



TILSON
GOVERNMENT SERVICES

National Telecommunications and Information Administration
ATTN: Laura Pettus
U.S. Department of Commerce, HCHB Room 4812
1401 Constitution Avenue NW
Washington, DC 20230
Transmitted via email to SLIGP@ntia.doc.gov

June 15, 2012

Response to NTIA RFI on Development of the State and Local Implementation Grant Program for the Nationwide Public Safety Broadband Network Federal Register /Vol. 77, No. 95

Submission prepared by:

Joshua Broder, President
Ande Smith, Esq., General Counsel and Chief Operating Officer
Brian Orlandi, Director, Wireless Implementation Services
Carrie Preble, Esq., Manager, Site Acquisition
Chuck Gerry, Director, Utility Services
David Charbonneau, Director, Telecommunications
Christine Ohman, Director, Government Capture
Eben Perkins, Consultant

Point of contact for these comments is Joshua Broder at jbroder@tilsontech.com

Background and Summary

Tilson Government Services, LLC, along with affiliates Tilson Fiber Technology, LLC, Tilson Consulting Services, LLC, and Tilson Wireless Services, LLC, is a veteran-owned, 60-employee telecom and IT consulting and implementation firm with a national and international practice. Tilson is headquartered in Portland, Maine, but also has team members based in New Hampshire, Massachusetts, New York, and Switzerland. In telecom, Tilson provides services for wireless and fiber optic network build outs, including:

- Program and project management
- Grant compliance
- Site acquisition
- Pole licensing and make-ready management



TILSON

GOVERNMENT SERVICES

- Fiber and RF engineering
- Vendor selection and RFP management
- Construction management
- Outside plant (OSP) and tower management
- IT and GIS implementation, software development, and information security

Tilson typically provides these services to terrestrial and wireless telecom carriers, government agencies, and large businesses. Recently, Tilson has been engaged helping cellular carriers upgrade 2G to 3G sites and implement LTE. Tilson also currently provides telecom consulting services to several state agencies, broadband authorities, non-profits, and large companies.

Tilson recently participated as a vendor to several American Recovery and Reinvestment Act projects, including the NTIA Broadband Technology Opportunities Program (BTOP) funded projects:

1. Maine Fiber Company, Inc.'s *Three Ring Binder*, a 1,100 mile dark fiber network build
2. Maine State Library's Information Common's project, providing 107 public computing centers, technology literacy education, and 11 video conferencing centers at rural libraries
3. Axiom Technologies' Washington County Education and Employment through Sustainable Broadband Adoption, bringing broadband, technology education, and adoption strategies to farmers and fishermen
4. Massachusetts Broadband Institute's *MassBroadband123*, a 1,300 mile lit fiber optic network servicing over 1,300 community anchor instructions
5. Central Maine Power's Advanced Metering Infrastructure project, bringing 620,000 smart meters onto a new wireless network

Finally, Tilson provides services to facility owners looking to market their raw land, towers, and rooftops to wireless operators. Notably in Maine, Tilson represents Maine Public Broadcasting Network (MPBN) for collocations on the towers throughout the state.

As an interested vendor, an organization still providing professional services as a vendor to broadband ARRA projects in several states, and a wireless industry player, Tilson is interested in providing a response to this RFI in order to share best practices learned during BTOP and other commercial network deployments, to suggest some specific methods for vendor engagement, and to support the NTIA during the organizational phase of FirstNet. Tilson is in a position to provide some perspective from a 'snail's eye view' of planning, constructing, and operating networks in New England. These comments solely represent Tilson's corporate viewpoint, and not those of any individual employee, agent, or client.



General response

Tilson provides comments below in response to some selected RFI questions, as well as some additional feedback as solicited in question 19. Generally, we focus our comments on input on procurement standards under the grant program, and the allocation and timing of grant support to states.

