

Service-Disabled Veteran-Owned Small Businesses and  
Government Contracting: Assessing the State of Texas  
Procurement and Contract Management Guide Using the Federal  
Acquisition Regulation

By

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## *About the Author*

Nick Funari works as a Strategic Account Executive for GMP – Government Marketing & Procurement. Nick's primary role focuses on helping IT, Law Enforcement/Emergency, and Medical clients gather useful information of the Federal Government Marketplace and qualifying government contracts for clients. He is responsible for forecasting re-compete opportunities based on expiring contracts. Finally, Nick performs market analysis reports to determine what prime contractors are selling to different federal agencies, how they are selling their services, and for how much. Outside of work, Nick enjoys spending time with his family and friends, reading and being outdoors. Nick is also a Precinct Chairman with the Travis County Republican Party and a Court Appointed Special Advocate. Upon completion of his Master's degree, Nick plans on pursuing a Ph.D. in Public Policies or Economic Policies.

## ***Abstract***

**Purpose:** The purpose of this research is threefold. First, this research identified best practices related to procurement practices used by Service-Disabled Veteran-Owned Businesses (SDVOB) and developed a framework for the assessment of such practices. In particular, this framework was developed by using sources such as the Code of Federal Regulations (CFR, henceforth) and other scholarly sources. Next, this framework is used to assess procurement policies pertaining to SDVOSBs in Texas. Finally, this research provides recommendations to refine Texas procurement policies.

**Methods:** This research used document analysis as a method of data collection. This research gauges the eight best procurement policies for SDVOSBs and then makes recommendations for the state of Texas based on the findings. This research focused heavily on the policies most often used in federal procurement. These policies have a proven track record called Federal Acquisition Regulation (FAR) policies. By using document analysis to review the rules and regulations contained in the FAR, this research sought to provide the state of Texas with recommendations derived from the document analysis method of data collection.

**Findings:** Set-aside policies deal with nearly half of the overall policies found in the federal standard reviewed by this research. Set-asides are a fundamental component in government contracting and instrumental for SDVOSBs. By using the federal standard, policy recommendations for the State of Texas Procurement and Contract Management Guide are made.

## Chapter 1: Introduction

### *Small Businesses and Government Contracting*

Government contracting allows the private sector and the public sector the ability to assist one another in their missions. Contracting is a lucrative business that oftentimes is misunderstood. One component that is most often overlooked is the level of involvement that small businesses play.

There are different categories of small businesses. Each category has a different title and operates in the procurement arena in a different way. This research will discuss each category and the differences between them, but will focus solely on SDVOSBs. To best understand what a SDVOSB is, it is important to understand the qualities a business must hold to be considered a SDVOSB.

Brian Hebbel is the author of, *How to Market & Sell to the U.S. Government*. In his book, he explains the ins and outs of the procurement arena and government contracting. Hebbel explains that, “*According to the 13<sup>th</sup> Code of Federal Regulations (CFR) there are certain qualifications that must be held to be considered a SDVOB: at least 51% unconditionally owned, operated, and managed by the disabled veteran and a service-disabled veteran must only be 1% disabled to qualify for the program*” (Hebbel 2015, P.32). Being an SDVOSB comes with competitive advantages. SDVOSBs can bid on the same contracts that large companies can while having contracts that are written exclusively for small businesses, but large business cannot bid on the contracts written exclusively for small businesses. Research indicates that a large portion of federal funds have been awarded to small businesses. “*In Fiscal Year 2013, \$83.1 billion were awarded to small businesses. The Small Business Administration (SBA) set a goal of 23% of all*

*federal contract awards dollars must go to small businesses. The SBA webpage reports that a 23.9% goal was achieved in 2013” (Hebbel 2015, P. 27).*

As the SBA has worked alongside different government agencies in establishing policies that would benefit not just SDVOSBs but all small businesses, a narrative becomes clear: government contracting requires cooperation between a variety of different governmental organizations. Khi V. Thai, Ph.D., is a professor in the School of Public Administration, at Florida Atlantic University. In his research, found in *The Journal of Public Procurement*, Vol. 1, Thai helps describe some of the complexities involved in the procurement system by explaining how it is a system that operates within other systems. Thai states that, *“The public procurement system is a nested structure of systems within systems (e.g., acquisition regulation making process, procurement cycle, and contract negotiation process), rules within rules (e.g., agency procurement rules within FAR), organizational structures within organizational structures (e.g., three branches within a governmental unit; procurement-related standing committees and GAO within Congress; the complicated structure of centralized procurement within the executive branch, and complicated structure of decentralized procurement within executive agencies), and many independent procurement systems within a country (e.g., in the United States, the federal government, 50 state governments and over 84,000 local governments have their own procurement systems)”* (Thai 2001, P.39).

To better understand the independent procurement systems currently in place, an analysis of each of the 50 states was conducted to determine which states currently have policies that are friendly to veteran-owned small businesses. This information can be found below in Table 1.1 and this data is then summarized in Table 1.2. All information used in both Tables 1.1 and 1.2 came from the National Veteran Owned Business Association (NaVOBA) webpage.

**Table 1.1 States with Veteran Business Friendly Legislation Across the Country**

State	Program	Program Benefit
Alabama (AL)	Business and Occupation License Exemptions for Disabled Veterans and Veterans of WW II.	These laws took effect in 1975, making them the first veteran-owned business specific state laws in the country.
Alaska (AK)	Alaska Gov. Sean Parnell signed House Bill 24 into law June 4, 2010.	The bill offers qualified veteran-owned businesses a 5 percent procurement preference of up to \$5000 when bidding on state contracts. Qualified veteran bidders under the new law must be a sole proprietorship owned by an Alaska veteran, or the majority partners of a company, LLC, or corporation are Alaska veterans. The preference may not exceed \$5000 but can be cumulative to any other qualified preferences.
Arizona (AZ)	House Bill 2475	The bill established a tax credit for individuals and corporations who hire unemployed veterans and provide a state contract participation goal for veteran-owned businesses. The bill will establish a mandate that 1.5 percent of state contracts will be spent with service-disabled veteran-owned businesses the first year and then jump to a required 3 percent the second and subsequent years after passage.
Arkansas (AR)	Arkansas Act 893 / Arkansas Act 893	Arkansas Act 893 grafts Service-Disabled Veterans into the Minority Business Enterprise program, which is a key part of making sure that Arkansas is up to speed with other state practices. Arkansas Act 882 creates the set-aside goal of 5% of all state contract dollars be for Service-Disabled Veteran-Owned Small Businesses. This also includes the definitions of a Service-Disabled Veteran and what does it means to own a business.
California (CA)	The Disabled Veteran Business Enterprise (DVBE) Participation Program	This law took effect in 1989 and established a goal of 3 percent of state contracts be set-aside for SDVOSBs. The law was modified with an incentive program in 2007 that holds state agencies accountable for attaining the 3 percent goal. It also offers price preferences to SDVOSBs.

<p>Florida (FL)</p>	<p>Florida Service-Disabled Veteran Business Enterprise Opportunity Act (House Bill 687)</p>	<p>This law took effect on Veterans Day 2008 and provides a preference to SDVOSBs for state contracts. There is no goal established for a percentage of contracts awarded to SDVOSBs. Basically, if there are two equal bids in terms of quality and price and one of the bidders happens to be an SDVOSB, then the SDVOSB is given preference.</p>
<p>Georgia (GA)</p>	<p>Disabled veterans' exemption from payment of occupation tax, administrative fee, or regulatory fee</p>	<p>This law took effect in 1996 and exempts SDVOSBs from paying certain occupation taxes, administrative fees and regulatory fees.</p>
<p>Illinois (IL)</p>	<p>Senate Bill 206</p>	<p>On July 26, 2009, Illinois Governor Pat Quinn signed several pieces of veteran-related legislation. Senate Bill 206, sponsored by Sen. Michael Bond (D-Grayslake) and Rep. Al Riley (D-Hazel Crest), created a task force to potentially add veteran-owned businesses to the state's procurement list for contract set-asides. The legislation took effect on January 1, 2010.</p>
<p>Indiana (IN)</p>	<p>SEA 564</p>	<p>Governor Mike Pence signed SEA 564 on April 25, 2013, expanding veteran-owned small business opportunities in Indiana. The law is effective July 1, 2013 and sets a goal of 3% of state contracts be awarded to Indiana veteran-owned businesses.</p>
<p>Louisiana (LA)</p>	<p>The Veterans Initiative Policy</p>	<p>The commissioner of administration establishes annual goals for veteran and service-disabled veteran-owned small businesses in state procurements and public contracts. There are no specific set-asides or percentages, as the goals will be reevaluated each year based on historical procurement and public contracting data. Also, the commissioner may consider the capacity of VOSBs, and SDVOBs available.</p>

<p>Maryland (MD)</p>	<p>SB 171/ HB359: Procurement - Service-Disabled Veteran Business Enterprise Participation</p>	<p>This bill establishes a procurement preference program in which, beginning July 1, 2012, each State agency tries to award 0.5% of the value of its procurement contracts to small businesses owned and operated by veterans. To participate in the program, veteran-owned businesses must be verified by the Center for Veterans' Enterprise within the U.S. Department of Veterans Affairs.</p>
<p>Massachusetts (MA)</p>	<p>Executive order directs the Executive Office of Administration and Finance (A&amp;F) to define program requirements and guidelines.</p>	<p>A&amp;F implements a participation goal requirement for service-disabled veteran-owned small businesses to gain access to contracts for public projects in the areas of construction, design, and goods and services procurement. A&amp;F also establishes a Service-Disabled Veteran-Owned Business Enterprise Program to oversee the inclusion of business enterprises owned and controlled by service-disabled veterans in all areas of state procurement contracting.</p>
<p>Michigan (MI)</p>	<p>Public Act 91</p>	<p>This set a goal of 3 percent of state contracts to be awarded to SDVOSBs with a 10 percent price preference. In May 2008, Public Act 133 updated the original law, increasing the goal to 5 percent.</p>

Minnesota (MN)	Veteran Preference Program	In accordance with Laws of Minnesota, 2009, Chapter 101, Article 2, Section 56. The law includes provisions that assist two classes of veteran-owned businesses that compete for low-bid contracts in the state. The law provides a 6 percent preference for the first \$500,000 on bids for state contracts. The law also sets aside some state contracts from the Minnesota Department of Transportation, the Metropolitan Council and the University of Minnesota for small businesses, including the two aforementioned classes of veteran-owned businesses.
Missouri (MO)	HOUSE BILL NO. 1313	This bill took effect in 2008 and set a goal of 3 percent of state contracts to be awarded to SDVOSBs.
Nebraska (NE)	The Enterprise Zone Act	When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder if all other factors are equal.
Nevada (NV)	Assembly Bill 223	This bill took effect October 1, 2009 and provides a five percent bidding preference for service-disabled, veteran-owned businesses for state public works and state purchasing contracts.
New Jersey (NJ)	Cooperation amongst various departments in the state	The state's Treasury department works in conjunction with the state Economic Development Authority and the state Department of Military and Veterans Affairs to encourage "opportunities for veteran-owned businesses in state purchasing and procurement processes."

New Mexico (NM)	Bidding preference	The state of New Mexico offers up to a 10% advantage to resident VOSBs bidding on state contracts.
New York (NY)	Service-Disabled Veteran-Owned Business Act (S6865/A9135)	This act established a statewide goal to award 6 percent of procurement spending with veteran-owned businesses. This doubles the federal law and its 3 percent goal, making the New York legislation one of the most vigorous programs among the 27 other veteran business-friendly states.
Oregon (OR)	ORS 279A.105 Subcontracting to emerging small businesses or businesses owned or controlled by disabled veterans.	<p>(1) A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from, a business enterprise that is certified under ORS 200.055 as an emerging small business or a business enterprise that is owned or controlled by a disabled veteran, as defined in ORS 408.225.</p> <p>(2) A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from, a business enterprise that is certified under ORS 200.055 as an emerging small business and that, as identified by the contracting agency, is located in or draws the business enterprise’s workforce from economically distressed areas, as designated by the Oregon Business Development Department.</p> <p>(3) A contracting agency may require that a public contract be awarded to a responsible bidder, as defined in ORS 200.005, who the contracting agency determines has made good faith efforts as prescribed in ORS 200.045 (3). For purposes of this subsection, “responsible bidder” includes a responsible proposer that has made good faith efforts as prescribed in ORS 200.045 (3). [2003 c.794 §14; 2005 c.103 §5; 2009 c.235 §2]</p>

<p>Pennsylvania (PA)</p>	<p>Small Diverse Business Program</p>	<p>The Small Business Procurement Initiative reserves certain procurements for competition among only self-certified small businesses – those that employ 100 or fewer employees and meet maximum revenue requirements – and enables them to participate in state contracting opportunities as prime contractors. This was later changed to the Small Diverse Business Program to include small veteran-owned businesses.</p>
<p>Tennessee (TN)</p>	<p>SENATE BILL 2785</p>	<p>As enacted, grants special consideration for Tennessee service-disabled veteran-owned businesses, in the awarding and procuring of state contracts.</p>
<p>Texas (TX)</p>	<p>HB 194</p>	<p>Signed on 6/14/13 (effective 9/1/2013) includes SDVOSBs with a 20 percent disability rating in the state’s underutilized business program. The bill states in part, “The comptroller shall adopt rules to provide goals for increasing the contract awards for the purchase of goods or services by the commission and other state agencies to businesses that qualify as historically underutilized businesses because the businesses are owned or owned, operated, and controlled, as applicable, wholly or partly by one or more veterans as defined by 38 U.S.C. Section 101(2) who have a service-connected disability as defined by 38 U.S.C. Section 101(16). The goals established under this subsection are in addition to the goals established under Subsection (c) and the goals established under Subsection (c) may not be reduced as a result of the establishment of goals under this subsection. Goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods produced in this state or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal.”</p>

<p>Virginia (VA)</p>	<p>Service-Disabled Veterans Small Business Owners Program</p>	<p>Service-disabled veterans are able to obtain designation as such in the Small, Women Minority (SWaM) vendor database. The SWaM program is part of the state's Department of Minority Business Enterprise (DMBE) and its purpose is to increase the money spent with SWaM vendors, and increase the number of contracts awarded to SWaM vendors. Exemption of handling fee for veterans opening small business (HB 262/SB 455), waives the Department of Business Assistance's handling fee for veterans when they establish a small business through the one-stop small business permitting program.</p>
<p>Washington (WA)</p>	<p>Linked Deposit Program / Senate Bill 5041</p>	<p>Linked Deposit Program improves access to capital for verified VOSBs by decreasing interest rates on small business loans up to 2 percent. Senate Bill 5041 requires the state to reach out to veteran and service member-owned businesses, making them aware of opportunities to compete for state contracts</p>
<p>West Virginia (WV)</p>	<p>House of Delegates Bill 4283</p>	<p>This bill took effect in May 2006 and provides a preference for West Virginia resident veterans in procuring state contracts. With all other aspects being equal, veterans will be awarded a contract when competing with out-of-state vendors as long as the bid does not exceed of 3.5 percent of the competing bid.</p>
<p>Wisconsin (WI)</p>	<p>The State Bureau of Procurement Veteran Owned Business Policy PRO-D-12 / Assembly Bill 228</p>	<p>The State Bureau of Procurement Veteran Owned Business Policy PRO-D-12 attempts to award at least 5 percent of state contracts to small, disadvantaged, minority, women, and veteran businesses (minority groups). Also, these minority groups may be eligible for a low bid waiver as long as their bid is not more than 5 percent greater than the lowest bid. Assembly Bill 228 created preferences in state contracts for certain disabled veteran-owned businesses certified by the Department of Commerce, similar to preferences available to certified minority-owned businesses.</p>

**Table 1.2 Summary of States with Veteran Business Friendly Legislation Across the Country**

<b>Have established mandates that set-aside a 3% or greater spending goal for either SDVOSBs, VOSBs or both.</b>	<b>Offer some type of preference to VOSBs or SDVOSBs in procuring state contracts.</b>	<b>No set-asides or preference for VOSBs or SDVOSBs. Some legislation giving VOSBs or SDVOSBs a minor business advantage.</b>	<b>No legislative Activity</b>
Arkansas (AR)	Washington (WA)	Oregon (OR)	Hawaii (HI)
California (CA)	Nevada (NV)	Nebraska (NE)	Montana (MT)
Illinois (IL)	New Mexico (NM)	Alabama (AL)	North Dakota (ND)
Indiana (IN)	Texas (TX)	Tennessee (TN)	Idaho (ID)
Michigan (MI)	Louisiana (LA)	Georgia (GA)	Wyoming (WY)
Maryland (MD)	Missouri (MO)	Florida (FL)	South Dakota (SD)
New York (NY)	Wisconsin (WI)	Virginia (VA)	Iowa (IA)
	Minnesota (MN)		Kansas (KS)
	West Virginia (WV)		Oklahoma (OK)
	Pennsylvania (PA)		Colorado (CO)
	New Jersey (NJ)		Utah (UT)
	Massachusetts (MA)		Mississippi (MS)
	Alaska (AK)		South Carolina (SC)
	Arizona (AZ)		North Carolina (NC)
			Kentucky (KY)
			Ohio (OH)
			Maine (ME)
			Vermont (VT)
			Rhode Island (RI)
			Connecticut (CT)
			Delaware (DE)
			New Hampshire (NH)
			District of Columbia (DC)

