



INSPECTOR GENERAL

U.S. Department of Defense

FEBRUARY 18, 2020



Audit of DoD Service-Disabled Veteran-Owned Small Business Contract Awards

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





Results in Brief

Audit of DoD Service-Disabled Veteran-Owned Small Business Contract Awards

February 18, 2020

Objective

The objective of this audit was to determine whether the DoD awarded service-disabled veteran-owned small business (SDVOSB) contracts to eligible contractors.

Background

Executive Order 13360 requires heads of Federal agencies to provide the opportunity for service-disabled veteran businesses to significantly increase their participation in Federal contracting. Accordingly, the U.S. Government's goal is to award at least 3 percent of all Federal contracting dollars to service-disabled veteran businesses each year. To accomplish this goal, agency contracting officers may reserve, or set aside, certain procurements for such businesses to allow only SDVOSBs to compete.

The Office of Small Business Programs (OSBP) advises the Secretary of Defense on all matters related to small business, develops small business policy, and provides oversight to ensure all Military Departments and Defense agencies comply with those policies. The OSBP seeks to ensure maximum practicable opportunities for small businesses to participate in DoD procurements, establishes small business procurement goals for the DoD, monitors performance, and implements initiatives to achieve statutory goals across all small business socio-economic categories. Defense Pricing and Contracting (DPC) is responsible for all pricing, contracting, and procurement policy matters in the DoD. To develop small business policy, the DPC collaborates with

Background (cont'd)

the OSBP, which has the lead for advising the Secretary of Defense on all matters related to small business. The OSBP represents the DoD when working with the Small Business Administration (SBA) regarding small business interests. The SBA provides assistance to small businesses and helps service-disabled veterans get contracting opportunities with the Government.

An SDVOSB must be at least 51-percent unconditionally and directly owned by one or more service-disabled veterans. One or more service-disabled veterans must be in control of the management and daily business operations of the business, including both long-term decisions and day-to-day management and administration of operations. The service-disabled veteran must hold the highest officer position and have the managerial experience needed to run the business. The SDVOSB can subcontract between 50 and 85 percent of a set-aside contract depending on the type of work performed under the contract, as defined in the Code of Federal Regulations (CFR).

Contracting officers use the System for Award Management (SAM) database as their primary source of vendor information. Businesses self-represent SDVOSB status in SAM in the socio-economic section of their business profiles and must represent to the contracting officer that they are SDVOSBs when submitting an offer. Contracting officers must verify that the business is in SAM at the time of an offer or quote.

Finding

We found that DoD contracting activities awarded SDVOSB contracts to ineligible contractors and did not implement procedures to ensure compliance with SDVOSB subcontracting requirements after award. Specifically, of the 29 contractors we reviewed, we determined that:

- the DoD awarded 27 contracts, valued at \$827.8 million, to 16 contractors that did not meet the requirements for SDVOSB status. This occurred because the DoD relied on contractors to self-certify as an SDVOSB and



Results in Brief

Audit of DoD Service-Disabled Veteran-Owned Small Business Contract Awards

Finding (cont'd)

did not have additional controls in place for DoD contracting activities to verify the accuracy of those representations.

- DoD contracting personnel also did not verify compliance with the SDVOSB subcontracting requirements for 6 contracts awarded to 3 contractors, valued at \$164.7 million. This occurred because the OSBP did not have procedures in place for contracting personnel to track subcontracting amounts for compliance with the SDVOSB subcontracting limitations.

In addition, the SBA determined through SBA protest procedures that 3 of the 29 contractors were ineligible and we confirmed that those contractors did not always update their status in SAM after notification of ineligibility. This occurred because the OSBP did not coordinate with the SBA to establish controls to ensure that all contracting personnel receive SBA protest results and there is no process in place to ensure that the contractor updates its status.

In sum, we determined that the DoD awarded \$876.8 million in contracts to contractors that are not eligible for the SDVOSB set-aside program; therefore, we consider the \$876.8 million as questioned costs. Without additional controls in place, we concluded that DoD contracting activities will continue to award SDVOSB contracts to ineligible contractors and DoD agencies may be overstating the amounts reported for SDVOSB participation.

Recommendations

We recommend that the OSBP Director:

- coordinate with the Military Departments and Defense agencies and review contractors we determined to be ineligible and contractors that were denied SDVOSB status by the VA Center for Verification and Evaluation, and take action, through the SBA, as necessary;
- implement procedures, in coordination with the Defense Pricing and Contracting (DPC), to require contractors to submit documentation to support their SDVOSB status, as well as other socio-economic statuses, prior to contract award, and perform periodic reviews of SDVOSB contractors;
- implement procedures, in coordination with DPC, for contracting personnel to track subcontracting percentages required for SDVOSB contracts;
- coordinate with DPC, the General Services Administration and the SBA and implement procedures to ensure that contractors update their SAM status if the SBA determines the contractors are ineligible; and
- coordinate with DPC and the SBA and implement procedures to ensure protest results are communicated to contracting personnel DoD-wide, and reinforce procedures to ensure contracting personnel are aware of the protest procedures and their responsibilities.



Results in Brief

Audit of DoD Service-Disabled Veteran-Owned Small Business Contract Awards

Management Comments and Our Response

The OSBP Acting Director disagreed with the report and did not address the specifics of the recommendations in his comments; therefore, the recommendations are unresolved. Additionally, the Acting Director stated that his office was not primarily responsible for procurement policy or contract operations and suggested that Defense Pricing and Contracting or the Component Senior Procurement Executives should address the recommendations. However, according

to DoD Instruction 4205.01, "DoD Small Business Programs (SBP)," the OSBP is responsible for providing small business programs policy advice, proposing Defense-wide initiatives to the Office of the Secretary of Defense, and providing policy oversight of all DoD Component small business program activities. Therefore, we stand by our original conclusions and recommendations and request that the Acting Director provide additional comments in response to the final report that resolve the recommendations. Please see the Recommendations Table on the next page for the status of recommendations.

Recommendations Table

| Management | Recommendations Unresolved | Recommendations Resolved | Recommendations Closed |
|-----------------------------------|--|--------------------------|------------------------|
| Office of Small Business Programs | 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j | None | None |

Please provide Management Comments by March 18, 2020.

Note: The following categories are used to describe agency management's comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – OIG verified that the agreed upon corrective actions were implemented.



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

February 18, 2020

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION
AND SUSTAINMENT
DIRECTOR, DOD OFFICE OF SMALL BUSINESS PROGRAMS
AUDITOR GENERAL, DEPARTMENT OF THE NAVY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
AUDITOR GENERAL, DEPARTMENT OF THE AIR FORCE**

**SUBJECT: Audit of DoD Service-Disabled Veteran-Owned Small Business Contract Awards
(Report No. DODIG-2020-063)**

This final report provides the results of the DoD Office of Inspector General's audit. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report.

This report contains 10 recommendations that are considered unresolved because the Office of Small Business Programs Acting Director disagreed with the report. Therefore, as discussed in the Recommendations, Management Comments, and Our Response section of this report, these recommendations will remain unresolved until an agreement is reached on the actions to be taken to address the recommendations. Once an agreement is reached, the recommendations will be considered resolved but will remain open until adequate documentation has been submitted showing that the agreed-upon action has been completed. Once we verify that the action is complete, the recommendations will be closed.

DoD Instruction 7650.03 requires that recommendations be resolved promptly. Therefore, please provide us within 30 days your response concerning specific actions in process or alternative corrective actions proposed on the recommendations. Your response should be sent to followup@dodig.mil.

We appreciate the cooperation and assistance received during the audit. Please direct questions to me at [REDACTED].

A handwritten signature in black ink, reading "Theresa S. Hull", is positioned above the printed name.

Theresa S. Hull
Assistant Inspector General for Audit
Acquisition, Contracting, and Sustainment

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Introduction

Objective

The objective of this audit was to determine whether the DoD awarded service-disabled veteran-owned small business (SDVOSB) contracts to eligible contractors.

See Appendix A for our scope and methodology and the list of prior audit reports.