At a high level, we believe that the State and Local Implementation Grant Program should provide direct financial assistance to each state to cover the cost of data collection, data consolidation, and consultation, and not provide funding for governance bodies and operational staff costs at the state and local level. We believe that NTIA should prioritize, in collaboration with NIST as called for in the Act, setting detailed standards for data collection and submission, even as grants funds are noticed, applied for, and awarded. We suggest providing grant funding to state for a six month intensive data collection and consultation process, where states are eligible to fund a single employee during the grant period, and then use the bulk of the grant funds to contract out the necessary project management, data collection, data consolidation and manipulation, and support during the consulting process.¹ The NOFA, grant award, and grant management process can then be leveraged, through periodic intensive conferences hosted by the NTIA, to ensure that the data collection process proceeds on time on, budget, and in compliance with the then established FirstNet standards. We suggest that the NTIA host six national conferences (monthly) to ensure that contracted project teams are synchronized and compliant with FirstNet standards in data collection. NTIA should lead an effort to collect federal data set on existing federal facilities, and feed those back to the state teams preparing to submit data so the federal data can be integrated into the state view and be updated by teams with local knowledge. We also recognize that many states have much of the required data on hand, but there still needs to be an NTIA-led effort to synchronize those disparate data sources into a standardized format.

Specific responses

The Consultation Process

1. Section 6206(c)(2) of the Act directs FirstNet to consult with regional, State, tribal, and local jurisdictions about the distribution and expenditure of any amounts required to carry out the network policies that it is charged with establishing. This section enumerates several areas for consultation, including:
 - i. Construction of a core network and any radio access network build-out;
 - ii. placement of towers;
 - iii. coverage areas of the network, whether at the regional, State, tribal, or local level;
 - iv. adequacy of hardening, security, reliability, and resiliency requirements; (v) assignment of priority to local users;

¹ We believe this contracted labor relationship with private sector entities is a requirement of Section 6206 of the Act.



- v. assignment of priority and selection of entities seeking access to or use of the nationwide public safety interoperable broadband network; and (vii) training needs of local users.

What steps should States take to prepare to consult with FirstNet regarding these issues?

- a. What data should States compile for the consultation process with FirstNet? *Tilson response: We suggest that states compile detailed data on existing infrastructure, both terrestrial wireless, both private and public, including:*

- a. *Dark and lit fiber optic cable facilities available for lease.*
- b. *Colocation facilities, including data centers, central offices, cabinets, and hardened shelters.*
- c. *Wireless tower locations, including:*
 - i. *State and local government owned facilities*
 - ii. *Privately owned facilities*
 - iii. *Facilities with existing federal tower or ground leases where capacity could be expanded*
 - iv. *Detail on public broadcasting facilities, with particular attention to facilities providing emergency broadcast services*
- d. *Detail on BTOP funded infrastructure*
- e. *Vendors operating within the states with relevant capabilities, along with data on their status as a small, minority-owned, or disadvantaged business. This would serve as a sources sought process for the RFPs to come, and also inform the clearinghouse role outlined below in question 6(b).*

In every case, facility information should be provided in electronic, geocoded form in a standardized format determined by FirstNet, in partnership with NIST. It's critical that state data be synchronized on a federal standard, and gathered by vendors with experience in wireless and terrestrial telecom and not be left to engineering generalists, since subsequent FirstNet nation-wide engineering and budget decisions will be made relying on this data.

- b. Should this activity be covered by the State and Local Implementation grant program? *Tilson response: Yes, absolutely. Current State budgets don't contemplate this expense, and detailed data collection will be critical in complying with the Act's emphasis that existing infrastructure be leveraged.²*

² According to the Department of Commerce's Request for Information announced on May 16, 2012, "FirstNet is responsible for leveraging, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network."