**Link to information used in both of the tables:**

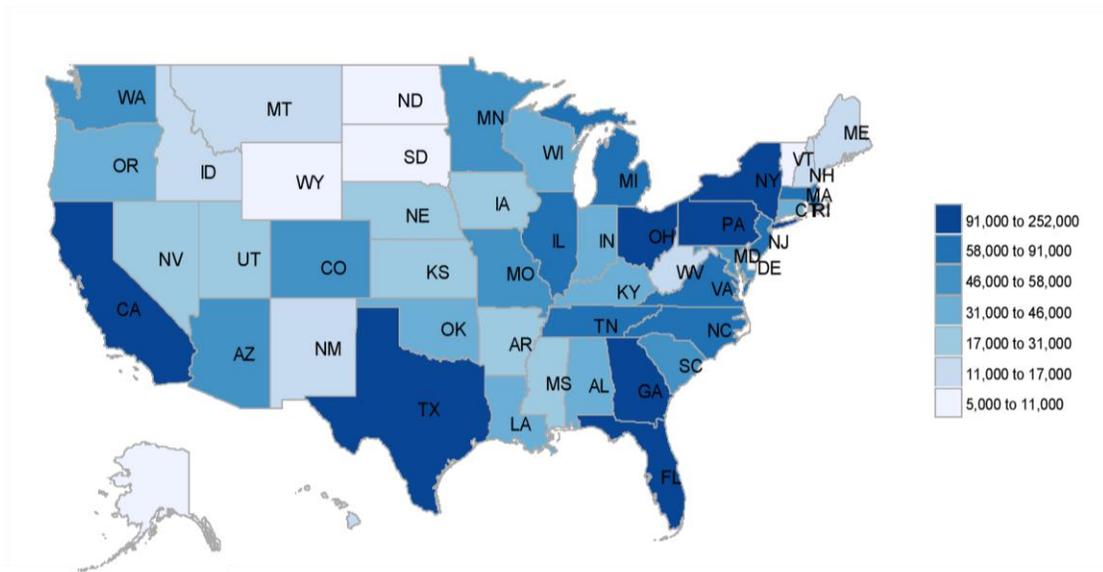
<https://navoba.org/wp-content/uploads/2017/11/StateTracker.pdf>

## *Service-Disabled Veteran-Owned Small Businesses by State*

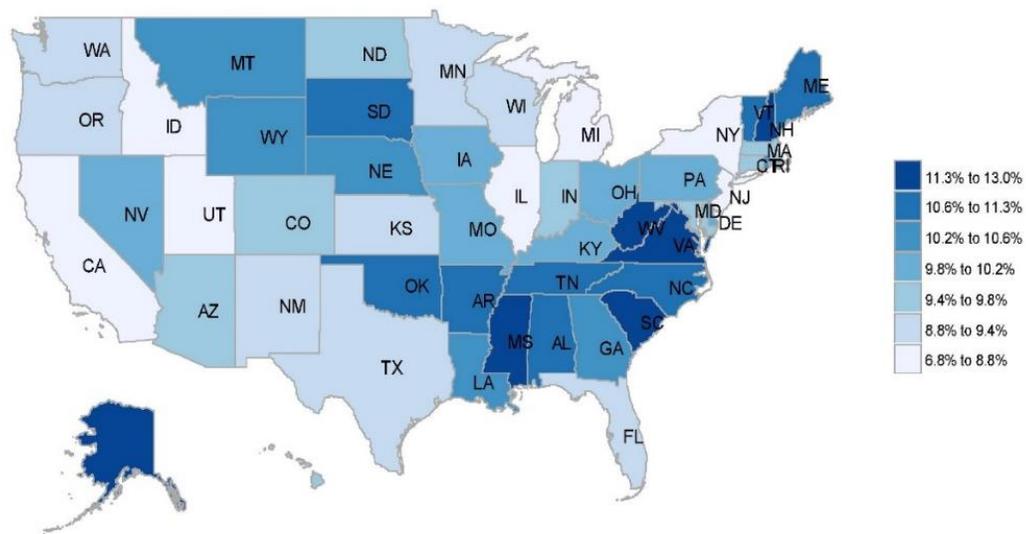
While extensive procurement policies exist at the federal level for SDVOSBs, state level procurement policies are quite different. Each state's procurement policy is different and some states do not have the same set-aside standards for SDVOSBs that exist at the federal level. Texas is one of many independent procurement systems.

According to the *Veteran-Owned Businesses and Their Owners. Data from the U.S. Census Bureau's Survey of Business Owners* the census estimated in 2012 that 2.52 million businesses were majority-owned by veterans and veteran-owned firms represented 9.1 percent of all U.S. firms. The *Veteran-Owned Businesses and Their Owners. Data from the U.S. Census Bureau's Survey of Business Owners* provided Figure 1 and Figure 1.1 on pages 36 and 37 of the survey. These figures outline the number and percentage of veteran-owned businesses by state.

**Figure 1: Number of Veteran-Owned Small Businesses by State - 2012**



**Figure 1.1: Percentages of Veteran-Owned Small Businesses by State - 2012**



*The Veteran-Owned Businesses and Their Owners. Data from the U.S. Census Bureau's Survey of Business Owners also notes the following statistics on pages 4 and 5 of the survey:*

*Top states by number of firms and sales. The states with the most veteran-owned firms, in order, were:*

- *California (252,377)*
- *Texas (213,590)*
- *Florida (185,756)*
- *New York (137,532)*
- *Pennsylvania (97,969)*

*The states with the most veteran-owned firm sales were the same:*

- *California (\$135.1 billion)*
- *Texas (\$109.9 billion)*
- *Florida (\$57.7 billion)*
- *New York (\$55.8 billion)*
- *Pennsylvania (\$50.3 billion)*

## ***Service-Disabled Veteran-Owned Small Businesses in Texas***

While Texas is the second leading state for number of veteran-owned businesses and the second leading state for veteran-owned business sales, it does so with only one veteran business-friendly legislation in place, HB 194, which states in part that, “*Goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods produced in this state or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal.*” While this policy does open the door for SDVOSBs in Texas, there is still much that can be done. This research will suggest additional policies that could be enacted in Texas to better assist SDVOSBs. These suggestions will be drawn from federal policies that are currently in place and reflective of SDVOSBs best interests. The federal policy this research will focus on is called the FAR.

## ***Federal Acquisition Regulation and the Texas Procurement and Contract***

### ***Management Guide***

The FAR is a detailed document that consists of 37 Chapters (PARTS) and is over 2,000 pages long. This document applies to all federal agencies, and then to numerous adjunct or quasi agencies. Not all chapters or PARTS of the FAR are relevant to this research, and not all FAR chapters or PARTS are applicable to state procurement policies. That is why this research focuses exclusively on areas that can be used by or benefit SDVOSBs in Texas. These FAR chapters or PARTS of focus are then compared to the State of Texas Procurement and Contract Management Guide, which provides a comprehensive list of Texas laws and policies pertaining to procurement. The State of Texas Procurement and Contract Management Guide is in many respects the state’s version of what is outlined in the FAR, because Texas’s policies are an

independent procurement system operating within the national procurement system. This research will provide recommendations to how The State of Texas Procurement and Contract Management Guide can better reflect policies found in the FAR that are beneficial to SDVOSBs.

**Formal Statement of Research Purpose:** The purpose of this research is threefold. First, this research identified best practices related to procurement practices used by SDVOSBs and developed a framework for the assessment of such practices. In particular, this framework was developed by using sources such as the Code of Federal Regulations (CFR, henceforth) and other scholarly sources. Next, this framework is used to assess procurement policies pertaining to SDVOSBs in Texas. Finally, this research provides recommendations to refine Texas procurement policies.

## Chapter 2: Literature Review

### *Chapter Purpose*

The purpose of this chapter is to assess and evaluate academic literature or relevant documents that support the eight policy categories and their subcategories which are sections (Parts) from the FAR. These FAR Parts are seen as the best practices that should be implemented by the state of Texas into their Procurement and Contract Management Guide to better reflect the interest of SDVOSBs. The eight categories and subcategories reviewed in this chapter will be the following:

#### **1. Full and Open Competition After Exclusion of Sources for SDVOSBs**

**1.1** FAR -- Part 6 Competition Requirements: Subpart 6.2 -- Full and Open Competition After Exclusion of Sources

**1.2** Subpart 6.206 – Set-asides for Service-Disabled Veteran-Owned Small Business Concerns

#### **2. Providing Good and Services Using Price Reductions**

**2.1** FAR -- Part 8 - Required Sources of Supplies and Services Subpart 8.4

**2.2** Subpart 8.405 – Ordering Procedures for Federal Supply Schedules.4 – Price Reductions

#### **3. Contract Negotiation with Industry**

**3.1** FAR -- Part 15 Contracting by Negotiation: Subpart 15.2 -- Solicitation and Receipt of Proposals and Information

3.2 Subpart 15.201 -- Exchanges with Industry Before Receipt of Proposals

**4. Emergency Acquisitions for SDVOSBs**

4.1 FAR -- Part 18 Emergency Acquisitions: Subpart 18.1 -- Available Acquisition Flexibilities

4.2 Subpart 18.116 -- Service-Disabled Veteran-Owned Small Business (SDVOSB) Sole Source Awards

**5. General SDVOSB Procurement Policies**

5.1 FAR -- Part 19 Small Business Programs: Subpart 19.14--Service-Disabled Veteran-Owned Small Business Procurement Program

5.2 Subpart 19.1403 -- Status as a Service-Disabled Veteran-Owned Small Business Concern

5.3 Subpart 19.1405 -- Service-Disabled Veteran-Owned Small Business Set-aside Procedures.

5.4 Subpart 19.1406 -- Sole Source Awards to Service-Disabled Veteran-Owned Small Business Concerns.

5.5 Subpart 19.1407 -- Contract Clauses

**6. Policies to Encourage SDVOSB Participation**

6.1 FAR -- Part 19 Small Business Programs: Subpart 19.2 -- Policies

6.2 Subpart 19.202-1 -- Encouraging Small Business Participation in Acquisitions

## **7. Set-Aside Policies for SDVOSBs**

**7.1** FAR -- Part 19 Small Business Programs: Subpart 19.5 -- Set-Asides for Small Business

**7.2** Subpart 19.502-1 -- Requirements for Setting Aside Acquisitions

**7.3** Subpart 19.502-2 -- Total Small Business Set-Asides

## **8. SDVOSB Notice of Set-Aside**

**8.1** xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION 2019-O0003)

A conceptual framework has been constructed using these eight policy categories and their FAR subcategories. The conceptual framework table is presented at the end of this chapter. The purpose of the conceptual framework table is to present the categories and subcategories discussed in this chapter and the supporting literature used.

Much of the information used in this chapter came from the Code of Federal Regulations (CFR), a codification of rules and administrative laws published by the Federal Register. The FAR is located in chapter one of the CFR. To better understand the FAR parts and subparts discussed in this chapter, excerpts from the CFR are used. These CFR excerpts are FAR policies in part or in full. Other sources used in this chapter came from scholarly journals, government reports, government publications, and books. The following section presents the first of the eight FAR parts that this chapter will discuss.

## ***1. Full and Open Competition After Exclusion of Sources for SDVOSBs***

FAR Part 6 - Competition Requirements, consists of six subparts. This research will focus on subpart 6.2 – Full and Open Competition After Exclusion of Sources. Subpart 6.2 contains eight sections. This research focuses on the general principles outlined by FAR 6.2 and section 6.206 – Set-asides for Service-Disabled Veteran-Owned Small Business Concerns. The policies contained in FAR subpart 6.2 are reviewed to determine its applicability and benefit to SDVOSBs.

### ***1.1 FAR -- Part 6 Competition Requirements: Subpart 6.2 -- Full and Open Competition After Exclusion of Sources***

According to the International Comparative Legal Guide to Public Procurement 2019, FAR 6.2 is simply a policy in which, “*a procuring agency may exclude in certain circumstances a particular source from a contract action in order to establish or maintain an alternative source of supply*” (McCullough & Anstett, 2019, P.238). This research expands upon this explanation of FAR 6.2 by breaking down each section of the policy; this is done to provide both a general explanation and a comprehensive overview.

FAR Subpart 6.2 begins with a scope section which states, “*This subpart prescribes policies and procedures for providing for full and open competition after excluding one or more sources*” (Code of Federal Regulation, 2010, P.112). The exclusion of particular sources noted in this section is known as a set-aside. To better understand how much this section of the FAR can be of benefit to small businesses, reviewing how much set-aside spending was done in the more recent years is necessary. The Air Force Institute of Technology notes in their report titled: Critical Issues in the Air Force Medical Equipment Procurement Process, “*The Federal*

*Procurement Data System (FPDS) tracked that for fiscal year 18 2016, 22.9 percent of DoD's contract actions favored small businesses, which translated to \$57.8 billion in transactions*" (Pang, 2018, P. 18). Of the DoD's \$57.8 billion in transactions, a percentage of those funders were awarded to SDVOSBs through policies outlined in FAR Subpart 6.202. To better understand how this subpart can be utilized by SDVOSBs, Subpart 6.206 is reviewed in detail.

## ***1.2 Subpart 6.206 Set-asides for Service-Disabled Veteran-Owned Small Business***

### ***Concerns***

This subpart of the FAR is divided into two sections. The first section explains how this subpart has a direct connection to the Veterans Benefits Act of 2003, which assisted SDVOSBs with gaining access to opportunities. The first section of this subpart explains that *"To fulfill the statutory requirements relating to the Veterans Benefits Act of 2003 (15 U.S.C. 657f), contracting officers may set-aside solicitations to allow only service-disabled veteran-owned small business concerns to compete"* (Code of Federal Regulation, 2010, P.113). This policy is fundamental for SDVOSBs, as the section explicitly notes how SDVOSBs are provided with set-aside preferences. These preferences are used by SDVOSBs when seeking contracts to bid on.

The second section of this subpart explains that, *"No separate justification or determination and findings are required under this part to set-aside a contract action for SDVOSB concerns"* (Code of Federal Regulation, 2010, P.113). This section helps to further outline some of the competitive advantages that come with being a SDVOSB. The Inspector-General notes in Report No. DODIG-2012-059 titled: *Inadequate Controls Over the DoD Service-Disabled Veteran-Owned Small Business Set-Aside Program Allow Ineligible Contractors to Receive Contracts*, *"contracting officers may set-aside solicitations for SDVOSB concerns with no requirement for justification or determination"* (Frontz, 2012, P.14).

Contracting officers may write contracts exclusively for SDVOSBs that no one else can bid on. FAR Subpart 6.206 proves to be an incredibly useful policy for SDVOSBs involved in procurement, as it directly provides SDVOSBs the ability to have contracting officers write set-aside contracts solely for them.

## ***2. Providing Good and Services Using Price Reductions***

FAR Part 8 – Required Sources of Supplies and Services, consists of eleven subparts. This research will focus on FAR subpart 8.4 – Federal Supply Schedules. FAR subpart 8.4 contains five sections. This research will focus on the general principles outlined by FAR Subpart 8.4 and section 8.405 -- Ordering Procedures for Federal Supply Schedules. 4 – Price Reductions. The policies contained in FAR subpart 8.4 are reviewed to determine its applicability and benefit to SDVOSBs.

### ***2.1 FAR -- Part 8 - Required Sources of Supplies and Services Subpart 8.4***

According to the International Comparative Legal Guide to Public Procurement 2019, FAR 8 is explained as policy in which, “*agencies may use Schedule contracts and commercial sources to fulfill their commercial items requirements*” (McCullough & Anstett, 2019, P.239). This research focuses on how SDVOSBs can leverage their status when providing commercial items to agencies using a clause of the FAR called “price reduction”. The price reduction clause is mentioned in FAR Subpart 8.405, but FAR Subpart 8.4 provides the background information needed to better understand FAR Subpart 8.405. While FAR Subpart 8.4 does not explicitly assist SDVOSBs, it does provide information in relation to an area of the FAR that SDVOSBs can use to their competitive advantage.

The Contract Attorneys Desk Book explains that *“Agencies obtain goods and services by placing orders with a schedule contractor utilizing the procedures set forth in FAR Subpart 8.4”* (Contract Attorneys Desk Book, 2014, P. 266). The Attorneys Desk Book goes on to explain *“Prior to executing a commercial items acquisition, agencies must attempt to meet their needs through the Required Sources of Supplies and Services (including commercial items) listed in FAR Part 8”* (Contract Attorneys Desk Book, 2014, P. 532). This is known as the Federal Supply Schedule program. The FAR describes the Federal Supply Schedule program in PART 8 Subpart 8.4 by mentioning, *“the Federal Supply Schedule program is also known as the GSA Schedules Program or the Multiple Award Schedule Program is directed and managed by GSA and provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying”* (Code of Federal Regulation, 2010, P.139).

The General Service Administration (GSA) is an online website that agencies can purchase products off of. When agency personnel are searching for items on the GSA, they can find products at a slightly discounted rates compared to products sold to a standard customer. Again, while FAR Subpart 8.4 does not explicitly assist SDVOSBs, it lays a foundation for a subpart of the FAR that does. FAR Subpart 8.405 is discussed in the section below. An example of a Texas-based SDVOSB that uses FAR Subpart 8.405 to its advantage is provided following a description of the FAR Subpart 8.405 primary functions.