Background

Service-Disabled Veteran-Owned Small Business Program

Executive Order 13360 requires heads of Federal agencies to provide the opportunity for service-disabled veteran businesses to significantly increase their participation in Federal contracting.¹ Accordingly, the Government's goal is to award at least 3-percent of all Federal contracting dollars to service-disabled veteran businesses each year. To accomplish this goal, agency contracting officers may reserve, or set aside, certain procurements for such businesses. According to the Code of Federal Regulations (CFR), a service-disabled veteran means a veteran with a disability that is service-connected.²

The Small Business Act requires the Government to provide the maximum practicable opportunities in its acquisitions to small businesses, including SDVOSBs.³ The Small Business Act established the Office of Small and Disadvantaged Business Utilization, redesignated as the Office of Small Business Programs (OSBP). The primary responsibility of the DoD OSBP is to advise the Secretary of Defense on all matters related to small business. The DoD OSBP is required to develop small business policy and provide oversight to ensure compliance by all Military Departments and Defense agencies. The SDVOSB program is one of the DoD OSBP areas of responsibility.

The Federal Acquisition Regulation (FAR) states that contracting officers may set aside solicitations to allow only SDVOSBs to compete.⁴ The FAR requires no separate justification or determination and findings to set aside a contract action for SDVOSBs.⁵

¹ Executive Order 13360, "Providing Opportunities for Service-Disabled Veteran Businesses to Increase Their Federal Contracting and Subcontracting," October 26, 2004.

² 13 CFR sec. 125.8 (2011).

³ Public Law 85-536, "Small Business Act," as amended, December 23, 2016.

⁴ Federal Acquisition Regulation (FAR) 6.206, "Set-asides for service-disabled veteran-owned small business concerns," January 13, 2017.

⁵ 13 CFR sec. 121.105, states that a business concern can be an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative organized for profit, with a place of business located in the United States, and which operates primarily within the United States.

Office of Small Business Programs

The OSBP, under the authority of the Office of the Under Secretary of Defense for Acquisition and Sustainment, represents the DoD in working with the Small Business Administration (SBA), the Department of Commerce, and other Federal agencies regarding small business interests. The OSBP is the focal point for all policy, practice, and procedures relating to small business programs within the DoD. Those responsibilities include developing policies, making recommendations, and issuing guidance on DoD plans, programs, and requirements; developing plans, programs, procedures, goals, and objectives; initiating actions and taskings to ensure DoD Components adhere to DoD policies; and conducting reviews and evaluating programs to ensure adherence to approved policies and standards. In addition, the OSBP has the responsibility to ensure maximum practicable opportunities for small businesses to participate in DoD procurements, establish small business procurement goals for DoD buying commands, monitor performance and implements initiatives to achieve statutory goals across all small business socio-economic categories, including the SDVOSB program. The OSBP reported that the DoD awarded 46,175 SDVOSB contracts, valued at \$8.8 billion, in FY 2017, and 52,211 SDVOSB contracts, valued at \$10.3 billion, in FY 2018, which represents 3.23 percent and 3.47 percent participation in DoD contracting by SDVOSBs, respectively.

Defense Pricing and Contracting

Defense Pricing and Contracting (DPC) is responsible for all pricing, contracting, and procurement policy matters in the DoD. To develop small business policy, the DPC collaborates with the OSBP, which has the lead for advising the Secretary of Defense on all matters related to small businesses.

Small Business Administration

The SBA provides assistance to small businesses through four programmatic functions: access to capital, entrepreneurial development, government contracting, and advocacy. Part of the SBA's role is to help disabled veteran businesses get contracting opportunities; this includes limiting competition for certain contracts to businesses that are SDVOSBs. The Government's goal is to award at least 3 percent of all Federal contracting dollars to SDVOSBs each year.

Requirements for SDVOSBs

In accordance with the CFR, an SDVOSB must be at least 51-percent unconditionally and directly owned by one or more service-disabled veterans.⁶ In addition, one or more service-disabled veterans must be in control of the management and daily

⁶ 13 CFR sec. 125.9 (2011).

business operations of the business. This includes both long-term decision making and the day-to-day management and administration of the business operations. A service-disabled veteran must hold the highest officer position (usually president or chief executive officer (CEO)) and must have managerial experience to the extent and complexity needed to run the business. In the case of a partnership, one or more service-disabled veterans must serve as general partners, with control over all partnership decisions. Limited liability companies must include one or more service-disabled veterans as managing members, with control over all decisions of the limited liability company.

Requirements for SDVOSB Subcontracting

In accordance with the CFR, an SDVOSB can subcontract part of a set-aside contract provided it meets the defined limitations.⁷ Specifically, in the case of a contract for services (except construction), the SDVOSB must spend at least 50 percent of the cost of contract performance incurred for personnel on their employees or employees of other SDVOSBs. In the case of a contract for general construction or special trade contractors, the SDVOSB must spend at least 15 or 25 percent, respectively, of the cost of contract performance incurred for personnel on their employees or employees of other SDVOSBs. Lastly, in the case of a contract for procurement of supplies or products, the CFR requires the SDVOSB prime contractor or other SDVOSBs to perform at least 50 percent of the cost of manufacturing the supplies or products (not including the cost of materials).

Contractors Self-Represent SDVOSB Status to the DoD

According to the FAR, at the time an SDVOSB submits its offer, it must represent to the contracting officer that it is an SDVOSB.⁸ The FAR also states that contracting officers should use the System for Award Management (SAM) database, managed by the U.S. General Services Administration (GSA), as their primary source of vendor information.⁹ Businesses input their own business information in their SAM profile and self-represent if they are an SDVOSB.

The FAR requires contractors to register in SAM to establish a common source of vendor data for the Government. The FAR states that offerors are required to be in SAM at the time of an offer or quote to comply with the annual representations and certifications requirements and that the contracting officers must verify that the offeror or quoter is in SAM at the time of an offer or quote.¹⁰

⁷ 13 CFR sec. 125.6 (2011).

⁸ FAR 19.1403, "Status as a service-disabled veteran-owned small business concern," January 13, 2017.

⁹ FAR 13.102, "Source list," July 2, 2015.

¹⁰ FAR 4.11, "System for Award Management," October 26, 2018.

Department of Veterans Affairs Verification Program

For Department of Veterans Affairs (VA) procurements, the VA Secretary, in accordance with Public Law 109-461, is required to maintain a database of small businesses owned and controlled by veterans and the veteran owners of such businesses.¹¹ In maintaining the database, the Secretary must verify that each small business listed in the database is owned and controlled by veterans and, in the case of a veteran who indicates a service-connected disability, verify the service-disabled status of the veteran. The database is publicly available, including to all Federal departments and agencies.

To meet the requirements of Public Law No. 109-461, the VA established the Vendor Information Pages (VIP) database, which the VA Center for Verification and Evaluation (CVE) manages. The CVE verifies SDVOSBs according to the tenets identified in title 38 of the Code of Federal Regulations, which address veteran eligibility, ownership, and control as determined in accordance with the regulation established by the Small Business Administration.¹²

Department of Veterans Affairs Beneficiary Records

The VA maintains a system that contains information regarding applicants for and beneficiaries of benefits administered by the Veterans Benefits Administration, which serves as the official record for veterans claims processing, management, adjudication, and appeals.¹³ The VA gathers or creates these records to enable it to administer statutory benefits programs to veterans, Service members, and Reservists — and their spouses, surviving spouses, and dependents — who file claims for a wide variety of Federal veteran's benefits.

The Beneficiary Identification Records Locator Subsystem is an electronic information system that contains veteran-specific information. The system is administered by the Veterans Benefits Administration and contains information that is entered when a veteran applies for benefits from the VA, such as compensation and pension, education, and medical benefits. The system provides an efficient method to confirm veteran information, such as character of service, service disability confirmation, and information about a surviving spouse.

Prior Audit on DoD Contractor SDVOSB Status

DoD OIG Report No. DODIG-2012-059, "Inadequate Controls Over the DoD Service-Disabled Veteran-Owned Small Business Set-Aside Program Allow Ineligible Contractors to Receive Contracts," February 29, 2012, found that controls over

¹¹ Public Law 109-461, "The Veterans Benefits, Health Care, and Information Technology Act of 2006," December 22, 2006.

