

LEGAL MEETS PRACTICAL, LLC

300 Colonial Center Parkway, Ste 100 | Roswell, GA 30076 | 703.552.3220 | scs@legalmeetspractical.com
legalmeetspractical.com

January 1, 2016

VIA ELECTRONIC SUBMISSION

Director

Regulation Policy and Management (02REG)

Department of Veterans Affairs

Re: Comments to RIN 2900-AO63 - VA Veteran-Owned Small Business (VOSB) Guidelines

Dear Sir or Madam:

As a veteran attorney and advocate who specializes in helping veteran-owned small businesses (VOSB) grow, I am pleased to offer the following comments on the above-referenced proposed rule issued by your agency on November 6, 2015:

Section 74.1. What definitions are important for VetBiz Vendor Information Pages (VIP) Verification Program?

- Days. This definition should include the time by which document submissions are due (i.e., close of the business day at 5:00 PM, midnight). I have seen veteran owners experience confusion with a lack of clarity.
- Permanent caregiver. It is unduly onerous and also irrelevant to require the applicant to “demonstrate that but for the permanent and severe disability the veteran would meet the requirements of this part.” It is unclear how this criteria would be satisfied (such as by a narrative statement, proof of veteran’s prior experience, etc); and at any rate, it does not matter given that the “control” requirement is supposed to be met by someone other than the veteran (the caregiver).

Section 74.2. What are the eligibility requirements a concern must meet for VetBiz Vendor Information Pages (VIP) Verification Program?

- Protest Decisions or other negative findings. This provision holds that an applicant found, via protest, to be ineligible for the Veterans First Contracting Program, will be immediately removed from the VetBiz VIP database. This requires clarification to ensure it is not unduly harsh. Specifically, this does not account for firms that have yet to exercise their right to appeal before the Small Business Administration Office of Hearings and Appeals. This provision should be modified to account for this scenario. Also, if there are other available options unexercised by a firm in order to prove continued VOSB/SDVOSB status, these should be exhausted (or relevant time limits expire) prior to removal from the VetBiz program.

- Permits, licenses, and state charters. In some cases, a business might fail to keep its county business license current, or maintain its annual registration with the state. These are simple fixes, and do not in any way affect a businesses capacity to operate. While one would not want to encourage a business not to update its licenses or annual registration, the penalty of automatic removal from the VetBiz database is too harsh. Rather, the applicant should be afforded 30 days to cure these infractions. Thirty days is sufficient if a business acts promptly; also, it prevents the CVE from investing the time and effort in re-processing an application for a firm removed from the VetBiz database.

74.4. Who does CVE consider to control a veteran-owned small business?

- The full-time requirement remains unclear. At section (c)(1), it states that veteran owners need not work full-time but must show sustained and significant time invested in the business; and at (c)(2), it states that one or more veterans must work full-time during the normal working hours of firms in that line of business. This is confusing because it seems to mean that in a firm with multiple veteran owners, the control requirement is satisfied so long as *one* of these individuals works full time. If this is the case, this should be stated clearly (preferably by consolidating these two paragraphs). **Also, I have noticed that the CVE always asks veteran owners how many hours they devote to the applicant firm, as well as the typical workdays and times. It remains unclear if the CVE expects a veteran to work a certain number of hours or whether the hours required to qualify as full-time varies depending on the nature of the business and its individual circumstances. This should be clarified.**
- I support the inclusion of the “extraordinary circumstances” clause at (e)(1), because it promotes a healthy business relationship in multi-owner firms. It strikes the balance between providing control to the veteran while preventing abuse of power.

74.5. How does the CVE determine affiliation?

The way this provision is written implies that there is no relationship between affiliation and control, which is not the case because affiliation relates to undue dependence. This connection should be noted to avoid confusion.

74.13. Can the applicant ask CVE to reconsider its initial decision to deny an application?

I note that this addresses only requests for reconsideration, which are out-of-date modes to appealing the denial of an application. At present, almost all applicants facing a denial instead opt to either withdraw, or participate in pre-decision or pre-determination. While the rules should include requests for reconsideration (as they are technically still available, albeit not frequently used), they should reflect these new processes.

74.14. Can an applicant or participant reapply for admission to the VetBiz VIP Verification Program?

Twelve months is an unduly long period of time for businesses to wait to reapply, and should be changed to six months. Also, this does not account for those firms that have been denied or

removed from the Program due to a technicality (such as failing to respond to a Pre-Decision or Pre-Determination Notice, or insufficiently responding to a Notice of Cancellation). Some type of “safety net” should be provided for those firms.

74.21 What are the ways a business may exit VetBiz VIP Verification Program status?

In general, it is very unclear when a Program participant is required to report any changes to the CVE. The amendments state at (e) that a participant must notify the CVE within 30 days of “changed circumstances,” but this paragraph seems to refer back to “formal” findings (such as via a protest). When a successful applicant receives an Approval Letter, it contains language about reporting adverse changes to the CVE. There should be a separate paragraph within this section that defines an “adverse change,” provides general examples, and gives a time by which it must be reported to the CVE.

74.22. What are the procedures for cancellation?

This paragraph at (e) should clarify and state that a participant may provide additional information for purposes of processing an appeal. This would prevent businesses from being removed from the Program on a technicality by ensuring that the Executive Director has all information before him in determining whether a business is eligible.

Last, the regulations should address how Freedom of Information Act requests relating to information uploaded with VetBiz applications are processed. Many veteran business owners are concerned given the fact that the CVE asks for extremely sensitive information (especially tax returns) in order to process applications.

Thank you very much for the opportunity to provide comments.

Sincerely,

/s/ Sarah Schauerte

Sarah Schauerte, Esq.*

*Admitted in VA