2. The Act requires that each State certify in its application for grant funds that the State has designated a single officer or governmental body to serve as the coordinator of implementation of the grant funds.
 - a. Who might serve in the role as a single officer within the State and will it or should it vary for each State? *Tilson has not responded to this question.*
 - b. Who might serve on the governmental body (e.g., public partners, private partners, technical experts, Chief Information Officers, SWIC, finance officials, or legal experts)? *Tilson response: Tilson has not responded on the general composition of the governmental body, but encourages the NTIA to require representatives from industry with requisite technical expertise and local knowledge.*
 - c. How should the States plan to involve the local entities in the State and Local Implementation grant program? *Tilson has not responded to this question.*
 - d. How should the States plan to involve the tribal entities in the grant program? *Tilson has not responded to this question.*
 - e. What requirements should be included in the grant program to ensure that local and tribal public safety entities are able to participate in the planning process? *Tilson has not responded to this question.*
 - f. How should the State and Local Implementation grant program ensure that all public safety disciplines (e.g., police, sheriffs, fire, and EMS) have input into the State consultation process? *Tilson has not responded to this question.*
 - g. How should the State and Local Implementation grant program define regional (e.g., interstate or intrastate) and how might the grant program be structured to facilitate regional participation through the States? *Tilson has not responded to this question.*
 - h. How should States plan to involve the Federal users and entities located within their States in the grant program? *Tilson response: State data collection efforts funded by the State and Local Implementation grant program should include federal facilities within the state. NTIA should gather national data sets from stakeholder federal agencies and provide state level data sets to the single officer or contracted data collection entity. We strongly believe that with that data in hand, state data collection will significantly enhance the completeness and accuracy of the data on federal facilities within the states.*

3. The Act contemplates that FirstNet will consult with States regarding existing infrastructure within their boundaries, tower placements, and network coverage, which FirstNet can use to develop the requests for proposals called for by the Act. The States, however, will need time and funding to collect the necessary information before they are ready to consult with FirstNet.



- a. Given these interrelated activities, how should the State and Local Implementation grant program be used by States to assist in gathering the information to consult with FirstNet? *Tilson response: The State and Local Implementation grant program should provide direct financial assistance to each state to cover the cost of data collection, data consolidation, and consultation. We suggest providing for a six month intensive data collection and consultation process, where states are eligible to fund a single FTE equivalent employee during the grant period, and then use the bulk of the grant funds to contract out the necessary project management, data collection, data consolidation and manipulation, and support during the consulting process.³ The NOFA, grant award, and grant management process can then be leveraged, through periodic intensive conferences, to ensure that the data collection process proceeds on time, on budget, and in compliance with the then established FirstNet standards. We suggest that the NTIA host six national conferences (monthly) to ensure that contracted project teams are synchronized and compliant with FirstNet standards in data collection.*
- b. Should consistent standards and processes be used by all States to gather this information? *Tilson response: Yes. If so, how should those policies and standards be established? What should those policies and standards be? Tilson response: The Act calls for NIST to take a direct role in establishing standards. NIST, NTIA and contracted private sector industry experts will need to meet to make recommendations for a data standard for the collection and consultation process for FirstNet to review and adopt. It's important that regional private sector industry experts participate in setting the standards to allow for a range of challenging climatic conditions across the project footprint. Perhaps the grant program could be used to fund such regional private sector entity involvement.*
- c. What time period should NTIA consider for States to perform activities allowed under the grant program as it relates to gathering the information to consult with FirstNet? *Tilson response: Six months. We recommend that the NTIA manage an aggressive, focused, and iterative interactive data collection process that has data collection vendors from each state coming together to work with the NTIA and ensure that state efforts remain synchronized and compliant with the inevitably evolving federal standard throughout the project.*

Existing Public Safety Governance and Planning Authorities

4. Over the years, States have invested resources to conduct planning and to create governance structures around interoperable communications focused primarily on Land Mobile Radio (LMR)

³ We believe this contracted labor relationship with private sector entities is a requirement of Section 6206 of the Act.



voice communications, including the Statewide Interoperability Coordinators (SWIC) and Statewide Interoperability Governing Bodies (SIGB), often called Statewide Interoperability Executive Committees (SIEC).

- a. What is the current role of these existing governance structures in the planning and development of wireless public safety broadband networks? *Tilson response: Many existing governance bodies are structured around voice centric, special purpose two-way, trunked, and LMR radio and may not be suitable for this purpose.*
- b. What actions have the States' governance structures (e.g., SWIC, SIGB, or SIEC) taken to begin planning for the implementation of the nationwide public safety broadband network? *Tilson has not responded to this question.*
- c. Can these existing governance structures be used for the PSBN, and if so, how might they need to change or evolve to handle issues associated with broadband access through the Long Term Evolution (LTE) technology platform? *Tilson response: See our response to question 4(a) above.*
- d. What is or should be the role of the Statewide Communications Interoperability Plans (SCIPs) in a State's planning efforts for the nationwide public safety broadband network? *Tilson has not responded to this question.*
- e. What actions do the States need to take to update the SCIPs to include broadband? *Tilson has not responded to this question.*
- f. Should the costs to change or evolve existing governance and Statewide Plans be eligible in the new program? *Tilson response: No. Since existing governance structures are not oriented towards the deployment of broadband services, federal funds should not be used to evolve existing structures.*
- g. Should the maintenance of those existing governance bodies and plans be eligible in State and Local Implementation grant program? *Tilson response: No. Given the program's limited budget, funds should be used for focused, aggressive data collection, evaluation, aggregation, and reporting. We do not believe it was the intent of the Act to fund state government positions, but rather to provide the capital needed to build a sustainable network.*