¹² 38 CFR sec. 74 (2018).

¹³ 13 CFR sec. 125 (2011).

¹³ Name of the VA system is Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records – VA.

the DoD SDVOSB set-aside program were not adequate to ensure that only eligible SDVOSBs obtained set-aside and sole-source contracts. Specifically, DoD contracting activities awarded 6 contracts, valued at \$1.9 million, to 5 ineligible contractors, and 27 contracts, valued at \$340.3 million, to 18 contractors that potentially misstated their SDVOSB status. Of the 18 contractors that potentially misstated their status, 6 contractors were denied SDVOSB status by the CVE, 5 contractors could not be verified by the CVE, and 7 contractors were not reviewed by CVE but found to have misstated their SDVOSB status to DoD through the OIG's independent evaluation of each contractor's eligibility for SDVOSB contract opportunities. These problems with SDVOSB contracts occurred because the DoD relied on contractors to self-represent their SDVOSB status without confirming the accuracy of the representations. The DoD did not have a mechanism in place to ensure that contractors receiving set-aside and sole-source contract awards met the applicable requirements for SDVOSBs. In addition, the only control in place to verify contractors' SDVOSB status was to check the Government registry for the contractors' self-representation, and this control was not always followed.

Review of Internal Controls

DoD Instruction 5010.40 requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls.¹⁴ We identified internal control weaknesses related to awarding SDVOSB contracts that allowed ineligible contractors to receive SDVOSB contract awards. Additionally, we identified weaknesses related to ensuring that SDVOSBs update their SAM profiles when notified they are ineligible by SBA and weaknesses related to compliance with subcontracting limitations. We will provide a copy of the report to the senior official responsible for internal controls at OSBP.

¹⁴ DoD Instruction 5010.40, "Managers' Internal Control Program Procedures," May 30, 2013.

Finding

DoD Awarded SDVOSB Contracts to Ineligible Contractors

DoD contracting activities awarded SDVOSB contracts to ineligible contractors and did not implement procedures to ensure compliance with SDVOSB subcontracting requirements after award. Specifically, of the 29 contractors we reviewed, we determined that:

- DoD contracting personnel awarded 27 contracts, valued at \$827.8 million, to 16 contractors that did not have a service-disabled veteran as the owner or highest ranking officer in the company or whose publically available information and contracting documentation did not support that the contractor met the requirements for SDVOSB status.¹⁵ This occurred because DoD contracting personnel relied on contractors to self-certify as an SDVOSB and did not have additional controls in place for DoD contracting activities to verify the accuracy of those representations before awarding SDVOSB set-aside or sole-source contracts.¹⁶
- DoD contracting personnel also did not verify compliance with the SDVOSB subcontracting requirements for 6 contracts, awarded to 3 contractors, valued at \$164.7 million. This occurred because OSBP did not have procedures in place for contracting personnel to track subcontracting amounts for compliance with the SDVOSB subcontracting limitations.¹⁷

In addition, the SBA determined through SBA protest procedures that 3 of the 29 contractors we reviewed were ineligible regarding either their size or status and those contractors did not always update their status in SAM after notification by the SBA of ineligibility. This occurred because the OSBP did not coordinate with the SBA to establish controls to ensure that all contracting personnel receive SBA protest results and there is no process in place to ensure that the contractor updates its status.

Without controls in place, DoD contracting activities will continue to award SDVOSB contracts to ineligible contractors. As a result, funds intended to support the U.S. veterans with disabilities that were incurred or aggravated during active

¹⁵ 13 CFR sec. 125 (2011).

The \$827.8 million is comprised of 27 contracts total dollar values which includes not to exceed dollar values for multiple award contracts and contract ceiling amounts.

¹⁶ FAR Subpart 13.1, "Procedures", July 2, 2015.

¹⁷ 13 CFR sec. 125.6 (2011).

service are not going to eligible SDVOSBs. The DoD awarded \$876.8 million in contracts to contractors that are not eligible for the SDVOSB set-aside program; therefore, we consider the \$876.8 million

The DoD awarded \$876.8 million in contracts to contractors that are not eligible for the SDVOSB set-aside program.

as unsupported questioned costs.¹⁸ In addition, DoD agencies may be overstating the amounts reported for SDVOSB participation in DoD contracts and not meeting their goal of having at least 3 percent of all prime contracts and subcontracts for each fiscal year awarded to SDVOSBs.

DoD Process for Awarding Contracts is Not Adequate to Ensure Awards to Eligible Contractors

DoD contracting activities awarded SDVOSB contracts to contractors that did not have a service-disabled veteran as the owner and highest ranking officer in the company or whose publically available information and contracting documentation did not support that they met the requirements for SDVOSB status. Furthermore, contracting personnel did not perform the oversight necessary to verify compliance with the SDVOSB subcontracting requirements.¹⁹

According to the FAR, DoD contracting officers are required to confirm that a contractor self-certified as an SDVOSB in SAM at the time an SDVOSB submits its offer.²⁰ The DoD relies solely on the self-certification process for contractors to identify their SDVOSB status with no additional controls in place to verify that contractors comply with the CFR requirements prior to awarding SDVOSB contracts.²¹

DoD Contractors Did Not Meet SDVOSB Status Requirements

DoD contracting activities awarded 27 contracts, valued at \$827.8 million, to 16 contractors that did not have a service-disabled veteran as the owner and highest ranking officer of the company or whose publically available information and contract documentation did not support that the contractor met the requirements for SDVOSB status. The CFR requires that an eligible SDVOSB be at least 51-percent owned by one or more service-disabled veteran and one or

¹⁸ The \$876.8 million comes from 1) the \$827.8 million in contracts awarded to contractors that did not have a service-disabled veteran as the owner or highest ranking officer in the company or whose publically available information and contracting documentation did not support that the contractor met the requirements for SDVOSB status and 2) \$49 million addressed in the SBA section of the report where we identified a contract that the DoD awarded after the SBA determined a contractor was other than small, which does not allow the contractor to qualify for the socioeconomic set aside programs.

¹⁹ 13 CFR sec. 125.15 and 125.6 (2011).

²⁰ FAR 13.102, "Source list," July 2, 2015.

²¹ 13 CFR sec. 125.15 (2011).

more service-disabled veteran must control the management and daily business operations.²² These contractors either did not have a service-disabled veteran associated with the company as the owner or highest ranking officer, according to VA beneficiary records, or the information obtained from various contractor databases, state business licenses, other publicly available resources, and contract documentation did not support that a service-disabled veteran is the majority owner, highest ranking officer, or manages and controls the long-term decision making and day-to-day operations. The following three examples outline instances where contractors were awarded SDVOSB contracts but did not meet the requirements for an SDVOSB award.

Contractor A

Contractor A received a \$5 million SDVOSB contract based on the contractor's self-representation of SDVOSB status in SAM. However, we were unable to confirm through VA data that the individual identified as the president in SAM was a service-disabled veteran. Specifically, the VA data confirmed the individual was a veteran but not a service-disabled veteran, and the VA Office of Inspector General was unable to validate whether the individual was a service-disabled veteran. Therefore, we determined that Contractor A did not qualify for SDVOSB status.

In addition, Contractor A's SAM profile is not accurate. The president of Contractor A passed away after the contract award, and the contractor's website now lists another individual as the president. The VA confirmed that the new president is not a service-disabled veteran, and though Contractor A updated its SAM profile in November 2018, it still identified the deceased individual as the president and represented itself as an SDVOSB. Because the current president is not a service-disabled veteran, Contractor A should be excluded from bidding on future SDVOSB contracts; however, that information is not accurately reflected in the contractor's current SAM profile.

Contractor B

Contractor B received three SDVOSB contracts, valued at \$209.6 million. However, evidence did not exist to support that a service-disabled veteran was the majority owner and highest ranking officer.

Contractor B received three SDVOSB contracts, valued at \$209.6 million. However, we determined that evidence did not exist to support that a service-disabled veteran was the majority owner and highest ranking officer or in control of the company.