## ***2.2 Subpart 8.405 – Ordering Procedures for Federal Supply Schedules.4 – Price Reductions***

Price reduction is an especially important component of government contracting. If utilized properly, SDVOSBs can leverage this policy to increase the profitability of the

commodities they are contracting out to the government. While this subsection does not directly benefit businesses that have an SDVOSBs, it can be used by them. After explaining what the price reduction clause is, this section provides an example of an SDVOSB that utilizes the price reduction clause in their business operations.

The subsection explains that *“Ordering activities should seek a price reduction when the supply or service is available elsewhere at a lower price, or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of individual orders, offers the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual ordering activity for a specific order”* (Code of Federal Regulation, 2010, P.174). This means that if a company is doing business in the commercial or private space and offers a discount on an item, then the government will request that they too receive the same discount on that item; this also means that a business which sells to the commercial or private sector cannot sell to the government at the manufacturer's suggested retail price (MSRP). To protect MSRP, a business with commercial or private sector sales can place their products on someone else's GSA Schedule. If a business sells exclusively to the government then they can sell products at MSRP because they have never offered a discounted sale.

Government Marketing & Procurement, LLC is a SDVOSB based out of Wimberly, Texas that does just this. By utilizing their SDVOSB status they are provided with a competitive advantage when dealing with government set-aside contracts and can place their client's products in front of the government at MSRP. The price reduction clause is one of the many reasons why SDVOSBs can thrive in the federal procurement arena.

### ***3. Contract Negotiation with Industry***

FAR Part 15 – Contracting by Negotiation, consists of six subparts. This research focuses on subpart 15.2 – Solicitation and Receipt of Proposals and Information. Subpart 15.2 contains ten sections. This research focuses on the general principles outlined by Subpart 15.2 -- Solicitation and Receipt of Proposals and Information and Subpart 15.201 -- Exchanges with Industry Before Receipt of Proposals. The policies contained in FAR subpart 15.2 are reviewed to determine its applicability and benefit to SDVOSBs.

#### ***3.1 FAR -- Part 15 Contracting by Negotiation: Subpart 15.2 -- Solicitation and Receipt of Proposals and Information***

The FAR encourages contractors and contracting officers to discuss information about opportunities with one another. This exchange of information is promoted due to policies included in FAR 15.2 and Subpart FAR 15.201. This FAR PART and subpart can be utilized by SDVOSBs to acquire information about opportunities they are interested in fulfilling. This section focuses on FAR Subpart 15.2 and the following section discusses FAR Subpart 15.201.

The General Services Administration explains FAR Part 15 in their report titled: *GSA Schedules vs. Open Market*. The GSA notes in their report, “*FAR Part 15 provides for full flexibility to negotiate any approach to contracting for supplies and services. A full range of contract types can be negotiated. FAR Part 15 offers more flexibility in terms of negotiating terms and conditions that will work best for the agency. The constraints of FAR and your agency supplement are the only limits on what you can negotiate under FAR Part 15*” (GSA, 2014, P.52). To understand FAR Subpart 15.2, it is equally essential to understand FAR 15, the component that Subpart 15.2 is part of.

This research now focuses on FAR Subpart 15.2 which explains that, *“This subpart prescribes policies and procedures for— (a) Exchanging information with industry prior to receipt of proposals; (b) Preparing and issuing requests for proposals (RFPs) and requests for information (RFIs); and (c) Receiving proposals and information”* (Code of Federal Regulations, 2010, P.276). This is incredibly useful for SDVOSBs as it enables them with the ability to communicate with contracting officers. As previously mentioned, in FAR Subpart 6.206 Set-asides for service-disabled veteran-owned small business concerns, contracting officers may write contracts exclusively for SDVOSBs that no one else can bid on; this means that if a contracting officer issues an RFI and a SDVOSB reaches out to discuss how they can provide the items being sought after, then the contracting officer could write the opportunity as a SDVOSB set-aside, the contracting officer could also simply award the contract to the SDVOSB if they believe that they meet the requirements listed in the RFI.

Exchanging information with contracting officers also allows SDVOSBs to educate contracting officers. The Department of Housing and Urban Development (HUD) explains in their Acquisition and Policy Procedures manual the importance of exchanging information before the receipt of proposals. HUD explains, *“The purpose of exchanging information before receipt of proposals is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government’s requirements, and enhance the Government’s ability to obtain quality supplies and services, including construction, at reasonable prices”* (HUD Acquisition Policy and Procedures, 2017, P. 136). FAR Subpart 15.2 is a win for both SDVOSBs and contracting officers, as it not only allows SDVOSBs to discuss opportunities with the government, but contracting officers can find the best options available. While Subpart FAR 15.2 discusses

different beneficial that SDVOSBs can utilize, it merely outlines the policies. FAR Subpart 15.201 goes into further detail. The next section of this research reviews the policies found in FAR Subpart 15.201.

### ***3.2 Subpart 15.201 -- Exchanges with Industry Before Receipt of Proposals***

FAR Subpart 15.2 explicitly mentions exchanging information with industry before receipt of a proposal, but FAR Subpart 15.201 elaborates on what this means. FAR Subpart 15.201 provides SDVOSBs with a guided outline of how they can approach government personnel about procurement opportunities. The Contract Attorneys Desk Book explains that *“FAR 15.201 - The FAR encourages the early exchange of information among all interested parties to improve the understanding of the government’s requirements and industry capabilities, provided the exchanges are consistent with procurement integrity requirements”* (Contract Attorneys Desk Book, 2014, P. 408). This means that SDVOSBs are not only able to reach out to government officials, but also encouraged to do so. Exchange with government officials means that SDVOSBs can better understand what the requirements are on an opportunity and can clarify what is being sought after.

The Department of Homeland Security (DHS) published an article titled: A Practical Guide to Source Selection in September 2013. The DHS report explains different ways that businesses can communicate with the government by stating, *“techniques to promote early exchanges with industry include: industry or small business conferences, public hearings, market research, pre-solicitation notices, Requests for Information (RFIs), and site visits”* (A Practical Guide to Source Selection, 2013 P.13). By increasing knowledge of FAR Subpart 15.201, SDVOSBs can learn more about the rules regarding when they can meet with contractor personnel, which also means this FAR PART can increase their chances of winning

opportunities. This is explained further in a report titled: Improving Federal and Department of Defense Use of Service-Disabled Veteran-Owned Businesses, by The RAND Corporation, a think tank backed by the Federal Government. The report explains that SDVOSBs, “*saw dramatic improvements in their ability to win contracts when they invested effort in understanding the FAR*” (Cox & Moore, 2013, P.xiii). The benefits associated with understanding the FAR are further explained below.

Brian Hebbel is the author of How to Market & Sell to the U.S. Government. In his book, he explains the ins and outs of the procurement arena and government contracting. Hebbel explains the importance of FAR Subpart 15.201, stating that, “*Exchanges with industry before the Receipt of Proposals is the most important section in the FAR for sales staff. This FAR clause is important because it assists SDVOSBs in gathering information and building relationships with agency personnel. This FAR clause is also a key clause that industry officials can use to educate government staff*” (Hebbel, 2015, P.108). By utilizing FAR Subpart 15.201 SDVOSBs can gain access to government officials and decision-makers. Hebbel goes on to explain that, “*The FAR 15.201 intent was to encourage government officials to talk to industry representatives*” (Hebbel 2015, 112). FAR Subpart 15.201 is a powerful tool that SDVOSBs can use to their benefit by enabling them with the ability to discuss potential business opportunities with the government. If it weren’t for this policy, it would be incredibly difficult for businesses to communicate with government officials or to inquire about the specifications listed on opportunities. The next section of this research shifts focuses on a different area of the FAR outside of communicating with government personnel.

#### ***4. Emergency Acquisitions for SDVOSBs***

FAR Part 18 – Emergency Acquisitions, consists of two subparts. This research focuses on Subpart 18.1 -- Available Acquisition Flexibilities. Subpart 18.1 contains 27 sections. This research will focus on the general principles outlined by Subpart 18.1 -- Available Acquisition Flexibilities and Subpart 18.116 -- Service-Disabled Veteran-Owned Small Business (SDVOSB) Sole Source Awards. The policies contained in FAR subpart 18.1 are reviewed to determine its applicability and benefit to SDVOSBs.

##### ***4.1 FAR -- Part 18 Emergency Acquisitions: Subpart 18.1 -- Available Acquisition Flexibilities***

According to a Memorandum for Chief Acquisition Officers and Senior Procurement Executives addressed to The Executive Office of the President, Office of Management and Budget by Daniel I. Gordon, *“FAR 18 addresses acquisition flexibilities that may be used to facilitate and expedite the acquisition of supplies and services during emergency situations”* (Gordon, 2011, P. 15). This section of research reviews the policies included in FAR 18.

FAR Part 18 states in its general summary opening in full that, *“The FAR includes many acquisition flexibilities that are available to the contracting officer when certain conditions are met. These acquisition flexibilities do not require an emergency declaration or designation of contingency operation”* (Code of Federal Regulation, 2010, P. 373). While this section of the FAR is brief, it is worth noting because it describes how contracting officers can designate a contract to a SDVOSB. FAR Subpart 18.116 goes into further detail of how SDVOSBs can be awarded contract opportunities.

## ***4.2 Subpart 18.116 -- Service-Disabled Veteran-Owned Small Business (SDVOSB)***

### ***Sole Source Awards***

A sole source award is issued by the government when a contract is entered into without a competitive process, based on the assertion that there is a single provider that can fulfill the requirements outlined by the contract. FAR Subpart 18.116 states in full that, “*Contracts may be awarded to Service-disabled Veteran-owned Small Business (SDVOSB) concerns on a sole source basis (See 19.1406)*” (Code of Federal Regulation, 2010, P.374). FAR Subpart 18.116 explicitly notes how SDVOSBs can be awarded contracts. This section of the FAR includes SDVOSBs in generally available emergency acquisition flexibilities available only under specific circumstances. FAR Subpart 18.116 also provides contracting officers with a level of discretion when administrating opportunities that benefit SDVOSBs.

Noted in FAR Subpart 18.116 is FAR Subpart 19.1406 - Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns, this section of the FAR is explained in greater detail later in this chapter. The following three sections of this chapter places great emphasis on FAR 19 and its supporting subsections, which focus on small business programs. FAR 19 includes some of the most powerful policies written for SDVOSBs involved in procurement. The policies found in FAR 19 promote the utilization of SDVOSBs and support the Small Disadvantaged Business Participation Program.

## ***5. General SDVOSB Procurement Policies***

FAR Part 19 – Small Business Programs, consists of fifteen subparts. This section focuses on subparts 19.14--Service-Disabled Veteran-Owned Small Business Procurement Program; 19.1401 – General; 19. 1402 – Applicability; 19. 1405 -- Service-disabled Veteran-

owned Small Business Set-aside Procedures; 19.1406 -- Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns; 19.1407 -- Contract Clauses. Subpart 19.14 contains seven sections. This research focuses on five of the seven sections. The policies contained in FAR subpart 19.14 are reviewed to determine its applicability and benefit to SDVOSBs.

### ***5.1 FAR -- Part 19 Small Business Programs: Subpart 19.14--Service-Disabled Veteran-Owned Small Business Procurement Program***

FAR Subpart 19.14 is a fundamental policy for SDVOSBs and is broken down into two sections. Section one describes the origins of these policies being rooted in the Veterans Benefit Act of 2003, which refined the benefits that veterans received from the Department of Veteran Affairs. Part one of FAR Subpart 19.14 states, “(a) *The Veterans Benefit Act of 2003 (15 U.S.C. 657f) created the procurement program for small business concerns owned and controlled by service-disabled veterans (commonly referred to as the Service-Disabled Veteran-owned Small Business (SDVOSB) Procurement Program )*” (Code of Federal Regulation, 2010, P.438) . Part two of FAR Subpart 19.14 explains the purpose of the SDVOSB Program and how it benefits SDVOSBs involved in procurement. Part two of FAR Subpart 19.14 states, “(b) *The purpose of the Service-Disabled Veteran-Owned Small Business Program is to provide Federal contracting assistance to service-disabled veteran-owned small business concerns*” (Code of Federal Regulation, 2010, P.438).

To be included in this policy, the government has certain standards that must be met. The Office of Government Contracting & Business Development explains the criteria that a business must meet to be considered a SDVOSB in their report titled: Government Contracting 101 Part 1 Overview of Small Business Programs. The report explains that “*To participate in this type of*

*set-aside, such businesses must be at least 51% owned and controlled by a service-disabled veteran and the daily management operations of the concern must be controlled by a service-disabled veteran or caregiver. And, they must be a small business”* (Government Contracting 101 Part 1 Overview of Small Business Programs, 2015, P.18). Organizations that meet the requirements to be considered an SDVOSB and obtain contracting assistance provided by the SDVOSB Procurement Program are beneficial for contracting officers. This is explained further by the U.S. Small Business Administration Office of Government Contracting and Business Development in their supplemental workbook titled: Veteran Owned Small Business Contracting Programs.

The workbook explains that the SDVOSB Procurement Program “helps contracting officers and agencies to meet the three percent government-wide procurement goal for SDVOSBs. It is a program designed to help service-disabled veteran-owned firms to win federal contracts. The program provides procuring agencies with authority to set acquisitions aside for exclusive competition among SDVOSBs, as well as the authority to make sole-source awards to service-disabled veteran-owned firms, if certain conditions are met. Eligibility for this program is unique only to service-disabled veteran-owned small firms. In addition, service-disabled veteran status is self-conveyed to the contracting officer without verification of veteran’s status from the VA or a third-party entity” (Veteran Owned Small Business Contracting Programs, 2013, P.7). It becomes clear that the SDVOSB Procurement Program is not only beneficial to SDVOSBs, but government officials as well. This policy encourages contracting officers to create opportunities for SDVOSBs.

## ***5.2 Subpart 19.1403-- Status as a service-disabled veteran-owned small business***

### ***concern***

As previously discussed, to be considered an SDVOSB certain qualifications must be met. To review these qualifications, the U.S. Small Business Administration Office of Government Contracting and Business Development's supplemental workbook was reviewed. The workbook is titled: Veteran Owned Small Business Contracting Programs. According to the workbook, *"Eligibility requirements for participation in the SDVOSB program are unique to firms owned by service disabled veterans: the service disabled veteran must have a service-connected disability that has been determined by the VA or DoD; the SDVOSB must be "small" under the NAICS code assigned to the procurement; the service-disabled veteran must own at least 51% of the SDVOSB; and, the service-disabled veteran must hold the highest office and control the management and daily operations of the SDVOSB"* (Veteran Owned Small Business Contracting Programs, 2013, P.11). Once these qualifications are met, an SDVOSB becomes eligible to participate in a set-aside opportunity.

To respond to set-asides designated to SDVOSBs, some information needs to be provided to the contracting officer in charge of the opportunity. The SDVOSB must show proof that the opportunity they are responding to is, in fact, an SDVOSB set-aside and that their business title matches the business title outlined in the opportunity. The SDVOSB must also display the North American Industry Classification System (NAICS) code found on the opportunity and display to the contracting officer that it is a small business classification. NAICS codes are used to classify different types of items or services and include a wide variety of categories, such as small businesses. FAR Subpart 19.1403 explains this stating in part, *"At the time that a service-disabled veteran-owned small business concern submits its offer, it must represent to the*

*contracting officer that it is a— (1) Service-disabled veteran-owned small business concern; and (2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the procurement”* (Code of Federal Regulations, 2010, P.438). By providing contracting officers or government officials with this information, the competition for an opportunity is then limited to the businesses that the contract is set-aside for, which in this case are SDVOSBs. This means that the competition is then on an even playing field for these businesses and the contract will go to the SDVOSBs with the best pricing or superior product. FAR Subpart 19.1403 enables SDVOSBs to claim an opportunity by using their business status. This is done only after a business meets the requirements to be considered an SDVOSB, and they provide notice to the contracting officer or government official that the opportunity they are responding to is an SDVOSB set-aside.

### ***5.3 Subpart 19.1405 -- Service-disabled Veteran-owned Small Business Set-aside Procedures***

FAR Subpart 19.1405 outlines some of the procedures that must be met for an SDVOSB set-aside to occur. This includes some of the responsibilities that the government must fulfill to issue a set-aside contract. While the competition for a set-aside is exclusive to only the business titles outlined by the opportunity, the contracting officer in charge of administering the opportunity needs to know that competition will, in fact, occur in order to issue a set-aside. For an SDVOSB set-aside to be issued, a contracting officer needs to have a reasonable expectation that multiple SDVOSBs will be placing bids on the opportunity. This is to assure that the government will be able to find the best deal available and to have options to choose from while they meet their three percent government-wide procurement goal for SDVOSBs.

The Veteran Owned Small Business Contracting Programs workbook issued by The U.S. Small Business Administration Office of Government Contracting and Business Development, explains these set-aside requirements by stating, “*a contracting officer may set-aside a procurement for a service disabled veteran owned small business if there is a reasonable expectation that two or more responsible SDVOSBs will submit offers, and, if the award can be made at a fair market price*” (Veteran Owned Small Business Contracting Programs, 2013, P.8). There are other requirements set forth by FAR Subpart 19.1405 that must be met by contracting officers to set-aside acquisitions.

