



**DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR ACQUISITION AND LOGISTICS
WASHINGTON DC 20420**

IL 001AL-11-15

June 8, 2011

OFFICE OF ACQUISITION AND LOGISTICS INFORMATION LETTER

TO: Under Secretaries for Health, Benefits, and Memorial Affairs; Assistant Secretary for Management; Director, Office of Construction and Facilities Management; Veterans Integrated Service Network Directors; Directors, VA Medical Center Activities, Outpatient Clinics, Medical and Regional Office Centers, and Regional Offices; Directors, Denver Acquisition and Logistics Center, VA Austin Information Technology Center, Records Management Center, VBA Benefits Delivery Centers, and VA Health Administration Center; Executive Director and Chief Operating Officer, VA National Acquisition Center; Chief Information Officer; VA Health Revenue Center; VA Health Eligibility Center; and Office of General Counsel

ATTN: Heads of Contracting Activities, VA Contracting Officers, VA Contracting Officers' Technical Representatives, Purchase Card Holders, and all Other VA Employees Involved with Acquiring Equipment, Supplies, and Services (Including Construction)

SUBJ: Subcontracting Compliance Review Program

I. PURPOSE

- A. To communicate the development and implementation of a new Subcontracting Compliance Review Program (SCRCP) which assesses contractor compliance with limitations on subcontracting requirements, subcontracting commitments, and subcontracting goals included in prime contracts with the Department of Veterans Affairs (VA).
1. The Office of Acquisition and Logistics (OAL), Risk Management and Compliance (RMC), in conjunction with acquisition professionals from the Veterans Health Administration, Veterans Benefits Administration, National Cemetery Administration, and other VA staff offices and organizations, developed a manual which sets forth guidelines and procedures for conducting compliance reviews under the program. When finalized, the SCRCP manual will provide an overview of the program, roles and responsibilities of contracting officers (CO), and samples of form letters, reports and checklists. In addition, the SCRCP manual will describe the review criteria and rating system, and the compliance review report. It

also outlines the remedies if contractors are determined to be non-compliant. The SCRP manual will be distributed to VA's acquisition community and will also be available for download from the Acquisition Resources Center within 45 days after issuance of this Information Letter (IL).

- B. To provide language which must be included in VA solicitations allowing a third-party (support contractor) access to the records of VA contractors.
1. Due to limited staff resources within VA's acquisition community, OAL intends to retain the services of contractor(s) to assist COs in assessing VA contractor compliance under the program. Currently, language does not exist in VA contracts allowing a third party (support contractor) access to records of VA contractors to conduct reviews under the program.
 2. OAL's RMC team conducted a random sampling of VA contract awards for fiscal year 2009 as reported in the Federal Procurement Data System -Next Generation. RMC staff will contact VA COs of record for contracts identified in the random sampling to determine the type of subcontracting compliance review to be conducted. If it is determined a review is needed, the CO of record must issue a bilateral modification incorporating third- party access language as provided in the attachment to this IL. The language in the attachment must be revised, as appropriate, for the specific contract action being modified.
 3. Effective immediately, COs are required to include third-party access language as provided in the attachment in new solicitations. In addition, COs are required to amend outstanding solicitations to include the access language.

II. BACKGROUND

- A. On December 22, 2006, the Veterans Benefits, Health Care, and Information Technology Act of 2006 was enacted (Public Law 109-461). The legislation, effective June 20, 2007, authorizes a unique "Veterans first" approach specific to VA contracting. Implemented and known in VA as the "Veterans First Contracting Program," the legislation changed the small business hierarchy within VA, placing service-disabled Veteran-owned small businesses (SDVOSBs) and Veteran-owned small businesses (VOSBs) first and second, respectively, as the highest priority sources in satisfying VA's open-market acquisition requirements. VA uses this special contracting authority to set-aside contracts for SDVOSBs and VOSBs either on a sole-source or competitive basis. Contracts awarded under the Veterans First Contracting Program must meet certain eligibility requirements and incur a mandatory percentage of the cost of the contract performance as specified in

the SDVOSB and VOSB clauses (i.e., VA Acquisition Regulation (VAAR) 852.219-10 and 852.219-11, respectively) included in contracts set-aside under the Veterans First Contracting Program.

- B. On December 8, 2009, VA published a final rule in the *Federal Register* to formally record and implement the Veterans First Contracting Program as a change to the VAAR. The final rule, effective January 7, 2010, included the contracting order of priority as follows:

1. SDVOSBs;
2. VOSBs, including, but not limited to, SDVOSBs;
3. Pursuant to -
 - a. Section 8(a) of the Small Business Act (15 United States Code (U.S.C.) 637(a)); or
 - b. The Historically Underutilized Business Zone (HUBZone) Program (15 U.S.C. 657a); and
4. Pursuant to any other small business contracting preference.