Specifically, Contractor B's state business license presented all members of the company as equal partners, each holding the title of member. Additionally, only

²² 13 CFR sec. 125 (2011).

one member of Contractor B was a service-disabled veteran, and lived over 2,000 miles away from the contractor's location. Therefore, we concluded that Contractor B was not an SDVOSB and was not eligible to receive SDVOSB contracts.

Since our initial determination, Contractor B has identified two other individuals as service-disabled veterans that are majority owners and highest ranking officers, in place of the previous service-disabled veteran. Specifically, the second service-disabled veteran associated with Contractor B, who took over after the previous service-disabled veteran's death, held the position from June 2012 until August 2018, and the third service-disabled veteran held the position from August 2018 to present. During a preliminary review, Contractor B identified the second service-disabled veteran as the new majority owner and CEO in SAM, SBA's Dynamic Small Business Search (DSBS), and the company's website.²³ However Contractor B's state business license still presented all members of the company as equal, each holding the title of Governor, and did not support that Contractor B qualified as an eligible SDVOSB because a service-disabled veteran was not the majority owner and highest ranking officer or in control of the company. Contractor B identified a third service-disabled veteran as the CEO in SAM and DSBS and the VA confirmed the individual's service-disabled veteran status. Again, Contractor B's state business license identified seven members of the company and indicated that all seven members were equal and held the title of Governor, which did not support that the service-disabled veteran was the majority owner and highest ranking officer or in control of the company. Additionally, all of the information reviewed from government databases and publicly available resources appeared to be similar to the information obtained throughout our review of Contractor B, with the only significant change being that the company substituted another individual for the previous service-disabled veteran in the publicly available sources. Furthermore, the current service-disabled veteran is the third individual that Contractor B has identified as the owner and highest ranking officer since we first reviewed the company in 2012. In the SDVOSB program a service-disabled veteran is required to be the majority owner *and* highest ranking officer; *and* have control over the management and daily business operations of the company; therefore, the rate of turnover for this position contributed to our conclusion that Contractor B did not meet these requirements. Lastly, at all points in time during our review of Contractor B, at least five of the other members of the company who were not service-disabled veterans remained consistent, indicating that these individuals play a more integral role within the company and further underscoring that Contractor B did not qualify for SDVOSB status.

²³ The Dynamic Small Business Service (DSBS) is a tool contracting officers use to identify potential small business contractors for upcoming contracting opportunities.

Contractor C

Contractor C received a \$33,192 SDVOSB contract; however we determined that evidence did not exist to support that a service-disabled veteran was the majority owner and highest ranking officer or in control of the company. Specifically, we were unable to confirm through the VA data that the identified president and project lead was a service-disabled veteran. The VA data confirmed that the individual was a veteran but did not include a service-connected rating percentage, and the VA Office of Inspector General was unable to validate whether the individual was a service-disabled veteran. However, we did identify that the principal director of operations was a service-disabled veteran. In addition, Contractor C's address was a Colorado residential property owned by the president, while the service-disabled veteran, the principal director of operations, lived 1,012 miles away in Wisconsin. Furthermore, the president signed the cover letter for Contractor C's proposal, certifying that he could legally bind the company in contractual negotiations as an officer of the company and that the service-disabled veteran was an alternate contact. Contractor C's proposal also identified that the president of the company would serve as the primary director and project manager for the project, while the service-disabled veteran held the position of Scientist/Quality Development and would serve as the Project Supervisor. Therefore, we determined that Contractor C was not an eligible SDVOSB because the VA could not confirm the service-disabled veteran status of the highest ranking officer and individual in control of the company and because the service-disabled veteran that was identified was not the highest ranking officer or in control of the company.

DoD Contractors Denied SDVOSB Status by the Department of Veterans Affairs

Of the 29 contractors we reviewed, the VA CVE previously denied SDVOSB status for 17 of the contractors. In accordance with Public Law, the Director of the CVE approves or denies SDVOSBs according to the tenets found in the CFR that address veteran eligibility, ownership, and control.²⁴ The VA requires contractors to have their SDVOSB status verified by the CVE before obtaining SDVOSB contracts. However, the DoD does not have a similar requirement or verification process, and relies on contractors to self-certify their SDVOSB status for DoD contracts in SAM.

We identified that 11 of the 17 contractors in our sample that were denied by the CVE could not be validated as eligible based on publicly available information, VA data, and contract documentation reviewed. However, our reviews were limited to information that could be obtained through publicly available resources and the CVE's reviews are based on additional documentation the contractor is required

²⁴ 38 CFR sec. 74 (2018).

to provide to support its SDVOSB status, such as tax documents and operating agreements. In addition, the CVE was not able to provide us documentation on the specific reasons it denied these contractors in the past because it no longer had the documentation. Therefore, since the CVE's reviews were based on additional documentation we did not have access to, it's likely that all 17 contractors that were denied SDVOSB status by the CVE were also not eligible to receive DoD SDVOSB awards. The DoD OSBP Director should review all 17 contractors that received DoD SDVOSB contracts but were denied SDVOSB status by the CVE to determine if it meets the requirements for SDVOSB status. In addition, the OSBP, in coordination with the Military Departments and Defense agencies, should take action through the SBA, as appropriate, against any contractors found to have misrepresented their SDVOSB status to the DoD to obtain contracts.

DoD Needs Additional Controls to Verify SDVOSB Status Before Awarding Contracts

Contractors are not eligible for SDVOSB contracts unless a service-disabled veteran is the majority owner and highest ranking officer in the company. Because publicly available information and contract documentation does not always provide enough evidence to support that contractors are owned and controlled by one or more service-disabled veterans, the DoD needs more detailed processes and procedures to verify that contractors meet the requirements to compete for SDVOSB contracts.²⁵ The DoD relies on the contractor to self-certify its status in SAM, but there are no requirements for contracting personnel to further verify the service-disabled veteran status. The DoD OSBP Director, in coordination

The DoD relies on the contractor to self-certify its status in SAM, but there are no requirements for contracting personnel to further verify the service-disabled veteran status.

with the Military Departments and Defense agencies, should review the 16 contractors we determined to be ineligible for the SDVOSB contract awards and take action to protest contractors through the SBA, as necessary.

To ensure that the DoD awards contracts to eligible contractors and confirms the accuracy of the SDVOSB status reported in SAM, the DoD OSBP Director, in coordination with DPC, should implement procedures to require contractors to submit documentation to support the owner and highest ranking officer's service-disabled veteran status when submitting proposals for SDVOSB contracts. Additionally, the procedures should require contractors to submit documentation that supports that they meet the requirements for SDVOSB concerns regarding

²⁵ 13 CFR sec. 125 (2011).

majority ownership and management and control of the long-term decisions and daily business operations. For ongoing contracts where eligibility was not verified at the time of award, the DoD OSBP Director, in coordination with DPC, should also implement procedures for the Services' Small Business Offices to perform periodic reviews of contractors that have obtained SDVOSB contracts to determine if those contractors meet the SDVOSB eligibility requirements and coordinate with the applicable contracting officer to protest the contractors that appear to be ineligible.

SDVOSB Subcontracting Limitations

DoD contracting personnel did not perform oversight for 6 contracts, valued at \$164.7million, for 3 contractors to ensure the contractors complied with the SDVOSB subcontracting requirements after award. The CFR states that an SDVOSB prime contractor can subcontract part of an SDVOSB contract provided that the contractor spends at least a certain percentage of the cost of contract performance incurred for personnel on the SDVOSBs employees or the employees of other SDVOSBs, depending on type of contract.²⁶ However, the DoD does not have procedures in place to track the amount or percentages that are subcontracted to ensure compliance. The following two examples outline instances where contractors were awarded SDVOSB contracts but the DoD did not provide oversight to ensure that the subcontracting requirements were met.

Contractor D

Contractor D received one SDVOSB contract, valued at \$50 million that did not appear to comply with subcontracting limitations. The DoD awarded this contract for general construction, requiring Contractor D to spend at least 15 percent of the cost of contract performance incurred for personnel on its employees or employees of other SDVOSBs. Neither of the two subcontractors identified in Contractor D's proposal were represented as SDVOSBs in SAM; therefore, Contractor D was required to spend the entire 15 percent of the cost of the contract on its own employees. Further, Contractor D's proposal expressed that the company values partnering with its subcontractors and planned to subcontract multiple portions of the contract, and Contractor D's organization chart provided with the proposal identified multiple positions that were either held by subcontractors or not yet assigned. In addition, we only identified two individuals as members of Contractor

²⁶ 13 CFR sec. 125.6 (2011).

