Report No. DODIG-2012-059 February 29, 2012

Inspector General
United States Department of Defense

Inadequate Controls Over the DoD Service-Disabled Veteran-Owned Small Business Set-Aside Program Allow Ineligible Contractors to Receive Contracts

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Acronyms and Abbreviations

CCR	Central Contractor Registration
CFR	Code of Federal Regulations
CVE	Center for Veterans Enterprise
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System–Next Generation
ORCA	Online Representations and Certifications Application
OSBP	Office of Small Business Programs
SBA	Small Business Administration
SDVOSB	Service-Disabled Veteran-Owned Small Business
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics
VA	Department of Veterans Affairs
VIP	Vendor Information Pages

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

February 29, 2012

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
NAVAL INSPECTOR GENERAL
DIRECTOR, DOD OFFICE OF SMALL BUSINESS PROGRAMS

SUBJECT: Inadequate Controls Over the DoD Service-Disabled Veteran-Owned Small Business Set-Aside Program Allow Ineligible Contractors to Receive Contracts (Report No. DODIG-2012-059)

We are providing this report for review and comment. DoD awarded approximately $342.2 million in funds set aside for the Service-Disabled Veteran-Owned Small Business program to potentially ineligible contractors. In addition, DoD contracting activities inaccurately coded contracts, valued at approximately $1.3 billion, as Service-Disabled Veteran-Owned Small Business set-aside or sole-source awards in the Federal Procurement Data System–Next Generation. We considered comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that recommendations be resolved promptly. The comments from the Under Secretary of Defense for Acquisition, Technology, and Logistics, were partially responsive. The Executive Director, Deputy Assistant Secretary of the Navy (Acquisition and Procurement) comments were responsive. The comments from the Deputy Director, Air Force Small Business Programs Office, were not responsive. The U.S. Army Corps of Engineers did not provide comments on a draft of this report. In addition, we redirected Recommendations A.2 and A.3 to the Commander, Mission and Installation Contracting Command. Therefore, we request additional comments on Recommendations A.1.b, A.2.a.(1), A.2.a.(2), A.2.a.(3), A.2.b, and B.3 by March 30, 2012.

Please provide comments that conform to the requirements of DoD Directive 7650.3. If possible, send a portable document format (.pdf) file containing your comments to aud-colu@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-8905 (DSN 664-8905).

Amy J. Frontz
Principal Assistant Inspector General
for Auditing

Report No. DODIG-2012-059 (Project No. D2010-D000FJ-0189.000) February 29, 2012

Results in Brief: Inadequate Controls Over the DoD Service-Disabled Veteran-Owned Small Business Set-Aside Program Allow Ineligible Contractors to Receive Contracts

What We Did

We analyzed whether the controls over the DoD Service-Disabled Veteran-Owned Small Business (SDVOSB) set-aside program affected the integrity of the program.

What We Found

Controls over 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 approximately $1.9 million, to ineligible contractors, and
- 27 contracts, valued at approximately $340.3 million, to contractors that potentially misstated their SDVOSB status.

This occurred because the DoD Office of Small Business Programs (OSBP) policy did not require adequate verification of contractor status before awarding SDVOSB set-aside and sole-source contracts. As a result, nonqualified firms received awards, reducing the opportunities for veterans disabled defending their country to receive DoD contracts.

In addition, the Federal Procurement Data System–Next Generation (FPDS-NG) contained coding errors related to SDVOSB set-aside and sole-source contracts. DoD contracting personnel:

- incorrectly coded 137 contracts, valued at approximately $1.3 billion, as SDVOSB awards; and
- did not always ensure that contract action reports were coded to reflect the correct set-aside used.

By entering incorrect information into FPDS-NG, the contracting activities compromise the integrity of the data.

What We Recommend

Among other things, DoD management should establish a contractor verification process to evaluate contractors' SDVOSB status. In addition, the commanding officers of the facilities we audited should determine whether contractors misstated their SDVOSB status and pursue necessary contractual remedies. Doing this could put $254.7million to better use by ensuring eligible SDVOSBs receive the intended benefits.

In addition, DoD should address the accuracy of FPDS-NG data and reevaluate the process for validating the contract action report data.

Management Comments and Our Response

The Director, DoD OSBP, comments were partially responsive to the recommendations. The Navy comments were responsive, but the Deputy Director, Air Force Small Business Programs Office, comments were not. He also provided unsolicited comments on two recommendations. The U.S. Army Corps of Engineers did not comment on a draft of this report.

We request management comments on the final report by March 30, 2012. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Under Secretary of Defense for Acquisition, Technology, and Logistics	B.3	B.1, B.2
Commander, Mission and Installation Contracting Command	A.2.a.(1), A.2.a.(2), A.2.a.(3), A.2.b, A.3	
Commander, Naval Facilities Engineering Command Mid-Atlantic		A.2.a.(1), A.2.a.(2), A.2.a.(3), A.2.b
Commander, Naval Facilities Engineering Command Northwest		A.2.a.(1), A.2.a.(2), A.2.a.(3), A.2.b
Commander, Offutt Air Force Base	A.2.a.(1), A.2.a.(2), A.2.a.(3), A.2.b	
Commander, U.S. Army Corps of Engineers Fort Worth District	A.2.a.(1), A.2.a.(2), A.2.a.(3), A.2.b	
Commander U.S. Army Corps of Engineers Mobile District	A.2.a.(1), A.2.a.(2), A.2.a.(3), A.2.b	
Commander, Norfolk Ship Support Activity		A.3
Commander, Naval Air Warfare Center, Aircraft Division		A.3
Commander, U.S. Army Corps of Engineers New England District	A.3	
Commander, Wright-Patterson Air Force Base	A.3	
Commander, U.S. Army Corps of Engineers New Orleans District	A.3	
Director, DoD Office of Small Business Programs	A.1.b	A.1.a

Please provide comments by March 30, 2012.

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Introduction

Audit Objective

Our objective was to evaluate the controls over the DoD Service-Disabled Veteran-Owned Small Business (SDVOSB) set-aside program. Specifically, we analyzed whether the controls in place affected the integrity of the program. See Appendix A for a discussion of the audit scope and methodology and prior audit coverage.

Background on the DoD Service-Disabled Veteran-Owned Small Business Program

Executive Order 13360, "Providing Opportunities for Service-Disabled Veteran Businesses to Increase Their Federal Contracting and Subcontracting," October 26, 2004, was established to honor the extraordinary service given to the United States by veterans with disabilities incurred or aggravated during active service with the Armed Forces. The Order requires heads of agencies to provide the opportunity for service-disabled veteran businesses to significantly increase their participation in Federal contracting. Further, agencies must establish a goal of not-less-than 3-percent participation by service-disabled veteran businesses in Federal contracting, giving agency contracting officers the authority to reserve certain procurements for such businesses.

Federal Acquisition Regulation (FAR) 6.206, "Set-Asides for Service-Disabled Veteran-Owned Small Business Concerns," states that contracting officers may set aside solicitations to allow only SDVOSBs to compete. It requires no separate justification or determination and findings to set aside a contract action for SDVOSB concerns.

Public Law No. 85-536, "Small Business Act," as amended, June 18, 2008, requires the Government to provide maximum practicable opportunities in its acquisitions to small businesses, including SDVOSBs. The Small Business Act further requires Federal agencies to establish an 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 develops small business policy and provides oversight to ensure compliance by all Military Departments and Defense agencies. The SDVOSB program is one of the DoD OSBP areas of responsibility.

Requirements for SDVOSB Concerns

In accordance with Part 125, Title 13, Code of Federal Regulations (13 CFR § 125.9 [2009]), an SDVOSB concern must be at least 51-percent unconditionally and directly owned by one or more service-disabled veterans. In addition, 13 CFR § 125.10 (2009) states that management and daily business operations of the concern must be controlled by one or more service-disabled veterans. This means that both the long-term decisionmaking and the day-to-day management and administration of the business operations must be conducted by one or more service-disabled veterans. A service-disabled veteran must hold the highest officer position in the concern

(usually president or chief executive officer) and must have managerial experience to the extent and complexity needed to run the concern. 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 Joint Ventures

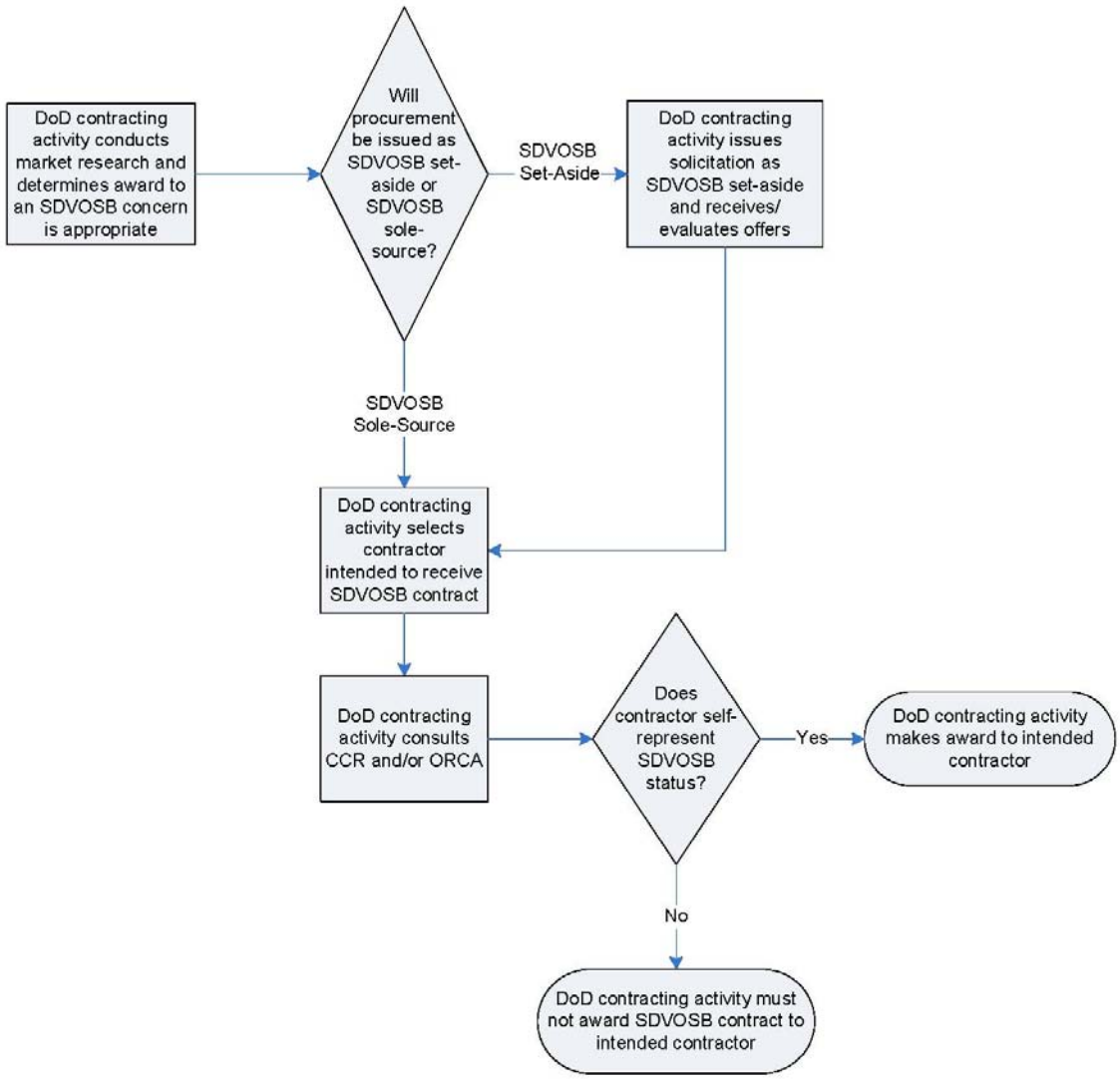
According to 13 CFR § 125.15 (2009), an SDVOSB may enter into a joint venture agreement with one or more other small businesses for the purpose of performing an SDVOSB contract. The joint venture must consist of at least one SDVOSB and one or more other small businesses. To qualify as an eligible SDVOSB joint venture, an SDVOSB must serve as the managing venture, and an employee of the managing venture must serve as the project manager. In addition, at least 51 percent of the net profits earned by the joint venture must be distributed to the SDVOSB concern. The managing venture must also retain the final records upon completion of the contract.

Contractors Self-Represent SDVOSB Status to DoD

In accordance with FAR 19.1403, "Status as a Service-Disabled Veteran-Owned Small Business Concern," at the time an SDVOSB submits its offer, it must represent to the contracting officer that it is an SDVOSB. FAR 13.102, "Source List," states that contracting officers should use the Central Contractor Registration (CCR) database as their primary source of vendor information to identify the status of an SDVOSB. The status information may also be used as the basis for ensuring that small businesses receive the maximum practicable opportunities to respond to solicitations.

