

[START OF TRANSCRIPT]

Carla: Welcome, and thank you for joining today's live SBA web conference. Before we begin, please ensure you have opened both the WebEx participant and chat panel by using the associated icon located at the bottom of your screen. Note that all audio connections are muted at this time.

You are welcome to submit written questions during the presentation, and these will be addressed during Q&A. To submit a question, select "all panelists" from the dropdown menu in the chat panel, enter your question in the message box provided and send. If you require technical assistance, please send a chat to the event producer.

With that, I'll turn the conference over to Chris Ishan. Chris, please go ahead.

Chris: Thank you, Carla. Hello everyone, and welcome to SBA's first Wednesday webinar series. Just last week, we celebrated Independence Day and that is the reason we are hosting this session on the second Wednesday this month.

In recognition of those who have sacrificed their lives for our freedom, I would like to share a quote by Ronald Reagan: "Freedom is never more than one generation away from extinction. We didn't pass it on to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same."

Independence Day is a time to celebrate this great nation and honor those who have served our country while dedicating their lives to defend peace and freedom around the world. If you are a veteran or active military, thank you for your service.

On to slide two. For today's session, we'll be focusing on the Service-Disabled Veteran-Owned Small Business Program; and by the end of the program, you should have a better understanding of this topic as well as the resources available to you.

If you are new to our event, this is a webinar series that focuses on getting subject matter experts on specific small business topics such as the SDVOSB program, and having them provide you with the valuable information you can use in the performance of your job.

We appreciate you taking the time to participate in this FY-19 program, and we hope that you benefit from today's session.

Now for a little background on the first Wednesday program, the program was initially created for contracting staff which is why the training was called "11-02 First Wednesday." The 11-02 designated government series for contracting personnel was later dropped to be more inclusive of other GS series as federal agencies increase their requirements for non-11-02s to obtain DAWIA and FAC-C certifications.

Additionally, other federal buying activities, SBA staff, PTAC and SBDC personnel, who after hearing about the training, requested access and were added to list of participants, so that is why SBA's first Wednesday program is aimed at federal government employees and our resources partners like PTACs and SBDCs.

Thank you to those of you who are repeat attendees, and welcome to those of you who are new to the program.

Slide three. As Carla mentioned, I am Chris Ishan and I work as a procurement center representative or PCR in Kansas City, Missouri. Additionally, Ms. Gwen Davis, who is the PCR in Minneapolis, Minnesota, will be reading your questions submitted during the program for our speaker to address at the end of today's session. We also, both, work in government contracting area four, and slide three includes our information.

Slide four. Please note that all lines are on mute. However, you may submit questions or technical issues in the chat box on your screen. Your questions may be submitted any time during today's session by entering them into the chat box, and these questions will be addressed at the end of our speaker's presentation. To make sure your question doesn't get overlooked, please ensure it is addressed to "all panelists" on the dropdown and not just to one individual.

As most of you know, we have transitioned to WebEx and have been informed that some users may experience issues such as a blocked website or other error messages when attempting to access the conference login from their computer. If you're affected by this issue, please make sure you dial-in and follow along with the slides provided in the email. We will ensure the page numbers are clearly stated so you can follow along. We're hopeful this issue will be resolved soon, and we apologize for any inconvenience.

Now if you're having any other technical issues, please call the AT&T support desk at the following number: 1888-796-6118. This telephone number is also included in the email invitation for today's program and on slide four of the PowerPoint presentation.

Otherwise, just keep listening in and follow along with the PowerPoint presentation.

For more SBA small business program training and additional resources, please visit the SBA learning center at www.sba.gov.

On to slide five. Did you know that the Association of Procurement Technical Assistance Centers (or APTAC) host a website where they post first Wednesday programs? Since these sessions are being recorded, you can re-listen to this program as well as previous sessions by visiting their website which is provided here on slide five.

Additionally, Procurement Technical Assistance Centers (or PTACs) are a great resource in partnering with your local PTAC for an industry day, sharing RFI notices or Sources Sought announcement, or simply referring small business concerns through PTAC are just a few reasons why they are such a useful resource for acquisition personnel. Please contact your local PTAC for additional information.

Slide six, which is the program scheduled for fiscal year 2019, and as you'll notice, today's session on the Service-Disabled Veteran-Owned Program, is the tenth topic in the series. You will notice that we only have one session remaining on our FY-19 calendar and due to speaker availability, we will be holding this session on the second Wednesday in August, which will be August 14th. The email invitation for this session will be sent out in a few weeks.