In the case of a contract for services (except construction), the SDVOSB must spend at least 50 percent of the cost of contract performance incurred for personnel on their employees or employees of other SDVOSBs. In the case of a contract for general construction or special trade contractors, the SDVOSB must spend at least 15 or 25 percent, respectively, of the cost of contract performance incurred for personnel on their employees or employees of other SDVOSBs. Lastly, in the case of a contract for procurement of supplies or products, the CFR requires the SDVOSB prime contractor or other SDVOSBs to perform at least 50 percent of the cost of manufacturing the supplies or products (not including the cost of materials).

D through publicly available information, indicating that the 15-percent limit must be fulfilled by work performed by the two individuals. Additionally, the contracting officer was unable to provide documentation to support that oversight was performed to ensure compliance with the subcontracting limitations. Therefore, it did not appear that Contractor D complied with the subcontracting requirements for this contract.

Contractor D was a joint venture between one SDVOSB contractor and one non-SDVOSB contractor, and the CFR joint venture requirements also applied to this contract.²⁷ Specifically, the CFR states that at least 51 percent of the net profits earned by the joint venture must be distributed to the SDVOSB. To comply with this requirement, the SDVOSB joint venture partner, which is only one of the four contractors identified as performing work under the contract, must retain at least 51 percent of the net profits earned. Because the contracting officer could not provide documentation to support the amounts Contractor D paid to its subcontractors, we are unable to determine that Contractor D complied with the joint venture requirements. Therefore, the DoD OSBP Director, in coordination with DPC, should implement procedures requiring contracting personnel to track and monitor the amounts SDVOSBs pay to non-SDVOSB joint venture partners throughout contract performance to ensure that contractors do not exceed the required net profit limitations, as defined in the CFR.

Contractor E

Contractor E received four SDVOSB contracts, valued at \$19.7 million, that did not comply with subcontracting limitations. These contracts required that Contractor E spend at least 25 percent of the cost of contract performance incurred for personnel on its employees or employees of other SDVOSBs. However, Contractor E subcontracted with another company that did not represent SDVOSB status in SAM. According to contracting personnel, the subcontractor completed a considerable portion of the work, and it was common for the contracting officer to interact with the subcontractor instead of the SDVOSB prime contractor. Additionally, employees of the prime contractor did not attend the preproposal conference, however subcontractor employees did, which further supports the lack of involvement of the SDVOSB. Contracting personnel stated that it was not possible to verify subcontracting limitations for SDVOSB contracts because they generally do not track these amounts. Additionally, contracting personnel identified that an employee of the subcontractor was the project manager who completed the day-to-day tasks, even though the SDVOSB eligibility requirements specify that

Contractor E received four SDVOSB contracts, valued at \$19.7 million, that did not comply with subcontracting limitations.

²⁷ 13 CFR sec. 125.15 (2011).

a service-disabled veteran is required to manage and control the daily business operations. Based on the extent of subcontractor involvement and the fact that contracting personnel did not monitor subcontractor performance, Contractor E did not appear to comply with the subcontracting limitations. Therefore, Contractor E would also not be an eligible SDVOSB.

DoD Needs Additional Controls to Track Subcontracting Percentages For SDVOSB Compliance

The DoD does not have assurance that SDVOSBs that subcontract work to other companies still meet the requirements of an eligible SDVOSB. Specifically, the DoD does not have procedures in place to monitor subcontracting percentage requirements throughout the life of the contract. Without these procedures, the DoD cannot ensure that the contractor spends the required percentage of the costs incurred for personnel on the SDVOSBs employees or the employees of other SDVOSBs, depending on the type of contract. Therefore, the DoD OSBP Director, in coordination with DPC, should implement procedures requiring contracting personnel to track and monitor the amounts SDVOSBs spend on non-SDVOSB subcontractors throughout contract performance to ensure contractors do not exceed the required limitations defined in the CFR.

DoD Contractors Determined Ineligible by SBA

The SBA determined that 3 of the 29 contractors were ineligible through protests on either size or status. The CFR states that contracting officers or other interested parties may submit a protest to the SBA if they question a contractor's eligibility for SDVOSB status.²⁸ The SBA then determines if the contractor complied with the SDVOSB requirements. If the SBA determines a contractor is ineligible for SDVOSB status, the contractor cannot obtain SDVOSB contracts until it overcomes the reasons for the protest and the SBA verifies the contractor as eligible. If the SBA determines a contractor is other than small, the contractor also does not qualify as an SDVOSB. If found ineligible, contractors are required to remove their SDVOSB status from their SAM profile after the protest however, two of these three contractors did not. Furthermore, the SBA Office of Hearings and Appeals overturned one of these protest decisions because the original protest was not filed in accordance with the time requirements for filing a protest even though the contractor was not an eligible SDVOSB.²⁹ The following three contractors we reviewed, the SBA concluded were not eligible based on size or service-disabled

²⁸ 13 CFR sec. 125.24 (2011).

²⁹ 13 CFR sec. 125 (2011), states that any interested party can protest the award of an SDVOSB contract on size or status within 5 business days after notification of the apparent successful offeror or after bid opening. The SBA must review the information provided in a protest and make a determination. The protested concern, the protester, or the contracting officer may appeal the SBA's decision to the Office of Hearing and Appeals, who will then make a final determination.

veteran status and the contractors did not always update their status in SAM, which could result in the DoD or other Federal entities inappropriately awarding these contractors SDVOSB contracts.

Contractor F

Contractor F received two SDVOSB contracts, valued at \$145.2 million. The SBA determined that Contractor F was ineligible for SDVOSB contract opportunities after two protests filed in connection with these contracts. Specifically, the SBA received a protest from an unsuccessful offeror questioning Contractor F's SDVOSB status after contract award, and the contracting officer filed another protest with the SBA related to the other contract because the requirements for both contracts were very similar. The SBA found that the contractor did not meet the SDVOSB eligibility requirements at the time of its offer because one or more service-disabled veterans did not control the company. The SBA notified Contractor F and the contracting officer of the ineligible status determination and that Contractor F was not eligible to submit offers on any future SDVOSB procurements. The SBA's decision was effective immediately and final unless overturned by an appeal. Contractor F appealed the SBA's SDVOSB status determination through the Office of Hearings and Appeals (OHA); however, according to the contracting officer, Contractor F lost the appeal because the OHA also found that Contractor F was not an eligible SDVOSB. Therefore, Contractor F cannot submit another offer as an SDVOSB on future SDVOSB procurements unless it overcomes the reasons for the protest and the DoD cannot include these two contracts in the amount reported for SDVOSB participation in DoD contracts. Contractor F still claimed SDVOSB status in SAM and SBA's DSBS despite receiving notification from the SBA that it is not an eligible SDVOSB.

Contractor F still claimed SDVOSB status in SAM and SBA's DSBS despite receiving notification from the SBA that it is not an eligible SDVOSB.

Additionally, documentation provided by the SBA identified that Contractor F was affiliated with another DoD contractor claiming Woman-Owned Small Business status.³⁰ However, the documentation showed that the service-disabled veteran and majority owner of Contractor F, who is a male, owns 52 percent of the affiliated company. The affiliated company was not an eligible Woman-Owned Small Business because the company was not at least 51-percent unconditionally and directly owned by one or more women. According to the contractor's most recent SAM profile, the company still claims Woman-Owned Small Business

³⁰ To be eligible for Women-Owned Small Business status, a business must be a small business, be at least 51 percent owned and controlled by women who are U.S. Citizens, and have women manage day-to-day operations and make long-term decisions.

status despite not meeting the applicable ownership requirements.³¹ Based on these discrepancies, the DoD would benefit from having additional controls over all socio-economic contracting programs that require contractors to self-certify their status. Therefore, the DoD OSBP Director, in coordination with DPC, should conduct a review of all socio-economic contracting programs that require contractors to self-certify their status and, as appropriate, implement procedures requiring contractors to submit documentation to support that they meet the applicable eligibility requirements, including ownership and control, before receiving set-aside and sole-source contracts.