FAR Subpart 19.1405 states in part that, “*To set-aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the contracting officer must have a reasonable expectation that— (1) Offers will be received from two or more service-disabled veteran-owned small business concerns; and (2) Award will be made at a fair market price*” (Code of Federal Regulations, 2010, P.439). FAR Subpart 19.1405 goes on to state that, “*If the contracting officer receives only one acceptable offer from a service-disabled veteran-owned small business concern in response to a set-aside, the contracting officer should make an award to that concern*” (Code of Federal Regulations, 2010, P.439). FAR Subpart 19.1405 outlines some of the procedures that must be met for an SDVOSB set-aside to occur. These procedures assist contracting officers with performing their jobs; meeting the three percent government-wide procurement goal for SDVOSBs; and allows SDVOSBs to operate on an even playing field with businesses of the same size and scope. To understand additional policies, the next section of this chapter discusses the policies involved in awarding SDVOSBs opportunities on a sole source basis.

## ***5.4 Subpart 19.1406 -- Sole Source Awards to Service-disabled Veteran-owned***

### ***Small Business Concerns***

FAR Subpart 19.1406 sets forth the provisions under which a contracting officer may issue a sole source award to an SDVOSB. This sole source award can only be issued if specific qualifications are fulfilled. FAR Subpart 19.1406 breaks these specifications down into five sections outlining what conditions must be met for a contracting officer to issue a sole source award. FAR Subpart 19.1406 states in its first two sections that a contracting officer may award sole source contracts to an SDVOSB if, “(1) *The contracting officer does not have a reasonable expectation that offers would be received from two or more service-disabled veteran-owned small business concerns; (2) The anticipated award price of the contract, including options, will not exceed—(i) \$6 million for a requirement within the NAICS codes for manufacturing; or (ii) \$3.5 million for a requirement within any other NAICS code*” (Code of Federal Regulations, 2010, P. 439). As previously mentioned, NAICS codes, or North American Industry Classification System codes, are used to classify different types of items or services and include a wide variety of categories, such as small businesses. FAR Subpart 19.1406 notes that the NAICS code in place must meet specific value thresholds for the opportunity to be considered a sole source award.

The third section of FAR Subpart 19.1406 explains contracting officer may award sole source contracts to a SDVOSB if, “(3) *The requirement is not currently being performed by an 8(a) participant*” (Code of Federal Regulations, 2010, P. 440). An 8(a) participant is a small business title similar to SDVOSBs. 8(a) businesses have set-aside opportunities written to them as well. The contracting officer must first vet the market to assure that the opportunity being

awarded to a SDVOSB through a sole source standard is in accordance with the rules and standards established by FAR Subpart 19.1406.

The final two sections of FAR Subpart 19.1406 detail the final requirements a contracting officer must fulfill to issue a sole source award to an SDVOSB. Sections four and five of FAR Subpart 19.1406 state, “(4) *The service-disabled veteran owned small business concern has been determined to be a responsible contractor with respect to performance; and (5) Award can be made at a fair and reasonable price*” (Code of Federal Regulations, 2010, P. 440). Together, the five sections of FAR Subpart 19.1406 set forth the requirements for what must occur for a contracting officer to issue a sole source award to an SDVOSB. To understand this more clearly, the Veteran Owned Small Business Contracting Programs workbook explains, “*Under this program, a contracting officer may award contracts to service-disabled veteran owned small businesses on a sole source basis. However, such awards can only be made if, only one SDVOSB can satisfy the requirement; the anticipated contract award price is less than \$6 million for manufacturing requirements or \$3.5 million for all other procurements; the firm is a responsible business; and, the award can be made at a fair and reasonable price*” (Veteran Owned Small Business Contracting Programs, 2013, P.9). Under the policies outline in FAR Subpart 19.1406, SDVOSBs can win contracts that they otherwise could not. This is only possible though if an SDVOSB satisfies the requirements outlined in the five sections of FAR Subpart 19.1406.

Understanding these five requirements can provide SDVOSBs with the knowledge needed to pursue and win opportunities. The following section of this chapter goes over contract clauses. While this section is concise, it presents significant topics that have been discussed or will be discussed later in this chapter.

## ***5.5 Subpart 19.1407 -- Contract Clauses***

While this subsection of the FAR is brief, it is worth noting because it references subsections that are in direct relation to SDVOSBs, those being: FAR Subpart 19.1405 Service-disabled veteran-owned small business set-aside procedures and FAR Subpart 19.1406 Sole source awards to service-disabled veteran-owned small business concerns. The Contract Clauses explains in part that, *“The contracting officer shall insert the clause 52.219–27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside, in solicitations and contracts for acquisitions under 19.1405 and 19.1406”* (Code of Federal Regulations, 2010, P.440). FAR Subpart 19.405 and FAR Subpart 19.406 are both described in detail in earlier sections of this chapter. FAR Subpart 52.219-27 will be discussed later in this chapter.

## ***6. Policies to Encourage SDVOSB Participation***

FAR Part 19 – Small Business Programs, consists of fifteen subparts. This section focuses on subparts 19.2 – Policies and 19.202-1 -- Encouraging Small Business Participation in Acquisitions. Subpart 19.2 contains two sections. This research focuses on the general principles outlined by Subpart 19.202-1 -- Encouraging Small Business Participation in Acquisitions. The policies contained in FAR subpart 19.2 are to be reviewed to determine its applicability and benefit to SDVOSBs.

### ***6.1 FAR -- Part 19 Small Business Programs: Subpart 19.2 – Policies***

FAR Subpart 19.2 begins with a scope section which identifies general policies pertaining to the utilization of small businesses and particularly SDVOSBs. This particular FAR subpart is quite lengthy in comparison to its counterparts. For the purposes of this research, sections from FAR Subpart 19.2 that explicitly mention SDVOSBs or that can be utilized by

SDVOSBs are reviewed. Other sections will not be included as they lack relevancy to this research. This research focuses on four policy sections found in FAR Subpart 19.2. The first section of FAR Subpart 19.2 supports the use of small businesses in contracting. This support for small businesses includes SDVOSBs.

FAR Subpart 19.2 states that, *“It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance”* (Code of Federal Regulation, 2010, P.384). FAR Subpart 19.2 directly outlines how SDVOSBs are to be provided the utmost number of contract opportunities. FAR Subpart 19.2 then goes a step further by explaining that the utmost number of contract opportunities for SDVOSBs is not limited to SDVOSBs acting as prime contractors, but SDVOSBs are also to be provided with the utmost number of subcontract opportunities as well. This policy offers SDVOSBs the ability to be included in the maximum number of opportunities that they can be a part of.

To better summarize the policies mentioned in section one of FAR Subpart 19.201, the Contract Attorneys Deskbook is reviewed. According to the Contract Attorneys Deskbook, FAR Subpart 19.201 does two things that can significantly benefit SDVOSBs. First, the Deskbook notes that FAR Subpart 19.201 includes policies and procedures in support of small businesses by explaining that the government is obligated to, *“Place a “fair proportion” of acquisitions (prime contracts) with small business concerns”* (Contract Attorneys Deskbook, 2014, 655). Second, the Deskbook goes on to explain that according to FAR Subpart 19.201, the government

is required to, *“Promote maximum subcontracting opportunity for small businesses. Prime contractors must agree to provide small businesses the “maximum practicable opportunity to participate in subcontracts”* (Contract Attorneys Deskbook, 2014, 655).

The second section of FAR Subpart 19.2 establishes requirements for agencies that issue contracts. These requirements include agencies creating offices that small businesses can contact regarding opportunities. FAR Subpart 19.2 states that, *“The Small Business Act requires each agency with contracting authority to establish an Office of Small and Disadvantaged Business Utilization”* (Code of Federal Regulation, 2010, P.384). This is especially important for SDVOSBs as it provides them with a resource that they can take full advantage of, and that will assist them in their endeavors.

Section three of FAR Subpart 19.2 states that the government has an obligation to, *“Assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions”* (Code of Federal Regulation, 2010, P.384). FAR Subpart 19.2 stands behind SDVOSBs being paid promptly and orderly. If the government fails to adhere to these standards and provide payment within 30 days of the contract start date, then they have to pay interest. Provided by FAR Subpart 19.2 is an assurance for SDVOSBs and all small businesses that they will be adequately compensated for their services. Without this policy in place, there would be much more uncertainty about how and when small businesses would be paid.

Section four of FAR Subpart 19.2 states that the Small Business Administration (SBA) will, *“Conduct annual reviews to assess the extent to which small businesses are receiving a fair share of Federal procurements, including contract opportunities under the programs administered under the Small Business Act”* (Code of Federal Regulation, 2010, P.886). Not only

do SDVOSBs have a variety of policies that assure they are provided with access to opportunities, but FAR Subpart 19.2 also provides a safeguard to assure that those opportunities are provided. Requiring agencies to be reviewed by the SBA means that these agencies are held accountable and that they are fulfilling the requirements outlined by all of FAR, not just FAR Subpart 19.2.

## ***6.2 Subpart 19.202-1 -- Encouraging Small Business Participation in Acquisitions***

The policies outlined in FAR Subpart 19.202-1 can be leveraged by SDVOSBs to win contracts by further expanding their ability access to opportunities. This is also done by increasing the level of involvement that SDVOSBs have. FAR Subpart 19.202-1 does this in part by bridging a gap that exists between small and large businesses and by granting further access to small businesses. According to a report published in 2011 by the National Contract Management Association titled: Key Issues in Federal Government Contract, FAR Subpart 19.202-1 has three primary purposes. The report explains the three main policies found in FAR Subpart 19.202-1 stating that it, “*divides acquisitions into reasonably small lots, encourages large business prime contractors to subcontract with small businesses, and it keeps the SBA in the loop on opportunities for Small Businesses*” (Warren, Blum, Lowe, 2011, P. 11). While the report published by the National Contract Management Association shines a light on what FAR Subpart 19.202-1 can do, this research looks at direct sections from FAR Subpart 19.202-1 to better understand how it’s polices benefit SDVOSBs.

The section of Far Subpart 19.202-1 that this research focuses on explains policy requirements that contracting officers are obligated to follow. These policies promote the inclusion of SDVOSBs in opportunities. FAR Subpart 19.202-1 states in part that, “*Small business concerns shall be afforded an equitable opportunity to compete for all contracts that*

*they can perform to the extent consistent with the Government's interest. When applicable, the contracting officer shall take the following actions: (a) Divide proposed acquisitions of supplies and services (except construction) into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement. (b) Plan acquisitions such that, if practicable, more than one small business concern may perform the work, if the work exceeds the amount for which a surety may be guaranteed by SBA against loss under 15 U.S.C.694b. (c) Ensure that delivery schedules are established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government. (d) Encourage prime contractors to subcontract with small business concerns”* (Code of Federal Regulation, 2010, P.396). The policies set forth by FAR Subpart 19.202-1 explicitly outline the steps a contracting officer is required to fulfill when issuing an opportunity. These steps are in place to assure small business involvement, including SDVOSBs. The following section of this research discusses set-asides for small businesses and how these policies are of benefit to SDVOSBs.

## ***7. Set-Aside Policies for SDVOSBs***

FAR Part 19 – Small Business Programs, consists of fifteen subparts. This section focuses on subparts 19.5-- Set-Asides for Small Business; 19.501 – General; 19.502 -- Setting Aside Acquisitions; 19. 502-1 -- Requirements for Setting Aside Acquisitions; and 19. 502-2 -- Total Small Business Set-Asides. Subpart 19.5 consists of eight sections. This research focuses on two of the eight sections. The policies contained in FAR subpart 19.5 will be reviewed to determine its applicability and benefit to SDVOSBs.

## ***7.1 FAR -- Part 19 Small Business Programs: Subpart 19.5 -- Set-Asides for Small Business***

Christoph Mlinarchik is an attorney and government contract specialist. Christoph explains in his research titled: *Does the FAR Apply to Federal Contractors? (No!) Dispelling Myths in FAR Applicability and Clause Selection in Government Contracts*, that, “*the FAR prescribes standard contract clauses to insert into contracts*” (Mlinarchik, 2017, P.68) when discussing FAR Subpart 19.5 in his research. This section discusses some of the contract clauses inserted into contracts under FAR Subpart 19.5; this is done by exploring the policies promoted by FAR Subpart 19.5.

Small business set-asides provide SDVOSBs with a higher probability of winning opportunities. FAR Subpart 19.5 assures that contracts are written for small businesses. These small businesses include SDVOSBs. The U.S. Small Business Administration Office of Government Contracting and Business Development explains some of the benefits FAR Subpart 19.5 has in its report titled: *Government Contracting 101 Part 1, Overview of Small Business Programs*.

The report explains that “*Small business set-asides are a powerful tool for helping small firms win federal prime contracts. Fundamentally, government buys that have an anticipated dollar value exceeding \$3,000, but not over \$150,000 are automatically reserved or set-aside for small businesses. This is required unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small businesses*” (Government Contracting 101 Part 1 Overview of Small Business Programs, 2015, P.10). The report goes on to note additional benefits that SDVOSBs receive from FAR Subpart 19.5 stating

that, “Further, contracts can be set-aside for small businesses certified in the 8(a) Business Development Program or the HUBZone Program. Or, they can be set-aside for qualified women owned small businesses or service-disabled veteran owned small businesses” (Government Contracting 101 Part 1 Overview of Small Business Programs, 2015, P.11). FAR Subpart 19.5 explains that opportunities within a specific price range are automatically set-aside for small businesses. This means that opportunities that fall within \$3,000-\$150,000 can be considered for SDVOSB set-aside.

This research focuses on other general policies found in FAR Subpart 19.5 that benefit SDVOSBs. The general purpose of FAR Subpart 19.5, “is to award certain acquisitions exclusively to small business concerns. A ‘set-aside for small business’ is the reserving of an acquisition exclusively for participation by small business concerns. A small business set-aside may be open to all small businesses. A small business set-aside of a single acquisition or a class of acquisitions may be total or partial. (b) The determination to make a small business set-aside may be unilateral or joint” (Code of Federal Regulation, 2010, P.400). The contracting officer makes a unilateral determination for a set-aside opportunity. A joint determination is one that is recommended by the SBA. This means that on joint determination, contracting officers must take into consideration what the SBA says, which would be in the interest of small businesses, including SDVOSBs. By exclusively addressing small business concerns and dealing with small business set-asides, FAR Subpart 19.5 promotes extremely beneficial policies for SDVOSBs.

In its general policies, FAR Subpart 19.5 notes that contracting officers are obligated to follow specific steps. FAR Subpart 19.5 explains that “The contracting officer shall review acquisitions to determine if they can be set-aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency’s small business

*programs. The contracting officer shall document why a small business set-aside is inappropriate when an acquisition is not set-aside for small business, unless a HUBZone or service-disabled veteran-owned small business set-aside or HUBZone or service-disabled veteran-owned small business sole source award is anticipated” (Code of Federal Regulation, 2010, P.400).* As previously explained in FAR Subpart 19.14, the purpose of the Small Business Program is to provide federal contracting assistance to service-disabled veteran-owned small business concerns. Contracting officers are to work in conjunction with the small business program delegated to an agency.

It is important to note how FAR Subpart 19.5 outlines the significance of a SDVOSB anticipated set-aside. FAR Subpart 19.5 promotes the utilization of SDVOSBs through its policies. The next section of this research discusses in detail the requirements for setting aside acquisitions. This includes taking a closer look at the price range that automatically constitutes a set-aside opportunity.

## ***7.2 Subpart 19.502-1 -- Requirements for Setting Aside Acquisitions***

FAR Subpart 19.502-1 contains policy requirements for contracting officers when issuing set-aside opportunities. FAR Subpart 19.502-1 states in full, “*(a) The contracting officer shall set aside an individual acquisition or class of acquisitions for competition among small businesses when— (1) It is determined to be in the interest of maintaining or mobilizing the Nations full productive capacity, war or national defense programs; or (2) Assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns; and the circumstances described in 19.502–2 or 19.502–3(a) exist. (b) This requirement does not apply to purchases of \$3,000 or less” (Code of Federal Regulations, 2010, P. 401).* As discussed in the previous section, acquisitions that fall between \$3,000 and \$150,000

are automatically set-aside for small businesses. This means that opportunities that fall within \$3,000-\$150,000 can be considered for SDVOSB set-asides.

FAR Subpart 19.502-1 explains that purchases of \$3,000 or less do not apply to this because they are considered a smaller purchase. Hebbel explains that *“in accordance with FAR, a large number of employees have been granted the authority to use credit/purchase cards for smaller purchases up to \$3,000. The employees using purchase cards are not necessarily contracting officers and contracting specialists”* (Hebbel, 2015, P. 13). This explains why purchases under \$3,000 do not apply to this. If SDVOSBs can navigate through agencies to find out who is using these purchase cards, then they can use the information to increase the sales. The next section of this research discusses the final portion of FAR 19 that applies to SDVOSBs. FAR Subpart 19.502-2 outlines the total small business set-asides.