Another questions we have, some of you have inquired as why we don't offer sessions in September, and the reason is that we understand that most of you are occupied with year-end requirements and do not have the time for the training. In order to use everyone's time more efficiently, we forego this training sessions in September.

We will advise you of the upcoming fiscal year 2020 schedule sometime in late September, when we send out the email invitation for the October training session.

On to slide seven. I'm sure several of you want to receive credit for today's training, so it'll be glad to know that today's session is worth one CLP. On the following slide, which is slide eight, you will find the training certificate and I will go over the instructions when we get there.

Several of you may have received the information for this training from a friend or colleague; but if you want to receive an email

directly from us, notifying you of upcoming first Wednesday webinar events, just send us an email at sbalearning@sba.gov, that is S-B-A-L-E-A-R-N-I-N-G@sba.G-O-V. In the subject line, please enter the words “add to list” and we’ll ensure you’re added to the distribution list.

Slide eight, you will see the certificate. First, you will need to access the PowerPoint presentation that was part of the SBA email invitation you received for today’s session. Then go to slide eight, you will manually fill-in your name where it states, “Insert your name here.” Next within the print settings, you will select, “Print current slide,” which will allow for only the certificate to be printed. Once this is done, you can coordinate the CLP achievement through your training program. Please note that SBA does not track your CLPs or communicate with your training program coordinator regarding your CLP achievements.

On to slide nine. Today’s training has been assembled to address Service-Disabled Veteran-Owned Small Business concerns as well as provided you with additional resources available for your use.

Our speaker has graciously accepted our invitation, and he will be directing me to continue on to the next slide.

As mentioned earlier, if you are unable to access WebEx, please follow along with the PowerPoint presentation that was included in the email for today’s training. We will identify the page number, so you can follow along.

Also, please note that some viewers may experience a delay as the slide changes on your screen.

Now, I am pleased to introduce today’s speaker to you, Mr. Christopher Clarke, who is an attorney advisor for SBA’s Office of Government Counsel. We appreciate that you can meet with us today, Chris, and I’ll turn the program over to you now.

Christopher:

Hi. I hope everyone can hear me. My name is Christopher Clarke. I’m an attorney with SBA. I work in our division of procurement law, and in that role, I [0:09:09 inaudible] a lot of different functions.

One of my primary role is that basically counsel to our procurement programs, and I’ve been primary counsel to the SDVO program at SBA since about 2010, so basically since then.

I also, in my capacity as counsel, give advice to SBA on its own contracting and various other aspects; but at least for today, I give

advice to the program office that does SDVO - I've been doing that for a while now.

With regard to what we're talking about, if you have questions, please ask. I know most of the answers. If I can answer them, I will.

In regard to like our regulations and everything that happened if you have questions, please ask. I'm very familiar with them.

I'm going to go over kind of generally with the expectation that people will probably have questions. If you have questions, please ask them.

I'll give a general overview of SBA's kind of view of and kind of some recent developments in the program.

We can go on to slide ten. Yeah, topic. Slide 11. Just because I never know how versed people are, so when you say SDVO small business programming, it's one of the few socio-economic programs that has a very confusing nature because there's two programs. There's one authorizing the Small Business Act that's administered by SBA, and that program's government-wide, that's mostly what I'm going to be covering today which is SBA.

Keeping [0:10:51 inaudible] that's pretty much every agency for the government. Big thing is its similar to basically our Small Business Contracting Program, and that its self-certification with status protest and appeals for determining eligibility. We don't pre-screen people before they're eligible for the program, pretty much like we don't pre-screen all small businesses, but we do. SBA is the final arbiter of who is eligible for our program, and we do that through status protest and appeals.

The other thing that's important to remember is it has parity with the other socio-economic programs, so there's that.

Then, here's my brief overview of the VA program; but remember, I don't work for VA. It only applies to VA contracting, and I'm just going to pre-answer this question. I often get the question, because it does kind of intersect with SBA's program, is: "What about when a contracting agency, other than VA, is basically contracting on behalf of VA using VA money?" SBA's position on that is if they set it aside under, there's no prohibition of another government agency setting it aside under the Small Business Act. If we get a protest or something other than that, we're going to handle that. Whether or not that was proper under VA's act, it's a question for VA and the contracting agency. SBA doesn't [0:12:27 inaudible] on the specific actions of other agencies.

The other key component is that firms under the VA's program has to be pre-screened by VA - they call it "verification." You basically have to submit an application and demonstrate prior to entering the program that you're eligible to VA.

They also have status protest and appeals on individual contracts; but weird twist of fate because of congress, those are heard at SBA but in a different office that handles SBA status protest. Those are all handled by SBA's Office of Hearings and Appeals.