Contractor G

Contractor G received 5 DoD SDVOSB contracts, valued at \$292 million. Additionally, Contractor G received non-DoD SDVOSB contracts that another contractor protested alleging that Contractor G was not an eligible SDVOSB or a small business. The SBA conducted separate reviews for both status and size. The SBA determined that Contractor G met the SDVOSB requirements; however, it found Contractor G to be other than small. If the contractor is not small, the contractor cannot compete for SDVOSB contracts. Based on the size determination, the SBA notified Contractor G that it was ineligible for any procurement or assistance authorized by the Small Business Act unless recertified by the SBA. The SBA informed the contractor that it was responsible for updating all applicable databases, including SAM, to reflect the other than small business status. Contractor G received all but one of the contracts included in our sample before the SBA rendered its decision; however, Contractor G did not change its SAM profile to reflect the decision after receiving notification from the SBA that it was not a small business. Additionally, Contractor G recertified in SAM after the SBA's decision, but still claimed to be a small business and an SDVOSB. Furthermore, the DoD awarded an SDVOSB set aside contract, valued at \$49 million, to Contractor G, after the SBA determined the contractor was no longer eligible as a small business because Contractor G did not update its status in SAM or notify the contracting officer of the decision. DoD contracting personnel rely on SAM to verify SDVOSB status; therefore, the DoD will continue to award set aside contracts to ineligible contractors, unless controls are put in place.

Contractor H

Contractor H received one SDVOSB contract, valued at \$3.6 million, after an extensive status protest history with the SBA. Specifically, the SBA received a protest for a General Services Administration contract questioning Contractor H's SDVOSB status; the SBA found the contractor ineligible because one or more

³¹ 13 CFR sec. 127.200 (2019).

service-disabled veterans did not control Contractor H. The SBA notified Contractor H that it did not comply with the SDVOSB eligibility requirements and was prohibited from submitting offers on future SDVOSB contracts until the contractor proved it had successfully overcome the grounds for the determination or the decision was overturned by appeal. Contractor H appealed the SBA's SDVOSB status determination through the OHA, and the OHA reversed the SBA's original decision because the status protest was untimely. A protest is required to be submitted by the close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.³² Although the OHA overturned the SBA's decision finding Contractor H ineligible based on a timing technicality, we could not confirm that Contractor H resolved the discrepancies identified by the SBA questioning the SDVOSB status. Therefore, while Contractor H technically maintained its SDVOSB status at the time it submitted its proposal on the DoD contract, we concluded that Contractor H did not meet the SDVOSB eligibility requirements.

DoD Needs Additional Procedures to Communicate SBA Determinations

The DoD may continue to award contracts to contractors that the SBA determined to be ineligible because of the lack of controls related to communicating protest results. The FAR requires DoD contracting officers to verify in SAM that contractors self-certify as SDVOSBs.³³ Contractors are

The DoD may continue to award contracts to contractors that the SBA determined to be ineligible because of the lack of controls related to communicating protest results.

responsible for updating their SAM profiles after the SBA upholds a protest and finds them ineligible for future contract opportunities. However, the SBA stated that there is no process in place to ensure contractors update these profiles. Therefore, the DoD OSBP Director should coordinate with DPC, the General Services Administration, and the SBA to implement procedures to ensure that contractors update SAM after the SBA determines the contractors ineligible for SDVOSB contracts.

Additionally, the SBA stated that it only provides the results of a protest to the protested contractor, the contractor who submitted the protest, and the contracting personnel assigned to the contract as required, and do not distribute protest results DoD-wide. The DoD relies on the contractors to police each other by submitting protests to the SBA if they believe a contractor does not meet

³² 13 CFR sec. 125.25 (2011).

³³ FAR 13.102, "Source list," July 2, 2015.

the SDVOSB eligibility requirements. However, since the SBA only provides its findings to the protested contractor, the protestor, and the contracting office that awarded the contract affected by the protest, any additional contracting personnel throughout the DoD and the rest of the Federal government would not be aware that the SBA determined that a contractor pursuing a SDVOSB contract was ineligible to receive the award. Furthermore, if a contract is a multiple award or task order contract, and the SBA finds the contractor ineligible, the contractor can keep the contract; however, the DoD cannot count any new task orders awarded towards its small business goals.³⁴ Therefore, the DoD OSBP Director, should coordinate with DPC and the SBA to implement procedures to ensure that SBA protest results are communicated to contracting personnel DoD-wide when the SBA determines a contractor is not eligible for SDVOSB contracts.

One of our sample contractors was able to keep its SDVOSB status based on a technicality of timeliness despite SBA's evidence that it did not meet eligibility requirements.

Furthermore, one of our sample contractors was able to keep its SDVOSB status based on a technicality of timeliness despite SBA's evidence that it did not meet eligibility requirements. Even though the contractor who protested the award did not file the

protest in a timely manner, the contracting officers could also file a protest at any time during the contract. Therefore, the DoD OSBP Director, in coordination with DPC, should reinforce the procedures to ensure that contracting officers are aware of the protest procedures and their responsibilities.

Conclusion

The DoD will continue to award SDVOSB contracts to ineligible contractors until the DoD OSBP Director implements procedures requiring contractors to submit documentation to support that they meet the requirements of an SDVOSB and have represented their status accurately in SAM. Awards to ineligible contractors will also continue until the DoD OSBP Director coordinates with SBA to ensure protest decisions are communicated DoD-wide when SBA determines that contractors are not eligible for SDVOSB procurements. The DoD awarded \$876.8 million in contracts that are not going to eligible SDVOSBs as intended by the set-aside program; therefore, we consider the \$876.8 million as questioned costs. If the DoD OSBP does not establish procedures to ensure that only eligible contractors receive SDVOSB contracts, the DoD will also be at risk of misreporting the amounts for SDVOSB participation in DoD contracting and not meeting the established socio-economic contracting goals. Furthermore, lack of action regarding ineligible SDVOSBs by the DoD OSBP compromises the integrity and intention of the SDVOSB

³⁴ 13 CFR sec. 125.27(g) (2011).

program, which is to serve veterans with disabilities incurred or aggravated in the line of duty. By not implementing adequate verification procedures for SDVOSB contracts, the DoD OSBP places service-disabled veterans in jeopardy of not receiving contract awards intended for them.

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the DoD Office of Small Business Programs Director:

- a. Conduct a review, in coordination with the Military Departments and Defense agencies, of all 17 contractors that received DoD Service-Disabled Veteran-Owned Small Business set-aside or sole-source contracts but were denied Service-Disabled Veteran-Owned Small Business status by the Department of Veterans Affairs Center for Verification and Evaluation to determine if they meet the requirements for Service-Disabled Veteran-Owned Small Business status. Based on the review, the Director should take action, as appropriate, against any contractors found to have misrepresented their Service-Disabled Veteran-Owned Small Business status to the DoD to obtain contracts by coordinating with the applicable contracting officer to protest, through the Small Business Administration, any contractors that appear to be ineligible.**
- b. Conduct a review, in coordination with the Military Departments and Defense agencies, of all 16 contractors in our sample that received DoD Service-Disabled Veteran-Owned Small Business contracts that we determined to be ineligible Service-Disabled Veteran-Owned Small Businesses to determine if they meet the eligibility requirements. Based on the review, the Director should take action, as appropriate, against any contractors found to have misrepresented their Service-Disabled Veteran-Owned Small Business status to the DoD to obtain set-aside and sole-source contracts by coordinating with the applicable contracting officer to protest, through the Small Business Administration, any contractors that appear to be ineligible.**
- c. Implement procedures, in coordination with Defense Pricing and Contracting, to require contractors to submit documentation to support the owner and highest ranking officer is a service-disabled veteran when submitting proposals for Service-Disabled Veteran-Owned Small Business set-aside and sole-source contracts. Additionally, the procedures should require contractors to submit documentation supporting that they meet the Service-Disabled Veteran-Owned Small Business requirements for majority ownership and management and control of the long-term decisions and daily business operations.**