Contractors must also complete annual electronic representations and certifications in the Online Representations and Certifications Application (ORCA) in conjunction with required registration in the CCR database. Contractors are required to update the representations and certifications submitted to ORCA as necessary, but at least annually, to ensure that they are kept current, accurate, and complete. The representations and certifications are effective for 1 year from the date of submission or update to ORCA. In provision 52.212-3, "Offeror Representations and Certifications–Commercial Items," contractors represent whether they meet the status requirements for various small business categories, including SDVOSBs. Figure 1 shows the process DoD activities take before awarding SDVOSB set-aside and sole-source contracts.

Figure 1. DoD Process for Awarding SDVOSB Set-Aside and Sole-Source Contracts



Department of Veterans Affairs Verification Program

The Secretary of the Department of Veterans Affairs (VA), in accordance with Public Law No. 109-461, "Veterans Benefits, Health Care, and Information Technology Act of 2006," December 22, 2006, is required to maintain a database of small businesses owned and controlled by veterans and the veteran owners of such businesses. To be eligible for inclusion in the database, veteran owners voluntarily submit the required information related to their small business. 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 to be available 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 is managed by the VA Center for Veterans Enterprise (CVE).

To protect veterans who have veteran-owned small businesses, the Veterans Small Business Verification Act was enacted in Section 104 of Public Law No. 111-275, "Veterans Benefits Act of 2010," October 13, 2010. This law expanded the VA's requirement to verify business status as owned and operated by veterans, service-disabled veterans, or eligible surviving spouses. According to the law, no small business may be included in the database until the Secretary has verified that the business is owned and controlled by veterans or surviving spouses and, where applicable, that the veteran incurred a service-connected disability. The law also required the Secretary to remove from the database any businesses that do not provide the documentation required to verify their eligibility.

In accordance with 38 CFR part 74 (2010), the VA is required to verify ownership and control of veteran-owned small businesses, including SDVOSBs. The Director, CVE, is authorized to approve or deny applications for VIP verification. CVE personnel confirm the accuracy of any statement or information provided as part of the verification application process, verifying whether the applicant meets the eligibility requirements.

Before our audit, we coordinated with CVE personnel to gain an understanding of their process for verifying SDVOSBs. They provided us with a step-by-step analysis of their verification program and decisionmaking process. (The CVE verification process is described in Appendix B.) CVE personnel also provided copies of their Denied, Approved, and Unverified lists as our audit progressed, as well as contractor files upon request. We applied the process they used to perform contractor SDVOSB status verifications throughout our review of the DoD SDVOSB program.

Controls Over the Service-Disabled Veteran-Owned Small Business Program Need Strengthening

DoD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, 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. We determined that internal control weaknesses in the DoD SDVOSB program existed as defined by DoD Instruction 5010.40. For the purpose of awarding set-aside and sole-source contracts, DoD relied on contractors to self-represent their SDVOSB status, without confirming the accuracy of the representations. Therefore, there was no 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 CCR for their self-representation, and this control was not always followed. We will provide a copy of the report to the senior official responsible for internal controls in the DoD Office of Small Business Programs.

Finding A. Contractors Improperly Received Contract Awards Intended for Service-Disabled Veteran-Owned Small Businesses

Controls over 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 inappropriately awarded six contracts, valued at approximately $1.9 million, to ineligible contractors. This occurred because contracting personnel did not consult the Central Contractor Registration (CCR) to confirm SDVOSB status.

- In addition, DoD contracting activities awarded 27 contracts, valued at approximately $340.3 million, to contractors that potentially misstated their SDVOSB status. This occurred because the Director, DoD Office of Small Business Programs (OSBP), did not establish a process to ensure that SDVOSBs met the applicable eligibility requirements before awarding set-aside and sole-source contracts.

As a result, DoD contracting activities were not meeting the statutory intent of the program to honor extraordinary service given to the United States by veterans with disabilities incurred or aggravated during active service with the Armed Forces. Further, without an adequate verification program in place, DoD increases the potential for future awards to contractors that misstate their SDVOSB status.

Contracting Activities Need to Verify SDVOSB Status Before Contract Award

DoD contracting activities awarded six contracts, valued at approximately $1.9 million, to five ineligible contractors.

DoD contracting activities awarded six contracts, valued at approximately $1.9 million, to five ineligible contractors. FAR 19.1403 requires contractors to self-represent SDVOSB status in CCR at the time they submit their offer to obtain a contract award. In accordance with FAR 13.102, contracting officers should use CCR to confirm vendor status. However, the CCR profiles for all five ineligible contractors confirmed that the contractors did not represent their SDVOSB status in CCR. Because DoD contracting activities did not confirm the vendors' status, they awarded contracts to nonqualified firms and subverted the statutory intent of the program to assist veterans disabled while defending their country. Table 1 shows the contracting activities that awarded contracts to ineligible contractors.

Table 1. DoD Contracting Activities Awarded Contracts to Ineligible Contractors

DoD Contracting Activity	Number of Contracts	Contract Number	Dollar Value
Army Communications Electronics Command	1	W909MY08C0034	$1,755,132
Defense Commissary Agency	1	HDEC0510P0076	39,490
Kentucky Army National Guard	1	W912KZ10P0067	63,915
National Capital Region Contracting Center	2	W9124A10P0096	33,183
		W9124A10P0097	8,848
Naval Surface Warfare Center	1	N6339410P5028	33,418
Total	**6**		**$1,933,986**

Army Communications Electronics Command

Army Communications Electronics Command contracting personnel awarded Contract No. W909MY08C0034, valued at $1.8 million, as an SDVOSB sole-source contract to an ineligible contractor, Systems Solutions Group Inc. The Command personnel confirmed through our data request that they awarded the sole-source contract to a contractor that did not represent SDVOSB status in CCR and classified the contract as SDVOSB sole-source on the contract action report. [1] Therefore, the Command inappropriately awarded an SDVOSB sole-source contract to a contractor that was not eligible to receive it.

Defense Commissary Agency

Defense Commissary Agency contracting personnel awarded Contract No. HDEC0510P0076, valued at $39,490, as an SDVOSB set-aside contract to an ineligible contractor, Pride Lawn Tree & Landscaping. The contractor did not represent SDVOSB status in CCR; however, an amendment to the solicitation was signed by the contractor and included clauses that indicated the contractor was an SDVOSB. Following our initial audit inquiry regarding the contractor's status, the contracting officer submitted a protest to the Small Business Administration (SBA). In September 2010, SBA officials dismissed the protest as lacking specificity.

In November 2010, however, SBA officials formally determined that the contractor was "other-than-small" for the subject procurement and size standard, which automatically prevents the contractor from qualifying as an eligible SDVOSB. Seven contractors submitted offers for this contract. On the basis of the SBA determination, the Defense Commissary Agency suspended

[1] A contract action is any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value. The report contains contract action data required to be entered into the Federal Procurement Data System–Next Generation.

further work on the contract until the senior contracting officer and general counsel had a chance to review all the documentation.

Kentucky Army National Guard

Kentucky Army National Guard contracting personnel awarded Contract No. W912KZ10P0067, valued at $63,915, as an SDVOSB set-aside contract to an ineligible contractor, Most Health Care Systems Inc. The Guard advertised the procurement in the Federal Business Opportunities database as an SDVOSB set-aside. Contracting personnel awarded the contract to the lowest offeror, without confirming in CCR that the contractor represented SDVOSB status. Two other contractors submitted offers on the contract, and both represented SDVOSB status. Therefore, contracting personnel should have ensured that the SDVOSB set-aside contract was awarded to one of the contractors that represented SDVOSB status.

National Capital Region Contracting Center

National Capital Region Contracting Center personnel at Fort Huachuca awarded Contract Nos. W9124A10P0096 and W9124A10P0097, valued at $33,183 and $8,848 respectively, as SDVOSB set-aside contracts to an ineligible contractor, Impact Partners, L.P. They originally intended to award the contracts to small businesses or small disadvantaged businesses. However, the solicitations for both contracts were issued as SDVOSB set-asides. Contracting personnel did not catch the error before awarding both contracts to the contractor that submitted the lowest quote, which was not an SDVOSB. At least one contractor that represented SDVOSB status in CCR submitted an offer on both contracts, and therefore, contracting personnel should have ensured that the contracts were awarded to a contractor that represented SDVOSB status, rather than only considering the lowest offer.

After we informed Fort Huachuca contracting personnel about this issue, they conducted a learning forum to stress the importance of ensuring consistency throughout the contract award process. Additionally, the learning forum addressed the need to specifically confirm contractor status before awarding set-aside and sole-source contracts.

Naval Surface Warfare Center

Naval Surface Warfare Center, Port Hueneme Division, contracting personnel awarded Contract No. N6339410P5028, valued at $33,418, as an SDVOSB set-aside contract to an ineligible contractor, Protelecom, LLC. The contractor did not represent SDVOSB status in CCR. The contract was awarded as a 100-percent set-aside for SDVOSB. Following our initial audit inquiry about the contractor's status, the contracting officer confirmed that the contractor was not an SDVOSB, but a veteran-owned, small disadvantaged business. By the time the contracting officer became aware that the contractor did not represent SDVOSB status, the contract terms had been fulfilled.

Contract Awards to Ineligible Contractors Will Continue Without Proper Verification

SDVOSB set-aside and sole-source contract awards to ineligible contractors will continue to exist if DoD contracting activities do not exercise due diligence by confirming a contractor's SDVOSB status in CCR. The Director, DoD OSBP, should emphasize the requirement of

confirming SDVOSB status before contract award. If contracting activities continue to award SDVOSB contracts to ineligible contractors, DoD may be subject to future litigation from eligible SDVOSB contractors that did not receive the set-aside or sole-source contract awards.

DoD OSBP Should Require Contractors to Demonstrate Their SDVOSB Status

DoD contracting activities awarded 27 contracts, valued at approximately $340.3 million, to DoD contractors that potentially misstated their SDVOSB status.

DoD contracting activities awarded 27 contracts, valued at approximately $340.3 million, to DoD contractors that potentially misstated their SDVOSB status. According to 13 CFR §§ 125.9 and 125.10 (2009), an eligible SDVOSB concern must be at least 51-percent owned by one or more service-disabled veterans. In addition, management and daily business operations of the concern must be controlled by one or more service-disabled veterans. DoD contracting activities awarded:

- 12 contracts, valued at approximately $11.5 million, to 6 contractors that were denied SDVOSB status by CVE;
- 7 contracts, valued at approximately $9.8 million, to 5 contractors who were on the CVE unverified list because their SDVOSB status could not be verified; and
- 8 contracts, valued at approximately $319 million, to 7 contractors who potentially misstated their SDVOSB status. These contractors were not previously reviewed by CVE.

DoD Contractors Denied by CVE

DoD awarded 12 SDVOSB set-aside contracts, valued at approximately $11.5 million, to 6 contractors who were denied eligibility by CVE. The six contractors were denied eligibility because they did not meet the SDVOSB requirements outlined in 13 CFR part 125 (2009). We issued three potential fraud referrals to the Defense Criminal Investigative Service as a result of our review. The Defense Criminal Investigative Service did not accept the remaining three contractors, citing that the contractors had no present contracts with DoD and there was no apparent loss based on prior performance.

Unverified Contractors

DoD awarded seven SDVOSB contracts, valued at approximately $9.8 million, to five contractors that CVE personnel had placed in unverified status because they were unable to confirm whether the majority owner was a service-disabled veteran. We issued a memorandum on September 13, 2010, to notify the Acting Director, DoD OSBP, that the five contractors might not qualify to receive DoD SDVOSB set-aside or sole-source awards. (The memorandum is reprinted in Appendix C.)

We asked the Acting Director, DoD OSBP, to follow up and verify whether the contractors we identified met the requirements of SDVOSB status and also to establish procedures for contracting activities to obtain official evidence of service-disabled veteran status. The Acting

Director did not provide a formal response to our memorandum. However, DoD OSBP personnel stated that each contractor had certified its status as an SDVOSB in compliance with the FAR and that they would take no further action. The response suggests that DoD OSBP would prefer to rely on the self-representation process, which contains several control deficiencies, rather than address the issues we identified.

CVE personnel confirmed that four of the five contractors remained in unverified status as of August 11, 2011. Since the Acting Director, DoD OSBP, did not take action in response to our memorandum, the commanding officers of the activities that awarded the contracts should follow up and verify whether the contractors met the requirements of SDVOSB status.