Leveraging Existing Infrastructure

5. How should States and local jurisdictions best leverage their existing infrastructure assets and resources for use and integration with the nationwide public safety broadband network?
 - a. How should States and local jurisdictions plan to use and/or determine the suitability of their existing infrastructure and equipment for integration into the public safety broadband network? *Tilson response: During the consultation process, states should provide a detailed catalog of state-owned and local jurisdiction facilities, along with an*



indication, if known, of additional capacity. States should not self-evaluate the suitability of such infrastructure, since the network requirements and design are not yet defined, and there would be no technical requirement to base such a judgment.

- b. What technical resources do States have available to assist with deployment of the nationwide public safety broadband network? *Tilson has not responded to this question.*
 - c. How will States include utilities or other interested third parties in their planning activities? *Tilson response: States should include power and telecom utilities in their data collection process, by collecting data on facilities where private and public utilities would be willing, for a fee, to host colocation or leasing excess capacity such as existing towers, utility poles, central offices, hardened shelters, dark fiber optic cable, and conduit and ducts. Only in the case of facilities in the public way should providing should such data be mandatory, and be funded on a cost-only reimbursement basis from grant funds. We don't believe that an unfunded mandate to provide data will be effective. Reporting on BTOP funded facilities, regardless of their position in the public way or on private property, should be mandatory.*
 - d. Should NTIA encourage planning for the formation and use of public/private partnerships in the deployment of the nationwide public safety broadband network? If so, how? *Tilson has not responded to this question*
6. Section 6206(b)(1)(B) of the Act directs FirstNet to issue open, transparent, and competitive requests for proposals (RFPs) to private sector entities for the purposes of building, operating, and maintaining the network. How can Federal, State, tribal, and local infrastructure get incorporated into this model?
- a. How would States plan for this integration? *Tilson response: By providing detailed data on such facilities during the collection process. Until the data has been collected, aggregated, and analyzed at the federal level against a unified design, it's not possible to plan for integration.*
 - b. Should States serve as clearinghouses or one-stop shops where entities bidding to build and operate portions of the FirstNet network can obtain access to resources such as towers and backhaul networks? If so, what would be involved in setting up such clearinghouses? *Tilson response. Yes. This role would naturally flow from the proposed grant funded data collection outlined in our general comments.*
 - c. Should setting up a clearinghouse be an eligible cost of the grant program? *Tilson response: Yes.*

State and Local Implementation Grant Activities



7. What are some of the best practices, if any, from existing telecommunications or public safety grant programs that NTIA should consider adopting for the State and Local Implementation grant program? *Tilson response:*
 - a. *Seek a categorical exemption from NEPA since this is a data collection, which is unlikely to have any environmental impacts. To the extent that the eventual implementation will largely leverage existing facilities, seek such an exemption for the implementation phase.*
 - b. *Host regular program conferences to synchronize states to the national program.*
 - c. *Engage with local PUCs and state legislative committees dealing with the regulation of telecom early in the implementation process to ensure that FirstNet identifies and begins to troubleshoot state and local jurisdictional regulatory issues early in the process.*
 - d. *State agencies without sufficiently sized annually budgeted staffs largely sought help from outside vendors and consultants to provide specialized compliance, project management, and subject matter expertise across many of the BTOP projects. Similarly, the State and Local implementation grant program should allow for a clear path to contracting such help.*
8. What type of activities should be allowable under the State and Local Implementation grant program? *Tilson response: the question has been addressed through our responses above.*
9. What types of costs should be eligible for funding under the State and Local Implementation grant program (e.g., personnel, planning meetings, development/upgrades of plans, or assessments)?
 - a. Should data gathering on current broadband and mobile data infrastructure be considered an allowable cost? *Tilson response: Yes, and this should be the major objective under the first phase of funding under the grant program.*
 - b. Should the State and Local Implementation grant program fund any new positions at the State, local, or tribal level that may be needed to support the work to plan for the nationwide public safety broadband network? If so, what, if any, restrictions should NTIA consider placing on the scope of hiring and the type of positions that may be funded under the grant program? *Tilson: No, we believe that the intent of Section 6206 of the Act is to prevent one time funding from going to fund government employee positions on a short term basis and to ensure that project work of all kinds is performed by private sector entities.*
10. What factors should NTIA consider in prioritizing grants for activities that ensure coverage in rural as well as urban areas? *Tilson response: We believe that funds should be allocated in such a way that more funds go to states that are larger, have more hilly topography, and have more vegetation.*



