receipt of the SBA Central Office's written confirmation of its determination. Within ten business days of the contracting officer's receipt of the SBA's written confirmation (or within a period acceptable to VA and the SBA), the Deputy Assistant Secretary for Acquisition and Materiel Management (95B) will advise the SBA Central Office that VA intends to file a formal appeal.

(b) Within ten business days of the contracting officer's receipt of the SBA Central Office's written confirmation, the contracting officer will furnish an original and one copy of the appeal file to Deputy Assistant Secretary for Acquisition and Materiel Management (95B). The file must contain a copy of the bid/offer from the firm considered nonresponsible, a copy of the bid/offer from the firm otherwise in line for award, a copy of the bid, a copy of the abstract, a copy of SBA's CoC Review Committee report, a copy of all correspondence with SBA on the matter, and the contracting officer's narrative statement establishing the error, omission, or other basis for disputing SBA's proposed responsibility determination.

(c) The Deputy Assistant Secretary for Acquisition and Materiel Management (95B) will review the file prepared by the contracting officer. If the contracting officer's position is accepted, the Deputy Assistant Secretary for Acquisition and Materiel Management (95B) will transmit the formal appeal to the SBA Central Office within ten business days after notifying that office of VA's intent to appeal (or within a period acceptable to VA and SBA). The contracting officer will be informed of the final SBA decision.

(d) If, after the Central Office review, it is decided that a formal appeal should not be made to the SBA, the contracting officer will be advised of

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this decision and that the CoC should be accepted by VA. The SBA Central Office will also be advised that VA will not pursue its formal appeal. If the decision concerns major construction projects and the Office of Facilities Management disagrees with the decision made by the Deputy Assistant Secretary for Acquisition and Materiel Management, the matter will be referred to the Senior Procurement Executive for a final VA determination.

**SUBPART 819.8 - CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)**

**819.800 General.**

(a) No contract will be entered into with SBA under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) unless a certification is made by the Administrator of that agency, or designee, that SBA is competent to perform the contract.

(b) When it is determined that the requirements of the Department of Veterans Affairs are appropriate for inclusion in this program, the contracting officer will make this fact known to the proper officials of the SBA regional office servicing his/her area. However, when projects funded from minor construction appropriation (between \$400,000 and \$2 million) are proposed for 8(a) acquisition, the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (00SB), shall be contacted by telephone or notified in writing in order to afford the OSDBU an opportunity to identify possible 8(a) sources prior to apprising SBA officials. If the certification required by paragraph (a) of this section is received, the Department of Veterans Affairs contracting officer will secure from SBA the name(s) and location(s) of their subcontractor(s) and the unit price(s) to be paid. Should these prices be within a range acceptable to the Department of Veterans Affairs, the contracting officer will notify SBA of acceptance.

(c) The contract will be made between Department of Veterans Affairs and SBA and will be administered by Department of Veterans Affairs.

(d) In addition to meeting the requirements of 801.602-70, contracting officers will secure cost and pricing data prescribed in FAR 15.403-4 and 815.804-2 when negotiating contracts under the SBA 8(a) program. Contracting officers will request an audit in accordance with 815.805-5 on proposals in excess of \$500,000 before negotiating any contract or modification.

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**819.803 Selecting acquisitions for the 8(a) program.**

The contracting officer will specify in writing the time limit for SBA to propose an acceptable 8(a) subcontractor. The time limit should be between 30 and 45 days, but may be extended by the contracting officer. ::If SBA is unable to furnish an 8(a) subcontractor, the facts will be reported in accordance with 819.870.::

**819.804 Evaluation, offering, and acceptance.**

(a) The contracting officer will notify SBA in writing of the time limit for contract negotiations in accordance with FAR 19.804-2. The time limit, as a minimum, should be 45 days, but may be extended by the contracting officer.

::(b) If contract negotiations must be terminated due to expiration of the time limits, the facts will be reported in accordance with 819.870.::

**819.806 Pricing the 8(a) contract.**

In order to expedite the 8(a) process, SBA should be informed as soon as a disparity between the 8(a) offered price and the estimated fair market price is determined. The SBA and the VA contracting office should collaborate to determine if the disparity is:

(a) A result of deficiencies in developing the fair market price, thereby requiring revision to the estimate;

(b) A result of overpricing by the 8(a) company, thereby requiring further efforts to negotiate a decrease in the offered price; or

(c) A legitimate differential which should be funded through the SBA business development expense.

**819.806-4 Funding business development expense.**

If SBA declines to fund the business development expense, it will be reported in accordance with 819.870.

**819.807 Estimating fair market price.**

(a) Estimating the fair market price is a crucial initial step in determining what is a reasonable price for a negotiated 8(a) contract. For supplies and

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equipment, previous prices paid under competitive conditions, adjusted for inflation, may provide necessary data to make such an estimate.

(b) Estimating fair market price for such services as architect-engineer and construction may be accomplished through independent cost estimates and other pertinent data obtained from SBA when the estimated fair market price is not fully supportable from available documentation (see FAR 19.807.

**819.807-70 Commitments of Office of Facilities Management funded projects for the 8(a) program.**

Major and minor projects funded by the Office of Facilities Management (including those delegated to VHA medical facilities) which have been committed to the 8(a) program will not be withdrawn from that program without the consent of the Office of Small and Disadvantaged Business Utilization (OSDBU). Requests for consent from OSDBU will normally be in writing and will clearly set forth the circumstances necessitating 8(a) withdrawal. If the contracting officer determines that time does not permit a written request, an oral request will be made. Such an oral request will be confirmed in writing.