DoD Contractors Who Potentially Misstated SDVOSB Status

DoD contracting activities awarded eight SDVOSB set-aside contracts, valued at approximately $319 million, even though sufficient evidence did not exist to support the contractors' SDVOSB status. Table 2 shows the contracting activities that awarded contracts to contractors that potentially misstated their SDVOSB status, which we identified from the red flags generated during our review.

Table 2. Awards to Contractors That Potentially Misstated Their SDVOSB Status

DoD Contracting Activity	Number of Contracts	Dollar Value
McChord Air Force Base	1	$7,304,890
Naval Facilities Engineering Command Mid-Atlantic	1	9,649,008
Naval Facilities Engineering Command Northwest	1	200,000,000
Offutt Air Force Base	2	1,943,611
U.S. Army Corps of Engineers Fort Worth	2	80,000,000
U.S. Army Corps of Engineers Mobile	1	20,000,000
Total	**8**	**$318,897,509**

To determine whether the contractor met the requirements of an SDVOSB, we performed a detailed analysis of each contractor. From the documentation we obtained, we determined that seven contractors received SDVOSB awards even though sufficient evidence did not exist to support their eligibility.

DoD contracting activities relied on contractors' self-representations in CCR and ORCA before awarding SDVOSB set-aside and sole-source contracts. The CCR and ORCA do not include enough information to effectively verify that a service-disabled veteran is the majority owner and holds the highest position in the concern.

The following examples demonstrate that had DoD OSBP established a process to ensure that SDVOSBs met the applicable eligibility requirements before awarding set-aside and sole-source

contracts, contractors who misstated their status would not have received SDVOSB contracts. DoD OSBP policy lacked the necessary controls to provide reasonable assurance that only eligible contractors received SDVOSB awards.

McChord Air Force Base

The 62nd Contracting Squadron personnel at McChord Air Force Base awarded an SDVOSB set-aside contract, valued at $7.3 million, to Contractor A even though evidence existed to indicate that Contractor A misstated information, providing the appearance that it met the requirements for SDVOSB joint ventures.

Contractor A was a joint venture between Company A-1, an SDVOSB firm, and Company A-2, a veteran-owned firm. During the audit, we determined that Company A-1 appeared to be an eligible SDVOSB concern. Therefore, in order for Contractor A to qualify as an eligible SDVOSB joint venture, Company A-1 had to serve as the managing venture and one of its employees had to serve as the project manager. In addition, Company A-1 had to receive at least 51 percent of the net profits earned by the joint venture and retain the final records upon completion of the contract.

A letter that Contractor A submitted to McChord Air Force Base contracting personnel provided information supporting that Contractor A misstated its status as an SDVOSB joint venture. Specifically:

- Company A-1 did not appear to be the managing venture;
- An employee of Company A-1 did not appear to serve as the project manager;
- The lack of evidence to support Company A-1's involvement in Contractor A indicated that Company A-1 would not receive at least 51 percent of the net profits earned by the joint venture; and
- Company A-1's lack of involvement indicated that it would not retain the final records.

As Company A-1 was the only SDVOSB identified as part of Contractor A, these factors directly violated the requirements for SDVOSB joint ventures. Therefore, Contractor A did not appear to meet the requirements for SDVOSB joint ventures and, thus, would not be eligible to receive SDVOSB set-aside or sole-source contracts.

Naval Facilities Engineering Command Mid-Atlantic

Naval Facilities Engineering Command Mid-Atlantic contracting personnel awarded an SDVOSB set-aside contract in the amount of $9.65 million to Contractor B, even though sufficient evidence did not exist to support its SDVOSB status.

Because we were unable to verify the majority owner and highest ranking officer of Contractor B through information available to us, we based our determination of SDVOSB status on the following. In coordination with the VA Office of Inspector General, we determined that of the four individuals identified as executives of the company, two were service-disabled veterans.

However, sufficient evidence did not exist to support that the service-disabled veteran conducting both the long-term decisionmaking and the day-to-day management and administration was the majority owner and highest ranking officer of Contractor B.

The two service-disabled veterans identified as executives for Contractor B were also listed as executive vice president and vice president of Contractor B-1, as noted in documentation filed with the State of North Carolina. Additionally, Contractor B and Contractor B-1 shared two business locations, according to the documentation used to self-certify SDVOSB status. The overlapping of company executives and business locations between Contractor B and Contractor B-1 raised questions about which contractor was satisfying the terms of the contract. Contractor B did not appear to be an SDVOSB and was not eligible to receive SDVOSB set-aside or sole-source contracts. Because of that determination, the remaining undisbursed amount of approximately $1.5 million should be put to better use to benefit eligible SDVOSBs.

Naval Facilities Engineering Command Northwest

Naval Facilities Engineering Command Northwest contracting personnel awarded an SDVOSB set-aside contract, with a ceiling amount of $200 million, to Contractor C, even though evidence was insufficient to support its SDVOSB status.

We were unable to clearly distinguish the majority owner and highest ranking officer of Contractor C, and we based our determination of SDVOSB status on all six of the individuals identified as members of the company. Only one of the six members was a service-disabled veteran. However, evidence did not exist to support that this individual was the majority owner and highest ranking officer of Contractor C.

The business license for Contractor C indicated that all six members of the company were equal partners. In addition, the service-disabled veteran lived in Anchorage, Alaska, while the contractor was in Seattle, Washington, approximately 2,266 miles away. The requirements for SDVOSB status state that a service-disabled veteran must control the day-to-day management and administration of the business operations. Considering the distance between the service-disabled veteran's residence and the contractor's location, it is not reasonable to believe that the contractor met this requirement. Therefore, Contractor C did not appear to be an SDVOSB and was not eligible to receive SDVOSB set-aside or sole-source contracts. Because of that determination, the remaining undisbursed amount of approximately $179.4 million should be put to better use to benefit eligible SDVOSBs.

Offutt Air Force Base

The 55th Contracting Squadron personnel at Offutt Air Force Base awarded two SDVOSB set-aside contracts through sealed bid to Contractor D: Contract No. 1 for $1.3 million and Contract No. 2 for $619,134. However, evidence existed to question the validity of Contractor D and whether it might be a potential passthrough to Contractor D-1.

Initial supporting documentation established Contractor D as an eligible SDVOSB; however, evidence existed that questions Contractor D's validity.

- Contractor D received the contracts; however, documentation in the contract files supported that a joint venture was established between Contractors D and D-1. No documentation was found to support that the contracting activity assessed the eligibility of the joint venture.

- The CCR for Contractors D and D-1 contained the same points of contact for both companies.

- The past performance summary submitted included only past performance for Contractor D-1.

- Contractor D was located in a single-family residence and did not have a company Web site.

- The Contractor representative was identified as the vice president of Contractor D-1. Additionally, e-mail correspondence was sent from a Contractor D-1 e-mail account and included the address for Contractor D-1.

- Contractor D articles of incorporation with the State of Missouri designated a three-member board of directors. The board had the power to make decisions by majority vote. Only one of the three shareholders was a service-disabled veteran, and the articles would preclude him from controlling the long-term decisionmaking and day-to-day management and administration of the business operations of Contractor D because he could be outvoted by the other members. This business license was terminated in 2009, and the later articles of incorporation could not be obtained, preventing further determination.

The inconsistencies with the documentation supported that Contractor D was a potential passthrough company to Contractor D-1. Additionally, information reported by Contractor D on the Recovery.gov Web site supported that Contractor D was not retaining the required 15 percent of the contract cost. The possibility that Contractor D was a passthrough would indicate that the percentage retained was going directly to Contractor D-1, which was not an SDVOSB.

U.S. Army Corps of Engineers Fort Worth District

U.S. Army Corps of Engineers Fort Worth District contracting personnel awarded two SDVOSB set-aside contracts, as follows.

Contract No. 1. One SDVOSB set-aside contract, with a ceiling amount of $40 million, went to Contractor E, even though evidence indicated that Contractor E misstated information, providing the appearance that it met the requirements for SDVOSB joint ventures.

Contractor E was a joint venture between Company E-1, a Section 8(a) firm, and Company E-2, an SDVOSB firm. During this audit, we determined that Company E-2 appeared to be an eligible SDVOSB. Therefore, in order for Contractor E to qualify as an eligible SDVOSB joint venture, Company E-2 had to serve as the managing venture, and one of its employees had to

serve as the project manager. In addition, Company E-2 had to receive at least 51 percent of the net profits earned by the joint venture and retain the final records upon completion of the contract.

The joint venture agreement for Contractor E appropriately addressed the pertinent eligibility requirements for SDVOSB joint ventures and provided the appearance that the contractor met those requirements. However, information existed to indicate that Contractor E misstated its eligibility. Specifically:

- Company E-1 appeared to be the managing venture;
- An employee of Company E-1 appeared to serve as the project manager;
- Contractor E's organization chart supported that Company E-1 played a much greater role in the joint venture than Company E-2 and that it might receive at least 51 percent of the net profits earned by the joint venture; and
- The principal office and place of business of Contractor E was the office location of Company E-1, which indicated that Company E-1 might retain the final records.

Since Company E-1 was not an SDVOSB, these factors directly violated the requirements for SDVOSB joint ventures. Therefore, Contractor E did not appear to meet the requirements for SDVOSB joint ventures and the contractor was not eligible to receive SDVOSB set-aside or sole-source contracts. Because of that determination, the remaining undisbursed amount of approximately $28.6 million should be put to better use to benefit eligible SDVOSBs.

Contract No. 2. Another SDVOSB set-aside contract, with a ceiling amount of $40 million, went to Contractor F, even though evidence was insufficient to support its SDVOSB status. Although not evident from the original contract data, Contractor F, an SDVOSB firm, actually participated in a joint venture with Company F-1 to complete the contract.

During this audit, we determined that Contractor F appeared to be an eligible SDVOSB. Therefore, in order for the joint venture between Contractor F and Company F-1 to qualify as an eligible SDVOSB joint venture, Contractor F had to serve as the managing venture and one of its employees had to serve as the project manager. In addition, Contractor F had to receive at least 51 percent of the net profits earned by the joint venture and retain the final records upon completion of the contract.

The joint venture agreement between Contractor F and Company F-1 appropriately addressed the pertinent eligibility requirements for SDVOSB joint ventures and provided the appearance that the contractor met those requirements. However, the information in the joint venture agreement appeared to be misstated. Specifically:

- Company F-1 appeared to be the managing venture, and
- An employee of Company F-1 appeared to serve as the project manager.

Company F-1 was not an SDVOSB; thus, these factors directly violated the requirements for SDVOSB joint ventures. Therefore, the joint venture between Contractor F and Company F-1 did not appear to meet the requirements for SDVOSB joint ventures and the contractor was not eligible to receive SDVOSB set-aside or sole-source contracts. Because of that determination, the remaining undisbursed amount of approximately $30 million should be put to better use to benefit eligible SDVOSBs.

U.S Army Corps of Engineers Mobile District

U.S. Army Corps of Engineers Mobile District contracting personnel awarded an SDVOSB set-aside contract in the amount of $20 million, even though evidence existed to support that the majority owner and highest ranking officer of Contractor G was not a service-disabled veteran. In addition, the owner of Contractor G was identified as the incorporator of three additional businesses in active status, one of which reported the same address as Contractor G. Management and daily business operations of the concern had to be controlled by one or more service-disabled veterans. In accordance with 13 CFR §§ 125.9 and 125.10 (2009), an SDVOSB had to own at least 51 percent and manage the daily business operations. The supporting documentation did not confirm that the owner met the qualifications of a service-disabled veteran; therefore, Contractor G did not meet the qualifications of an SDVOSB. Furthermore, the owner's involvement in the three additional businesses could impair his ability to run the daily operations of Contractor G. Because of that determination, the remaining undisbursed amount of approximately $15.4 million should be put to better use to benefit eligible SDVOSBs.

Lack of Adequate Procedures for Evaluating SDVOSB Status

DoD did not have adequate procedures in place to properly evaluate SDVOSB status before awarding an SDVOSB set-aside or sole-source contract. In accordance with FAR 6.206, "Set-Asides for Service-Disabled Veteran-Owned Small Business Concerns," contracting officers may set aside solicitations for SDVOSB concerns with no requirement for justification or determination. DoD contracting activities are limited to relying on contractors' self-representations in CCR and ORCA before the award of SDVOSB set-aside and sole-source contracts. The CCR and ORCA do not include enough information to effectively verify that a service-disabled veteran is the majority owner and holds the highest officer position in the concern.

To ensure that contractors accurately represent SDVOSB status, the Director, DoD OSBP, should establish procedures to properly evaluate SDVOSB status before contract award. These procedures should require contractors to submit documentation to support their SDVOSB status. At a minimum, contractors should establish that a service-disabled veteran is at least 51-percent owner, holds the highest officer position, controls the long-term decisionmaking, and manages the day-to-day operations of the business. Status as a service-disabled veteran should be confirmed through either a disability rating letter issued by the VA or a disability determination from DoD. [2]

[2] The DD Form 214, "Certificate of Release or Discharge From Active Duty," is a report of separation generally issued when a Service member performs active duty or at least 90 consecutive days of active duty training. The report contains information normally needed to verify military service for benefits, retirement, employment, and membership in veterans' organizations.