### ***7.3 Subpart 19.502-2 -- Total Small Business Set-Asides***

Mark A. Walther from the United States Agency of International Development (USAIDA) explains in an article titled: *Acquisition & Assistance Policy Directive*, that FAR Subpart 19.502-2 is in place, *“to require set-aside of certain procurement actions for small businesses, unless the CO determines that there is not a reasonable expectation of obtaining offers from two or more responsible small businesses that are competitive, in terms of market prices, quality, and delivery”* (Walther, 2018, P.3). This research section discusses set-aside actions contained in FAR Subpart 19.502-2.

FAR Subpart 19.502-2 contains policies that benefit small businesses. This research focuses on three sections found in Subpart 19.502-2 that benefit SDVOSBs. The first section of Subpart 19.505-2 that this research focuses on states, *“(a) Each acquisition of supplies or*

*services that has an anticipated dollar value exceeding \$3,000, but not over \$150,000, is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery”* (Code of Federal Regulations, 2010, P. 401). FAR Subpart 19.502-2 outlines the price range for opportunities that are set-aside for small businesses. Of these small business set-asides, a portion of opportunities are awarded to SDVOSBs. This policy lays a foundation for which opportunities can be set-aside for SDVOSBs.

If a contracting officer does not issue a small business set-aside, but a small business is the only organization to place a bid on the opportunity, then the small business can be awarded the opportunity. FAR Subpart 19.502-2 explains this by stating, *“if the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm”* (Code of Federal Regulations, 2010, P. 401). FAR Subpart 19.502-2 goes into further detail for what contracting officers are required to do when issuing small business set-asides. The third section of FAR Subpart 19.502-2 analyzed in this research explains that, *“the contracting officer shall set aside any acquisition over \$150,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (but see 19.502– 3 as to partial set-asides). Although past acquisition history of an item or similar items is always important, it*

*is not the only factor to be considered in determining whether a reasonable expectation exists”*  
(Code of Federal Regulations, 2010, P. 402).

Under this policy, small businesses and SDVOSBs have a level of preference on contracts allowing them to win opportunities by having contracts that are explicitly written for them. There are specific requirements outlined by FAR Subpart 19.502-2 that must be met in order to win these opportunities. FAR Subpart 19.502-2 explains how qualification outlined must be met to be awarded a set-aside. To review further details about the set-aside policies found in FAR Subpart 19.502-2, a section from the U.S. Small Business Administration Office of Government Contracting and Business Development developmental workbook is reviewed.

The workbook explains that, *“for acquisitions over \$150K – they too are to be set-aside for small business, when there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns, and the award can be made at a fair market price. It is important to note, consideration is first for a set-aside or sole source award under the 8(a), HUBZone, SDVOSBs or Woman Owned Small Business programs before a general small business set-aside. However, there is no order of precedence among 8(a), HUBZone, SDVOSB or WOSB programs”* (Government Contracting 101 Part 1 Overview of Small Business Programs, 2015, P.12). This can provide SDVOSBs with an even playing field as they are able to compete with other organizations of similar size and scale. Without this FAR Subpart 19.502-2 policy in place, acquisitions over \$150,000 would be much more difficult for SDVOSBs to pursue and ultimately win. Thanks to this policy, SDVOSBs have the ability to pursue sizable contracts while competing exclusively against other small businesses.

## ***8. SDVOSB Notice of Set- Aside***

This chapter has already provided a detailed outline of the qualifications that must be met in order for an organization to be considered a SDVOSB. FAR Subpart 52.219-27 discusses policies that promote set-aside notices for organizations that meet the SDVOSB status. By meeting the qualifications needed to be considered an SDVOSB, these organizations' endeavors are supported by polices located in FAR Subpart 52.219-27. These policies are reviewed in the following section.

### ***8.1 xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION 2019-O0003)***

FAR Subpart 52.219-27 is a subpart of FAR Subpart 52.218, a section of the FAR that is labeled separately from the other parts as “reserved”. FAR Subpart 52.219-27 is the twenty-seventh subpart of FAR Subpart 52.218 which contains twenty-eight subparts in total. FAR Subpart 52.219-27 is different from other FAR parts that this chapter has discussed because it was established in November 2011, making it a newer policy. Doc No: 2011-27786 from The Federal Register Online via the Government Publishing Office explains that FAR Subpart 52.219-27 is an interim agency rule between the DOD, GSA, and NASA. The interim rule was issued to amend the FAR. The agencies ruling sought to amend sections from FAR Subpart 19.1405 and FAR Subpart 19.1406, both of these sections have been discussed earlier in this chapter. To fully understand FAR Subpart 19.1405 and FAR Subpart 19.1406 it is equally important to understand the changes FAR Subpart 52.219-27 emplaced on these FAR sections. Doc No: 2011-27786 from The Federal Register explains that “*The contracting officer shall insert the clause 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-*

*Aside, in solicitations and contracts for acquisitions that are set aside or reserved for, or awarded on a sole source basis to, service-disabled veteran-owned small business concerns under 19.1405 and 19.1406. This includes multiple-award contracts when orders may be set aside for service-disabled veteran-owned small business concerns”* (Federal Register Volume 76, Number 212, 2011). To better understand the clause that contracting officers insert under FAR Subpart 52.219-27, a section from the second volume of the Code of Federal Regulations is reviewed. Reviewing this CFR revision is required because FAR Subpart 52.219-27 is not located in the first volume of the CFR which this research has been using. CFR Title 48—Federal Acquisition Regulations System contains each section of FAR Subpart 52.219-27.

The first section of FAR Subpart 52.219-27 explains the qualifications that an organization must hold to be considered a SDVOSB by stating that the organization must be, “*no less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly-owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran. (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected”* (Code of Federal Regulations, Title 48—Federal Acquisition Regulations System, 2011, P. 148). FAR Subpart 52.219-27 then goes on to state the policies in place for reviewing offers on opportunities.

FAR Subpart 52.219-27 explains that “*Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered. (2) Any award*

resulting from this solicitation will be made to a service-disabled veteran-owned small business concern. (c) Agreement. A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for— (1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other service-disabled veteran-owned small business concerns; (2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other service-disabled veteran-owned small business concerns; (3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other service-disabled veteran-owned small business concerns” (Code of Federal Regulations, Title 48—Federal Acquisition Regulations System, 2011, P. 148). FAR 52.219-27 concludes by explaining the policies in place for responding to opportunities with joint ventures. A joint venture means that there will be more than one party responding to an opportunity, these policies outline what will occur what a SDVOSB is involved in a joint venture. FAR 52.219-27 explains, “A joint venture may be considered a service-disabled veteran owned small business concern if— (1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the following representations: That it is a service disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement; (2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement” (Code of Federal Regulations, Title 48—Federal Acquisition Regulations System, 2011, P. 149). While the sections of FAR Subpart 19.1405 and FAR Subpart 19.1406 are both used today in

full, it is essential to note FAR Subpart 52.219-27 because it can be inserted into FAR Subpart 19.1405 and FAR Subpart 19.1406. This research has sought to conduct a comprehensive analysis of the FAR, to do this sufficiently, it was required to mention the interim ruling that is FAR Subpart 52.219-27. Further, all FAR parts and subparts listed in this research are up to date and current.

### ***Conceptual Framework Table***

A conceptual framework has been constructed using the eight categories (parts) of the FAR and their subcategories (subparts) that this chapter has reviewed. The purpose of the conceptual framework table is to present the supporting literature used in this chapter. Much of the supporting literature used in this chapter came from the CFR, a codification of rules and administrative laws published by the Federal Register. Other sources used in this chapter came from scholarly journals, government reports, government publications, and books. All of the supporting literature used in this chapter is reviewed in the conceptual framework table.

**Table 2.1 Conceptual Framework**

<b>Service-Disabled Veteran Owned Small Businesses and Government Contracting: Assessing the State of Texas Procurement and Contract Management Guide Using the Federal Acquisition Regulation</b>	
<b>Purpose:</b> The purpose of this research is threefold. First, this research identified best practices related to procurement practices used by SDVOSBs and developed a framework for the assessment of such practices. In particular, this framework was developed by using sources such as the Code of Federal Regulations (CFR, henceforth) and other scholarly sources. Next, this framework is used to assess procurement policies pertaining to SDVOSBs in Texas. Finally, this research provides recommendations to refine Texas procurement policies.	
<b>Category</b>	<b>Supporting Literature</b>
<b>1. Full and Open Competition After Exclusion of Sources for SDVOSBs</b>	
<b>1.1 FAR -- Part 6 Competition Requirements: Subpart 6.2 -- Full and Open Competition After Exclusion of Sources</b>	<b>Code of Federal Regulation, 2010; Pang, 2018; McCullough &amp; Anstett, 2019</b>
<b>1.2 Subpart 6.206 – Set-asides for Service-Disabled Veteran-Owned Small Business Concerns</b>	<b>Code of Federal Regulation, 2010; Frontz, 2012</b>
<b>2. Providing Goods and Services Using Price Reductions</b>	
<b>2.1 FAR -- Part 8 - Required Sources of Supplies and Services Subpart 8.4</b>	<b>Contract Attorneys Desk Book, 2014; Code of Federal Regulation, 2010; McCullough &amp; Anstett, 2019</b>
<b>2.2 Subpart 8.405 -- Ordering Procedures for Federal Supply Schedules.4 – Price Reductions</b>	<b>Code of Federal Regulation, 2010</b>
<b>3. Contract Negotiation with Industry</b>	
<b>3.1 FAR -- Part 15 Contracting by Negotiation: Subpart 15.2 -- Solicitation and Receipt of Proposals and Information</b>	<b>Code of Federal Regulations, 2010; HUD Acquisition Policy and Procedures, 2017; GSA, 2014</b>
<b>3.2 Subpart 15.201 -- Exchanges with Industry Before Receipt of Proposals</b>	<b>Contract Attorneys Desk Book, 2014; A Practical Guide to Source Selection, 2013; Hebbel, 2015; Cox &amp; Moore, 2013</b>

<b>4. Emergency Acquisitions for SDVOSBs</b>	
<b>4.1 FAR -- Part 18 Emergency Acquisitions: Subpart 18.1 -- Available Acquisition Flexibilities</b>	<b>Code of Federal Regulation, 2010; Gordon, 2011</b>
<b>4.2 Subpart 18.116 -- Service-Disabled Veteran-Owned Small Business (SDVOSB) Sole Source Awards</b>	<b>Code of Federal Regulation, 2010</b>
<b>5. General SDVOSB Procurement Policies</b>	
<b>5.1 FAR -- Part 19 Small Business Programs: Subpart 19.14--Service-Disabled Veteran-Owned Small Business Procurement Program</b>	<b>Code of Federal Regulation, 2010; Government Contracting 101 Part 1 Overview of Small Business Programs, 2015; Veteran Owned Small Business Contracting Programs, 2013</b>
<b>5.2 Subpart 19.1403 – Status as a Service-Disabled Veteran-Owned Small Business Concern</b>	<b>Veteran Owned Small Business Contracting Programs, 2013; Code of Federal Regulations, 2010</b>
<b>5.3 Subpart 19.1405 -- Service-Disabled Veteran-owned Small Business Set-aside Procedures</b>	<b>Veteran Owned Small Business Contracting Programs, 2013; Code of Federal Regulations, 2010</b>
<b>5.4 Subpart 19.1406 -- Sole Source Awards to Service-Disabled Veteran-Owned Small Business Concerns</b>	<b>Code of Federal Regulations, 2010; Veteran Owned Small Business Contracting Programs, 2013</b>
<b>5.5 Subpart 19.1407 -- Contract Clauses</b>	<b>Code of Federal Regulations, 2010</b>
<b>6. Policies to Encourage SDVOSB Participation</b>	
<b>6.1 FAR -- Part 19 Small Business Programs: Subpart 19.2 – Policies</b>	<b>Code of Federal Regulation, 2010; Contract Attorneys Deskbook, 2014</b>

<b>6.2 Subpart 19.202-1 -- Encouraging Small Business Participation in Acquisitions</b>	<b>Warren, Blum, Lowe, 2011; Code of Federal Regulation, 2010</b>
<b>7. Set-Aside Policies for SDVOSBs</b>	
<b>7.1 FAR -- Part 19 Small Business Programs: Subpart 19.5 -- Set-Asides for Small Business</b>	<b>Government Contracting 101 Part 1 Overview of Small Business Programs, 2015; Code of Federal Regulation, 2010; Mlinarchik, 2017</b>
<b>7.2 Subpart 19.502-1 -- Requirements for Setting Aside Acquisitions</b>	<b>Code of Federal Regulations, 2010; Hebbel, 2015</b>
<b>7.3 Subpart 19.502-2 -- Total Small Business Set-Asides</b>	<b>Code of Federal Regulations, 2010; Government Contracting 101 Part 1 Overview of Small Business Programs, 2015; Walther, 2018</b>
<b>8. SDVOSB Notice of Set- Aside</b>	
<b>8.1 xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION 2019-O0003)</b>	<b>Federal Register Volume 76, Number 212, 2011; Code of Federal Regulations, Title 48—Federal Acquisition Regulations System, 2011</b>

## *Chapter Overview*

The purpose of this chapter was to assess and evaluate academic literature and or relevant documents which support the eight categories (parts) of the FAR and their subcategories (subparts) pertaining to best practices that should be implemented by the state of Texas into their Procurement and Contract Management Guide to better reflect the interest of SDVOSB. Eight FAR categories (parts) and subcategories (subparts) were reviewed in this chapter.

This information will be utilized in the following chapter when comparing the State of Texas Procurement and Contract Management Guide to federal procurement policies. This comparison is used to determine how the state of Texas's policies compare and contrast to the federal standards. This comparison will be utilized to make recommendations to refine Texas procurement policies focused on SDVOSBs.

## Chapter 3: Methodology

### *Chapter Purpose*

The purpose of this chapter is to present the methods used to evaluate the FAR against the State of Texas Procurement and Contract Management Guide. The FAR was analyzed to determine if the State of Texas Procurement and Contract Management Guide contains similar and or the same SDVOSB friendly policies. This chapter includes the following five sections: The State of Texas Procurement and Contract Management Guide, a brief discussion of document analysis as a method of research, the Operationalization of Conceptual Framework, Operationalization Table, Assessment Criteria for Document Analysis, and Chapter Overview.

### *Section overview:*

- **The State of Texas Procurement and Contract Management Guide:** This document is thoroughly reviewed and summarized.
- **Document Analysis:** A detailed explanation of this research method, and the reason it was chosen is provided.
- **Operationalization of Conceptual Framework:** Defines how the evidence used in this research offers a model for data collection and analysis.
- **Operationalization Table:** Formal summary of the research purpose, category, method, and evidence.
- **Assessment Criteria for Document Analysis:** Defines the categories used to determine how the state of Texas's policies compare and contrast to the federal standards outlined in the previous chapter.

## ***The State of Texas Procurement and Contract Management Guide***

The State of Texas Procurement and Contract Management Guide defines the laws and policies used by Texas agencies to acquire commodities and services. The guide can be found on the State Comptroller's webpage:

<https://comptroller.texas.gov/purchasing/publications/procurement-contract.php>

The webpage explains that *“This guide is a complete rewrite of the State of Texas Procurement Manual and the State of Texas Contract Management Guide, which are merged into one document with the goal of providing a holistic approach to government procurement.”* By combining the State of Texas Procurement Manual and the State of Texas Contract Management Guide into one compressive 248-page document, the state of Texas created version 1.0 of the guide on June 1, 2018, and modified the guide on August 1, 2018, creating version 1.1, which is currently being used by the state of Texas.

The guide explains in its introduction that the *“Statewide Procurement Division (SPD) is the central authority for state agency procurement guidance, education, and statewide contract development services. The SPD director serves as the Chief Procurement Officer (CPO) for the State of Texas. The CPO has authority over state agency procurement.”* (State of Texas Procurement and Contract Management Guide, 2018, P.1) The introduction then goes on to explain that, *“SPD publishes this State of Texas Procurement and Contract Management Guide (Guide) to aid public procurement professionals in the execution of their duties and to provide step-by step guidance and a framework for the continued development of public procurement processes and best practices”* (State of Texas Procurement and Contract Management Guide, 2018, P.1).

The Statewide Procurement Division has included in their publication what they see as the best practices for procurement policies in the state of Texas. These policies cover a wide range of subjects which the guide breaks down into 13 sections. The sections included in the guide are as follows:

- Introduction
- Professional Certification and Training Program
- Ethics Laws and Professional Standards
- Vendor Communication
- SPD, DIR, Oversight Teams, and Planning Documents
- The Procurement Cycle
- Procurement Planning
- Procurement Method Determination
- Vendor Selection
- Contract Formation and Award
- Contract Management
- Version History of the Guide
- Appendices

The Statewide Procurement Division includes some policies that are beneficial to SDVOSBs such as HB 194, which states in part that, *“Goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods produced in this state or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal.”* This research suggests

additional policies that could be enacted in the state of Texas to better assist SDVOSBs involved in procurement. These suggestions are drawn from the FAR parts that were reviewed in the previous chapter. The policies found in the 13 sections of the State of Texas Procurement and Contract Management Guide were evaluated to determine if they promote the same opportunities for SDVOSBs as the FAR.