Then the other key core component is for the Veteran Preference Program at VA. There's not parity with SBA's program. There's actually a statutory preference for the Veterans-owned and service-disabled Veteran-owned.

Then the last thing is something that's pretty recent, just for fiscal year 2019, which is per a request flash order by congress. SBA and VA basically merged some of their common elements in terms of requirements for the program, which is , the core elements of the program are basically, without getting too much into it, the first and foremost is the business has to be a small business; that's not really covered, but that's kind of the primary requirement - you have to start there.

Then the next requirement is demonstrating that you're owned by a service-disabled veteran and that you're controlled by service-disabled veterans. As of October 1st, 2018, there's a common set of regulations for that. VA and SBA basically share the same regs. They're housed in SBA's part of the CFR; so, in 13CFR part 125, that's where the common regulations for both programs are situated, and VA changed their regulations to have cross references to ours. SBA worked with VA in drafting those regulations, but we basically thought it made more sense to put, instead of like duplicating them in two places, basically housing them in one section.

On to slide 12. I mentioned it earlier, but along, these are the basically core components for SBA's program that there'll be a veteran or veterans with a service-connected disability that the service-disabled veterans directly and unconditionally own at least 51% of the concern, and that service-disabled veterans control the concern and that they be a small business concern.

Slide 13. Sometimes it comes up like people ask SBA, "Well, who's a service-disabled veteran," and SBA's response is whoever other agencies say is, but we have a definition. I just put in the definition. This is the definition, is basically in order to basically be considered as service-disabled veteran, SBA doesn't like get into the specifics of

it, but we do require that you provide proof, and here's some of the things that you can get; but generally, like 95, probably 95% at the time, it's a letter from the VA stating that you have service-connected disability.

Page 14, slide 14. I have a question. I see questions coming in. Is it better to answer them at the end or when we're there?

Chris:

Chris, if you want to wait until the end of the program, we can do that, then we'll just get a summary of them all.

Christopher:

Okay. That's good. I'm indifferent either way; but if you have a question, put it up. Okay.

Some of the key issues with ownership is depending on how much you've been involved in small business contracting, who owns things is not as simple as people who people generally think about it.

One of the key aspects of most of our programs is that SBA actually requires that a participant in our program be directly owned by the service-disabled veteran. These means that you can't basically have a holding company [0:17:14 inaudible] four certain types of trust; but the general rule is like if you set up, you can't have a company between the ownership, and the company, and the program, that normally shows up in people that have like holding companies, or some weird trust, or stuff like that. A lot of times people will set things up for tax purposes to avoid paying lots of taxes, but then want to benefit from a government program and then get very upset that we have a requirement that that lets them get less tax avoidance.

You can sometimes have a trust [0:17:57 inaudible] entity, but I put up there, it's a really specific type of trust. In those cases, those trusts are, for the most part, functionally equivalent of direct ownership.

The other one that comes up a lot when we're talking about ownership is unconditional. There's like a general understanding of what unconditional is, and then there's also a general misunderstanding a little bit with the general public about the various types of conditions that can put on equity throughout the United States. What we're looking at with this is bond paper, I'll give you the general overview here of like one of things that when SBA's writing regulations and when we're interpreting regulations, we're trying to write regulations that encompass and, for the most part, moves companies, especially most small businesses will generally automatically fall into the eligible category without having to do

much work, but also write the rules in a way that basically makes it harder for basically bad actors to exploit loopholes in our system. We tend to write with a goal of encompassing as many as possible, but kind of like having little key languages here and there that keeps people from doing crazy things, and unconditional is one of those.

I have some examples, but I can give you like, I have dozens of these, maybe hundreds, of crazy things I've seen. Probably like one of the most common ways to be like extremely weird and tricky is you basically have where service-disabled veteran basically owns the company, I use quotation marks, you can see it, but he can't sell, transfer or anything else, and all of his minority partners can.

We've also seen things where, this is one of the crazy ones, is the purported service-disabled veteran had a condition on his ownership where his sale price was locked in at like \$10,000 forever. Basically, they started a company and one of set of shares, those shares owned by the service-disabled veteran, were locked in and were only every going to be worth \$10,000 regardless of how large the company became. Stuff like that, we find kind of problematic mainly because that just seems off.

We also see a lot, another thing that we see are lots of issues with like distributions and basically diverting distributions to other people because mainly what people are used to seeing is if you own 70% of a firm, and the firm made a million dollars and then distributed to its shareholders the money, they would most likely distribute it that way in a manner like equal to the equity share, but that's not always what we see. We see ones where they made a million dollars, and the way that it was structured, the service-disabled veteran was only entitled to about 3%. We see stuff like that.