Although the existing DoD process for determining contractor SDVOSB status is in compliance with the FAR, this process does not include adequate steps for confirming that contractors actually meet the applicable SDVOSB requirements. Without proper procedures in place to evaluate SDVOSB status, DoD has no assurance that contractor self-representations are accurate. The lack of adequate procedures compromises the integrity and intention of the SDVOSB program. In addition, greater risk exists that DoD will continue to award SDVOSB contracts to contractors who misrepresent their status.

Although the existing DoD process for determining contractor SDVOSB status is in compliance with the FAR, … DoD has no assurance that contractor self-representations are accurate.

Financial Benefit to SDVOSBs

DoD awarded eight contracts, valued at approximately $319 million, to seven contractors who potentially misstated their SDVOSB status. Five of these contracts remained open, with approximately $254.7 million in funds that have not been disbursed.

The original intent of the contracts was to provide opportunities for service-disabled veterans to participate in Federal contracting. However, evidence existed to indicate that the contractors misstated their SDVOSB status to DoD and inappropriately obtained the contracts. The contracting activities should verify the SDVOSB status of the contractors referenced in this report. If a contracting activity identifies that a contractor misstated its status to DoD, the activity should pursue contractual remedies and put any remaining undisbursed funds to better use by ensuring those veterans disabled while defending the country receive the intended benefits.

We arrived at the $254.7 million in funds put to better use by taking the total contract values less disbursements. Any potential monetary benefit would be reduced by any offsetting direct and indirect costs that would be incurred to implement the recommended action. The full extent of the monetary benefits would be quantifiable once management takes action.

Conclusion

SDVOSB set-aside and sole-source contract awards to contractors who misstate their status will continue until the Director, DoD OSBP, establishes adequate policies and procedures to properly verify contractor status. If the DoD OSBP does not establish adequate procedures, it will continue to convey the message that assisting service-disabled veterans is not a priority. Furthermore, the lack of action compromises the integrity and intention of the SDVOSB program, which is to serve veterans with disabilities incurred or aggravated in the line of duty. Veterans remain at risk of losing the benefits the President intended for them. By not implementing adequate verification procedures for SDVOSB contracts, the DoD OSBP places service-disabled veterans in jeopardy of not receiving the intended contract awards.

Management Comments on the Finding and Our Response

Air Force Small Business Programs Office Comments

The Deputy Director, Air Force Small Business Programs Office, responded to our discussion regarding Contractor D at Offutt Air Force Base. He evaluated the information provided in the report with regard to Contractor D and noted specific areas of disagreement. He stated that CCR documents showed no common points of contact between Contractor D and Contractor D-1. He also stated that it was uncommon for a prime to engage a subcontractor who has relevant past performance to provide the level of assurance that the prime can do the work, noting that in order to be in compliance, the SDVOSB must perform 15 percent of the work.

Additionally, he considered immaterial the fact that Contractor D was located in a single-family residence and did not have a company Web site. Many small business owners work out of their residence and do not maintain Web sites in order to keep down costs. Further, he stated that we presented no evidence that the Contractor representative was the vice president of Contractor D-1. He stated that one would expect to have an employee of Contractor D-1 send correspondence from the company e-mail account. He also stated that contracting officers were to verify SDVOSB status in CCR and that the articles of incorporation were not required documentation. Finally, he stated that the contracting officer would have no way of knowing at the time of contract award, what percentage of the contract Contractor D would perform.

Our Response

We have addressed each of the issues as presented. The Government point of contact listed on the CCR for both Contractor D and Contractor D-1 are the same person. Additionally, the other points of contact included on the CCR for Contractor D list the address associated with Contractor D-1. We agree that it seems uncommon for the prime to engage a subcontractor who has relevant past performance to provide the level of assurance that the prime can do the work. That information was included in the report to further question Contractor D's validity.

Additionally, while it may seem immaterial for a small business to be located in a single-family residence and not have a company Web site, this information supports that Contractor D was potentially a passthrough company. Furthermore, we agree that maintaining a company Web site is not a requirement; however, a majority of the DoD SDVOSBs included in our audit maintained Web sites, causing us to again question whether Contractor D was potentially a passthrough company.

Documentation obtained from the contract file supported that the vice president of Contractor D−1 acted as a representative on the contract on more than one occasion. That correspondence was done through an e-mail account established with Contractor D-1. We agree that contracting officers were only required to confirm SDVOSB status in CCR and ORCA; however, the entire premise of this audit was to establish that the requirements were not sufficient to ensure that only eligible SDVOSBs were obtaining DoD contracts. Further, although the contracting officer would have no way of knowing at contract award whether or not the SDVOSB contractor would perform the required 15 percent of the work, the fact that Contractor D did not perform the required percentage further supported the possibility that Contractor D was potentially a passthrough.

Recommendations, Management Comments, and Our Response

Redirected Recommendations

As a result of the realignment of McChord Air Force Base, we redirected draft Recommendation A.2 to the Commander, Mission and Installation Contracting Command. Because the Commander, Fort Drum, did not comment on a draft of this report, we redirected draft Recommendation A.3 to the Commander, Mission and Installation Contracting Command. We request that the Commander, Mission and Installation Contracting Command, provide comments on the final report by March 30, 2012.

Recommendations

A.1. We recommend that the Director, DoD Office of Small Business Programs:

a. **Issue guidance to all DoD contracting activities that award Service-Disabled Veteran-Owned Small Business set-aside and sole-source contracts, reiterating the requirement that DoD contracting personnel confirm via the Central Contractor Registration that contractors represent Service-Disabled Veteran-Owned Small Business status before award.**

b. **Establish a contractor verification process similar to that outlined in Public Law Nos. 109-461, "Veterans Benefits, Health Care, and Information Technology Act of 2006," December 22, 2006, and 111-275, "Veterans Benefits Act of 2010," October 13, 2010, to evaluate contractors' Service-Disabled Veteran-Owned Small Business status before awarding set-aside and sole-source contracts.**

DoD Office of Small Business Programs Comments

The Director, DoD OSBP, agreed with Recommendation A.1.a, stating that the Department notes that FAR 13 applies to the simplified acquisition threshold and that for acquisitions above that threshold, FAR 4.12 directs contracting officers to review a vendor's entry in the ORCA, as that is where a vendor actually certifies. Further, the Director agreed to issue guidance reminding contracting officers of the requirements under FAR 13.102 and highlighting the use of ORCA for vender certification. He stated that guidance would be issued by the end of the 3rd quarter of FY 2012.

The Director did not agree, however, with Recommendation A.1.b, stating that he was hesitant to alter current veteran-focused activities in the absence of evidence indicating that such a change would produce a net benefit to service-disabled veterans who own small businesses. He stated that the VA's verification process was slow and resource–intensive, causing many veterans to miss opportunities. Further, he stated that the VA's parameters regarding ownership and control presented barriers that discourage veteran businesses from forming teams.

Additionally, he stated that CVE was established to meet the requirement of Public Law No. 109-461, which Congress mandated specifically for the VA. In that regard, he stated that Congress intended different treatment of the two Departments with different rules and that the

law applied only to the VA. At the same time, he stated, many congressionally mandated rules for DoD were very prescriptive and not applicable to VA. Further, he stated that Congress has not provided DoD with either the resources or the authority to establish a system such as Public Law No. 109-461 envisions. Finally, he stated that in the absence of evidence indicating that such a change would produce a net benefit to SDVOSBs, his office would be hesitant to alter the current veteran-focused activities.

Our Response

The comments from the Director, DoD OSBP, were responsive to Recommendation A.1.a, but were not responsive to Recommendation A.1.b. Our audit analyzed whether the controls in place affected the integrity of the SDVOSB program, specific to vendor self-certification of service-disabled veteran status. The results demonstrate that there is enough evidence to support the need for a contractor verification process. Without a verification process, the SDVOSB program remains susceptible to fraud, waste, and abuse, and deserving SDVOSBs could miss opportunities that would have otherwise been afforded to them.

Concerning the barriers to forming teams, SDVOSBs may enter into a joint venture agreement with one or more small business concerns for the purpose of performing an SDVOSB contract as long as the joint venture meets the requirements outlined in 13 CFR § 125.15. A verification process would not hinder eligible SDVOSBs from growing and expanding to better compete for subsequent acquisitions. We request that the Director, DoD OSBP, reconsider his position on Recommendation A.1.b or establish a cost effective compensating solution to evaluate contractors' service-disabled status prior to award, and provide comments on the final report by March 30, 2012.

Air Force Office of Small Business Programs Comments

Although not required to comment, the Deputy Director, Air Force Small Business Programs Office provided the following comments on Recommendation A.1. He stated that once his office receives guidance from the Director, DoD OSBP, he intends to coordinate with the Secretary of the Air Force, Mission Support Division, in issuing the suggested guidance concerning CCR. Additionally, he stated that adopting the verification practices of the CVE would be inappropriate for the mission of the Air Force Office of Small Business Programs.

Our Response

Although the Deputy Director, Air Force Small Business Programs Office, stated that adopting the verification practices of the CVE would be inappropriate for the mission, the report highlights several deficiencies with the current self-certification process in support of the recommendation. Additionally, the recommendation states that a contractor verification process similar to that outlined in Public Law Nos. 109-461 and 111-275 should be established, not that DoD should adopt the CVE verification program.

A.2. We recommend that the Commanders, Mission and Installation Contracting Command; Naval Facilities Engineering Command Mid-Atlantic; Naval Facilities Engineering Command Northwest; Offutt Air Force Base; and U.S. Army Corps of Engineers Fort Worth and Mobile Districts, task the contracting officers to:

a. Follow up on the contractors referenced in this report to determine whether they misstated their Service-Disabled Veteran-Owned Small Business status by obtaining:

(1) A list of each business owner/stockholder, including position held and the respective ownership percentages totaling 100 percent;

(2) A copy of the either a disability rating letter issued by the Department of Veterans Affairs or a disability determination from DoD confirming the majority owner(s)' service-disabled veteran status; and

(3) Evidence to support that a service-disabled veteran controls the long-term decisionmaking and manages the day-to-day operations of the company; for example, a copy of the articles of incorporation/organization or an equivalent document establishing voting rights.

b. Pursue contractual remedies and/or referral for consideration of possible suspension or debarment action, if necessary.

Deputy Assistant Secretary of the Navy (Acquisition and Procurement) Comments

The Executive Director, Deputy Assistant Secretary of the Navy (Acquisition and Procurement), responded on behalf of the Commanders, NAVFAC Mid-Atlantic and NAVFAC Northwest and partially agreed with the recommendation. She stated that SBA, not the contracting officer, had the authority and responsibility to determine whether the contractors "misstated" their small business status. However, she stated that on the basis of the information provided in the report, the NAVFAC contracting officers would challenge the SDVOSB status of Contractor B and Contractor C by referring the matter to SBA, in accordance with FAR 19.307 and 13 CFR § 125.25. Upon receipt of the SBA's determination, the authorizing agency would take the appropriate action.

Our Response

The comments from the Executive Director, Deputy Assistant Secretary of the Navy (Acquisition and Procurement), were responsive, and no additional comments were required.

Management Comments Required

The Deputy Director, Air Force Small Business Programs Office, responded on behalf of the Commander, Offutt Air Force Base (see page 16). The comments were not responsive to Recommendations A.2.a.(1), A.2.a.(2), A.2.a.(3) and A.2.b. We request that the Commander, Offutt Air Force Base provide comments on the final report by March 30, 2012.

The U.S. Army Corps of Engineers did not comment on a draft of this report. We request that the Commanders, U.S. Army Corps of Engineers Fort Worth and Mobile Districts, provide comments on the final report by March 30, 2012.

A.3. We recommend that the Commanders, Norfolk Ship Support Activity; Naval Air Warfare Center, Aircraft Division; U.S. Army Corps of Engineers New England and New Orleans Districts; Wright-Patterson Air Force Base; and Mission and Installation Contracting Command, task the contracting officers to follow up on the contractors referenced in Appendix C by obtaining supporting documentation referenced in Recommendation A.2.a to determine their Service-Disabled Veteran-Owned Small Business eligibility. If necessary, pursue contractual remedies and/or referral for consideration of possible suspension and debarment action.

