



# Phase 1 Pre-Proposal Meeting

February 8, 2018

## National Memorial Cemetery of Arizona Phoenix, AZ

# Agenda

- **Contracting & Acquisition Overview**

- ❖ Tammiko Newell, Contracting Officer, VA Office of Construction & Facilities Management

- **Project Scope and Overview**

- ❖ William Peach, Project Manager, VA Office of Construction & Facilities Management.

- **Question & Answer Session**

# Project Team

- **Project Team Organization**
  - Project Manager, CFM
  - Contracting Officer
  - National Cemetery Administration
  - Design Build Team

# Acquisition & Contracting

- **Design/Build Acquisition**
  - **Phase One**
    - Past Performance
    - Relevant Project Experience
    - Specialized experience, technical competence, & Capability to perform
    - Technical Qualifications
  - **Phase Two**
    - Technical Approach
    - Project Management
    - Price/Cost Proposal

# Project Milestones

## Estimated Project Schedule

- Issue Phase 1 RFQ – January 24, 2018
- Issue Phase 2 RFP – April 2018
- Award D/B Contract – September 2018
- NTP – October 2018
- Project Completion – January 2022

# Acquisition & Contracting

- **Acquisition Strategy**
  - The VA is still in the process of determining the method of this procurement
  - Options
    - **Set Aside** (This includes Set-Aside for SDVOSB and VOSB)

# Acquisition & Contracting

- **Proposal Submission (continued)**
  - Evaluation Criteria (examples)
    - Construction Management
    - Past Performance
    - Proposed Schedule
    - Small Business Participation
    - Subcontracting Plan (Large Businesses)
      - » Meeting VA's Socioeconomic Goals
- **Project Magnitude** – \$20,000,000.00 to \$50,000,000.00
- **NAICS 237990** – Other heavy and civil engineering construction; \$33.5 Million (SB)

# Acquisition & Contracting

- **Bid Guarantee**
  - 20% of amount offered and/or
  - \$3,000,000
- **Bonds-Required**
  - Performance
  - Payment
- **Funding**
  - FY18 President's Budget



# Acquisition & Contracting

- Contractor Performance Assessment Reporting System (CPARS)
  - Required for contract awards at \$100K or greater
- RFP Solicitation
  - Not a public bid opening (Sealed bidding)
- Joint Venture and Teaming Arrangements
  - VA's Information Letter 049-06-4
  - Mentor/Protégé – must be approved by SBA prior to submittal of Phase 1 RFQ
- Firm Fixed Price

## Office of Small and Disadvantaged Business Utilization

- **Supreme Court of the United States Decision on Kingdomware Technologies, Inc v. United States**
  - Released: June 16, 2016
  - Determined that the “**Rule of Two**” must be applied to *all competitive* VA contract awards
  - **Background:** VA and lower courts previously interpreted the rule as limited to *open market acquisitions only*

## Office of Small and Disadvantaged Business Utilization

- **What is the “Rule of Two”?**
  - Provides that “... a contracting officer of the Department **shall award contracts**” by restricting competition to Veteran-Owned Small Businesses if the officer **reasonably expects** that at least two such businesses “... **will submit offers** and that the award can be made at a **fair and reasonable price** that offers **best value** to the United States.” 38 U. S. C. §8127(d)

# Office of Small and Disadvantaged Business Utilization

## Impact of Supreme Court Decision

- Expected increase in opportunities for procurement-ready VOSBs
- Emphasizes necessity for comprehensive and robust Market Research that facilitates identification of procurement-ready VOSBs for VA requirements
- Expected increase in volume of Verification applications and increased significance of the Vendor Information Pages (VIP)

# Office of Small and Disadvantaged Business Utilization

## **MyVA Verification Program**

- Implementation of MyVA Verification will improve Veteran experience during the application process
- Increase in demand will create short term stress on the process

## Office of Small and Disadvantaged Business Utilization

### **What can VOSBs Do to Take Advantage of Increased Opportunities?**

- Be Verified
- Have a complete profile in VIP Database
- Register in VA Business Intelligence Tool (VA BIT)
- Obtain Federal Supply Schedule as appropriate
- Register for FedBizOpps (FBO) alerts
- Respond to RFI/Sources Sought
- Attend the National Veterans Small Business Engagement (NVSBE)

# Office of Small and Disadvantaged Business Utilization

## *JOINT VENTURE AGREEMENTS FOR COMPLIANCE WITH FAR, VAAR, AND FEDERAL REGULATIONS*

# Office of Small and Disadvantaged Business Utilization

## Joint Ventures VAAR 819.7003

A joint venture may be considered a SDVOSB or VOSB concern if –

- ❖ At least one member of the joint venture correctly represents itself at the time of offering or quoting as a SDVOSB or VOSB concern
- ❖ Each other concern is small under the size standard corresponding to the NAICS code assigned to the acquisition
- ❖ The joint venture meets the requirements of paragraph 7 of the size standard explanation of affiliates in Federal Acquisition Regulation (FAR)19.101
- ❖ The joint venture meets the requirements of 13 Code of Federal Regulations (CFR) 125.15(b), modified to include veteran-owned small businesses where this CFR section refers to SDVOSB concerns.
- ❖ Verified for eligibility in the VIP database.



