



**U.S. Small Business
Administration**



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Service Disabled Veteran Owned Small Business (SDVOSB) Program

Hosts

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Welcome to “SBA Virtual Learning 2019”

1. Questions answered during the final 10 minutes.
2. Technical problems: *Contact the moderator with a note in the chat box or call the AT&T Support Desk at 1-888-796-6118.*
3. Page numbers stated for those working off hard copies of the program.
4. We cover the “**SBA Quick Reference**” as time allows.
5. For more SBA training visit the SBA Learning Center website
<https://www.sba.gov/tools/sba-learning-center/search/training>

Association of Procurement Technical Assistance Centers (APTAC)

Procurement Technical Assistance Centers are a vital resource partner.

- APTAC posts past “First Wednesday” programming at this link:
<http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting officer resources: “How PTACs partner with federal agencies”:
<http://www.aptac-us.org/federal-partners/>
- Find your nearest Procurement Technical Assistance Center at <http://www.aptac-us.org>

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

2019 SCHEDULE

1:00 to 2:00 Central Time

FY 2019	Date	Topic
1	October 3, 2018	Understanding the Non-Manufacturer Rule
2	November 7, 2018	Size and Affiliation
3	December 5, 2018	*National Day of Mourning*
4	January 9, 2019	*Government Shutdown*
5	February 13, 2019	Certificate of Competency (COC) Program
6	March 6, 2019	Market Research
7	April 3, 2019	8(a) Program
8	May 8, 2019	Joint Ventures
9	June 5, 2019	Legislative & Regulatory Update
10	July 10, 2019	Service Disabled Veteran Owned (SDVOSB) Program
11	August 14, 2019	All Small Mentor Protégé Program

The program schedule is for information only and is subject to change.

One Continuous Learning Point

- Self-service: Using the PowerPoint that was sent with your invitation for this training event, fill in your name on the certificate slide and save. Download the certificate and print for your records. You submit your request for training credit IAW your agency policy, i.e. FAITAS.
- Phoning in only: If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

“SBA 1st Wednesday Virtual Learning 2019”

This Certificate is awarded to

Insert Your Name Here

For completion of

SDVOSB Program

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01.
Recommendation of One CLP.



Pamela J. Beavers
Director, Area IV
SBA Office of Government Contracting

07/10/2019

DATE

Today's Speaker

Christopher R. Clarke
Attorney Advisor
Office of General Counsel
U.S. Small Business Administration



Service-Disabled Veteran Owned Small Business Concern (SDVO SBC)

SDVO SBC – Two Programs

1. SBA's Program
 - Government Wide set-aside program
 - Self-certification
 - Status Protest and Appeals on specific government contracts
 - Parity with other SBA programs
2. VA's Program
 - Only applies to VA contracting (What about VA money but another agency's CO – ask VA and the other Agency, SBA does not have an opinion on specific contracts)
 - Firms are verified/certified by VA
 - Status protest and appeals are handled by SBA's Office of Hearing and Appeals
 - At VA veteran and SDV set-asides have preference over other set-aside programs
3. Common Ownership and Control regulations as of Oct. 1, 2018. [83 FR 48912, Sept. 28, 2018]

SBA program Requirements

- A Veteran with a service-connected disability
- SDVs directly and unconditionally own at least 51% of the concern (125.12)
- SDVs control the concern (125.13)
- Be a small business concern (13 C.F.R. part 121)

Service-disabled Veteran

- is a veteran who possesses either a valid disability rating letter issued by the Department of Veterans Affairs, establishing a service-connected rating between 0 and 100 percent, or a valid disability determination from the Department of Defense or is registered in the Beneficiary Identification and Records Locator Subsystem maintained by Department of Veterans Affairs' Veterans Benefits Administration as a service-disabled veteran. Reservists or members of the National Guard disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify.

51% Ownership

Direct

- Primary concern is that there are not intervening entities between the SDV owner and the concern
- A concern owned principally by another business entity that is in turn owned and controlled by one or more service-disabled veterans does not meet this requirement.
- Ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by service-disabled veterans where the trust is revocable, and service-disabled veterans are the grantors, trustees, and the current beneficiaries of the trust.