Deputy Assistant Secretary of the Navy (Acquisition and Procurement) Comments

The Executive Director, Deputy Assistant Secretary of the Navy (Acquisition and Procurement), responded on behalf of the Commanders, Norfolk Ship Support Activity and Naval Air Warfare Center, Aircraft Division, and agreed with the recommendation. She stated that the Contracting Officer, Norfolk Ship Support Activity, requested further documentation to validate the contractor's SDVOSB eligibility. The Contracting Officer concluded that the data presented verified the contractor's status as a SDVOSB. She further stated that Contracting Officer, Naval Air Warfare Center, performed followup action to determine the SDVOSB eligibility of the contractor. On December 12, 2011, the Contracting Officer confirmed that the contractor was verified as SDVOSB in VIP.

Our Response

The comments from the Executive Director, Deputy Assistant Secretary of the Navy (Acquisition and Procurement), were responsive, and no additional comments were required.

Air Force Small Business Programs Office Comments

The Deputy Director, Air Force Small Business Programs Office, responded on behalf of the Air Force District Washington and the Air Force Materiel Command at Wright-Patterson Air Force Base. He stated that the contract issued by the Air Force District of Washington was an 8(a) set-aside. He also stated that the CCR for the contractor indicated that the firm was also an SDVOSB and asked that we remove it from the audit. Further, he stated that the contract issued by the Air Force Materiel Command at Wright-Patterson Air Force Base was issued to a company who self-certified as SDVOSB in CCR. Finally, he stated that Air Force Material Command officials thought we were recommending that it request that SBA validate the contractor's eligibility status, and they thought it would not be prudent since 90 percent of the work was complete.

Our Response

The comments from the Deputy Director, Air Force Small Business Programs Office, on behalf of the Air Force District Washington and the Commander, Wright-Patterson Air Force Base, were not responsive. Although we list the contract issued by the Air Force District of Washington in Appendix C of this report, we did not solicit comments from them in response to this recommendation. The contractor's status was confirmed by CVE before we issued the draft

report. Further, the contract number referenced in the Deputy Director's response was not the contract reviewed during this audit, and therefore, the corresponding information provided was not relevant.

Additionally, while the contract awarded by the Air Force Materiel Command at Wright-Patterson Air Force Base was awarded to a contractor that self-certified in CCR that it was an SDVOSB, Veterans Benefits Administration records do not support service-disabled veteran status. Even though more than 90 percent of the work on the contract was complete, by not requesting that SBA validate the SDVOSB eligibility status of the contractor, the unverified contractor would remain eligible to receive future DoD SDVOSB contract awards. We request that the Commander, Wright-Patterson Air Force Base, provide comments on the final report by March 30, 2012.

Management Comments Required

The U.S. Army Corps of Engineers did not comment on a draft of this report. We request that the Commanders, U.S. Army Corps of Engineers New England and New Orleans Districts, provide comments on the final report by March 30, 2012.

Finding B. Action Needed to Prevent Coding Errors in the Federal Procurement Data System–Next Generation

The Federal Procurement Data System–Next Generation (FPDS-NG) data contained coding errors related to SDVOSB set-aside and sole-source contracts. Specifically, DoD contracting personnel incorrectly coded 219 of 275 contract actions as SDVOSB awards, resulting in an accuracy rate of only 20.4 percent for this data element. These actions should have been coded as a different type of set-aside. The coding errors affected 137 contracts, valued at approximately $1.3 billion. This occurred because DoD contracting personnel did not always select the correct type of set-aside when entering contract action data. The coding errors negatively impacted the accuracy of the data contained in FPDS-NG, upon which the Federal Government relies. By entering incorrect information into FPDS-NG, the contracting activities compromised the integrity of the data.

Federal Procurement Data System–Next Generation

FPDS-NG is a repository for collecting, developing, and disseminating procurement data to the Congress, Executive branch, and private sector. The General Services Administration operates and maintains the system. The Federal Government uses the reported data to measure and assess the impact of Federal procurement on the nation's economy, the extent to which awards are made to businesses in the various socioeconomic categories, the impact of full and open competition on the acquisition process, and other procurement policy purposes.

Recurring and special reports generated from FPDS-NG are used by the President, Congress, Government Accountability Office, Federal executive agencies, and the general public. Therefore, it is important that data contained in FPDS-NG are accurate, complete, and submitted in a timely manner. To ensure up-to-date information within the system, contracting officers must submit complete and accurate data on all required contract actions.

Contracting Officers Ultimately Responsible for Accuracy of FPDS-NG Data

DoD contracting personnel did not always ensure that the contract action reports were coded properly to reflect the appropriate type of set-aside. The Military Departments and Defense agencies mainly attributed the miscodings to error on the part of the individuals who entered the data into the contract action reports. According to FAR 4.604, "Responsibilities," the responsibility for the submission and accuracy of the individual contract action report resides with the contracting officer who awarded the contract action. Therefore, contracting officers must ensure the accuracy of all information submitted.

Also, in accordance with FAR 4.604, the Senior Procurement Executive, in coordination with the head of the contracting activity, is responsible for developing and monitoring a process to ensure that contract actions are reported accurately in FPDS-NG. The Senior Procurement Executive for DoD is the Under Secretary of Defense for Acquisition, Technology, and Logistics

(USD[AT&L]). DoD is required to submit to the General Services Administration an annual certification of whether, and to what extent, agency contract action report data for the preceding fiscal year were complete and accurate.

DoD Contracting Personnel Need to Ensure That Contracts Are Correctly Coded in FPDS-NG

FPDS-NG data revealed that DoD contracting personnel incorrectly coded contracts as SDVOSB set-aside or sole-source. For all FY 2010 DoD SDVOSB contract actions as of July 22, 2010, FPDS-NG contained contract actions associated with 154 contractors whose socioeconomic data[3] did not reflect SDVOSB status. We validated each contractor profile in CCR to determine whether the contractors self-represented SDVOSB status. The CCR data revealed the following:

- 141 contractors did not represent SDVOSB status,
- 9 contractors did represent SDVOSB status, and
- 4 contractors did not have CCR profiles.

Of the contracts awarded to the 145 contractors that either did not represent SDVOSB status or did not have CCR profiles, the Military Departments and Defense agencies confirmed that 137 contracts, valued at approximately $1.3 billion, were miscoded as SDVOSB set-aside or sole-source. The miscoded contracts should have been coded as either Unrestricted or another type of set-aside or sole-source, such as Small Business, Small Disadvantaged Business, Historically Underutilized Business Zone, Section 8(a), or Women-Owned. Table 3 shows a breakout of the number and dollar value of the miscoded contracts by Military Department and the Defense agencies.

The Military Departments and Defense agencies confirmed that 137 contracts, valued at approximately $1.3 billion, were miscoded as SDVOSB set-aside or sole-source.

Table 3. DoD Contracts Miscoded as SDVOSB Set-Aside and Sole-Source

Military Department or Agency	Miscoded Contracts	
	Number	Dollar Value
Army	53	$425,163,709
Navy	51	222,501,525
Air Force	20	62,718,174
Defense Agencies	13	619,916,071
Total	**137**	**$1,330,299,479**

[3] The contractor socioeconomic data that appear in FPDS-NG are automatically populated by CCR. When a contractor registers in CCR, it may show in its profile that the business qualifies under a specific socioeconomic category, including SDVOSB.

We sampled 67 of the 137 miscoded contracts, valued at approximately $544 million, from the initial data request for additional review. The documentation we reviewed and inquiries we made to the contracting activities further confirmed that 55 of the contracts identified were, in fact, miscoded as SDVOSB set-aside or sole-source.

DoD Annual Certification of FPDS-NG Data

DoD certified to an accuracy rate of 96.3 percent for the type of set-aside data element; however, we identified an accuracy rate of only 20.4 percent.

For FY 2010, DoD certified to an accuracy rate of 96.3 percent for the type of set-aside data element; however, we identified an accuracy rate of only 20.4 percent for this data element.[4] According to the DoD FPDS-NG Contract Reporting Data Improvement Plan, DoD Components must review certain data elements for accuracy when included on the FPDS-NG contract action report. To confirm the accuracy of the type of set-aside data element, the Components must first determine whether the procurement was a set-aside. The Components must then confirm whether the type of set-aside was correct and corresponded with CCR.

DoD contracting activities accurately coded only 56 out of the 275 (20.4 percent) contract actions reviewed as SDVOSB set-aside or sole-source, leaving a majority of the actions miscoded. The inaccuracies noted indicate possible control deficiencies in DoD's process for validating the accuracy of contract action report data related to the type of set-aside data element. These deficiencies further indicate that DoD's process may not include adequate procedures for ensuring that all set-aside types are represented in the samples it selects for data validation. As a result, DoD is not in full compliance with the standards outlined in FAR 4.604. To promote the integrity of the data contained in FPDS-NG, the USD(AT&L) should emphasize the importance of entering accurate information related to contract actions and reevaluate the data validation process to address the deficiencies.

No System Controls in FPDS-NG to Detect Errors in the Type of Set-Aside Data Element

FPDS-NG data contained 219 miscodings out of the 275 SDVOSB set-aside and sole-source contract actions obtained for FY 2010. Contracting officers are responsible for the submission and accuracy of the contract action reports on each contract action. The contractor socioeconomic data associated with a contractor is loaded directly into FPDS-NG through an interface with CCR. FPDS-NG does not have a built-in system control to prevent contracting personnel from selecting SDVOSB set-aside or sole-source as the type of set-aside when the contractor's socioeconomic data do not show SDVOSB status. Therefore, human error is the most prevalent factor affecting the accuracy of the data.

FPDS-NG includes a function to validate information entered into the system and prevent contracting personnel from proceeding before validating and correcting errors when entering

[4] The 96.3-percent accuracy rate for the type of set-aside data element represents the overall accuracy of this element across DoD based on the records reviewed for FY 2010. Our accuracy rate of 20.4 percent represents only the SDVOSB set-aside and sole-source records reviewed during this audit.

contract action report data. However, based on the FPDS-NG validation rules, this control does not extend to errors related to selecting SDVOSB set-aside or sole-source as the type of set-aside when the contractor's socioeconomic data do not reflect this status.

If the system had such a control, it would prompt contracting personnel to ensure that the type of set-aside selected was accurate before they included the contract action report data in FPDS-NG. This type of system-generated control would also ensure that SDVOSB set-aside and sole-source contracts were not awarded to contractors that did not represent SDVOSB status. Therefore, to improve the accuracy of FPDS-NG data and integrity of the SDVOSB program, USD(AT&L) should coordinate with the General Services Administration to implement a system-generated flag specific to SDVOSB contracts to alert contracting personnel when the type of set-aside selected does not correspond with the contractor's socioeconomic data.

Conclusion

Coding errors in FPDS-NG related to SDVOSB set-aside and sole-source contracts will continue to exist until USD(AT&L) implements adequate controls to ensure the accuracy of the contract action report data. The coding errors we identified resulted primarily from human error on the part of DoD contracting personnel. Since human error in any system can never be eliminated completely, USD(AT&L) should emphasize to the contracting activities the importance of entering accurate information into FPDS-NG. The Federal Government relies on FPDS-NG data to measure and assess the impact of Federal procurement on the nation's economy, the extent to which awards are made to businesses in the various socioeconomic categories, and the impact of full and open competition on the acquisition process, and to address changes to procurement policy. Therefore, to protect the reliability and integrity of the data upon which the Federal Government relies, USD(AT&L) should put proper controls in place to ensure that DoD contracting personnel enter accurate information into FPDS-NG.

Recommendations, Management Comments, and Our Response

B. We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics:

1. Issue guidance to all DoD contracting activities, emphasizing the importance of entering accurate information into the contract action reports to ensure the integrity of the data in the Federal Procurement Data System–Next Generation.

2. Reevaluate the process for ensuring that contract actions are reported accurately in the Federal Procurement Data System–Next Generation. At a minimum, ensure that all set-aside types are included in the samples selected for validating the accuracy of the data.

3. Coordinate with the General Services Administration to modify the contract action report system to include a system-generated flag, specific to Service-Disabled Veteran-Owned Small Business contracts, when the type of set-aside selected does not correspond with the automatically populated socioeconomic data.

Under Secretary of Defense for Acquisition, Technology, and Logistics Comments

The Director, DoD OSBP, responded on behalf of USD(AT&L) and agreed with the recommendations. He stated that since the inception of FPDS-NG, the USD(AT&L) has worked continuously to improve the accuracy of DoD data. USD(AT&L) plans to reissue guidance related to entering accurate information in FPDS-NG by the end of the 3rd quarter of FY 2012.

In addition, he stated that data related to all set-aside types were now included in the samples selected for validating the accuracy of FPDS-NG data and considered Recommendation B.2 closed. Finally, he stated that the General Services Administration added a business rule last calendar year related to SDVOSB contracts and considered Recommendation B.3 closed.

Our Response

The comments from the Director, DoD OSBP, on Recommendations B.1 and B.2 were responsive. We consider the action taken by USD(AT&L) related to the recommendations sufficient.