- d. Implement procedures, in coordination with Defense Pricing and Contracting, for the Services' Small Business Offices to periodically review contractors that have obtained Service-Disabled Veteran-Owned Small Business contracts, where eligibility was not verified at the time of award, to determine if those contractors meet the Service-Disabled Veteran-Owned Small Business eligibility requirements, and coordinate with the applicable contracting officer to protest, through the Small Business Administration, any contractors that appear to be ineligible.**
- e. Implement procedures, in coordination with Defense Pricing and Contracting, requiring contracting personnel to track and monitor the amounts Service-Disabled Veteran-Owned Small Businesses pay to joint venture partners that are not Service-Disabled Veteran-Owned Small Businesses throughout contract performance to ensure that contractors do not exceed the required net profit limitations, as defined by the Code of Federal Regulation.**
- f. Implement procedures, in coordination with Defense Pricing and Contracting, requiring contracting personnel to track and monitor the amounts Service-Disabled Veteran-Owned Small Businesses spend on subcontractors that are not Service-Disabled Veteran-Owned Small Businesses throughout contract performance to ensure that contractors do not exceed the required limitations, as defined by the Code of Federal Regulation.**
- g. Conduct a review of all socio-economic contracting programs that require contractors to self-certify their status and, as appropriate, implement procedures, in coordination with Defense Pricing and Contracting, requiring contractors to submit documentation to support that they meet the applicable eligibility requirements, including ownership and control, before receiving set-aside and sole-source contracts.**
- h. Coordinate with Defense Pricing and Contracting, the General Services Administration, and the Small Business Administration to implement procedures to ensure that contractors update the System for Award Management after the Small Business Administration determines the contractors are ineligible for Service-Disabled Veteran-Owned Small Business contracts.**
- i. Coordinate with Defense Pricing and Contracting and the Small Business Administration to implement procedures to ensure protest results are communicated to contracting personnel DoD-wide when the Small Business Administration determines a contractor is not eligible for Service-Disabled Veteran-Owned Small Business set-aside or sole-source contracts.**

- j. **Reinforce existing procedures, in coordination with Defense Pricing and Contracting, to ensure contracting officers are aware of the protest procedures and their responsibilities.**

DoD Office of Small Business Programs Comments

The OSBP Acting Director disagreed with the report, stating that Defense Pricing and Contracting is responsible for addressing all Pricing, Contracting, and Procurement Policy matters within the DoD, and OSBP is not responsible for procurement policy or contract operations. The Acting Director also stated that neither OSBP nor Defense Pricing and Contracting reviews executed contracts under most circumstances. Additionally, Component Senior Procurement Executives are responsible for contract operations and compliance with procurement policy and should have an opportunity to address specific concerns about contracting officer acceptance of small business representations and surveillance activities to determine compliance with contract terms and conditions. The Acting Director further stated that the SBA is responsible for determining eligibility and ensuring compliance with notifications to adjust representations. Also, requiring additional compliance documentation beyond the SBA's requirements may violate the Administrative Procedures Act or the Federal Procurement Policy Act. The Acting Director recommended that we coordinate with the SBA for their concurrence on the audit findings of SDVOSB ineligibility and contractor compliance.

Our Response

Comments from the Acting Director did not address the specifics of the recommendations; therefore, the recommendations are unresolved. Additionally, while the Acting Director's comments discussed the responsibilities of Defense Pricing and Contracting and Component Senior Procurement Executives, the comments did not acknowledge the OSBP's responsibility over DoD small business programs. According to DoD Instruction 5134.04, "Director of Small Business Programs (SBP)," December 4, 2017, the OSBP is the focal point for all policy, practice, and procedures relating to small business programs within the DoD. The Instruction assigns the OSBP the responsibility to manage and oversee the DoD small business programs, in accordance with DoD Instruction 4205.01, "DoD Small Business Programs (SBP)," June 8, 2016. According to DoD Instruction 4205.01, the OSBP is responsible for providing small business programs policy advice, proposing Defense-wide initiatives to the Office of the Secretary of Defense, and providing policy oversight of all DoD Component small business program activities.

The recommendations in this report request that the OSBP take actions that fall within the scope of these responsibilities. Furthermore, while Defense Pricing and Contracting is responsible for all pricing, contracting, and procurement policy matters in the DoD, Defense Pricing and Contracting responded to the report and stated that it did not plan to provide additional comments because the Office of the Under Secretary of Defense (Acquisition and Sustainment) identified the OSBP as the lead for implementing the report recommendations. Therefore, we stand by our original conclusions and recommendations that the OSBP should coordinate with Defense Pricing and Contracting to implement policies to ensure that DoD contractors meet specific small business program requirements and uphold the integrity of those programs.

Additionally, this report is not only intended to address contract specific issues, but also addresses systemic weaknesses identified within the DoD's use of the SDVOSB program. Therefore, most of the recommendations are intended to request the OSBP to develop a standardized solution to ensure only eligible contractors receive SDVOSB contracts and ensure those contractors follow existing requirements for contract performance. Although the Acting Director requested we provide the Senior Procurement Executives with the opportunity to address specific concerns, many of our recommendations are directed at ensuring consistency among DoD small business contracting practices and compliance with procurement policy. Therefore, we maintain our position that the OSBP should coordinate with Component Senior Procurement Executives to review small business awards and address any concerns related to contractor small business representations and contracting office activities to determine compliance with contract terms.

Furthermore, requesting contractors to provide documentation to demonstrate eligibility, ownership and control, similar to documentation already provided to other Federal agencies to support compliance with SDVOSB requirements, would not violate the Administrative Procedure Act. According to the Act, agencies may collect information to the greatest extent practicable directly from a subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs. The Act also states that agencies may maintain all records that are used in making determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. In addition, the rule making provisions of the Administrative Procedure Act, as outlined in section 553, title 5, United States Code, do not apply to public contracts.

We conclude that the Act allows agencies to collect and maintain relevant and complete information to determine their rights and privileges under the SDVOSB program for the purpose of obtaining contracts, such as documentation required to support that contractors meet the requirements for ownership and control. The OSBP should, in coordination with Defense Pricing and Contracting, the Military Services, and the SBA, implement the recommendations in accordance with the Administrative Procedure Act and other statutory requirements, including the Administrative Procedure Act rule-making procedures, if applicable.

Lastly, we agree that the SBA has authority for determining SDVOSB eligibility and notifying contractors to update their status representations in accordance with protest decisions, which prompted us to meet with SBA officials at various points throughout our audit. SBA officials gave us a detailed overview of their protest process and provided supporting documentation for protested contractors in our sample. In addition to providing the SBA an overview of our audit, we coordinated our final results regarding contractor eligibility and status updates in SAM on February 3, 2020. It is critical that the OSBP coordinate with the Military Services and Defense Agencies to review the specific awards given to potentially ineligible contractors, and take action against any contractors found to have misrepresented their SDVOSB status to DoD through the SBA protest process. SBA officials agreed that any potentially ineligible contractors receiving awards or about to receive awards should go to the SBA for a decision. Therefore, we request that the OSBP Acting Director provide additional comments in response to the final report that resolve the recommendations.

Appendix

Scope and Methodology

We conducted this performance audit from October 2018 through October 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To complete the audit, we evaluated SDVOSB contract awards from FYs 2017 and 2018. We obtained data from the Federal Procurement Data System-Next Generation to identify an SDVOSB universe. We also obtained data from the VA CVE to identify contractors who have been approved through the VA's verification program, removed or withdrawn from the program, and denied SDVOSB status. Lastly, we obtained contractor payment information from the Defense Logistics Agency and the Defense Finance and Accounting Service. The audit team worked with the DoD OIG Data Analytics Team to identify contractors of increased risk through an affiliation algorithm.

