

New Certification Requirements for Veteran-Owned Small Business Concerns and Service-Disabled Veteran-Owned Small Business Concerns Seeking Public Procurement Contracts



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Effective January 1, 2023, Veteran-Owned Small Business Concerns (VOSBs) and Service-Disabled Veteran-Owned Small Business Concerns (SDVOSBs) will be required to obtain Small Business Administration (SBA) certification to participate in any federal government agency VOSB or SDVOSB sole source or set-aside prime contracts. This change originated from a Final Rule (87 FR 73400) published by the SBA on November 29, 2022. As a result of this Final Rule, not only will VOSBs and SDVOSBs be required to re-visit, and in some cases re-apply for various certifications, but these new regulations will also impact joint ventures that rely on their member's VOSB or SDVOSB status to bid public work.

New Regulation

Previously, a VOSB and SDVOSB could self-certify to perform set-aside and sole source projects on non-U.S. Department of Veteran Affairs (VA) procurements—a VOSB and SDVOSB only needed to be certified by the VA Center for Verification and Evaluation (CVE) when bidding on VA procurements contingent on its status.

As of January 1, 2023, the requirement that VOSBs and SDVOSBs be certified will extend to all federal prime contracts, regardless of the overseeing agency. The Final Rule implements the 2021 National Defense Authorization Act (NDAA 2021), changing the certification process for VOSBs and SDVOSBs. NDAA 2021 transferred the certification function from the VA to the SBA. This means that the VA has stopped accepting new applications for VOSB and SDVOSB certification or recertification. The transfer is intended to reduce confusion and provide veterans with a central support for their small business certification and contracting assistance needs. The new program is called the Veteran Small Business Certification Program, or VetCert, and governing regulations can be found in 13 CFR Part 128. Now, a concern must apply to the SBA for certification as a VOSB or SDVOSB, submitting evidence that it is a small business owned and controlled by one or more qualifying veterans. If the SBA determines that a concern meets the eligibility requirements of a VOSB or SDVOSB, it will make the appropriate designation in the certification database.

Timing, Grace Period, and Re-certification

SDVOSB and VOSBs certified by the VA CVE prior to January 1, 2023, do not need to re-certify with the SBA this year. The SBA will deem such firms certified for the remainder of their three-year eligibility term. At the conclusion of that three-year term, the firms will need to meet all conditions of eligibility and apply to be recertified by SBA.

If a SDVOSB or VOSB was self-certified, it has a one-year grace period, ending December 31, 2023, to file an application for certification and may continue to rely on its self-certification to compete for non-VA sole source and set-aside awards during that time.

As of January 9, 2023, the SBA began accepting applications for certification [HERE](#).

Impacts to Joint Ventures

As before, a Joint Venture is not required to be certified as a VOSB or SDVOSB under the new regulations. New regulations were issued, however, in 13 CFR 128 outlining the certification requirements of joint venture members. A joint venture may submit an offer for a VOSB or SDVOSB contract if the joint venture meets the requirements as set forth in 13 CFR § 128.402. These requirements include that (1) the VOSB or SDVOSB joint venture partner is certified, (2) the joint venture agreement complies with the requirements set forth in 13 CFR § 128.402, and (3) a VOSB or SDVOSB cannot be a joint venture partner on more than one joint venture that submits an offer for a specific contract set-aside or reserved for VOSBs or SDVOSBs.

With regard to size, a joint venture of a certified VOSB or SDVOSB and one or more other business may submit an offer for a VOSB or SDVOSB procurement as long as both businesses are small under the size standard corresponding to the pertinent NAICS code.

Importantly, at the time of offer as a joint venture for a VOSB or SDVOSB contract, each certified VOSB or SDVOSB joint venture partner must certify that (1) it is a certified VOSB or SDVOSB, (2) it is small under the corresponding size standard, and (3) it will comply with the subcontracting limitations outlined in the regulations.

13 CFR § 128.402 also sets forth requirements for the contents of a joint venture agreement to perform VOSB or SDVOSB contracts; limitations on subcontracting; standards for the evaluation of a joint venture's capabilities, past performance, and experience; a requirement that certified VOSB or SDVOSB partners to joint ventures submit performance of work reports at certain stages of the procurement process; and bases for suspension or debarment of a joint venture under this section.

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