The Director's comments on Recommendation B.3 were partially responsive. Upon review of the updated validation rules, we noted that the validation rule governing veteran sole-source and veteran set-aside contracts was modified to include SDVOSB as a valid business type. However, this modification would not affect contracts where the type of set-aside used was SDVOSB sole-source or SDVOSB set-aside. Therefore, a validation rule governing that SDVOSB was the only valid business type for SDVOSB sole-source and SDVOSB set-aside contracts was still necessary.

This recommendation is not considered closed. We request that USD(AT&L) provide comments on the final report by March 30, 2012.

Appendix A. Scope and Methodology

We conducted this performance audit from April 2010 through September 2011 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 objective.

To complete the audit, we evaluated Service-Disabled Veteran-Owned Small Business (SDVOSB) set-aside and sole-source contract awards to contractors that were not classified as SDVOSB concerns and contractor self-representations of SDVOSB status. We obtained two sets of data from the Federal Procurement Data System–Next Generation (FPDS-NG) to select samples for testing.

SDVOSB Awards to Non-SDVOSB Concerns

We obtained FPDS-NG data to evaluate SDVOSB set-aside and sole-source awards to contractors that did not appear to be SDVOSBs. We queried FPDS-NG for all FY 2010 DoD SDVOSB contract actions as of July 22, 2010, and filtered the results to obtain all actions associated with contractors that were not coded as SDVOSBs in FPDS-NG. We identified 275 contract actions associated with 145 individual contracts that did not appear to be SDVOSBs yet received SDVOSB set-aside or sole-source contracts from DoD.

We selected 23 contractors for further review, and reviewed 75 contract actions in the Electronic Document Access system related to the 23 contractors selected for further review to determine whether the contracts indicated SDVOSB set-aside or sole-source. From our review of documentation obtained from the Electronic Document Access system, we could not clearly determine whether the contracts were awarded as SDVOSB set-aside or sole-source. Therefore, we submitted all contract and task order information related to the 145 contractors that either did not represent SDVOSB status or did not have CCR profiles to the DoD Office of Small Business Programs (OSBP) for confirmation with the Military Departments and Defense agencies.

We reviewed the responses provided by the Military Departments and Defense agencies and selected a sample of contract items for additional review. Through various site visits and data requests, we obtained the documentation necessary to determine whether the sample contracts were awarded as SDVOSB set-aside or sole-source.

Contractor Self-Representations of SDVOSB Status

We also obtained FPDS-NG data to evaluate contractor self-representations of SDVOSB status. To narrow the population, we obtained the FPDS-NG American Recovery and Reinvestment Act report, August 24, 2010. We queried the report for all SDVOSB contract actions and matched the actions against the Denied, Approved, and Unverified

contractor lists provided by CVE. To focus our review on contractors that had not participated in the CVE verification process, we excluded all contract actions that matched to one of the CVE lists.

We provided the remaining actions to our Quantitative Methods Division to determine our sample. The nonstatistical sampling approach grouped the population by Military Department and contracting office, and selected the top contracting offices based on dollar value for base year and all options. For the Army, we selected the top five contracting offices valued over $5 million, accounting for 70-percent coverage. For the Navy, we took a census of the contracting offices. For the Air Force, we selected the top three contracting offices valued over $1.6 million, accounting for 96-percent coverage.

For each sample contractor, we performed independent research to obtain the information necessary to determine whether the contractor appeared to meet the requirements for SDVOSB concerns. Specifically, we obtained information from sources such as CCR, the Online Representations and Certification Application (ORCA), the Small Business Administration Dynamic Small Business Search, State License Bureaus, LexisNexis, and the contractors' Web sites. We also consulted with the VA Office of Inspector General to identify the service-disabled veteran status of the business owners. In addition, we obtained contract documentation through site visits and data requests. We analyzed all information obtained and determined whether it supported that the contractor was eligible for SDVOSB contract awards.

For the contractors we identified that potentially misstated their SDVOSB status, we obtained documentation from the contracting activities to support the total disbursements to date. We calculated the remaining financial benefit that could be made available to eligible SDVOSBs by subtracting the total disbursements from the total contract values.

Use of Computer-Processed Data

We relied on computer-processed data from FPDS-NG to select the populations for both samples used to complete this audit. Specifically, we relied on contractor socioeconomic information and the type of set-aside identified when accessing the FPDS-NG data. We determined that CCR feeds the contractor socioeconomic data into FPDS-NG and contracting personnel input the type of set-aside. We also determined that FPDS-NG had built-in system controls to help ensure completeness and uniformity of the data; however, these controls did not ensure data accuracy. We confirmed the accuracy of the FPDS-NG data by reviewing supporting documentation.

Use of Technical Assistance

The Quantitative Methods Division assisted with the audit. In support of evaluating contractor SDVOSB status self-representations, the Quantitative Methods Division analysts provided a nonstatistical sample of SDVOSB set-aside and sole-source contract actions.

Prior Coverage of the SDVOSB Program

During the last 5 years, the Government Accountability Office (GAO) has issued one report discussing the Service-Disabled Veteran-Owned Small Business program. Unrestricted GAO reports can be accessed over the Internet at http://www.gao.gov.

GAO

GAO Report No. GAO-10-108, "Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts," October, 23, 2009

Appendix B. CVE Process for Verifying Veteran-Owned Small Businesses

In accordance with 38 CFR part 74 (2010), the VA is required to verify ownership and control of veteran-owned small businesses, including Service-Disabled Veteran-Owned Small Businesses. CVE is responsible for receiving, reviewing, and evaluating all VIP verification applications.

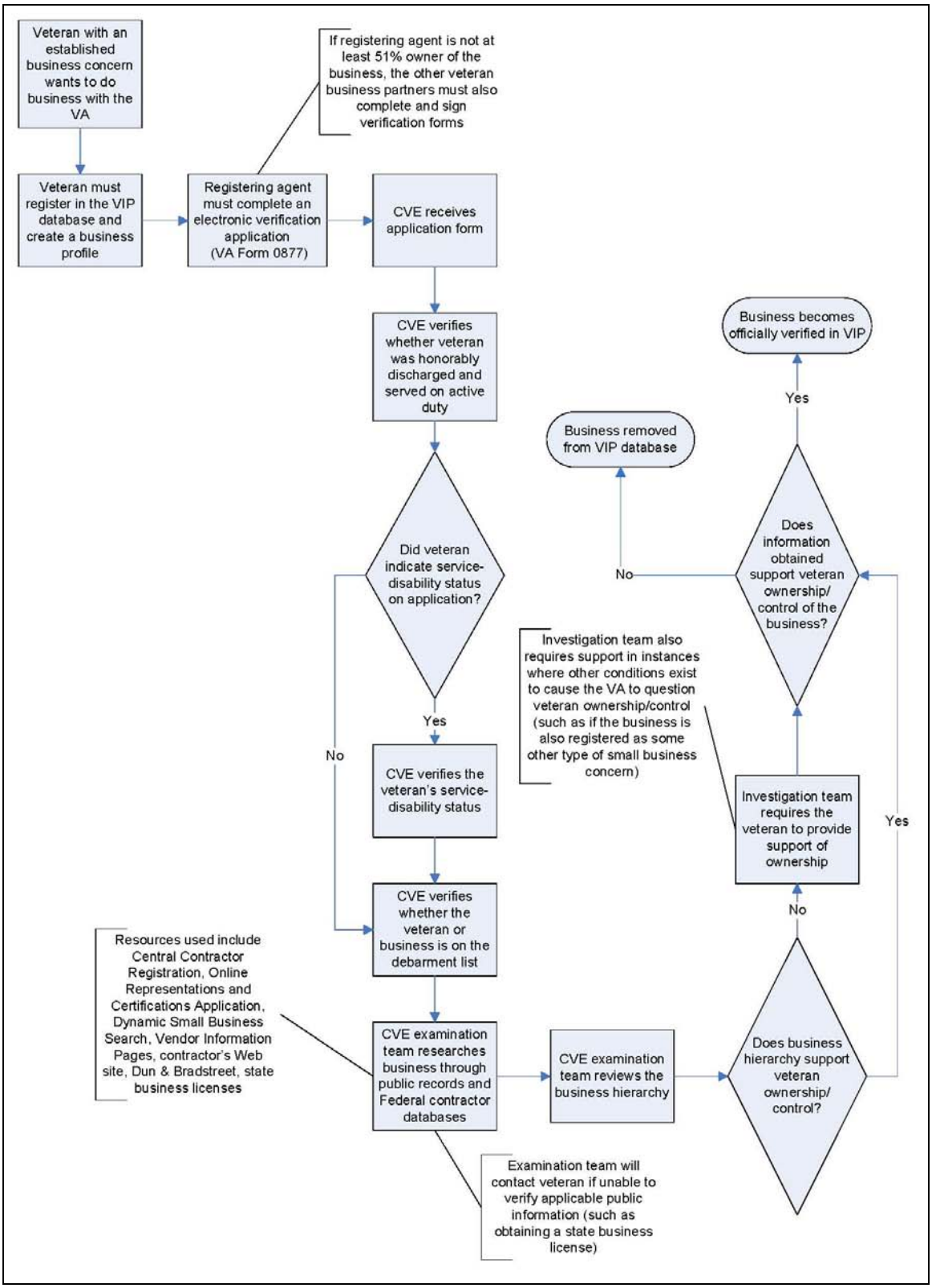
When a contractor applies for inclusion in the VIP database, CVE personnel conduct an examination to verify the accuracy of any statements or information provided as part of the application process. To complete the examination, CVE personnel confirm the accuracy of the information submitted on the VA Form 0877, "VetBiz Vendor Information Pages Verification Program," November 2008, and verify that appropriate ownership is represented.

CVE confirms through the Excluded Parties List System that no business owners are debarred, suspended, or otherwise ineligible to receive Federal contracts. CVE personnel review CCR, ORCA, Dynamic Small Business Search, and the VetBiz VIP database to ensure that the information provided is consistent and supports the information provided on the application.

CVE personnel review the contractor's Web site, if available, and research the contractor through public Web sites, such as Dun & Bradstreet. The CVE also obtains the contractor's business license from the respective state licensing bureau. If the information obtained during the examination is not conclusive enough to make a decision, CVE personnel request that the contractor provide additional support, such as operating agreements, articles of incorporation, financial statements, personal and business tax returns, meeting minutes, payroll records, and stock certificates.

Upon determining whether to approve or deny a contractor's application for verification, CVE issues a letter stating the decision. If CVE approves the contractor's application, the contractor is eligible to participate in the VA Program for Veteran-Owned Small Businesses during the verification eligibility period as long as the contractor continues to meet the applicable requirements. If CVE denies the contractor's application, the letter states the specific reasons for denial and informs the applicant of any appeal rights. Contractors approved for verification are included in the VIP database with a "verified" status symbol, and denied contractors are removed from public view in the database. Figure B-1 shows the CVE Vendor Verification Process.

Figure B-1. CVE Vendor Verification Process



Appendix C. Memorandum to Acting Director, DoD Office of Small Business Programs

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

SEP 1 3 2010

MEMORANDUM FOR ACTING DIRECTOR, DOD OFFICE OF SMALL BUSINESS PROGRAMS

SUBJECT: Contractors That May Not Qualify for the DOD Service-Disabled Veteran-Owned Small Business Set-Aside Program

We want to bring to your attention five contractors that may not qualify to receive DOD Service-Disabled Veteran-Owned Small Business (SDVOSB) set-aside awards. In April 2010, we announced an audit to evaluate the controls over the DOD SDVOSB Set-Aside program (Project No. D2010-D000FJ-0189.000). The audit identified contract awards to small businesses owned by service-disabled veterans (SDV) as an area of high risk. Specifically, DOD relies on contractors to self-certify their status as SDVOSB concerns, which presents an opportunity for contractors to misrepresent their status in order to improperly benefit from the SDVOSB Set-Aside program.

As part of the audit, we coordinated with the Department of Veterans Affairs (VA) Center for Veterans Enterprise (CVE) to obtain copies of their Denied, Unverified, and Approved Contractor Lists. Upon a review of the data, we identified five DOD contractors from the CVE Unverified List that were awarded DOD contract actions in FY's 2009 and 2010.

The VA confirmed that it placed these five contractors on the CVE Unverified list because their SDV status could not be verified. To determine SDV status, the CVE consults the Veterans Benefits Administration's (VBA) Beneficiary Identification Record Locator Subsystem (BIRLS). A DD Form 214, Certificate of Release or Discharge from Active Duty, documents a veteran's character of service and is required to establish a record in BIRLS. The CVE assigns Unverified status to contractors that do not pass the BIRLS or Excluded Parties List System (EPLS) verification.