- C. To further increase opportunities for SDVOSBs and VOSBs, the VAAR requires VA COs include evaluation factors providing additional consideration to such offerors in competitively negotiated solicitations which are not set-aside for SDVOSBs or VOSBs. In addition, COs must give additional consideration to any offeror, regardless of size status, which proposes to subcontract with SDVOSBs or VOSBs. The subcontracting commitments are included in the contract pursuant to VAAR 852.215-71, Evaluation Factor Commitments. For solicitations containing Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, the CO is required to include VAAR 852.219-9, VA Small Business Subcontracting Plan Minimum Requirements. In accordance with this clause, offerors required to submit individual subcontracting plans shall include minimum goals for award of subcontracts to SDVOSBs and VOSBs.

- D. A Government Accountability Office (GAO) study of the SDVOSB program reveals fraud and abuse in the program government-wide (GAO Report No. GAO-10-108, October 2009). With respect to VA contracts awarded to SDVOSBs, the report cited a case where the SDVOSB did not perform any work and subcontracted 100 percent of the work to a non-SDVOSB. In several other cases cited for VA contracts, SDVOSBs did not meet eligibility requirements for participation in the program because non-service-disabled Veterans managed and controlled the daily operations. GAO also cited a

case whereby an SDVOSB was a pass-through for a non-SDVOSB under a VA contract.

- E. In an effort to eliminate fraud, waste, and abuse, VA is implementing controls within its Veterans First Contracting Program. Currently, VA's Office of Small and Disadvantaged Business Utilization is in the process of verifying firms listed in VA's Vendor Information Pages (VIP) database located at: <http://www.vetbiz.gov>. This verification allows for up-front preventive controls prior to the award of contracts, and should ensure only eligible SDVOSBs and VOSBs receive contracts under the Veterans First Contracting Program.
- F. In addition to implementing front-end controls, VA must ensure, subsequent to the award of contracts, firms awarded contracts under the Veterans First Contracting Program, as well as any other small business program (e.g., non-Veteran small business, 8(a), HUBZone), adhere to the limitations on subcontracting requirement (or percentage of work performance requirement) included in prime contracts. In addition, firms receiving additional consideration for proposing to subcontract with SDVOSBs and VOSBs must be monitored to ensure adherence to the subcontracting commitments included in their contracts. Furthermore, other than small business concerns must be monitored to ensure such concerns are achieving the small business program goals included in their approved subcontracting plans. The SCRP monitors contractors' compliance with these post-award subcontracting requirements.

III. ACTION

- A. OAL staff will negotiate and award contract(s) whereby support contractor(s) will assess VA contractors for compliance on behalf of VA.
- B. RMC staff will:
 - 1. Administer contract(s) awarded to support contractor(s).
 - 2. Conduct and assess a random sampling of VA contracts awarded each fiscal year.
 - 3. Contact COs of record for each contract award included in the sampling and inform them the contractor will be assessed for compliance.
 - 4. Perform other duties as provided in the SCRP manual, when available. Duties will include, but are not limited to:
 - a. obtaining contract documents from COs;

- b. providing copies of contract documents (relevant portions) to support contractor(s) once received from COs;
- c. participating in the scheduling of compliance reviews, as necessary; and;
- d. compiling detailed information in a central database regarding each compliance review to include, but not limited to:
 - i. name of contractor reviewed;
 - ii. date of compliance review;
 - iii. type of compliance review;
 - iv. results of compliance review (including rating);
 - v. actions taken by COs as a result of compliance review; and
 - vi. corrective actions taken by contractor reviewed.

C. COs must:

- 1. Modify contracts (bilateral modification) identified in random sampling incorporating third-party access language (subsequent to being contacted by RMC staff). COs must use the language in the attachment when modifying contracts, revising the language, as appropriate, for the specific contract action.
- 2. Include third-party access language as provided in the attachment in all new solicitations, effective immediately.
- 3. Amend outstanding solicitations to include the access language.
- 4. Review and, where appropriate, redact contract documents identified in sampling and provide documents to RMC staff.
- 5. Cooperate fully with RMC staff to ensure compliance reviews are scheduled in a timely manner.
- 6. Perform other duties as provided in the SCRP manual, when available. Duties will include, but are not limited to:

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- a. sending assessment notification form letter to contractor once informed by RMC staff;
 - b. scheduling compliance reviews upon receiving written consent from RMC staff the reviews can be scheduled;
 - c. reviewing compliance review reports and communicating the results of the review, in writing, to the contractor;
 - d. taking action, as appropriate, when contractors are non-compliant; and
 - e. informing RMC staff, in writing, of all actions taken as a result of the compliance review.
- D. COs and other VA officials may request a review of any contractor if they determine a review is warranted based upon reasonable information of possible noncompliance.

IV. POINT OF CONTACT

Please direct questions regarding this IL to Acquisition Policy at (202) 461-0668.