### ***Document Analysis***

This research used document analysis as a method of data collection. Professors Patricia Shields, Ph.D. and Nandhini Rangarajan, Ph.D. explain document analysis in their book titled: *A Playbook for Research Methods Integrating Conceptual Frameworks and Project Management*. The professors define document analysis as a system which “*involves organizing and analyzing data*” (Shields & Rangarajan 2013, P.22). Professors Sharlene Nagy Hesse-Biber, Ph.D. and Patricia Leavy, Ph.D. discuss document analysis in the book titled: *Public Administration Ethics for the 21st Century*. The professors explain that document analysis involves “*immersion, exploration, contextual understanding, and emergent insight into social meanings, relationships and activities*” (Hesse-Biber & Leavy 2008, P.134). Because this research gauges the eight best practices of procurement policies for SDVOSBs and then makes recommendations for the state of Texas based on the findings, document analysis seemed to be the most appropriate method of data collection.

One of the advantages of using document analysis is focusing on the information contained in each study. This research focuses heavily on the policies most often used in federal procurement. These policies have a proven track record of working at the federal level. By using document analysis to review the rules and regulations contained in the FAR, this research sought to provide the state of Texas with recommendations that derive from the document analysis

method of data collection. Another advantage of using document analysis is that it is well suited for qualitative research. The researcher of this project reviewed a substantial number of resources to locate the best information suited for this project. This information included a wide variety of documents used to complete this qualitative study.

One limitation faced in this research was time constraints. This applied research project was conducted in partial fulfillment of the requirements for the degree of Master of Public Administration through Texas State University. The researcher was provided approximately one year to fulfill this research. Due to these time constraints, using document analysis proved to be the most effective method of data collection. This is because document analysis provided the researcher with the means to compare and contrast the best policies outlined, while locating additional material to support the primary sources of information used in this research.

### ***Operationalization of Conceptual Framework***

The Operationalization of Conceptual Framework Table 3.1 is presented in the following section of this chapter. The purpose of this table is to gauge the best practices used at the federal level to see if they are currently being used in the state of Texas. An operationalization evaluation of best practices consists of *“finding evidence that the “ideal” process is in place. The process meets the ideal criteria if the evidence collected shows that it does”* (Shields & Rangarajan 2013, P.171). This table is used to present evidence that tests this researcher’s hypothesis. The table presents the eight best practices of procurement policies for SDVOSBs that were found in the FAR.

The table is structured as follows: column one presents the eight ideal FAR categories (PARTS) and their corresponding subcategories (subparts); column two presents the research

method used, and column three presents the evidence this research used to evaluate the State of Texas Procurement and Contract Management Guide when compared to the FAR.

**Table 3.1 Operationalization Table**

<b>Service-Disabled Veteran Owned Small Businesses and Government Contracting: Assessing the State of Texas Procurement and Contract Management Guide Using the Federal Acquisition Regulation</b>		
<p><b>Purpose:</b> The purpose of this research is threefold. First, this research identified best practices related to procurement practices used by SDVOSBs and developed a framework for the assessment of such practices. In particular, this framework was developed by using sources such as the Code of Federal Regulations (CFR, henceforth) and other scholarly sources. Next, this framework is used to assess procurement policies pertaining to SDVOSBs in Texas. Finally, this research provides recommendations to refine Texas procurement policies.</p>		
<b>Gauging Category</b>		
<b>Research Method–Document Analysis</b>		
<b>Category</b>	<b>Research Method</b>	<b>Evidence</b>
<b>1. Full and Open Competition After Exclusion of Sources for SDVOSBs</b>		
<b>1.1 FAR -- Part 6 Competition Requirements: Subpart 6.2 -- Full and Open Competition After Exclusion of Sources</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide outline any procurement policies for Full and Open Competition After Exclusion of Sources that benefit SDVOSBs?
<b>1.2 Subpart 6.206 – Set-asides for Service-Disabled Veteran-Owned Small Business Concerns</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide outline any Set-asides for Service-Disabled Veteran-Owned Small Business Concerns?
<b>2. Providing Goods and Services Using Price Reductions</b>		
<b>2.1 FAR -- Part 8 - Required Sources of Supplies and Services Subpart 8.4</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide identify Required Sources of Supplies and Services from SDVOSBs?
<b>2.2 Subpart 8.405 -- Ordering Procedures for Federal Supply Schedules.4 – Price Reductions</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide outline anything like the price reduction clause?
<b>3. Contract Negotiation with Industry</b>		
<b>3.1 FAR -- Part 15 Contracting by Negotiation: Subpart 15.2 -- Solicitation and Receipt of Proposals and Information</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide promote Contracting by Negotiation through Solicitation and Receipt of Proposals and Information?

<b>3.2 Subpart 15.201 -- Exchanges with Industry Before Receipt of Proposals</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide outline any Exchanges with Industry Before Receipt of Proposals?
<b>4. Emergency Acquisitions for SDVOSBs</b>		
<b>4.1 FAR -- Part 18 Emergency Acquisitions: Subpart 18.1 -- Available Acquisition Flexibilities</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide promote Emergency Acquisitions through Available Acquisition Flexibilities?
<b>4.2 Subpart 18.116 -- Service-Disabled Veteran-Owned Small Business (SDVOSB) Sole Source Awards</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide include Available Acquisition Flexibilities for Service-Disabled Veteran-Owned Small Business (SDVOSB) Sole Source Awards?
<b>5. General SDVOSB Procurement Policies</b>		
<b>5.1 FAR -- Part 19 Small Business Programs: Subpart 19.14--Service-Disabled Veteran-Owned Small Business Procurement Program</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide provide Small Business programs that include a Service-Disabled Veteran-Owned Small Business Procurement Program?
<b>5.2 Subpart 19.1403 -- Status as a Service-Disabled Veteran-Owned Small Business Concern</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide outline the Status as a Service-Disabled Veteran-Owned Small Business Concern?
<b>5.3 Subpart 19.1405 -- Service-Disabled Veteran-Owned Small Business Set-aside Procedures</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide provide Service-Disabled Veteran-Owned Small Business Set-aside Procedures?
<b>5.4 Subpart 19.1406 -- Sole Source Awards to Service-Disabled Veteran-Owned Small Business Concerns</b>	Document Analysis	Service-Disabled Veteran-Owned Small Business Set-aside Procedures include Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns?
<b>5.5 Subpart 19.1407 -- Contract Clauses</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide have the same Service-Disabled Veteran-Owned Small Business contract clauses?

<b>6. Policies to Encourage SDVOSB Participation</b>		
<b>6.1 FAR -- Part 19 Small Business Programs: Subpart 19.2 – Policies</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide include Small Business Program Policies?
<b>6.2 Subpart 19.202-1 -- Encouraging Small Business Participation in Acquisitions</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide Encourage Small Business Participation in Acquisitions?
<b>7. Set-Aside Policies for SDVOSBs</b>		
<b>7.1 FAR -- Part 19 Small Business Programs: Subpart 19.5 -- Set-Asides for Small Business</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide include Set-Asides for Small Businesses?
<b>7.2 Subpart 19.502-1 -- Requirements for Setting Aside Acquisitions</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide include small business Requirements for Setting Aside Acquisitions?
<b>7.3 Subpart 19.502-2 -- Total Small Business Set-Asides</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide include Total Small Business Set-Asides?
<b>8. SDVOSB Notice of Set- Aside</b>		
<b>8.1 xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION 2019-O0003)</b>	Document Analysis	Does the State of Texas Procurement and Contract Management Guide include Notice of Service-Disabled Veteran-Owned Small Business Set-Asides?

## *Assessment Criteria for Document Analysis*

Three categories are used when comparing the State of Texas Procurement and Contract Management Guide to federal procurement policies. This comparison is used to determine how the state of Texas's policies compare and contrast to the federal standards. This comparison is utilized to make recommendations to refine Texas procurement policies focused on SDVOSBs. The three categories used are as follows: Exact Policy, Equivalent Policy, and No Comparable Policy.

## Chapter 4: Results

### *Chapter Purpose*

The purpose of this chapter is to present the findings from the analysis conducted on the State of Texas Procurement and Contract Management Guide. Each section of this chapter presents the results related to the eight categories (parts) of the FAR and their subcategories (subparts) pertaining to best practices that should be implemented by the state of Texas into their Procurement and Contract Management Guide to better reflect the interest of SDVOSBs.

As discussed in the previous chapter of this research, three categories are used in the tables below when comparing the State of Texas Procurement and Contract Management Guide to federal procurement policies. This comparison is used to determine how the state of Texas's policies compare and contrast to the federal standards. This comparison is utilized to make recommendations to refine Texas procurement policies focused on SDVOSBs. The three categories used are as follows: Exact Policy, Equivalent Policy, and No Comparable Policy.

Exact Policy means that the State of Texas Procurement and Contract Management Guide has a policy in place that is identical in scope and category to the federal standard. Equivalent Policy means that the State of Texas Procurement and Contract Management Guide has a policy in place that is similar in scope and or category to the federal standard. No Comparable Policy means that the State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.

It is important to note that an Equivalent Policy contains certain similarities while containing differences. These differences can include a state policy failing to cover the same level and scope as the federal standard, but being part of the same category or classification. This

distinction will be further elaborated upon as an explanation for each policy’s categorization and is provided after each table.

This comparison of state policies to the federal standard is used in order to make analytical statements and comments on the State of Texas Procurement and Contract Management Guide, as well as the details of the data. In addition, without this approach, it seems unlikely that recommendations would be as efficient. As previously mentioned, this comparison is utilized to make recommendations to refine Texas procurement policies focused on SDVOSBs.

**Table 4.1 Full and Open Competition After Exclusion of Sources for SDVOSBs**

<b>1. Full and Open Competition After Exclusion of Sources for SDVOSBs</b>				
<b>Category</b>	<b>Evidence</b>	<b>Exact Policy</b>	<b>Equivalent Policy</b>	<b>No Comparable Policy</b>
<b>1.1 FAR -- Part 6 Competition Requirements: Subpart 6.2 -- Full and Open Competition After Exclusion of Sources</b>	Does the State of Texas Procurement and Contract Management Guide outline any procurement policies for Full and Open Competition After Exclusion of Sources that benefit SDVOSBs?		The State of Texas Procurement and Contract Management Guide does outline an exclusion policy that is similar in scope and or category to the federal standard.	

<p><b>1.2 Subpart 6.206 – Set-asides for Service-Disabled Veteran-Owned Small Business Concerns</b></p>	<p>Does the State of Texas Procurement and Contract Management Guide outline any Set-asides for Service-Disabled Veteran-Owned Small Business Concerns?</p>			<p>The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.</p>
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***FAR -- Part 6 Competition Requirements: Subpart 6.2 -- Full and Open Competition***

***After Exclusion of Sources***

FAR Part 6 Competition Requirements: Subpart 6.2 enables a contracting officer with the discretion of omitting or excluding one or multiple sources from competing on a bid. While the State of Texas Procurement and Contract Management Guide does outline an exclusion policy that is similar in scope or category to the federal standard, it cannot be seen as an exact policy match, because of the differences it includes.

Texas procurement falls primarily under the umbrella or oversight of the Statewide Procurement Division (SPD) and the Department of Information Resources (DIR). *“Agencies must use SPD and DIR designated procurement methods unless the procurement is subject to a statutorily specified exclusion or authorized exemption”* (State of Texas Procurement and Contract Management Guide, 2018, P.15). This means that exclusion can only occur if an agency, purchase, or contract value is out of the jurisdiction or statutory authority of the SPD and DIR. Because of these jurisdictions in place, and the overreach that the SPD and DIR have, contracting officers do not have the same level of discretion in Texas as they otherwise have at the federal level under FAR Part 6 Competition Requirements: Subpart 6.2.

***Subpart 6.206 – Set-asides for Service-Disabled Veteran-Owned Small Business***

***Concerns***

FAR 6.206 is in place for contracting officers to offer set-aside solicitations to allow only SDVOSB concerns to compete on an opportunity. The State of Texas has not established statewide mandates that provide set-asides or spending goals for SDVOSBs. Under Texas Government Code § 2155.444, the state has established the preferential treatment of SDVOSBs; but preferential treatment is much different from a formal statewide set-aside policy. Texas Government Code § 2155.444 states in part that *“goods produced or offered by a Texas bidder that is owned by a service-disabled veteran who is a Texas resident shall be given a first preference and goods produced in this state or offered by other Texas bidders shall be given second preference, if the cost to the state and quality are equal”* (State of Texas Procurement and Contract Management Guide, 2018, P. 187).

**Table 4.2 Providing Goods and Services Using Price Reductions**

<b>2. Providing Goods and Services Using Price Reductions</b>				
<b>Category</b>	<b>Evidence</b>	<b>Exact Policy</b>	<b>Equivalent Policy</b>	<b>No Comparable Policy</b>
<b>2.1 FAR -- Part 8 - Required Sources of Supplies and Services Subpart 8.4</b>	Does the State of Texas Procurement and Contract Management Guide identify Required Sources of Supplies and Services from SDVOSBs?		The State of Texas Procurement and Contract Management Guide does outline a policy that is similar in scope and or category to the federal standard for a Required Sources of Supplies and Services.	
<b>2.2 Subpart 8.405 -- Ordering Procedures for</b>	Does the State of Texas Procurement and Contract Management Guide outline anything		The State of Texas Procurement and Contract Management Guide does outline a	

Federal Supply Schedules.4 – Price Reductions	like the price reduction clause?		policy that is similar in scope and or category to the federal standard for price reductions.	
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***FAR -- Part 8 - Required Sources of Supplies and Services Subpart 8.4***

PART 8 Subpart 8.4 deals with government customers being able to purchase items off of GSA at prices associated with volume buying or discounted rates. The state of Texas uses a system similar to GSA, but all its own called TXMAS where state buyers can purchase items that provide the best value standard for the state. While the system in place at the state level is different from the federal standard, it quite similar in scope and category.

***Subpart 8.405 -- Ordering Procedures for Federal Supply Schedules.4 – Price Reductions***

Price reductions, by and large, are in place so that government customers can secure discounted rates on products. Following the best value standards previously outlined, the State of Texas does outline a policy that is similar in scope and category to the federal standard for price reductions.

**Table 4.3 Contract Negotiation with Industry**

<b>3. Contract Negotiation with Industry</b>				
<b>Category</b>	<b>Evidence</b>	<b>Exact Policy</b>	<b>Equivalent Policy</b>	<b>No Comparable Policy</b>
<b>3.1 FAR -- Part 15 Contracting by Negotiation: Subpart 15.2 -- Solicitation and Receipt of Proposals and Information</b>	Does the State of Texas Procurement and Contract Management Guide promote Contracting by Negotiation through Solicitation and Receipt of Proposals and Information?		The State of Texas Procurement and Contract Management Guide does outline multiple policies that are similar in scope and or category to the federal standard for Contracting by Negotiation through Solicitation and Receipt of Proposals and Information.	
<b>3.2 Subpart 15.201 -- Exchanges with Industry Before Receipt of Proposals</b>	Does the State of Texas Procurement and Contract Management Guide outline any Exchanges with Industry Before Receipt of Proposals?		The State of Texas Procurement and Contract Management Guide does outline multiple policies that are similar in scope and or category to the federal standard for Exchanges with Industry Before Receipt of Proposals.	

***FAR -- Part 15 Contracting by Negotiation: Subpart 15.2 -- Solicitation and Receipt of Proposals and Information***

FAR 15.2 explains that “*This subpart prescribes policies and procedures for— (a) Exchanging information with industry prior to receipt of proposals; (b) Preparing and issuing requests for proposals (RFPs) and requests for information (RFIs); and (c) Receiving proposals and information*” (Code of Federal Regulations, 2010, P.276). While the State of Texas does not

match the federal standard exactly, it does offer some policies in place for negotiation and exchange of information between industry and government customers. The policies outlined by the State of Texas are more restrictive than the federal standard. Each of the state’s policies are broken down in the table below. This table provides a comparison of competitive procurement methods used in the State of Texas, and when negotiations and communications are deemed permissible.

<b>Comparison of Competitive Procurement Methods</b>			
<b>Procurement Method</b>	<b>Use When</b>	<b>Advantages</b>	<b>Advantages</b>
<b>Invitation for Bids (IFB)</b>	Products and services are standardized or uniform.	Award process is simpler. In determining best value, price and whether the goods or services meet specifications are the most important considerations.	Defined specifications may be difficult to develop. Does not encourage innovative solutions. Negotiations are not allowed if there is more than one responsive bidder.
<b>Request for Proposals (RFP)</b>	When negotiations are desired.	Allows for customized proposals suggesting different approaches to the same business need.  Allows for negotiations.	Lead time for procurement is much greater.
<b>Request for Offers (RFO)</b>	Vendor is expected to provide innovative ideas or solutions.	Considerations in addition to price are used to determine best value.	Evaluations tend to be more complex.
<b>Request for Qualifications (RFQ)</b> [This method is usually required by statute, e.g., Professional Services]	Selection is made solely on the skills and qualifications of the vendor.  Price is not a factor until after a vendor is selected.	Emphasizes the competency and experience of the vendors.	Vendor is selected before price is negotiated.  Two-step process.