We queried the Federal Procurement Data System (FPDS) for all DOD SDVOSB contract actions in FY's 2009 and 2010. We matched the query results to the CVE Unverified List and identified five contractors with recent contract actions. For each contractor identified, we obtained the corresponding contracts and determined the total award values using the Electronic Document Access (EDA) system and information from FPDS. We identified awards to the five contractors totaling approximately $9.8 million. (See Table 1 and Attachment A)

Table 1. DOD SDVOSB Set-Aside Awards to Unverified Contractors

Contractor Name	DUNS Number	Total Value of Contracts Awarded
[redacted]	[redacted]	$4,407,310.77
[redacted]	[redacted]	1,607,060.28
[redacted]	[redacted]	2,791,464.75
[redacted]	[redacted]	977,104.15
[redacted]	[redacted]	16,232.80
Total		**$9,799,172.75**

While Unverified Status does not indicate intentional misrepresentation by the contractor, it does indicate that the VBA record does not support SDV status. Once the CVE notifies a contractor that its SDV status cannot be confirmed, the contractor has the opportunity to correct the BIRLS information. As of July 7, 2010, the five contractors identified are still in Unverified Status. Since DOD contractors self-certify, there is no confirmation that the VBA records support SDV status. Therefore, there may be additional contractors that would not pass the BIRLS verification.

We recommend the DOD Office of Small Business Programs (OSBP):

- Request contracting officers to follow-up with the five contractors identified to verify if they meet the requirements for SDV status. For any contractors that do not meet the requirements for SDV status, pursue appropriate contractual remedies and/or referral for consideration of possible suspension or debarment action.
- Establish procedures for contracting activities to obtain a copy of the DD Form 214 and a copy of the disability rating letter issued by the VA to confirm SDV status prior to awarding SDVOSB contracts.

Please advise whether the OSBP plans to take action regarding the above recommendations by September 30, 2010. If you have any questions regarding this memorandum, please contact [redacted]

Patricia A. Marsh

Patricia A. Marsh, CPA
Assistant Inspector General
Defense Business Operations

Attachment A: Service-Disabled Veteran-Owned Small Business (SDVOSB) Set-Aside Contracts Awarded to Unverified Contractors

1. [redacted]
   - The Norfolk Ship Support Activity issued contract number [redacted], [redacted], as an SDVOSB Set-Aside award. The total award value, including any options, is $2,436,909.77. According to the Federal Procurement Data System (FPDS), the estimated ultimate completion date for this contract is [redacted].
   - The Naval Air Warfare Center issued contract number [redacted], as an SDVOSB Sole Source award. The total award value, including any options, is $1,970,401. According to FPDS, the estimated ultimate completion date for this contract is [redacted].

2. [redacted]
   - The Air Force District of Washington issued contract number [redacted], [redacted] as an SDVOSB Set-Aside award. The total award value, including any options, is $1,607,060.28. According to FPDS, the estimated ultimate completion date for this contract is [redacted].

3. [redacted]
   - The United States Army Corps of Engineers (USACE), New England District, issued contract number [redacted], as an SDVOSB Set-Aside award. The total award value, including any options, is $1,491,968.75. According to FPDS, the estimated ultimate completion date for this contract is [redacted].
   - The Air Force Materiel Command at Wright-Patterson Air Force Base issued contract number [redacted], as an SDVOSB Set-Aside award. The total award value, including any options, is $1,299,496. According to FPDS, the estimated ultimate completion date for this contract is [redacted].

4. [redacted]
   - The USACE, New Orleans District, issued contract number [redacted], [redacted], as an SDVOSB Set-Aside award. The total award value, including any options, was $977,104.15. According to FPDS, the estimated ultimate completion date was [redacted]

5. [redacted]
   - The Director of Contracting at Fort Drum issued contract number [redacted], as an SDVOSB Set-Aside award. The total award value, including any options, was $16,232.80. According to FPDS, the estimated ultimate completion date for this contract was [redacted].

Note: [redacted] was also identified on the Center for Veterans Enterprise (CVE) Unverified List. The Contracting Command at Fort Irwin issued contract number [redacted], as an SDVOSB Set-Aside award. This contract was cancelled on [redacted], because the quantities ordered were not enough to sustain the contractor's business. We did not include this contractor in our results; however, they remain on the Unverified List and should be monitored for future SDVOSB awards.

Under Secretary of Defense for Acquisition, Technology, and Logistics Comments

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

ACQUISITION, TECHNOLOGY AND LOGISTICS

JAN 10 2012

MEMORANDUM FOR INSPECTOR GENERAL, DEPUTY DIRECTOR, DoD PAYMENTS AND ACCOUNTING OPERATIONS

THROUGH: DIRECTOR, ACQUISTION RESOURCES AND ANALYSIS 1/11/12

SUBJECT: Response to DoD IG Draft Report on Inadequate Controls Over the DoD Service-Disabled Veteran-Owned Small Business Set-Aside Program Allow Ineligible Contractors to Receive Contracts (Project N. D2010-D000FJ-0189.000)

This memorandum responds to the two recommendations in the draft report, as referenced above, directed to the Director, Department of Defense (DoD) Office of Small Business Programs and to the three recommendations directed to the Under Secretary of Defense for Acquisition, Technology and Logistics. The Under Secretary asked that I respond on his behalf. I understand that your office sent the other recommendations (designated A.2. and A.3. in the Report) to the relevant Commanders for a direct response; consequently, this memorandum does not discuss any of the issues raised by those recommendations.

Payment and Accounting Operation Recommendation:
You recommend that the Director, DoD Office of Small Business Programs, issue guidance to all DoD contracting activities that award Service-Disabled Veteran-Owned Small Business set-aside and sole-source contracts, reiterating the requirement that DoD contracting personnel confirm, via the Central Contractor Registration, the contractor's status as a Service-Disabled Veteran-Owned Small Business before awarding the contract.

Director, Office of Small Business Programs, Response:
Concur. The Department notes that the Federal Acquisition Regulation (FAR) Part 13 applies to simplified acquisition threshold. For acquisitions above the simplified acquisition threshold, DoD policy, set out at FAR Subpart 4.12, directs contracting officers to review a vendor's entry in the Online Representations and Certifications Application (ORCA) – as that is where a vendor actually certifies. Paragraph three of the attached memorandum, dated July 21, 2010, is provided for your information.

We agree to issue guidance and remind contracting officers of the requirements under FAR 13.102, and, at the same time, highlight the use of ORCA for vendor certification. We will issue such guidance by the end of the 3rd quarter of FY 2012.

Payment and Accounting Operation Recommendation:
You recommend that the Director, DoD Office of Small Business Programs establish a contractor verification process, similar to that outlined in Public Law Nos. 109-461 and 111-275, to evaluate the contractor's status as a Service-Disabled Veteran-Owned Small Business prior to awarding set-aside and sole-source contracts.

Director, Office of Small Business Programs, Response:
Do not concur. Adopting verification practices similar to those of the Veteran Affairs (VA) Center for Veterans Enterprise (CVE) would not provide a net benefit to our service-disabled veterans who own small businesses. Many veterans have indicated that the VA's verification system is harmful to them. The process, as referenced on pages 24 and 25 of the report, is slow, causing them to miss opportunities. The process is also resource intensive. In addition, the VA's parameters regarding ownership and control present barriers that discourage these businesses from forming teams. Veteran-owned small businesses, as well as all small businesses, find that teaming enables them to grow and expand in order to better compete for subsequent acquisitions.

As the report points out, CVE was established to meet the requirements of Public Law No. 109-461 which Congress mandated specifically for the Department of Veteran Affairs. The law is applicable only to the VA and not to any other Departments. Concurrently, there are many Congressionally mandated rules for DoD (such as those in the Defense Federal Acquisition Regulations) that are very prescriptive and are not applicable to the VA.

The different treatment of the two Departments suggests that Congress recognizes the difference in missions between the VA and the DoD and intends that the Departments operate with different rules. Congress has not provided DoD either the resources or the authority to establish a system such as Public Law No. 109-461 envisions.

We would be hesitant to alter the current veteran-focused activities in the absence of evidence indicating that such a change would produce a net benefit to the service-disabled veteran-owned small businesses.

Payment and Accounting Operation Recommendation:
You recommend that the Under Secretary of Defense for Acquisition, Technology and Logistics issue guidance to all DoD contracting activities, emphasizing the importance of entering accurate information into the contract action reports to ensure the integrity of the data in the Federal Procurement Data System–Next Generation.

Under Secretary of Defense for Acquisition, Technology and Logistics Response:
Concur. Since inception of the Federal Procurement Data System, we have worked continuously to improve accuracy of the DoD data. We will re-issue such guidance by the end of the 3rd quarter of FY 2012.

Payment and Accounting Operation Recommendation:
You recommend that the Under Secretary of Defense for Acquisition, Technology and Logistics reevaluate the process for ensuring that contract actions are reported accurately in the Federal Procurement Data System–Next Generation. At a minimum, ensure that all set-aside types are included in the samples selected for validating the accuracy of the data.

Under Secretary of Defense for Acquisition, Technology and Logistics Response:

Concur. This type of data is now included in the samples selected for validating the accuracy of the data. Hence, this recommendation should be closed.

Payment and Accounting Operation Recommendation:
You recommend that the Under Secretary of Defense for Acquisition, Technology and Logistics coordinate with the General Services Administration (GSA) to modify the contract action report system to include a system-generated flag, specific to Service-Disabled Veteran-Owned Small Business contracts, when the type of set-aside selected does not correspond with the automatically populated socioeconomic data.

Under Secretary of Defense for Acquisition, Technology and Logistics Response:
Concur. GSA added a business rule to this effect last calendar year. Hence, this recommendation should be closed.

Please contact [redacted] if additional information is required. Thank you for providing me with the opportunity to respond.

Andre J. Gudger, Director
DoD Office of Small Business Programs

Attachment:
As stated

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

ACQUISITION, TECHNOLOGY AND LOGISTICS

JUL 21 2010

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISTICS MANAGEMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Correctly Identifying Size Status of Contractors

This memorandum is to re-iterate the process for correctly determining the size status of contractors for contract awards in accordance with Federal Acquisition Regulation (FAR) requirements and supporting federal-wide electronic systems. Please ensure these procedures are disseminated throughout your procurement workforce.

FAR Subpart 19.303, Determining North American Industry Classification System (NAICS) Codes and Size Standards, instructs contracting officers that they must determine the appropriate NAICS code and related small business size standard and include them in solicitations above the micro-purchase threshold. Solicitations and synopses posted via Federal Business Opportunities (FBO) must clearly identify the appropriate NAICS code. FAR provision 52.204-8, Annual Representations and Certifications, which is required in most solicitations, must include the NAICS code and size standard when included in solicitations. When the solicitation is for commercial items, the NAICS code and size standard must be present on the Standard Form 1449 in accordance with FAR provision 52.212-1, Instruction to Offer – Commercial Items. If FAR provisions 52.204-8 or 52.212-1 are not included in solicitations, contracting officers must ensure that the NAICS code and size standard are included in FAR provision 52.219-1, Small Business Program Representations, when that provision is required to be included in solicitations.

In preparing to make contract award, contracting officers must review a vendor's completed provisions in the Online Representations and Certifications Application (ORCA) database (https://orca.bpn.gov) to determine the small business size status relating to the appropriate NAICS code of a vendor when FAR provision 52.204-8 or 52.212-3, Offeror Representations and Certifications – Commercial Items, is included in the contract. If these provisions are not included, then contracting officers must review the offerors' responses to 52.219-1 in their proposal to determine the size status on associated awards.

Upon contract award, contracting officers must identify the predominant NAICS code from the solicitation and the size of the successful offeror when submitting their contract action report to the Federal Procurement Data System (FPDS). The contracting officer shall indicate either 'Small Business' or 'Other than Small Business' in the Contracting Officer's Determination of Business Size data field in accordance with the offeror's response to the applicable provision described above. If none of the above provisions are included in the solicitation, there is no mechanism to determine the size status, and the vendor must be considered 'Other than Small Business.'

Additionally, be reminded that FAR clause 52.219-28, Post-Award Small Business Program Re-representation, shall be included in solicitations and contracts exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas. This clause requires contractors identified as small businesses at contract award to re-represent their size status to the contracting officer upon novations, mergers or acquisitions that do not require novations, and on any contracts prior to extending performance into a sixth year or any subsequent option period. If the contractor indicates during re-representation that their size status has changed, the contracting officer must issue a modification to indicate such and report it to FPDS within 30 days after notification. From that point forward, subsequent actions under that contract will be identified with the new size status.

Please note that none of these instructions indicate that the contracting officer shall consult the Central Contractor Registration (CCR) database to determine small business size. While the Small Business Administration (SBA) does indicate at CCR if it has certified the registrant as an 8(a) program participant or HUBZone vendor; the small business designation that the SBA provides per registrant's listed NAICS code should only be used for market research activities. ORCA is the official authoritative source of the vendor's certifications regarding size at contract award.