/S/
Jan R. Frye
Deputy Assistant Secretary
for Acquisition and Logistics

Access Records Language

A. Language for Sole-Source and Set-Aside Solicitations Issued under the Veterans First Contracting Program and any other Small Business Program

1. Contracting officers (CO) must include the language provided in paragraph 2. below in Department of Veterans Affairs (VA) solicitations **which are sole-source or set-aside for service-disabled Veteran-owned small business (SDVOSB) concerns, Veteran-owned small business (VOSB) concerns, and all other types of small business concern (e.g. non-Veteran small business, 8(a), Historically Underutilized Business Zone (HUBZone) to include those small businesses with no specific sourcing set asides.** Such language places prospective contractors on notice VA and/or a third party (support contractor) will require access to VA contractor records, as needed, to assess contractor compliance with the limitations on subcontracting requirement included in VA contracts awarded to these types of concerns on a sole-source or set-aside basis.
2. Language should be included in the "Contract Administration Data" section of the solicitation document:

Limitations on Subcontracting - Monitoring and Compliance

This solicitation includes _____ Fill-in _____ (Note: COs must fill in the applicable clause required to be included in sole-source and set-aside acquisitions (e.g., VA Acquisition Regulation (VAAR) 852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set- Aside; VAAR 852.219-11, VA Notice of Total Veteran-Owned Small Business Set-Aside; Federal Acquisition Regulation (FAR) 52.219-14, Limitations on Subcontracting; etc.). Accordingly, any contract resulting from this solicitation will include this clause.

The contractor is advised in performing contract administration functions, the CO may use the services of a support contractor(s) retained by VA to assist in

Attachment

assessing the contractor's compliance with the limitations on subcontracting or percentage of work performance requirements specified in the clause. To that end, the support contractor(s) may require access to contractor's offices where the contractor's business records or other proprietary data are retained and to review such business records regarding the contractor's compliance with this requirement. All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the contractor's business records or other proprietary data reviewed or obtained in the course of assisting the CO in assessing the contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs. Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The contractor is required to cooperate fully and make available any records as may be required to enable the CO to assess the contractor's compliance with the limitations on subcontracting or percentage of work performance requirement.

Note: The above language also must be included, but modified appropriately, in solicitations using full and open competition where FAR 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, is applicable.

B. Language for Competitively Negotiated Solicitations which are not Set-Aside for SDVOSBs or VOSBs, including request for quotations (RFQ) for task/delivery orders or blanket purchase agreements (BPA) which require a statement of work and include any evaluation criteria in addition to price.

1. COs must include the language provided in paragraph 2. below in VA solicitations **which will be issued on a competitively negotiated basis that are not set-aside for SDVOSBs or VOSBs, including RFQs for task/delivery orders or BPAs which require a statement of work and include any evaluation criteria in addition to price.** Such language puts prospective contractors on notice VA and/or a third party (support contractor) will require access to VA contractor records, as needed, to assess contractor compliance with subcontracting commitments incorporated into the contract.

Attachment

2. Language should be included in the "Contract Administration Data" section of the solicitation document:

Subcontracting Commitments - Monitoring and Compliance

This solicitation includes VAAR 852.215-70, Service-Disabled Veteran-Owned and Veteran-Owned Small Business Evaluation Factors, and VAAR 852.215-71, Evaluation Factor Commitments. Accordingly, any contract resulting from this solicitation will include these clauses. The contractor is advised in performing contract administration functions, the CO may use the services of a support contractor(s) to assist in assessing contractor compliance with the subcontracting commitments incorporated into the contract. To that end, the support contractor(s) may require access to the contractor's business records or other proprietary data to review such business records regarding contract compliance with this requirement. All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the contractor's business records or other proprietary data reviewed or obtained in the course of assisting the CO in assessing the contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs. Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The contractor is required to cooperate fully and make available any records as may be required to enable the CO to assess the contractor compliance with the subcontracting commitments.

C. Language for Solicitations Requiring the Inclusion of FAR 52.219-9, Small Business Subcontracting Plan, and VAAR 852.219-9, VA Small Business Subcontracting Plan Minimum Requirements

1. COs must include the language provided in paragraph 2. below in VA solicitations where FAR 52.219-9 and VAAR 852.219-9 are applicable. Such language puts prospective contractors on notice VA and/or a third party (support contractor) will require access to VA contractor records, as needed, to assess contractor compliance with the subcontracting plan.

Attachment

2. Language should be included in the "Contract Administration Data" section of the solicitation document:

Subcontracting Plan - Monitoring and Compliance

This solicitation includes FAR 52.219-9, Small Business Subcontracting Plan, and VAAR 852.219-9, VA Small Business Subcontracting Plan Minimum Requirement. Accordingly, any contract resulting from this solicitation will include these clauses. The contractor is advised in performing contract administration functions, the CO may use the services of a support contractor(s) to assist in assessing the contractor's compliance with the plan, including reviewing the contractor's accomplishments in achieving the subcontracting goals in the plan. To that end, the support contractor(s) may require access to the contractor's business records or other proprietary data to review such business records regarding the contractor's compliance with this requirement. All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the contractor's business records or other proprietary data reviewed or obtained in the course of assisting the CO in assessing the contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs. Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The contractor is required to cooperate fully and make available any records as may be required to enable the CO to assess the contractor compliance with the subcontracting plan.