# Office of Small and Disadvantaged Business Utilization

## Joint Ventures Continued

- A. Main Characteristics:
  - 1. Co-management
  - 2. Sharing profits and losses
  - 3. Limited duration
- B. Competing as a joint venture:
  - 1. Joint ventures should be formed before submitting offer
  - 2. Agreement should provide for contract performance
- C. Forms of Joint Venture:
  - 1. Partnership
  - 2. Limited Liability Company
  - 3. Corporation (more formalities)

# Office of Small and Disadvantaged Business Utilization

## Joint Ventures - Small Business Set-Asides

- ❖ All partners must be small businesses; and
- ❖ The contractor must meet certain size requirements:
  - Revenue-based size standard contract based on NAICS code
- ❖ CVE Certified

# Office of Small and Disadvantaged Business Utilization

## Joint Ventures - Small Business Set-Asides

- A. The Joint Venture may bid on up to three proposals within 2 years
- B. Government can award to JV if contract:
  - 1. Exceeds ½ of revenue-based size standard
  - 2. Exceeds \$10M (employee-based size standard)
  - 3. All partners must be small, except for SBA-approved Mentor-Protégé relationship

## AFFILIATION

- *is a term used to define a business relationship a small business may have with other firms and the affect that relationship has on that firm's business size status.*
- *It is not Limitation of subcontracting which places limitations on the amount of work that a small business prime contractor can subcontract out.*

# Office of Small and Disadvantaged Business Utilization

## Some Factors to Consider Regarding Affiliation –

### The Ostensible Subcontract Rule Unusual Reliance on a Subcontractor

- Which party will manage the contract?
- Are there discrete tasks to be performed by each party or is there commingling of personnel?
- What party performs the more complex and costly contract functions?
- Which party possesses the requisite background and experience to carry out contract?
- What degree of collaboration was there on the bid or proposal preparation?
- What is the amount of work to be performed by each party?

# Office of Small and Disadvantaged Business Utilization

## Ostensible Subcontracting Continued

- The Contracting Officer determination includes:
  - ✓ If the prime contractor is not capable of doing the work independently, then an ostensible subcontractor arrangement exists.
  - ✓ In looking at the “totality of circumstances” determine if the subcontractor is performing a significant portion of the work
  - ✓ If the CO considers the prime to be LB, (s)he must refer the matter to the SBA for a formal size determination

# Office of Small and Disadvantaged Business Utilization

## Ostensible Subcontracting Continued

- Upon reaching a determination that such an arrangement exists, then the contracting officer must:
  - ✓ Consider the revenue of both firms in determining if they meet the size standard for the procurement
  - ✓ If the combined revenue exceeds the standard, then the company would be considered large business for the purpose of the current procurement.
  - ✓ If the CO considers the prime to be LB, they must refer the matter to the SBA for a formal size determination

# Office of Small and Disadvantaged Business Utilization

## Definitions

### SDVOSB is eligible for award if...

- ❖ Disability is service-connected as defined in 38 U.S.C. 101(16)
- ❖ One or more Service-connected Veterans-
  - ❖ --Own 51% or more of the firm
  - ❖ --Manage and control the daily operations of the firm, or in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran
- ❖ Firm meets the small business size standard under relevant industry (NAICS) Code
- ❖ Listed in VIP

# Office of Small and Disadvantaged Business Utilization

## **SDVOSB/VOSB - Small Business Status Protests**

### **VAAR 819.307**

- Socioeconomic status protests (not size status protests) for SDVOSB/VOSB are decided by the Executive Director (ED), VA Office of Small and Disadvantaged Business Utilization (OSDBU) whether raised by the contracting officer or an offeror.
- The OSDBU decision shall be final.
- OSDBU will decide socioeconomic status protests until execution of an interagency agreement with the Small Business Administration.



# Office of Small and Disadvantaged Business Utilization

## General References

- *13 CFR 121.103, What is Affiliation?*
- *13 CFR 124.513, Joint Ventures and 8(a) Contracts*
- *13 CFR 124.519, Dollar Limits on Sole Source Contracts an 8(a) Company Can Receive*
- *13 CFR 124.520, SBA 8(a) Mentor-Protégé Program*
- *13 CFR 125, Government Contracting Programs*

# Office of Small and Disadvantaged Business Utilization

- [www.va.gov/osdbu](http://www.va.gov/osdbu)
- 202-461-4300
- VA Center for Veterans Enterprise
- 866-584-2344
- [www.VetBiz.gov](http://www.VetBiz.gov)
- 202-618-3765 (Verification Questions)
- [Tyrone.Lassiter@va.gov](mailto:Tyrone.Lassiter@va.gov)
- 202-632-5619

# Questions & Answers