We also see instances where certain things are pledged as collateral and convertible notes, pretty much any weird type of strange transaction that you can put in there that would make it easier or more likely that the benefits of the program which is basically growing a business, having a successful business, making money from the business get diverted from the service-disabled veteran to non-service-disabled veteran. Equity holders are problematic for our goals.

We can go on to 15. Okay. Control also gets pretty tricky, but I'll go over the components and then I'll, once again, talk about kind of how SBA looks at the issue. One of the things when you're looking at our control regulations is there's basically two main components

that might not be clear on their face; but if you understand how the rules' written, it's pretty clear.

The service-disabled veteran or veterans must have the power to control the firm, and this is, what SBA does is we look at your corporate document, your shareholders agreements, all your side agreements, and basically see if the service-disabled veteran actually has the power to control the firm. Sometimes you'll see this. It's like people will be like, "How come you found me ineligible? I'm the CEO," but then you read their document and like you can write whatever you want, and the CEO is, you'll have a document where the service-disabled veteran is the CEO, but then a vice president has more power to basically run the company and make decisions on a day-to-day basis than the CEO, so that's always a problem, so that goes from the power.

Then, they must actually demonstrate that they control the firm; meaning that you have to have on paper all the requirements that show you can if you want to control the firm, and then you actually have to be able to demonstrate that you're actually using that power and not basically only having it on paper, meaning there's someone else basically at the firm doing all the work that the paper documents you gave us said you would be doing.

Then **[0:23:34 inaudible]** the general, so that gets into the management, and daily business operation must be controlled by one or more service-disabled veteran. You have to actually be doing that. Then, you have the day-to-day operations and long-term decision making.

Then, we get into some of the things that are key elements of control which is you have to be like in a managerial position, like the highest officer, and you have to have relevant experience to run the firm. The relevant experience used to be kind of a problem, but it's less of now and this isn't like you have to have decades of experience, but, I'll give you an example: Generally what we're looking for, is there someone else around that has more experience? I'll give you like a worst-case example that we saw, and then I'll give you kind of like more of run-of-the-mill.

We had one case. This was a long time ago, but it was actually like a high-tech IT firm - not like an IT reseller. An actual software, and the service-disabled vet was a hairdresser as of two weeks before like starting the firm, did not have a college degree, and the minority owner had a master's degree in software engineering and had 25 years of experience doing the exact work that the firm did, so that

should, on its face, a problem; so that's kind of what we're looking at.

What's more common is that the service-disabled veteran has a little experience, but not a lot and then there's someone else that has most of it. Those are a little bit trickier, and we deal with those on a case-by-case basis.

Then, I didn't get into this, but we do have different requirements for control with regard to partnerships, limited liability companies and corporations. There're a little unique differences with each because they're different structures, but I point out what the main one is, is because the way corporations are structured and they're more of a legally, formal entity with their formalities.

We also require that the service-disabled veteran be able to control the board of directors. There's a bunch of rules with regard to that. It can get tricky in certain instances, but for the most part, it's not. If you're doing things like naturally, you'll probably fall into it.

One of the things that we do run into with control is not that people are doing anything on purpose run, but because of the unique nature of some of our rules. Some people will get like forms off the internet or something, and just copy them, and those rarely work out well, but they're usually able to fix them pretty quickly and that's usually just a case. It goes back to one of the two main components.

We'll have a firm where it's pretty clear that the service-disabled veteran's actually running the firm, but the corporate documents are off because they didn't actually take the time to make sure that they'd meet the requirements [0:26:38 inaudible] so we run into that more often than one would think. It's just kind of not a lack of care, but a lack of understanding the process and thinking this will be okay.

We can go on to the 16th. Here's control continued. One of the things is like when we changed the rules [0:27:07 inaudible] this fiscal year. We did make some changes to control. If I can give the best explanation for it, it's kind of like a balance between the way SBA likes to rate rules and the way VA likes to rate rules. I mean we're kind of trying to strike balance so that we're both comfortable.

VA really likes to have like bright-line rules like yes; no; if this happens, that happens; but SBA doesn't really love that because as I mentioned before there's so many variations that we can see that

are accounting for all instances of what might occur. It's just really not possible, so we kind of like gave more indicators of like what we think is our overall policy. I'm not saying one way is right or one way is wrong. It's just kind of a different approach to rulemaking and regulations. We got into it a little bit, and I think it's a pretty happy, what congress asked us to do is combine the rules in a way that both were happy with. SBA was happy. I believe VA was happy that we addressed everything.