Contractor Self-Representations of SDVOSB Status

We obtained Federal Procurement Data System-Next Generation data to evaluate contractor self-representations of SDVOSB status. To narrow the population, we filtered the data to identify FYs 2017 and 2018 SDVOSB contracts only. We worked with the DoD OIG Data Analytics Team to query all SDVOSB contractors that matched the VA CVE lists of approved, removed or withdrawn, and denied contractors. We also worked with the Data Analytics Team to create an affiliation algorithm to identify high-risk contractors that share information, such as bank accounts, passwords, phone numbers, e-mail addresses, and tax identification numbers. Using the affiliation algorithm, we identified contractors that were affiliated. To select our sample of 29 contractors, we used the affiliation data and high dollar value to select 5 contractors that were either approved or had been removed or withdrawn from the VA CVE verification program and 5 contractors that had not completed the verification process. We also selected all 17 contractors with FYs 2017 and 2018 SDVOSB contract actions that were denied SDVOSB status by the VA CVE. Lastly, we included two contractors reviewed during the prior audit that had FYs 2017 and 2018 SDVOSB contract actions.³⁵

³⁵ We selected a total of 30 sample contractors; however, during our review we identified that one contractor was no longer in business and the contract actions included in our sample were not related to our scope of active DoD contracts during FYs 2017 and 2018. Therefore, we removed the contractor from the sample, resulting in a total of 29 sample contractors reviewed.

For each sample contractor, we performed independent research to obtain information necessary to determine whether the contractor appeared to meet the SDVOSB requirements.³⁶ Specifically, we obtained information from sources such as SAM, SBA's DSBS, state license bureaus, LexisNexis, and other public sources. We also consulted with the VA Office of Inspector General to identify the service-disabled veteran status of the majority owner and highest ranked officer. In addition, we obtained contract documentation from the Services and Defense agencies that awarded the contracts included in our sample. We analyzed all information obtained and determined whether it supported that the contractor was eligible for SDVOSB contract awards.

We reviewed the following Federal and DoD criteria.

- Executive Order 13360, "Service-Disabled Veterans Executive Order," October 20, 2004
- Public Law 85-536, "Small Business Act," as amended, December 23, 1966
- Public Law 109-461, "Veterans Benefits, Health Care, and Information Technology Act of 2006," December 22, 2006
- Public Law 111-275, "Veterans Benefits Act of 2010," October 13, 2010
- United States Code, Title 38, "Veterans Benefits," Section 101, "Definitions," October 13, 2010
- 13 CFR Part 125, "Government Contracting Programs," January 1, 2011
- 38 CFR Part 74, "Veterans Small Business Regulations," July 1, 2018
- FAR Subpart 4.11, "System for Award Management," October 26, 2018
- FAR Subpart 6.206, "Set-asides for service-disabled veteran-owned small business concerns," January 13, 2017
- FAR Subpart 9.6, "Contractor Team Arrangements," October 26, 2018
- FAR Subpart 13.102, "Source list," July 2, 2015
- FAR Subpart 19.14, "Service-Disabled Veteran-Owned Small Business Procurement Program," January 13, 2017

Use of Computer-Processed Data

We used computer-processed data throughout the audit; however, we did not rely solely on the data and confirmed the accuracy of the data through source documentation. Specifically, we used data obtained from the Federal Procurement Data System-Next Generation to obtain a universe of all active SDVOSB contracts from FYs 2017 and 2018. We also used data obtained from the VA CVE, the Defense

³⁶ 13 CFR Part 125 (2011)

Logistics Agency, and the Defense Finance and Accounting Service to develop a sample of 29 contractors to determine whether the DoD awarded SDVOSB contracts to eligible contractors.

We evaluated the SDVOSB contractors' status by examining contract files and documentation obtained from public sources such as SAM, the SBA's DSBS, state license bureaus, LexisNexis and other publicly available information. Based on our testing, we determined that the data used to identify the universe of FYs 2017 and 2018 active SDVOSB contracts was not reliable for identifying the total contract values. Therefore, we only relied on the data to select the sample of SDVOSB contractors reviewed.

Use of Technical Assistance

The DoD OIG Data Analytics Team provided assistance with the audit. The Data Analytics Team developed an algorithm that was used to identify high risk contractors and affiliations. We used the resulting information to select a sample of DoD SDVOSB contractors to review for eligibility.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO) issued one report related to VA SDVOSB set-aside awards and two reports related to the VA verification program.

GAO

Report No. GAO-18-648, "Veterans First Program, VA Needs to Address Implementation Challenges and Strengthen Oversight of Subcontracting Limitations," September 24, 2018

The GAO found that the VA conducted limited oversight of contractor compliance with limitations on subcontracting and had few mechanisms for ensuring compliance. Without better oversight, the VA was limited in its ability to detect violations and ensure the goal of Veterans First – to promote opportunities for veteran-owned small businesses – was not undermined.

Report No. GAO-16-129, "Veteran-Owned Small Businesses, VA Improved Its Verification Program but Lacks an Effective Operational Plan for Ongoing Efforts," March 21, 2016

The GAO found that the VA had undertaken multiple efforts to address continuing verification program challenges and long-term goals; however, the agency did not have a comprehensive operational plan for managing these

efforts to completion. Without a detailed operating plan to guide multiple ongoing efforts that is updated on a timely basis, the VA will continue to be at risk for delays in implementing its initiatives and achieving its long-term goals.

Report No. GAO-13-95, "Veteran-Owned Small Businesses, Planning and Data System for VA's Verification Program Need Improvement," January 14, 2013

The GAO found that the VA had made significant changes to its verification process for service-disabled and other veteran-owned small businesses to improve operations and address program weaknesses, but continued to face challenges in establishing a stable and efficient program to verify firms on a timely and consistent basis. Although the VA's Office of Small and Disadvantaged Business Utilization initiated action to develop a strategic plan, the plan lacked performance measures to assess whether desired outcomes were being achieved and had a short-term focus not typically associated with a strategic plan.

Management Comments

Office of Small Business Programs



OFFICE OF THE UNDER SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-3000

MEMORANDUM FOR THE OFFICE OF THE INSPECTOR GENERAL

SUBJECT: Proposed Audit Report of DoD Service-Disabled Veteran-Owned Small Business
Contract Awards D2019-D000AX-0019.000

The DoD Inspector General solicited comments and statements of actions to be taken for subject report. The Office of Small Business Programs (OSBP) appreciates the opportunity to provide feedback to this report, especially regarding the proposed recommendations. At this time OSBP non-concurs with the proposed report for the following primary reasons:

- OSBP is not the office of primary responsibility for procurement policy or contract operations. Defense Pricing and Contracting (DPC) is responsible for addressing all Pricing, Contracting, and Procurement Policy matters within the Department.
- Neither OSBP nor DPC reviews executed contracts under most circumstances. Component Senior Procurement Executives (SPE) are responsible for contract operations compliance with Procurement Policy. SPEs should be provided an opportunity to address specific concerns about contracting officer acceptance of small business representations and surveillance activities to determine compliance with contract terms and conditions.
- The Small Business Administration (SBA) is responsible for determining eligibility and ensuring compliance with notifications to adjust representations. Requiring additional compliance documentation beyond SBA's requirement may violate the Administrative Procedures Act and/or the Federal Procurement Policy Act.

I recommend that your office coordinate with SBA prior to issuing a final report for their concurrence in the audit findings of SDVOSB ineligibility and contractor compliance. Additionally, I request your office provide DPC and component SPEs with specifics for contracts and individuals cited as non-compliant with SDVOSB requirements and procedures, so that they may have an opportunity to respond to the draft report.

My point of contact for subject report is [REDACTED]

A handwritten signature in black ink, appearing to read "J. Scott Baum".

J. Scott Baum
Principal Director, Industrial Policy
Acting Director, OSBP

Acronyms and Abbreviations

| | |
|---------------|---|
| CFR | Code of Federal Regulations |
| CVE | Center for Verification and Evaluation |
| DSBS | Dynamic Small Business Search |
| FAR | Federal Acquisition Regulation |
| OHA | Office of Hearings and Appeals |
| OSBP | Office of Small Business Programs |
| SAM | System for Award Management |
| SBA | Small Business Administration |
| SDVOSB | Service-Disabled Veteran-Owned Small Business |
| VA | Department of Veterans Affairs |



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