11. Are there best practices used in other telecommunications or public safety grant programs to ensure investments in rural areas that could be used in the State and Local Implementation grant program? *Tilson response:*
- a. *It's critical that facilities paid for with federal funds be available on an open access, non-discriminatory basis where such use does not interfere with site protection or the priority of public safety use. Open access is critical to stimulating broadband developments in rural markets.*
 - b. *Power and air conditioning are critical in rural areas where climactic conditions can be challenging and power can be less reliable. The data collection process should include information about available power feeds and existing sources of back-up power like generators. During the design phase of the project, it will be critical to plan for back-up power and air conditioning, along with appropriate alarming on such life support systems to allow for reliable system operation in rural areas.*
12. In 2009, NTIA launched the State Broadband Initiative (SBI) grant program to facilitate the integration of broadband and information technology into state and local economies.
- a. Do States envision SBI state designated entities participating or assisting this new State and Local Implementation grant program? *Tilson response: Yes, SBI state designated entities will be critical stakeholders in the data collection process.*
 - b. How can the SBI state designated entities work with States in planning for the nationwide public safety broadband network? *Tilson response: By providing data, convening stakeholders, and advocating for broadband during the consultation process. To the extent that such groups have been organized around terrestrial telecom and may supervise the state effort, they should seek private sector entity contracted support on carrier wireless technical expertise.*
13. What outcomes should be achieved by the State and Local Implementation grant program?
- a. Are there data that the States and local jurisdictions should deliver to document the outcomes of the grant program? *Tilson response: Yes, as indicated in the general comments, the State and Local Implementation grant program should call for an NTIA led, tightly controlled iterative round of data collection, aggregation, normalization and submission on a federal standard.*
 - b. If so, how should they be measured? *Tilson has not responded to this question.*
 - c. Who should collect this information and in what format? *Tilson response: private sector entities as called for by the Act and noted above.*
 - d. What data already exist and what new data could be gathered as part of the program? *Tilson response: Many states already have most of the required data, and federal agencies have data of their facilities on hand. We believe that the challenge of the data collection effort is aggregating the disparate sources of data, ensuring they are*



complete, normalizing the data to a federal standard, and ensuring they are submitted in a compatible format. Our recommendation for a process to follow to achieve that objective is outlined in our general comments.