One of the things that comes up with control is, one of the big ones, controlled by non-service-disabled veterans. What SBA did on some of these things, we added what we call "rebuttable presumptions," which we kind of like highlighted some of the main issues that we run into over the years and basically it said these aren't by themselves are barred to being eligible for the program; but if you're going to fall into one of these categories, you have to actually provide evidence to SBA that you meet the requirements. You're not going to default into eligible.

The other thing that SBA looks at is if we're going to say another, like the service-disabled veteran doesn't control, generally what we look for is there another person actually controlling. We have a bunch of different rules about overreliance, financially tied to them, things that would lead someone that the service-disabled **[0:29:16 inaudible]** not really being able to exercise control in like an untethered way. Here's the examples of rebuttable presumptions.

Basically, we don't have a, basically what would be called a "fulltime devotion requirement," but we did, what we did say is if you're not working for the firm during normal business hours of that firm during its, which is standard for that industry, we're going to assume that you don't control the firm, that doesn't mean you're not eligible. It just means that you're going to have to demonstrate how you're going to have to demonstrate to SBA affirmatively how, given that situation, you do control the firm.

One of the things is, this has just come up over and over and over again over the years, and firms that don't have a problem rebutting the presumption don't seem to complain that much. Firms that do, tend to complain a lot.

The other one's a little bit more, I don't know, controversial. Once again, it doesn't mean you're not eligible. It just means you have to demonstrate that you are eligible. I mean this one has to do with being located near where the firm's office is. Over the years, SBA, and one of the issues is **[0:30:41 inaudible]** is we had a really old OHA decision, which we agreed with which was in a certain industry,

in construction. We had a firm where it was very lightly, light resume on an individual, meaning he didn't have a lot of experience, but he did have some so we weren't going to say no on the experience, well, because he did, the individual did have some experience, but just not as much, but he didn't have as much as like the other people and the other officers in the firm.

The other thing is he was located on the east coast, and the firm's headquarters and all their work were located in California, and SBA was just like, "Well, how are you actually operating the day," and it was a construction firm, and so we asked the question, and their answer to how he was controlling the day-to-day operation wasn't good enough for SBA, so we just found them ineligible. OHA agreed; but then, later, OHA limited that decision to only construction which made it weird. Basically, what we did is we basically just took that case and expanded it to everybody which is if you're not located near where your office is and where the work is done, it doesn't mean not you're not eligible, but you have to like give us an explanation of why this works. Like I said, if you don't have someone else doing all the work for you, it's probably not a problem.

We also added what's called an "exception for extraordinary circumstances," which is a lot of times what you're seeing, like operating agreements and by-laws, is what are called like sometimes "super majority voting requirements," or basically you own a majority of the firm, but it takes more than a majority of equity holders to take an action when you see this all the time. This is like one of those ones. This is a bright line, which is you can only have those circumstances where the service-disabled veteran needs a non-service-disabled veteran equity holder to like basically take an action in these five circumstances. In these five circumstances, you would need either a super majority or a unanimous vote of equity holders to take an action. We limited it to these five circumstances that might expand over time, it might not, but we started with five.

Sixteenth, we're on 16. Seventeen. We get a lot of questions, at least SBA does, about joint ventures. Over the years, probably over the last four or five years, the joint venture regulations in the various programs have changed over time. For a little of time, SDVO was a little bit/substantially off from the joint venture regulations [0:33:45 inaudible] that was causing a little bit of confusion. What we did, I don't have the date for this rule, but it was pretty recent. Maybe the last 18 months to two years, we've, for the most part, standardized the joint venture regulations across all the programs. They're not exactly the same, but they're mostly the same. Basically, what that means is if you're a service-disabled veteran company,

you can joint venture with a non-service-disabled veteran company, provide you, follow those regulations and all the requirements that joint venture can bid on a SDVO set-aside as if the joint venture is an SDVO even though only one member of the joint venture is, so that's kind of like the benefit of that.

Then, there's also the All Small and 8A Mentor-Protégé. Once again, that means those participants can take part as an SDVO if all the requirements from various [0:34:50 inaudible] are met. This isn't a training on joint ventures or mentor-protégé, so I didn't get that much into it; but if you have questions, feel free to ask. Sometimes, joint venture stuff can get pretty tricky; but I think it's gotten much simpler over the last probably like 12 months as the rules have really come in to, convergence [0:35:09 inaudible] the same.

You can go to slide 18. This is just a little slide on what is an SDVO contract. Basically, between micro and the micros purchase and simplified acquisition threshold, mandatory set-asides and parity. Basically, an SDVO contract under SBA definition is when you restrict the competition for the contract or order to an SDVO and then above the [0:35:43 inaudible] parity as well with the market research.