(The State of Texas Procurement and Contract Management Guide, 2018, P.45)

### ***Subpart 15.201 -- Exchanges with Industry Before Receipt of Proposals***

The State of Texas Procurement and Contract Management Guide includes a section titled: **VENDOR COMMUNICATION**. This section states in part that, “*Communication between public procurement professionals and vendors is imperative and encouraged. If used effectively, communication with industry representatives is a vital resource for public procurement professionals*” (The State of Texas Procurement and Contract Management Guide, 2018, P.7). The Guide goes on to explain that communication occurs in four primary ways:

- **Fact Gathering:** Exchange of information about upcoming opportunities.
- **Drafting the Solicitation:** When the actual solicitation-drafting process has begun, vendor communication must cease.
- **During the Solicitation:** Once the solicitation is issued, communication can occur as instructed by solicitation’s outlines.
- **Evaluation and Negotiation:** Confirming what is required to meet the solicitations requirements; negotiations, as appropriate based on the procurement method; exchange of information as necessary to facilitate a potential contract award.

**Table 4.4 Emergency Acquisitions for SDVOSBs**

<b>4. Emergency Acquisitions for SDVOSBs</b>				
<b>Category</b>	<b>Evidence</b>	<b>Exact Policy</b>	<b>Equivalent Policy</b>	<b>No Comparable Policy</b>
<b>4.1 FAR -- Part 18 Emergency Acquisitions: Subpart 18.1 -- Available Acquisition Flexibilities</b>	Does the State of Texas Procurement and Contract Management Guide promote Emergency Acquisitions through Available Acquisition Flexibilities?		The State of Texas Procurement and Contract Management Guide does outline an Emergency Acquisitions policy that is similar in scope and or category to the federal standard.	
<b>4.2 Subpart 18.116 -- Service-Disabled Veteran-Owned Small Business (SDVOSB) Sole Source Awards</b>	Does the State of Texas Procurement and Contract Management Guide include Available Acquisition Flexibilities for Service-Disabled Veteran-Owned Small Business (SDVOSB) Sole Source Awards?			The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.

## ***FAR -- Part 18 Emergency Acquisitions: Subpart 18.1 -- Available Acquisition***

### ***Flexibilities***

The State of Texas Procurement and Contract Management Guide includes a section on emergency acquisitions. The section explains the procedures which need to be fulfilled in order for flexible acquisitions to take place. The Guide states in part, *“An emergency purchase occurs when the agency must make the procurement quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state. Proper procurement planning for anticipated business need is expected. Pending expiration of funds does not constitute an emergency. Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat or to avoid undue additional cost to the state”* (The State of Texas Procurement and Contract Management Guide, 2018, P. 29). The Guide goes on to explain that the SPD permits all agencies to make emergency procurements.

### ***Subpart 18.116 -- Service-Disabled Veteran-Owned Small Business (SDVOSB) Sole Source Awards***

The State of Texas Procurement and Contract Management Guide defines its sole source policies by stating, *“The specified product or service is only available for purchase through a single vendor e.g., manufacturer, publisher, service provider. Examples of sole source proprietary purchases include a back issue of a magazine available from only the publisher and an educational conference available from only the conference sponsor”* The State of Texas Procurement and Contract Management Guide, 2018, P.20). While the State of Texas

Procurement and Contract Management Guide does discuss sole source policies, it does not mention SDVOSBs within its parameters.

**Table 4.5 General SDVOSB Procurement Policies**

<b>5. General SDVOSB Procurement Policies</b>				
<b>Category</b>	<b>Evidence</b>	<b>Exact Policy</b>	<b>Equivalent Policy</b>	<b>No Comparable Policy</b>
<b>5.1 FAR -- Part 19 Small Business Programs: Subpart 19.14--Service-Disabled Veteran-Owned Small Business Procurement Program</b>	Does the State of Texas Procurement and Contract Management Guide provide Small Business programs that include a Service-Disabled Veteran-Owned Small Business Procurement Program?			The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.
<b>5.2 Subpart 19.1403 – Status as a Service-Disabled Veteran-Owned Small Business Concern</b>	Does the State of Texas Procurement and Contract Management Guide outline the Status as a Service-Disabled Veteran-Owned Small Business Concern?			The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.
<b>5.3 Subpart 19.1405 -- Service-disabled Veteran-owned Small Business Set-aside Procedures</b>	Does the State of Texas Procurement and Contract Management Guide provide Service-Disabled Veteran-Owned Small Business Set-aside Procedures?			The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.
<b>5.4 Subpart 19.1406 -- Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns</b>	Service-Disabled Veteran-Owned Small Business Set-aside Procedures include Sole Source Awards to Service-disabled			The State of Texas Procurement and Contract Management Guide does not have any policy in place that

	Veteran-owned Small Business Concerns?			compares in scope and or category to the federal standard.
<b>5.5</b> Subpart 19.1407 -- Contract Clauses	Does the State of Texas Procurement and Contract Management Guide have the same Service-Disabled Veteran-Owned Small Business contract clauses?			The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.

***FAR -- Part 19 Small Business Programs: Subpart 19.14--Service-Disabled Veteran-Owned Small Business Procurement Program***

The State of Texas Procurement and Contract Management Guide does not include a small business program explicitly for SDVOSBs. It can be concluded that there is no comparable policy at the state level in place at this time that compares in scope or category to the federal standard.

***Subpart 19.1403 – Status as a Service-Disabled Veteran-Owned Small Business Concern***

FAR Subpart 19.1403 deals directly with SDVOSB set-asides, which the State of Texas Procurement and Contract Management Guide does not offer, meaning that the Guide does not compare in scope or category to the federal standard Status as a Service-Disabled Veteran-Owned Small Business Concern. As outlined in chapter two, FAR Subpart 19.1403 is a way for SDVOSBs to verify for the contracting officer that the opportunity they are responding to is set-aside for a business of their status; and that they meet the NAICS code assigned to the procurement.

## ***Subpart 19.1405 -- Service-Disabled Veteran-Owned Small Business Set-aside***

### ***Procedures***

The State of Texas Procurement and Contract Management Guide does not offer any set-aside policies for SDVOSBs. This means the State also does not include any SDVOSB set-aside procedures. It can be concluded that there is no comparable policy at the state level in place at this time that compares in scope or category to the federal standard.

## ***Subpart 19.1406 -- Sole Source Awards to Service-Disabled Veteran-Owned Small***

### ***Business Concerns***

While the State of Texas Procurement and Contract Management Guide does discuss Sole Source Policies, it does not mention sole source policies as a general procurement policy for SDVOSBs or provide a subsection for Sole Source policies for SDVOSB. Due to this research placing heavy emphasis on the assessment of procurement policies pertaining to SDVOSBs, and because this section does not explicitly outline policies which involve SDVOSB, it can be inferred that the State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope or category to the federal standard for general procurement policy for SDVOSBs.

## ***19.1407 -- Contract Clauses***

The State of Texas Procurement and Contract Management Guide does not offer any general policies for SDVOSBs comparable to the federal standard that deals with set-asides and sole source. The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope or category to the federal standard for contract clauses that apply to SDVOSBs.

**Table 4.6 Policies to Encourage SDVOSB Participation**

<b>6. Policies to Encourage SDVOSB Participation</b>				
<b>Category</b>	<b>Evidence</b>	<b>Exact Policy</b>	<b>Equivalent Policy</b>	<b>No Comparable Policy</b>
<b>6.1 FAR -- Part 19 Small Business Programs: Subpart 19.2 – Policies</b>	Does the State of Texas Procurement and Contract Management Guide include Small Business Program Policies?		The State of Texas Procurement and Contract Management Guide does outline small business program policies that are similar in scope and or category to the federal standard.	
<b>6.2 Subpart 19.202-1 -- Encouraging Small Business Participation in Acquisitions</b>	Does the State of Texas Procurement and Contract Management Guide Encourage Small Business Participation in Acquisitions?		The State of Texas Procurement and Contract Management Guide does policies that Encouraging Small Business Participation in Acquisitions which are similar in scope and or category to the federal standard.	

## ***FAR -- Part 19 Small Business Programs: Subpart 19.2 – Policies***

Chapter two focused on four policy sections found in FAR 19.2 that explicitly mentioned SDVOSBs or that could be utilized by SDVOSBs. This chapter will compare each section of FAR 19.2 and how it compares to the State of Texas Procurement and Contract Management Guide. There are some similarities that can be found between the State of Texas Procurement and Contract Management Guide, and the federal standard, each of these similarities and differences are identified for the purpose of this research. While the state policies this section will review are limited in scope, they do cover the same categories as the federal standard.

The first section of FAR 19.2 supports the use of small businesses in contracting. This support for small businesses includes SDVOSBs. FAR 19.2 states that, *“It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance”* (Code of Federal Regulation, 2010, P.384). The State of Texas Procurement and Contract Management Guide provides practicable opportunities under the State’s Historically Underutilized Business (HUB) Program.

The State of Texas Procurement and Contract Management Guide explains the HUB Program by stating, *“The Statewide Historically Underutilized Business (HUB) Program promotes full and equal business opportunities in an effort to remedy disparity in state procurement and contracting. The Statewide HUB Program collaborates with various minority and women business trade organizations and development centers to circulate information*

*pertaining to the initiatives of the Statewide HUB Program*” (The State of Texas Procurement and Contract Management Guide, 2018, P. Appendix 5 – Page 1). The HUB Program includes SDVOSBs. While the program is not set up explicitly for SDVOSBs, it does represent their needs and provides SDVOSBs with procurement opportunities.

The second section of FAR 19.2 establishes requirements for agencies that issue contracts. These requirements include agencies creating offices that small businesses can contact regarding opportunities. FAR 19.2 states that, *“The Small Business Act requires each agency with contracting authority to establish an Office of Small and Disadvantaged Business Utilization”* (Code of Federal Regulation, 2010, P.384). This is especially important for SDVOSBs as it provides them with a resource that they can take full advantage of, and that will assist them in their endeavors. The HUB Program is also applicable to the second section of FAR 19.2.

Section three of FAR 19.2 states that the government has an obligation to, *“Assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions”* (Code of Federal Regulation, 2010, P.384). The State of Texas Procurement and Contract Management Guide explains on a similar note that agencies are liable for late payment fees, and payments are considered late after 31 days of the receipt of the goods; performance of the services; or receipt of the invoice for the goods or services.

Section four of FAR 19.2 states that the Small Business Administration (SBA) will, *“Conduct annual reviews to assess the extent to which small businesses are receiving a fair share of Federal procurements, including contract opportunities under the programs administered under the Small Business Act”* (Code of Federal Regulation, 2010, P.886). The

State of Texas Procurement and Contract Management Guide outlines similar policies in monthly reviews carried out to assure the State agencies are providing fair opportunities for small businesses under the HUB Program Reports. The State of Texas Procurement and Contract Management Guide explains the HUB Program Reports stating in part, "*Each agency must maintain, and compile monthly, information relating to the agency's and each of its operating divisions' use of Historically Underutilized Businesses (HUBs), including information regarding subcontractors and suppliers*" (The State of Texas Procurement and Contract Management Guide, 2018, P. 10).

***Subpart 19.202-1 -- Encouraging Small Business Participation in Acquisitions***

As previously discussed, The State of Texas Procurement and Contract Management Guide includes the HUB Program. This program can be considered to be similar in scope or category to the federal standard. While the HUB Program is not identical to the federal standard, it does share similar policies and promote opportunities for small businesses.

**Table 4.7 Set-Aside Policies for SDVOSBs**

<b>7. Set-Aside Policies for SDVOSBs</b>				
<b>Category</b>	<b>Evidence</b>	<b>Exact Policy</b>	<b>Equivalent Policy</b>	<b>No Comparable Policy</b>
<b>7.1 FAR -- Part 19 Small Business Programs: Subpart 19.5 -- Set-Asides for Small Business</b>	Does the State of Texas Procurement and Contract Management Guide include Set-Asides for Small Businesses?			The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.

<b>7.2</b> Subpart 19.502-1 -- Requirements for Setting Aside Acquisitions	Does the State of Texas Procurement and Contract Management Guide include small business Requirements for Setting Aside Acquisitions?			The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.
<b>7.3</b> Subpart 19.502-2 -- Total Small Business Set-Asides	Does the State of Texas Procurement and Contract Management Guide include Total Small Business Set-Asides?			The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.

***FAR -- Part 19 Small Business Programs: Subpart 19.5 -- Set-Asides for Small***

***Business***

The State of Texas Procurement and Contract Management Guide does not include any policies that promote small business set-asides for SDVOSBs. The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope or category to the federal standard. This is because the set-aside policies outlined in The State of Texas Procurement and Contract Management Guide only assist two program classifications, neither of which include SDVOSBs. The two program types supported by the Texas Procurement and Contract Management Guide are: “1. Prison Made Goods governed by Chapter 497 of the Texas Government Code, and 2. the State Use Program authorized by Chapter 122 of the Texas Human Resources Code” (The State of Texas Procurement and Contract Management Guide, 2018, P.16). Chapter 497. Industry and Agriculture; Labor of Inmates Subchapter A.

Texas Correctional Industries – does not include or mention SDVOSBs. Chapter 122 of the Texas Human Resources Code Title 8. Rights and Responsibilities of Persons with Disabilities, Chapter 122. Purchasing from People with Disabilities – does not include or mention SDVOSBs.

***Subpart 19.502-1 -- Requirements for Setting Aside Acquisitions***

The State of Texas Procurement and Contract Management Guide does not include any policies that hold requirements for set-aside acquisitions that compare in scope and or category to the federal standard. The set-aside acquisition policies outlined by The State of Texas Procurement and Contract Management Guide do not support the efforts of SDVOSBs.

***Subpart 19.502-2 -- Total Small Business Set-Asides***

The State of Texas Procurement and Contract Management Guide does not include any policies that hold requirements for total small business set-asides that compare in scope or category to the federal standard. The set-aside acquisition policies outlined by The State of Texas Procurement and Contract Management Guide do not support the efforts of SDVOSBs.

**Table 4.8 SDVOSB Notice of Set- Aside**

<b>8. SDVOSB Notice of Set- Aside</b>				
<b>Category</b>	<b>Evidence</b>	<b>Exact Policy</b>	<b>Equivalent Policy</b>	<b>No Comparable Policy</b>
<b>8.1</b> xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION 2019-O0003)	Does the State of Texas Procurement and Contract Management Guide include Notice of Service-Disabled Veteran-Owned Small Business Set-Aside?			The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope and or category to the federal standard.

***xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION 2019-00003)***

As discussed in chapter two, this section of the FAR was established in November of 2011, making it a newer policy. Doc No: 2011-27786 from The Federal Register Online via the Government Publishing Office explains that FAR Subpart 52.219-27 is an interim agency rule between the DOD, GSA, and NASA. The interim rule was issued to amend the FAR. The agencies ruling sought to amend sections from FAR Subpart 19.1405 and FAR Subpart 19.1406, both of these sections have been discussed earlier in this chapter. This FAR policy can be inserted into FAR Subpart 19.1405 and FAR Subpart 19.1406, both policy areas that deal with SDVOSBs.

The State of Texas Procurement and Contract Management Guide does not have any policy in place that compares in scope or category to the federal standard as previously outlined for FAR Subpart 19.1405 and FAR Subpart 19.1406. Because the State of Texas Procurement and Contract Management Guide does not compare to FAR Subpart 19.1405 and FAR Subpart 19.1406, by default, the state policy does not compare to xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. This is because xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside deals with the very policy that this research has already discovered is not covered by The State of Texas Procurement and Contract Management Guide.

## *Chapter Overview*

The results of this research can be summarized as follows:

- The State of Texas Procurement and Contract Management Guide has no exact policies in place that are identical in scope or category to the federal standard.
- The State of Texas Procurement and Contract Management Guide has eight policies in place that are equivalent in scope or category to the federal standard.
- The State of Texas Procurement and Contract Management Guide has 11 policies in place that do not have any comparison in scope or category to the federal standard.

The implications of these findings are discussed in Chapter 5. The results of this research are used to provide recommendations to refine Texas procurement policies. These recommendations will focus on how the State of Texas can implement policies that better reflect the interests of SDVOSBs following the federal standard.

## **Chapter 5: Conclusion**

### ***Chapter Purpose***

The purpose of this chapter is to interpret the findings of this research and provide recommendations to refine procurement policies pertaining to SDVOSBs in Texas. Each chapter's purpose is reviewed. This review is followed by a detailed outline of the results. These results are further analyzed to understand better how the State of Texas Procurement and Contract Management Guide can be refined to be more reflective of the federal standard.

### ***Summary of Findings***

Chapter one introduced how small businesses are involved in government contracting and the different policies each state has for SDVOSBs involved in procurement. Chapter one introduced two points: first, how this research places a significant focus on procurement policies found in Texas; second, how procurement policies found in Texas compare to the federal standard. Chapter two assessed and evaluated academic literature and or relevant documents that support the eight policy categories and their subcategories, which are sections (parts) from the FAR. These policies pertain to the best practices that should be implemented by the state of Texas into their Procurement and Contract Management Guide to reflect the interest of SDVOSB. A conceptual framework table was presented at the end of the chapter.

Chapter three introduced the methods used to evaluate the State of Texas Procurement and Contract Management Guide against the FAR. This chapter also presented an Operationalization Table. Chapter four detailed the findings from the analysis conducted on the State of Texas Procurement and Contract Management Guide. Remaining consistent with the previous chapters, chapter four reviewed the eight policy topics and 19 subsections. This review

was done to determine how the State of Texas Procurement and Contract Management Guide compares to the federal standard.