Thank you for your assistance in ensuring the correct identification of size status for contractors related to contract awards. Future improvements within the federal Integrated Acquisition Environment (IAE), in which CCR, ORCA, FBO, and FPDS all reside, are planned to more seamlessly integrate these applications and associated processes. FAR cases will be opened, as necessary, to capture these process improvements. Any questions regarding the use of the IAE systems discussed herein may be directed to [redacted]. Any questions regarding general socio-economic procurement policy should be directed to [redacted].

cc:
Director, OSD Office of Small Business Programs

Deputy Assistant Secretary of the Navy (Acquisition and Procurement) Comments

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

DEC 20 2011

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL,
ACQUISITION AND CONTRACT MANAGEMENT,
DEPARTMENT OF DEFENSE INSPECTOR GENERAL
ARLINGTON, VIRGINIA

SUBJECT: Inadequate Controls over the DoD Service-Disabled Veteran-Owned Small Business Set-Aside Program Allow Ineligible Contractors to Receive Contracts, Draft Audit Report (Project No. D2010-D000FJ-0189.000)

The attached comments are provided by the Department of the Navy in response to your draft audit report dated November 29, 2011.

My point of contact for this action is [redacted]. She can be reached at [redacted].

Althea H. Coetzee
RDML, SC, USN
Executive Director
DASN (AP)

Attachment:
As stated

DEPARTMENT OF THE NAVY COMMENTS ON DODIG DRAFT REPORT
D2010-D000FJ-0189.000 DATED NOVEMBER 29, 2011

"INADEQUATE CONTROLS OVER THE DOD SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE PROGRAM ALLOW INELIGIBLE CONTRACTORS TO RECEIVE CONTRACTS"

FINDING A: Contractors Improperly Received Contract Awards Intended for Service-Disabled Veteran-Owned Small Businesses (SDVOSB).

Recommendation A.2: The DoDIG recommended that the Commander, Naval Facilities Engineering Command Mid-Atlantic (NAVFAC MIDLANT) and Commander, Naval Facilities Engineering Command Northwest (NAVFAC Northwest) task the contracting officers to:

a. Follow up on the contractors referenced in this report to determine whether they misstated their Service-Disabled Veteran-Owned Small Business status by obtaining:

(1) A list of each business owner/stockholder, including position held and the respective ownership percentages totaling 100 percent,

2) A copy of the either a disability rating letter issued by the Department of Veterans Affairs or a disability determination from DoD confirming the majority owner(s) service-disabled veteran status, and

(3) Evidence to support that a service-disabled veteran controls the long-term decisionmaking and manages the day-to-day operations of the company; for example, a copy of the articles of incorporation/organization or an equivalent document establishing voting rights.

NAVFAC Response: **Partially-concur**. The Small Business Administration, not the contracting officer, has the authority and responsibility to determine if the contractors "misstated" their small business status. However, based on the information provided in this report, the NAVFAC contracting officers will challenge the Service-Disabled Veteran-Owned Small Business status of [redacted] and [redacted] by referring the matter to the Small Business Administration (SBA) in accordance with FAR 19.307 and 13 CFR 125.25.

b. Pursue contractual remedies and/or referral for consideration of possible suspension or debarment action, if necessary.

NAVFAC Response: Upon receipt of the Small Business Administration's determination, the appropriate action will be taken by the authorizing agency (NAVFAC or the Small Business Administration).

Recommendation A.3: The DoDIG recommended that the Commander, Norfolk Ship Support Activity (NSSA) and Commander, Naval Air Warfare Center, Aircraft (NAVAIR) Division:

Task the contracting officers to follow up on the contractors referenced in Appendix C by obtaining supporting documentation referenced in Recommendation A.2.a. to determine their Service-Disabled Veteran-Owned Small Business eligibility. If necessary, pursue contractual remedies and/or referral for consideration of possible suspension and debarment action.

NSSA Response: Concur. At the direction of the Commander of NSSA, the contracting officer requested further validation of [redacted] eligibility. The evidence shows that the disabled veteran in question owns 51 percent of the stock and is the Chairman of the [redacted] board and Chief Executive Officer/President of [redacted] It also reflects that he has owned over 50% of the stock since incorporation of 2005. The Department of Veterans Affairs letter documenting the veteran's disability and a copy of [redacted] By-Laws were provided. The Contracting Officer concluded that the data presented verified [redacted] status as a SDVOSB.

At the time of the award, the Contracting Officer verified [redacted] status as a SDVOSB by checking the Central Contract Registry and by checking the Online Representations and Certifications Application in accordance with FAR 13.102 and 19.301-1 respectively. Any further verification of the SDVOSB status is not required by the FAR.

NAVAIR Response: **Concur**. While the contracting officer complied with all applicable regulations in awarding Naval Air Warfare Center contract [redacted], the recommendation requested further validation of the offeror's eligibility. Therefore, the Naval Air Systems Command (NAVAIR), performed follow-up action to determine the SDVOSB eligibility of the awardee. Specifically, NAVAIR searched the Department of Veteran Affairs Vendor Information Pages (VIP) at https://www.vip.vetbiz.gov on 12 December 2011. VIP indicates that the contractor is a verified SDVOSB. Therefore, no contractual remedies and/or referrals are necessary.

Air Force Small Business Programs Office Comments

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

OFFICE OF THE UNDER SECRETARY

05 JAN 2012

SAF/SB
1060 Air Force Pentagon
Washington, DC 20330-1060

[redacted]
Inspector General
Department of Defense
4800 Mark Center Drive
Alexandria, VA 22350 - 1500

Dear [redacted]

Thank you for the opportunity to comment on the draft of your report entitled, "Inadequate Controls Over the DoD Service-Disabled Veteran-Owned Small Business Set-Aside Program Allow Ineligible Contractors to Receive Contracts (Project No. D2010-D000FJ-0189.000)." The report makes two recommendations to OUSD OSBP.

DoD Inspector General Recommendation:

A-1: We recommend that the Director, DoD Office of Small Business Programs:

a. Issue guidance to all DoD contracting activities that award Service-Disabled Veteran-Owned Small Business set-aside and sole-source contracts, reiterating the requirement that DoD contracting personnel confirm via the Central Contractor Registration that contractors represent Service-Disabled Veteran-Owned Small Business status before award.

b. Establish a contractor verification process similar to that outlined in Public Law Nos. 109-461 and 111-275 to evaluate contractors' Service-Disabled Veteran-Owned Small Business status before awarding set-aside and sole-source contracts.

Air Force Office of Small Business Program Response:

Once we receive guidance from the OUSD Director, Office of Small Business Programs, we will coordinate with SAF/AQCX in issuing the guidance you suggest concerning the Central Contractor Registration, if necessary.

We agree with the OUSD DoD Office of Small Business Programs, insofar as adopting the verification practices of the Veteran Affairs Center for Veterans Enterprise (CVE) would be inappropriate for our mission.

Additionally, in our attachment, we provide responses for the three contracting activities mentioned in your report. Overall, at least with respect to the Air Force, encryption keys used by

your office were not compatible with most of our activities and the contracts and contractors referred to, but not identified, were difficult to find which delayed response time. Also, the methodology used seemed to measure the Air Force contracting activities to the Veterans Administration processes and procedures which, as you know, is not applicable to, other than the VA.

There is no argument that where PCO's fails to do the minimum requirement of checking a Contractor SDVOSB status against the CCR or miscoding contracts in FPDS-NG, while not confined to SDVOSB, does need to be addressed.

Thank you for providing me with the opportunity to respond.

Sincerely

John G. Caporal

JOHN G. CAPORAL, GS-15
Deputy Director
Small Business Programs
Department of the Air Force

Attachment:
Comments on the subject DoD IG Report

Attachment 1 **6 January 2012**

Subject: Inadequate Controls Over the DoD Service Disabled Veteran-Owned Small Business Set-Aside Program Allow Ineligible Contracts to Receive Contracts, dated 29 Nov 2011

The subject "**DRAFT**" report was sent to the individual contracting activities for comment before publication. Three Air Force Contracting Activities: AFNCR appeared on page 28 for a contract totaling $1,607,060.28 and AFMC also appeared on page 28 for a contract valued at $1,299,494.00. Offutt Air Force Base, ACC and. Offutt were cited on pages 9, 11, and 12 for two contracts with a combined total dollar amount of $1,943,611. .

The contract at AFNCR [redacted] was an 8(a) set-aside. When I looked up the CCR for the contractor selected, [redacted], cage code [redacted], it indicated that the firm was also an *8(a), Small Business, Hispanic American Owned,* ***Service Disabled Veteran Owned Business****, Women-Owned Business and an Economically Disadvantaged Women-Owned Small Business.* Each category is counted as an obligation under this award. Please remove 20 CONS, Shaw AFB SC, from the requirement to respond. They have no part in this audit.

AFMC responded to a mention of AFMC on page 28 on contract [redacted] to [redacted]. The contract was to replace HVAC and repair the interior of Bldg. 18 project, awarded 28 September 2009. I pulled the CCR for the company and found that the company *self certified themselves as SDVOSB* as well *as Self Certified Small Disadvantaged Business* and found it was a *small business*. AFMC seemed to feel that the DoD IG wanted them to go to the SBA to request the SBA assist in validating that [redacted] is a SDVOSB. Because the work is over 90% complete, perusing that course of action at this time, would not be prudent. It appears that they did check the CCR.

My evaluation of the Offutt AFB part of the report was as follows:

On page 11 of the DoD DRAFT IG report, the report cites two contracts out of ;"The 55th Contracting Squadron personnel at Offutt Air Force Base awarded two SDVOSB set-aside contracts through sealed bid; Contract 1 for $1.3m and Contract No.2 for $619,134 to Contractor D. However, evidence exists to question the validity of Contractor D and whether it might be a potential passthrough to Contractor D-1. Initial supporting documentation established Contractor D as an eligible SDVOSB; however, evidence existed that questions Contractor D's validity.

- Contractor D received the contracts; however, documentation in the contract files supported that a joint venture was established between Contractors D and D-1. No documentation was found that the contracting activity assessed the eligibility of the joint venture.

- **The CCR for Contractors D and D-1 contained the same points of contact for both companies.** A side by side review of CCR documents of each firm found no common points of contact.
- **The past performance summary included only past performance for Contractor D-1.** It is uncommon for a prime to engage a subcontractor who has relevant past performance to provide the command with a level of assurance that the prime can do the work. As long as the SDVOSB does 15% of the work in a construction contract and is managing the project it should be in compliance.
- **Contractor D was located in a single family residence and did not have a company website.** Immaterial, many small businesses work out of their residence and unless the task required a website, then this is also immaterial. Keeping down the overhead allows small businesses to keep their overheads low and provide the government with the same quality at a lower price.
- **The contractor representative was identified as the vice president of Contractor D-1.** No evidence was presented other than this written conclusion that this, in fact, exists. So no comment can be provided.
- **Additionally, e-mail correspondence was sent from a Contractor D-1 e-mail account and included the address for Contractor D-1.** This statement is unclear. One would expect to have an employee of Contractor D-1 to send correspondence from their company e-mail account and for that account to have their address.
- **Contractor D articles of incorporation with the state of Missouri designated a three-member board of directors. The board had the power to make decisions by majority vote. Only one of the three shareholders was a service-disabled veteran, and the articles of incorporation would preclude him from controlling the long term decision making and day-to- day management and administration of the business operations of Contractor D because he could be outvoted by the members. The business license was terminated in 2009, and the later articles of incorporation couldn't be obtained, preventing further determination.** Contracting Officers are to verify that the Contractor is a Service Disabled Veteran Small Business in CCR which they did and you also found. Getting a hold of the articles of incorporation is not required. Only one veteran was a shareholder. Did he own 51% or more of the company? You did not indicate whether the BOD had two Service Disabled Veterans, just that there was only one SDV as a stockholder. In the change in the articles of incorporation, you admitted you could not obtain, so you do not know whether or not this perceived problem was subsequently corrected.
- **The inconsistencies with the documentation support that Contractor D <u>was a potential</u> passthrough company to Contractor D-1. Additionally, information reported by Contractor D on the Recovery.com Web site supported that Contractor D was not retaining the required 15 percent of contract cost. The <u>possibility</u> that Contractor D was a passthrough would indicate that the percentage retained was going to Contractor D-1, which was not a SDVOSB.** The Contracting Officer would have no way of knowing, at the time of contract award, what the ultimate outcome of the percentage of contract cost going to Contractor D, a self certified CCR registered SDVOSB, would be less than 15 percent.

V/R

[redacted]

Secretary of the Air Force, Office of Small Business Programs

Inspector General
Department of Defense