There is sole-source authority in the Small Business Act. I listed the requirements for sole-source authority. One of the issues is with... this isn't the same as 8(a) sole-source authority, which is one of the key issues is there has to be, if you have two SDVOs that can do the work and your market research shows that they can do the work, you can't limit it to only one of them. If there is only one that can do it, you have kind of an easy route to sole-source; but it's a very easy way to sole-source, it's a pretty easy justification, and that you don't have to really give one, but there is kind of the requirement that there [0:36:32 inaudible] one. I'm not sure how often [0:36:34 inaudible], but it exist.

Slide 19. As I mentioned before, at the very, very beginning, SBA does not pre-certify firms for the government-wide program. We allow self-certification. Then, the primary mechanism for basically ensuring eligibility with our requirements, we ensure eligibility with the requirements at the contract level.

My personal opinion now for attribution to the entire agency, one of the issues that you run into with certification programs is you end up certifying people that aren't use, end up using a lot of government resources to certify people that aren't going to get government contracts or even plan to get government contracts.

One of things this does is we're looking only at firms that have government contracts that are actually participating in the program.

Here's some of the key components, which is basically anyone that's an interested party can challenge. There's some timeliness issues that come up. There's some big ones involving, there's some big timeliness issues kind of floating out there with regard to multiple award contracts, scheduled contracts, and orders. SBA had an opinion. SBA's Office of Hearings and Appeals had an opinion. It was different. Lots of people have an opinion. That's just out there. I don't know how common that is; but one of the things is even with the timeliness issues that exist, SBA and contracting officers can always file a protest. We have no restriction.

I would also like to point out some of the interested party in timeliness issues for SDVO. If you're familiar, and for status protest, in general, it's slightly different than size. It's not exactly the same, which can be confusing; but I'm just pointing it out. There's a little bit slight difference in who's an interested party and what timeliness standards apply.

The other thing that's really important at least for SBA because we don't prescreen everybody, is we only actually process protest that raise a genuine issue about someone's eligibility, so someone has to actually give us a reason to go looking for. One of the reasons is a lot of burden on a small business to go through one of these protests. These protests collect a lot of information, and we collect it extremely quickly, and if you don't give it to us extremely quickly, we find you ineligible. Basically, opening every bidder up to that on every contract seems a little bit unreasonable to SBA. In order to start a process that has that much of a burden, we have to have that person protesting to actually provide a genuine real reason to go through that process.

The other thing is with SDVO. We have an independent appeal right to SBA's Office of Hearings and Appeals [0:39:53 inaudible] different timetable and some different rule,

Then, you can go on to slide 20. I'll bring this up just because I get a lot of questions on it. I just bring it up. There's been talk from lots of different people about VA, and SBA, and merging the programs, and all that other stuff, and whether or not that's happening. What ended up happening is just the honest truth, is SBA has talked with VA, and we've looked at it, and it's been considered, but it's not something that's easy to do or cheap to do, so that's one of the things. If it is going to happen, it's something that SBA and VA cannot do on their own, that was just one of the things we looked

at. We always look at where the government, “Can we do something without having to go back to congress?” The answer in this case is no. One of the things is it would actually need congress to step in and do it, so we get that answer. That’s genuinely the answer. We looked at it. It’s not very simple.

Basically, SBA and VA programs are different. Our methods of doing things are different and just, in general, transferring things among agencies just is never inexpensive and it’s never really as easy as everybody thinks. If it does happen, it would be a multi-year process that would require a legislative change.

Number 21. Now, we’re on to questions. There’s not that many, so I can just read, I’ll probably just go through them all if people don’t mind.

Chris:

Okay. That works.

Christopher:

Ownership and control questions, slide 11: “Is there still a regulation that states a veteran-owned or SDVO company owner can sign over control to another individual in the case of incapacity of the service-disabled veteran?” Yes, although there’s always been a caveat with that. It’s not any service-disabled veteran. It’s only, let me make sure it’s still correct. This is the lawyer in me. Where is it? Give me one second. If you guys don’t mind **[0:42:35 inaudible]** It’s limited to, there’s a definition in SBA’s rule, which is a service-disabled veteran with a permanent and severe disability, so it’s that. Then, there’s a, with surviving spouse.