**819.809-70 Procurement of supplies, services, and research and development.**

(a) Contracts for supplies, equipment and services other than construction will be prepared as any other prime contract and in accordance with FAR Subpart 19.8.

(b) The Department of Veterans Affairs contracting officer will forward the prime contract to SBA in sufficient numbers to furnish two copies to SBA and one copy to each subcontractor. SBA will return the signed original to the Department of Veterans Affairs contracting officer.

**819.809-71 Procurement of construction.**

Construction projects which have been selected for inclusion in this program will be contracted for as provided in this section and FAR Subpart 19.8.

(a) The contracting officer will submit, for each project so identified, the complete project listing including technical specifications, drawings and wage rates to the proper official of the appropriate SBA regional office. Should SBA select a competent subcontractor capable of performing the

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work, they will so certify to the Department of Veterans Affairs contracting officer. They will furnish him/her the name and complete address of the subcontractor(s), the project involved and the price(s) quoted. If the price quoted is within the range acceptable to the Department of Veterans Affairs, the contracting officer will indicate acceptance to SBA.

(b) When the contracting officer receives Standard Form 1442, Solicitation, Offer and Award (Construction, Alternation, or Repair), signed by SBA and the subcontractor, and the performance and payment bonds, the contracting officer will forward a notice to proceed to the subcontractor.

**:::819.870 Quarterly report of inability of Small Business Administration regional offices to negotiate 8(a) set-asides.**

(a) VA shall identify all instances where SBA is unable to negotiate 8(a) set-asides for VA. Within 20 working days after the end of each fiscal quarter, the applicable office or facility shall submit a report to the Office of Small And Disadvantaged Business Utilization (OSDBU) which documents each requirement submitted to SBA to negotiate an 8(a) set-aside returned by SBA without subcontracting action. Negative reports are not required.

(b) The report will identify:

(1) The office or facility making the report.

(2) Each occurrence by the service (including construction or commodity proposed for 8(a) set aside.)

(3) The date submitted to SBA.

(4) The date returned by SBA without action.

(5) The reasons SBA was unable to negotiate an 8(a) set-aside (e.g., no 8(a) contractors available, unreasonable pricing, inability to meet time frame, etc.).

(6) The estimated contract price.

(c) Reports Control Symbol 90-0410 has been established for this report.:::

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**SUBPART 819.70 - VETERAN-OWNED AND OPERATED SMALL BUSINESSES**

**819.7001 Policy.**

(a) Pub. L. 93-237 amended the Small Business Act by directing SBA to give "special consideration" to veterans of the Armed Forces in all SBA programs. Consistent with and in furtherance of that statute, it is the policy of the Department of Veterans Affairs to encourage participation by veteran-owned and operated small businesses, including Vietnam era and disabled, in VA acquisitions.

(b) All VA facilities having procurement requirements for which veteran-owned small businesses are known sources, will take affirmative action to solicit these firms and assist them in participating in VA acquisition opportunities.

**819.7002 Definition.**

A veteran-owned small business is a small business that is at least 51 percent owned by a veteran who also controls and operates the business. Control in this context means exercising the power to make policy decisions. Operate in this context means actively involved in day-to-day management. For purposes of this definition, eligible veterans include:

(a) Veterans who served in the U.S. Armed Forces and were discharged or released under conditions other than dishonorable.

(b) Vietnam era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably.

(c) Disabled veterans with a minimum compensable disability of 30 percent, or a veteran who was discharged for disability.

**819.7003 Procedure.**

(a) To obtain information on business development for veteran-owned businesses and further identify veteran-owned small businesses, contracting officers shall contact the veterans affairs officers at the local SBA district office. When counseling small businesses, contracting officers shall determine if the business is veteran-owned and operated and

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ensure that SF 129s are completed properly to identify veteran-owned business.

(b) The veteran-owned business representation in 852.219-70 shall be included in all solicitations.

**819.7004 Waiver of the use of veteran-owned firms.**

It is the policy of the Department of Veterans Affairs to provide veteran-owned firms every opportunity to participate in the acquisition process. A contracting office wishing to waive this policy for a particular procurement involving other than small purchase procedures must first process a VA Form 90-2268. The contracting officer must clearly document on VA Form 90-2268 the reasons that eligible veteran-owned firms are not intended to be solicited or quotations sought for the particular procurement. Exempt from this reporting requirement are SBA 8(a) acquisitions. :::(See 819.502-71.):::

**:::819.7005 Reporting requirements.**

(a) Each VA acquisition activity not reporting through VA's FPDS will submit a semiannual summary report of actions taken in regard to this subpart to the Office of Small and Disadvantaged Business Utilization (OSDBU)(00SB).

(b) The semiannual report is to be received by OSDBU not later than April 30 for the period ending March 31 and November 1 for the period ending September 30.

(c) Included in the report will be:

(1) the grand total of actions and dollar value of all awards, regardless of dollar amount, to small businesses owned and operated by veterans;

(2) the total actions and dollar value of contracts awarded to Vietnam era veteran-owned small businesses; and

(3) the total actions and dollar value of contracts awarded to disabled veteran-owned small business.

**VAAC 97-6 December 28, 1998**

Department of Veterans Affairs Acquisition Regulation

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(d) Questions may be directed to OSDBU. Summary of Actions to Assist Veteran-Owned and Operated Small Business, Report Control Symbol 00-0426, applies to this report. Note: No report is required if actions are reported into the FPDS.

(e) Negative reports are required.:::