Unconditional

- This tends to be a trickier issue primarily concerned with not having a condition on the SDVs ownership
- Some Examples of impermissible conditions (not an exhaustive list)
 - Restrictions on sale or transfer of SDVs equity (but not on the non-sdv)
 - Distributions or sale value not commiserate with equity stake (SDV owns 51% but only entitled to 10% of profit or something similar)
 - Non-standard loan agreements with shares as a type of collateral

Control

- *Two Main components*
 - *1. Must have the power to control the firm (the corporate documents will show this)*
 - *2. Must actually demonstrate control of the firm (must use the power that they have)*
- *General. To be an eligible SDVO SBC, the management and daily business operations of the concern must be controlled by one or more service-disabled veterans*
- *Day-to-day operations and long term decision making*
- *Managerial position and experience – Highest officer, and with enough relevant experience to run the firm*
- *Different requirements for Partnerships, Limited Liability Companies, and Corporations – main difference is that with a corporation must also control Board of Directors.*

Control cont'd

Control by non-SDVs

- Several regulations and rebuttable presumptions
- Key concern is the ability and reality of another individual actually controlling the long term and day-to-day operations.

Rebuttable Presumptions

- There is a rebuttable presumption that a service-disabled veteran does not control the firm when the service-disabled veteran is not able to work for the firm during the normal working hours that businesses in that industry normally work.
- There is rebuttable presumption that a service-disabled veteran does not control the firm if that individual is not located within a reasonable commute to firm's headquarters and/or job-sites locations, regardless of the firm's industry.

Exception for “extraordinary circumstances”

- (1) Adding a new equity stakeholder;
- (2) Dissolution of the company;
- (3) Sale of the company;
- (4) The merger of the company; and
- (5) Company declaring bankruptcy

Joint Ventures and All Small Mentor Protégé

- ❑ Joint Venture regulations have mostly been standardized across socio-economic programs.
 - ❑ Requirements for an SDVO SBC Joint Venture – 125.18(b)
- ❑ Mentor Protégé – Can partake of SDVO SBC set-aside provided all requirements are met – see 13 CFR 125.9

SDVO SBC Contracts

Set-asides (FAR 19.1405)

- Between micro and SAT
 - Mandatory set-asides for small business programs, with parity between the socio-economic programs and small businesses
- Above the SAT
 - Market research, fair market price...etc. Parity with socio-economic programs with those programs having a preference before a small business set-aside.

Sole Source (125.23 – FAR 19.1406)

- (a) None of the provisions of §§125.21 or 125.22 apply;
- (b) The anticipated award price of the contract, including options, will not exceed:
 - (1) \$6,500,000 for a contract assigned a manufacturing NAICS code, or
 - (2) \$4,000,000 for all other contracts;
- (c) A SDVO SBC is a responsible contractor able to perform the contract; and
- (d) Contract award can be made at a fair and reasonable price.

SDV SBC Status Protest

- 13 CFR 125 part D/FAR 19.307
- Any interested party can file a protest challenging a firm's status as and SDVO SBC
 - Must be timely and sufficiently specific
 - Timely – Other bidders – within 5 days of notification of apparent successful offeror or bid opening (SBA or CO – always timely)
 - Sufficiently specific - . A protest merely asserting that the protested concern is not an eligible SDVO SBC, without setting forth specific facts or allegations is insufficient.
Example: A protester submits a protest stating that the awardee's owner is not a service-disabled veteran. The protest does not state any basis for this assertion. The protest allegation is insufficient.
- Are process by SBA with appeal rights to SBA's Office of Hearing and Appeals
- Timing
 - 15 days for SBA to render initial determination
 - 10 days to appeal
 - 20 days for OHA to decide

Potential Changes

- SBA and VA programs merging with SBA handling certification for VA program and possibility of elimination of self-certification for Government Wide program.
- As of right now, this has been discussed but nothing has been decided and nothing will happen without a Legislative change. If it does happen it will be awhile.

QUESTIONS?



“SBA Quick Reference”

Summary of CFR Regulations

SBA Size Regulations	13 CFR Part 121
HUBZone Regulations	13 CFR 126.616
SBA Certificate of Competency	13 CFR 125.5
Service-Disabled Veteran	13 CFR 125.15(b)
8(a) and SDB Regulations	13 CFR 124.513
Small Disadvantaged Business	13 CFR 124.1002(f)
WOSB Program	13 CFR 127
SBA Prime Contracting	13 CFR 125.2
SBA Subcontracting	13 CFR 125.3

Types of SBA Contacts and Offices

- A. SBA Government Contracting Area Offices <https://www.sba.gov/federal-contracting/counseling-help>
 - SBA Procurement Center Representatives (PCRs)
 - SBA Commercial Market Representatives (CMRs)

- B. SBA District Offices <https://www.sba.gov/local-assistance/find/?type=SBA%20District%20Office&pageNumber=1>
 - Business Opportunity Specialists (BOS)

- C. SBA Regional Offices <https://www.sba.gov/local-assistance/find/?type=SBA%20Regional%20Office&pageNumber=1>

- D. SBA Headquarters <https://www.sba.gov/local-assistance/find/?type=SBA%20Headquarters%20Office&pageNumber=1>