Alright. Give me a second. If you look at 125-13, and the control and stuff, so they would still have to own the firm. They can’t transfer the equity, but if you basically have.. so, it’s not open to all service-disabled veterans, just ones with severe disability which is defined. They can basically, and just to give you an indication, it’s usually people that are basically incapacitated. They can continue to owe the firm, and then they can pass over the control rights to someone that can do it on their **[0:43:42 inaudible]** so that still exists, and it’s in 125-13. Then, the definitions are in the definition section.

The next question is: “How the 51% ownership rule applies to employee stock ownership plans?” ESOPs are difficult. The ESOP, most likely, can’t 100% make one... this is my caveat, and everything’s a hypothetical. Everything is a little bit different; but generally, the way that an ESOP has to be structured to meet the requirements of that thing, it would be very difficult for the ESOP to own 100% of the firm.

One of the things that would have, like you can still have an ESOP, but you would either have to move it into another share, you either have, sometimes it's easier to have multiple shares of stock and do things with that, or just have it have like a lower percentage. But yeah, you'd still like, ESOPs affect direct ownership. One of the things you would have is the service-disabled veteran owning a certain number, over 51%, and then the ESOP owning less, and then you have to deal with.

I didn't get into the [0:45:11 inaudible] but we have a [0:45:12 inaudible] issue which is basically stock options and other sorts of convertible-type instruments like convertible debt we treat as exercise. One of the things that happens with employee stock ownership plan is if you structure it, if you don't structure it just right, basically we end up giving [0:45:32 inaudible] effect to like years and years and years and years' worth of options, which basically ends up diluting the veteran shares. You are able to structure it correctly. You just have to the work, and I'm, I don't work for people that structure them. I could structure them if I wanted them to, but I generally don't give people advice on how to structure their company.

The next one: "Is a sole-source contract awarded to any SBC, including an SDVO SBC, a small business set-aside and is it then subject to the limitations on subcontracting if it meets the applicable far left?" Yes. There's no statutory authority to do a small business sole-source, so that's the first. This is the answer: It depends on the justification used for the sole source. If you're using the sole-source justification for SDVOs in the Small Business Act, so then that's where you're getting your authority to restrict the competition, that authority if you're using the Small Business Act, and then you're sole sourcing it to an SDVO and use that authority, that means you kind of come to the purview of SBA and SBA's rule, yes, the limitations of subcontracting would attach to that sole source if you're using the Small Business Act authority.

Slide 19, timeframe for protest. It's in the FAR, so no. I don't think you need to incorporate the entire FAR into the solicitation. Technically, this is my opinion as a lawyer, if you give notice of it being a set-aside, the relevant FAR provision should give notice to people of their rights; but that's me as a lawyer. People should go read solicitations and read what their rights are. The FAR is public. People can go read it. The contracting officer told them it was a set-aside, so therefore they should be aware and be on notice of what their legal right [0:47:53 inaudible] are.

“Is there wait time after non-venturing transfers ownership shares to make the veteran a majority owner before the company can apply for verification?” Verification is a VA issue. I have no idea.

For SBA if you accomplished that transfer prior to submitting an offer on award, so SBA determines time of eligibility for a contract at the time of offer. If you complete the transaction prior to offer, we would assume the transaction took place and would be fine. But with regard to verification and pre-screening, that’s a VA issue.

“What are the regulations specific to the surviving spouse?” I can give that to you, there are. You can have it, it’s 125-12-I, and basically [0:48:56 inaudible] gets to basically, one, there’s a thing that surviving spouse, the, there’s requirements on what type of service-disabled veteran you are. Basically, yes, if you meet all those requirements, the ownership can be transferred to your surviving spouse and she can maintain eligibility for the program for VA [0:49:19 inaudible] program, which I’m not in charge of all of this, but until she re-marries, until she relinquishes her ownership interest, or ten years. There’s three, there’s or, and that’s in there too.

Next question: “Regarding the rule of two, is it allowable to apply geographical limitations? For example, market research shows ten companies nationwide, but only one SDVO who’s qualified within my SBA servicing district, would that permit sole sourcing to that one SDVO?” The answer to that question is yes and no. Does the market research show that only one, only the SDVO in your district to perform the requirement? If that answer is yes, then, yes, you can sole source. One of those things is like, “Oh, can I geographically limit my thing?” It’s like does your market research show that you have a requirement to do work in Maine, and it’s unlikely that someone from Florida will be able to do it, that happens. I’ll give an example; say you want to take a Coast Guard boat and get it like repaired at a dockyard. A dockyard in Florida probably isn’t going to be able to do it, so that’s not a geographic limitation. It’s just the statement of work, and that dockyard in Florida can’t do it.

You can’t generally do like only companies that live in Maine, that reside in Maine can bid on this contract, but there are contracts where there will be limitations in terms of who can do the work based on what the requirements are. I hope that answers the question without telling people.