The results found in chapter five can be summarized as follows:

- The State of Texas Procurement and Contract Management Guide has no exact policies in place that are identical in scope and category to the federal standard.
- The State of Texas Procurement and Contract Management Guide has eight policies in place that are equivalent in scope and category to the federal standard.
- The State of Texas Procurement and Contract Management Guide has 11 policies in place that do not have any comparison in scope or category to the federal standard.

First, this chapter will review the eight policies in place that are equivalent in scope and category to the federal standard, followed by recommendations for how to improve these policies. Next, this chapter will review the 11 policies in place that do not have any comparison in scope and or category to the federal standard, followed by recommendations for how to improve these policies. Lastly, this chapter will provide a comprehensive overview of recommendations to refine procurement policies pertaining to SDVOSBs in Texas.

## ***EQUIVALENT POLICIES***

The following list includes the eight policies in place that are equivalent in scope and category to the federal standard. Each policy is reviewed to determine how it could be improved to reflect the interests of SDVOSBs.

### **9. Full and Open Competition After Exclusion of Sources for SDVOSBs**

**1.1** FAR -- Part 6 Competition Requirements: Subpart 6.2 -- Full and Open Competition After Exclusion of Sources

### **10. Goods and Services Provided by Price Reductions**

**2.1** FAR -- Part 8 - Required Sources of Supplies and Services Subpart 8.4

**2.2** Subpart 8.405 – Ordering Procedures for Federal Supply Schedules.4 – Price Reductions

### **11. Contract Negotiation with Industry**

**3.1** FAR -- Part 15 Contracting by Negotiation: Subpart 15.2 -- Solicitation and Receipt of Proposals and Information

**3.2** 15.201 -- Exchanges with Industry Before Receipt of Proposals

### **12. Emergency Acquisitions for SDVOSBs**

**4.1** FAR -- Part 18 Emergency Acquisitions: Subpart 18.1 -- Available Acquisition Flexibilities

### **6. Policies to Encourage SDVOSB Participation**

**6.2** FAR -- Part 19 Small Business Programs: Subpart 19.2 – Policies

### 6.3 Subpart 19.202-1 -- Encouraging Small Business Participation in Acquisitions

#### ***FAR -- Part 6 Competition Requirements: Subpart 6.2 -- Full and Open Competition After Exclusion of Sources***

Texas procurement falls primarily under the umbrella or oversight of the Statewide Procurement Division (SPD) and the Department of Information Resources (DIR). *“Agencies must use SPD and DIR designated procurement methods unless the procurement is subject to a statutorily specified exclusion or authorized exemption”* (State of Texas Procurement and Contract Management Guide, 2018, P.15). The federal standard provides contracting officers with further levels of discretion in their decision making. By following this recommendation, contracting officers in Texas could provide full and open competition after excluding one or more sources outside of the SPD and DIR umbrella. Contracting officers in Texas would then be able to provide SDVOSBs with further access to state opportunities.

#### ***FAR -- Part 8 - Required Sources of Supplies and Services Subpart 8.4***

The state of Texas uses a system similar to GSA, but has one all its own called TXMAS where state buyers can purchase items that provide the best value standard for the state. Through the Cooperative Purchasing agreement, state and local agencies can buy IT and tactical equipment or police equipment off of GSA. Although the use of GSA is permitted for state and local governments to purchase select items from the State of Texas Procurement and Contract Management Guide does not go into much detail on the use of GSA, how it can be used, or the benefits it can bring. If state contracting officers filtered search results on the GSA Advantage webpage based on Business/Socio-economic Types and applied the “Veteran-Owned SB” or “SVC Disabled Vet-Owned SB” filter, then state contractors could better locate SDVOSBs to

fulfill their contracting needs. While TXMAS is a feasible option, training contracting officers on how to use GSA Advantage when searching for IT and tactical equipment or police equipment could assist them in meeting their goals and provide more opportunities for partnering with a SDVOSB.

***Subpart 8.405 – Ordering Procedures for Federal Supply Schedules.4 – Price Reductions***

Following the same recommendations as to the best value standards previously outlined, the State of Texas does outline a policy that is similar in scope and or category to the federal standard for price reductions. This could be improved upon by utilizing GSA.

***FAR -- Part 15 Contracting by Negotiation: Subpart 15.2 -- Solicitation and Receipt of Proposals and Information***

The FAR Subpart 15.2 encourages contractors and contracting officers to discuss information about opportunities with one another. The federal standard promotes policies that have more flexibility than at the state level. By implementing policies reflective of the federal standard, it will allow all businesses (not just SDVOSBs) the opportunity to discuss information about contracts and contract opportunities with contracting officers. By following this recommendation, SDVOSBs and other organizations could have more direct access to government officials.

***Subpart 15.201 -- Exchanges with Industry Before Receipt of Proposals***

The federal standard promotes more techniques for contracting officers and agencies to exchange information with industry. By implementing policies more reflective to the federal

standard, it will allow all businesses (not just SDVOSBs) the opportunity to exchange information with contracting officers and agencies.

### ***FAR -- Part 18 Emergency Acquisitions: Subpart 18.1 -- Available Acquisition***

#### ***Flexibilities***

The federal standard offers more flexibilities for contracting officers and agencies than the policies found in the State of Texas Procurement and Contract Management Guide. These flexibilities can provide contracting officers with the ability to partner with a SDVOSB. Because the policies found at the state level are so narrow in comparison to the federal standard, it limits a contracting officer's ability to locate additional opportunities for SDVOSBs.

### ***FAR -- Part 19 Small Business Programs: Subpart 19.2 – Policies***

The State of Texas HUB Program does include policies that benefit SDVOSBs, but these policies are limited in comparison to the federal standard. To better meet the needs of SDVOSBs the state could implement policies modeled after the federal standard. These policies would adequately address SDVOSB contracting concerns than the HUB Program as it would be explicitly set up for SDVOSBs.

#### ***Subpart 19.202-1 -- Encouraging Small Business Participation in Acquisitions***

As previously discussed, the State of Texas Procurement and Contract Management Guide includes the HUB Program. This program is similar to the federal standard, but it does not benefit SDVOSBs in the same ways. By implementing policies reflective of the federal standard, SDVOSBs can win more contracts by expanding their access to opportunities. The federal standard also expands the level of involvement SDVOSBs have in the procurement process.

## ***NO COMPARABLE POLICY***

The following list includes the 11 policies in place that do not have any comparison in scope and or category to the federal standard. Each policy is reviewed to determine how it could be improved to reflect the interests of SDVOSBs.

### **1. Full and Open Competition After Exclusion of Sources for SDVOSBs**

**1.2** Subpart 6.206 – Set-asides for Service-Disabled Veteran-Owned Small Business Concerns

### **4. Emergency Acquisitions for SDVOSBs**

**4.2** Subpart 18.116 -- Service-Disabled Veteran-Owned Small Business (SDVOSB) Sole Source Awards

### **5. General SDVOSB Procurement Policies**

**5.1** FAR -- Part 19 Small Business Programs: Subpart 19.14--Service-Disabled Veteran-Owned Small Business Procurement Program

**5.2** Subpart 19.1403 – Status as a Service-Disabled Veteran-Owned Small Business Concern

**5.3** Subpart 19.1405 -- Service-disabled Veteran-owned Small Business Set-aside Procedures

**5.4** Subpart 19.1406 -- Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns

**5.5** Subpart 19.1407 -- Contract Clauses

### **7. Set-Aside Policies for SDVOSBs**

**7.1** FAR -- Part 19 Small Business Programs: Subpart 19.5 -- Set-Asides for Small Business

## 7.2 Subpart 19.502-1 -- Requirements for Setting Aside Acquisitions

## 7.3 Subpart 19.502-2 -- Total Small Business Set-Asides

## 8. SDVOSB Notice of Set- Aside

8.1 xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION 2019-O0003)

### *Subpart 6.206 – Set-asides for Service-Disabled Veteran-Owned Small Business*

#### *Concerns*

FAR Subpart 6.206 is in place for contracting officers to offer set-aside solicitations to allow only SDVOSB concerns to compete for an opportunity. The State of Texas has not established statewide mandates that propose set-asides or spending goals for SDVOSBs. By following this policy recommendation based on the federal standard, the state of Texas would provide SDVOSBs with further access to opportunities.

### *Subpart 18.116 -- Service-Disabled Veteran-Owned Small Business (SDVOSB) Sole Source Awards*

A sole source award is issued by the government when a contract is entered into without a competitive process, based on the assertion that there is a sole provider that can fulfill the requirements outlined by the contract. While the State of Texas Procurement and Contract Management Guide does discuss sole source policies, it does not mention sole source opportunities for SDVOSBs. By following the federal standard, the state of Texas would increase SDVOSB participation in statewide procurements while also providing contracting officers with further ability to administrate opportunities to SDVOSBs.

***FAR -- Part 19 Small Business Programs: Subpart 19.14--Service-Disabled Veteran-Owned Small Business Procurement Program***

The State of Texas Procurement and Contract Management Guide does not include a small business program explicitly for SDVOSBs. If the state of Texas implemented a policy reflective of the federal standard, then contracting officers would be provided with further flexibilities. These flexibilities would occur in two ways. First, contracting officers would have the ability to set-aside opportunities for SDVOSBs; second, contracting officers could issue sole-source awards for SDVOSBs. This program would allow the state of Texas to meet SDVOSB contracting concerns and encourage contracting officers to work with SDVOSBs. This policy recommendation would create a SDVOSB procurement program that could be implemented into the State of Texas Procurement and Contract Management Guide.

***Subpart 19.1403 – Status as a Service-Disabled Veteran-Owned Small Business Concern***

FAR Subpart 19.1403 deals directly with SDVOSB set-asides, which the State of Texas Procurement and Contract Management Guide does not offer. By reflecting the federal standard, the state of Texas could enable SDVOSBs with the ability to claim opportunities by using their business classification. This would mean that the state of Texas would also need to set up identical qualifications requirements for a business to be considered a SDVOSB. Through this policy, the state of Texas would enable SDVOSBs with the ability to provide notice to contracting officers and state officials that the opportunity they are responding to is an SDVOSB set-aside. This policy would strengthen SDVOSBs chances in winning state opportunities.

## ***Subpart 19.1405 -- Service-Disabled Veteran-Owned Small Business Set-aside***

### ***Procedures***

FAR Subpart 19.1405 outlines some of the procedures that must be met for an SDVOSB set-aside to occur. This includes some of the responsibilities that the government must fulfill to issue a set-aside contract. The State of Texas Procurement and Contract Management Guide does not offer any set-aside policies for SDVOSBs. The State of Texas has not established statewide mandates that propose set-asides or spending goals for SDVOSBs. By following the federal standard, the state of Texas would provide SDVOSBs with more access to opportunities and competitive advantages. This policy recommendation would provide the state of Texas with procedures to set-aside opportunities for SDVOSBs.

## ***Subpart 19.1406 -- Sole Source Awards to Service-Disabled Veteran-Owned Small***

### ***Business Concerns***

FAR Subpart 19.1406 sets forth the provisions under which a contracting officer may issue a sole source award to an SDVOSB. While the State of Texas Procurement and Contract Management Guide does discuss sole source policies, it does not mention sole source opportunities for SDVOSBs. By following the federal standard, the state of Texas would increase SDVOSB participation in statewide procurement. By following a policy suggestion that has been successful at the federal level, SDVOSBs in Texas would be more fairly awarded contracts.

## ***Subpart 19.1407 -- Contract Clauses***

By implementing this policy recommendation, the state of Texas would enable contracting officers with the ability to do two things. First, contracting officers could use

SDVOSB set-aside procedures; and second, contracting officers could address SDVOSB sole source award concerns. This policy recommendation would enable permit SDVOSBs in Texas with further access to contracts while also providing SDVOSBs with a more level playing field when pursuing contract opportunities.

***FAR -- Part 19 Small Business Programs: Subpart 19.5 -- Set-Asides for Small Business***

The State of Texas Procurement and Contract Management Guide does include set-aside policies, but the Guide does not include any procedures that promote small business set-asides that include SDVOSBs. By incorporating set-aside policies for SDVOSBs, the state of Texas would provide SDVOSBs with the ability to compete on contracts reserved exclusively for originations of matching titles. This policy would provide SDVOSBs with unique access to opportunities that they otherwise would not have.

***Subpart 19.502-1 -- Requirements for Setting Aside Acquisitions***

By implementing the policies outlined in FAR Subpart 19.202-1, contracting officers are provided with the steps needed to issue a set-aside acquisition. These steps are in place to assure small business involvement, including SDVOSBs. This policy recommendation can be leveraged by SDVOSBs to win contracts by further expanding their access to opportunities. This recommendation would also increase the level of involvement SDVOSBs have in state contracting.

### ***Subpart 19.502-2 -- Total Small Business Set-Asides***

This policy recommendation would set forth a price range for opportunities set-aside for small businesses. Of these small business set-asides, a portion of them would be awarded to SDVOSBs. Under this policy recommendation, if a contracting officer does not issue a small business set-aside, but small business is the only one to bid on an opportunity, then a small business can then be awarded such opportunity. Further, without this policy in place, acquisitions over \$150,000 are made much more difficult for SDVOSBs to pursue in the state of Texas.

### ***xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION 2019-O0003)***

This policy recommendation can be implemented into the recommendations outlined in FAR Subpart 19.1405 and FAR Subpart 19.1406 which deal with service-disabled veteran-owned small business set-aside procedures and sole source awards to service-disabled veteran-owned small business concerns. This policy recommendation can enable SDVOSBs in Texas to participate in state procurement initiatives. Furthermore, this policy supports SDVOSB efforts by outlining set-aside procedures.

### ***Recommendations Overview***

This research has contributed a better understanding of procurement policies in the state of Texas and how they compare and contrast to the FAR. This chapter has provided recommendations to refine Texas procurement policies based upon a federal standard. While each of these recommendations could benefit SDVOSBs, one policy recommendation, in particular, would change how SDVOSBs are involved in procurement, SDVOSB set-asides. This policy is further discussed below.

As discussed in Chapter 1, according to the veteran-owned businesses and their owners, data from the U.S. Census Bureau's Survey of Business Owner, Texas has the second-leading number of SDVOSBs (213,590) and SDVOSB sales (\$109.9 billion) in the United States. While Texas is home to a substantial number of SDVOSBs, it has a limited number of veteran business-friendly legislation in place. This research has reviewed a federal standard as a policy recommendation for the state of Texas.

It can be concluded based on the findings of this research that one of the most important procurement policies for SDVOSBs is set-aside standards. There are currently seven states that have established mandates that set-aside a 3% or greater spending goal for SDVOBs: Arkansas (AR), California (CA), Illinois (IL), Indiana (IN), Michigan (MI), Maryland (MD), and New York (NY). These states are successfully following policies similar in scope or category to the federal standard. If Texas were to codify SDVOSB set-aside mandates of 3% or greater, then Texas would be joining the ranks of other states that have the most veteran business-friendly legislation. As Texas calls itself home to veteran businesses, only by implementing these policies, could it call itself a more favorable location for SDVOSBs and perhaps change from having the second-leading number of SDVOSBs and SDVOSB sales to being the first.

While it would be tremendous for the state of Texas to implement all of the policies recommended by this research, SDVOSB set-asides have proven to be an incredibly powerful policy. This is because set-aside policies that are either explicitly for SDVOSBs or that can be used by SDVOSBs are noted in six out of the 19 policies that this research outlined:

- **Subpart 6.206 – Set-asides for Service-Disabled Veteran-Owned Small Business Concerns**

- **Subpart 19.1405 -- Service-Disabled Veteran-Owned Small Business Set-aside Procedures**
- **FAR -- Part 19 Small Business Programs: 19.5 -- Set-Asides for Small Business**
- **Subpart 19.502-1 -- Requirements for Setting Aside Acquisitions**
- **Subpart 19.502-2 -- Total Small Business Set-Asides**
- **xxvii. FAR Subpart 52.219-27 -- Notice of Service-Disabled Veteran-Owned Small Business Set-Aside. (DEVIATION 2019-O0003)**

## ***CONCLUSION***

Government contracting has changed the way the public and private sectors interact with one another. It has also enabled SDVOSBs with the ability to provide local, state, and federal governments with goods and services. This research has sought to better understand how Texas procurement policies compare and contrast to the federal standard. It is clear based off this research that set-aside policies are heavily used by SDVOSBs in federal government contracting, but this leveled playing field is not offered by the state of Texas for SDVOSBs.

Because set-aside policies deal with nearly half of the overall policies found in the federal standard reviewed by this research, it can be concluded that set-asides are a fundamental component in government contracting and instrumental for SDVOSBs. All of the policy areas found in the federal standard that were reviewed in this research serve the best interests of SDVOSBs. Each policy found in the federal standard would also play a significant role in representing the interests and needs of SDVOSBs if implemented into the State of Texas Procurement and Contract Management Guide. Should only one policy topic be chosen for

implementation into the State of Texas Procurement and Contract Management Guide, this research recommends set-aside policies to be selected. This is because of the significant value that set-aside policies bring for SDVOSBs and the number of times they were included in the federal standard.

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