Quick answer, no, you can’t limit it by geographic per se, but you can have requirements and do market research; and if the market

research says that only this group of people can do it, then you can limit it.

“Does the veteran have to have an honorable discharge?” SBA doesn’t answer that question. They have to have a letter from VA, or other documents saying that they are a service-disabled veteran eligible. One of the reasons that, I think you’re right that they have to be, but I’m not 100% sure, that’s why we get the documentation from the other agencies.

Okay. This last question was: “How can it be [0:52:01 inaudible] holds a critical technology, and the cost of technology is below the limitations of subcontracting?” That happens frequently under the SBIR/STTR program and under FAR6. Only one reasonable source, and no other supplies or services will satisfy agency requirements. That’s a different justification for sole source is the answer to that question. That’s a different statutory one. What I’m saying is if you use a different statutory reason for limiting sources, limitations on subcontracting don’t apply - only if you use the authority granted on the Small Business Act.

Okay. Like I said, I will differ to VA for who they determine is a service-disabled veteran.

The last question was, I think it was a, further up, there was a question about, it was follow-on question to an answer I gave regarding sole source or limited sources and the limitations on subcontracting. The question was: “Does the limitations on subcontracting attach anytime a service-disabled veteran is awarded a contract based on limited competition?” I said anytime it’s restricted under the Small Business Act, the answer is yes; that’s just the rule.

Then the follow-on was mentioning the SBIR program, and FAR6.3, and basically using, I forgot the statutory thing, but the reference was FAR6.3 and only one responsible source. That’s an independent, basically, exception to competition that exist outside the Small Business Act. If that happens, if you have an independent justification for restricting competition, and you’re not using the Small Business Act to justify the restriction, then the limitations of subcontracting don’t apply. I hope that answers the question. If not, maybe I can talk more with the individual that had that. I’d be happy to talk about that issue.

Did I get everybody’s questions? It seems like some people answered the [0:54:38 inaudible] question. Like I said, I don’t know

the answer and I don't like to step on VAs or DODs toes with regard to who's actually eligible to be called a "service-disabled veteran."

Chris:

Okay. Chris, what we'll do is, that appears to be the last question. I see there's some discussion afterwards with that in the chat box; however, I'm going to go through. There's a couple slides after for SBA quick reference guides. There's two slides here. If anybody does have additional questions, please type them in the chat box now and we'll try to address them by the end of today's program.

But I'll just go over this quickly, a couple slides. This is a summary of CFR regulations. On the left, you'll see the specific topic you might have and where you can locate it in the CFR. In this case here, we have the service-disabled vet 13CFR125.15B as part of today's discussion, and there's also a whole list of other topics as well there.

On to slide 24. This just gives you kind of an outline of SBA offices, and their location, and what their responsibilities are. Within SBA government contracting area offices, that's what I'm a part of, I am one of the procurement center representatives.

There's also a commercial market replace representative (CMRs), and they fall on to the area offices.

We also have SBA district offices, which are located all throughout the United States as well and that's where your business opportunity specialists are located.

The, you also have the SBA regional offices and those fall within the specific regions as well, and then SBA headquarters' located out in the D.C. Chris, your headquarters, correct?

Christopher:

That is correct.

Chris:

Okay. If you follow those lengths, there's additional information on those as well.

It looks like there are no additional questions, so just want to have a couple reminders here: Our next session will be on, somebody just snuck one in here, okay. Chris, did you see this one? It says, "Does the self-certification documents need to be uploaded to GLS or certified at sba.gov?"

Christopher:

No, they do not. If you know the women's program, there is a requirement. There was, and we still hold to it, a requirement in the statute that required like basically providing the government with documents. Those go to certified.gov as a, to satisfy that statutory

requirement, but the SDVO program doesn't have that. We don't require small businesses to go through that process.

Chris: Okay. Great. Just want to remind everyone, our next session will be the second Wednesday of August, so that's August 14th. Expect to get an email invitation from that here later this month.

I also want to have a thank you out to Carla, our moderator. She's been our friendly voice for as long as I've known, and she is stepping away, and so I just want to thank her, and just show our appreciation at SBA. Carla, thank you very much for being there for us and all the support that you've given us in the program, and--

Carla: **[0:58:03 inaudible]**

Chris: Yeah. Thank you. Once again, Chris, thank you for joining us here today, and we appreciate all the participation on the call today. We will talk to you next month.

Carla: That concludes our conference. Thank you for using AT&T Even Conferencing - Enhanced. You may now disconnect.

[End Of Transcript]