14. The U.S. Department of Homeland Security's Office of Emergency Communications (OEC) has developed the following tools through its Technical Assistance Program available at <http://www.publicsafetytools.info>, including: (1) Mobile Data Usage and Survey Tool—Survey process to document the current-state mobile data environment, in preparation for a migration to LTE; (2) Statewide Broadband Planning Tool—Template and support on Statewide strategic broadband planning issues designed to serve as an addendum to the SCIP; (3) Frequency Mapping Tool—Graphical tool to display FCC license information and locations including cellular sites within a jurisdiction; and (4) Communications Assets Survey and Mapping Tool (CASM)—Data collection and analysis tool for existing land mobile radio assets. Should States be encouraged to utilize tools and support available from Federal programs such as those developed by OEC? Are there other programs or tools that should be considered? *Tilson has not responded to this question.*
15. Do the States have a preferred methodology for NTIA to use to distribute the grant funds available under the State and Local Implementation grant program?
 - a. Should NTIA consider allocating the grant funds based on population? *Tilson response: No. Population allocation would disproportionately favor urban states. Rural states often have equal or bigger infrastructure footprints than more urban states and face a similarly challenging data collection and consultation process to evaluate, aggregate and report out on existing infrastructure. The amount of existing infrastructure in a state is often a factor of both the land mass of the state, and the topography and vegetation of the state. Bigger states, hillier states, and more vegetated states all have a greater data collection and implementation challenge. In building the methodology for NTIA to use to distribute the grant funds available under the State and Local Implementation grant program, NTIA should consider basing the allocation on landmass modified by topography and vegetation.*
 - b. What other targeted allocation methods might be appropriate to use? *Tilson has not responded to this question.*
 - c. Should NTIA consider phasing the distribution of grant funds in the new program? *Tilson response: Yes, we recommend breaking the distribution of grant funds into two phases, with the majority of the funds available for the data collection and consultation effort : (1) For data collection and services in support of the consultation, and (2) for state planning for implementation once NTIA releases the RFP for implementation of the network.*



State Funding and Performance Requirements

16. What role, if any, should the States' Chief Information Officer (CIO) or Chief Technology Officer (CTO) play in the State and Local Implementation grant program and the required consultations with FirstNet? How will these different positions interact and work with public safety officials under the State and Local Implementation grant program? *Tilson has not responded to this question.*
17. The Act requires that the Federal share of the cost of activities carried out under the State and Local Implementation grant program not exceed 80 percent and it gives the Assistant Secretary the authority to waive the matching requirement, in whole or in part, if good cause is shown and upon determining that the waiver is in the public interest. As NTIA develops the State and Local Implementation grant program, what are some of the factors it should consider regarding States' ability to secure matching funds? *Tilson has not responded to this question.*
18. What public interest factors should NTIA consider when weighing whether to grant a waiver of the matching requirement of State and Local Implementation grant program? *Tilson has not responded to this question.*

Other

19. Please provide comment on any other issues that NTIA should consider in creating the State and Local Implementation grant program, consistent with the Act's requirements.

Additional comments

1. Public broadcasting facilities: Many states have existing publicly or not-for-profit owned public broadcasting tower facilities that are currently being used to trunk and transmit emergency broadcasting signals. Since the emergency broadcasting system and FirstNet are likely to have some form of interoperability, and local emergency broadcasting systems struggle to find public and private funding to support the maintenance of their facilities, we recommend that FirstNet consider a preference for siting facilities on public broadcasting towers, when the tower is an acceptable technical fit, during the implementation. To achieve this end, states should provide a specific data set on public broadcasting towers during the data collection process so they can be included in the system design.
2. Procurement of services.
 - a. **Support private sector parties performing data collection and consultation preparation.** Section 6206 of the Jobs Act⁴ calls for "issuing open, transparent, and competitive requests for proposals to private sector entities for building, operating, and maintaining the network." In structuring the program rules in development of the State

⁴ Middle Class Tax Relief and Jobs Creation Act of 2012, Public Law 112-96, Stat 156 (2012).



and Local Implementation grant program, NTIA should strongly consider how best to ensure that assistance dollars provided under grants are used to engage private sector vendors to the greatest extent possible. For example, should NTIA provide grant funds for states to collect data in preparation for the consultation process, the grant program should provide clear programmatic guidance on how to comply with the spirit of Section 6206 of the act by having the bulk of work performed by private sector entities.

- b. **Provide for contracting preference for small, veteran owned, and service disabled veteran owned businesses in structuring the development of the State and Local Implementation grant program.** Congress and the President have provided clear guidance on federal contracting preference for veteran and service disabled veteran owned small businesses, as outlined below in public law and executive order.⁵ Given the draw downs in Iraq and Afghanistan, and the surge in veterans with technical skills returning to industry, these preferences are more important than ever. While the Department of Commerce suggests that grantees support Minority Owned Business Enterprise,⁶ there is not a department-wide specific prime contract or subcontract target for small, veteran owned, and SDVOSBC businesses within grant programs. We suggest that NTIA strongly consider setting specific targets and requirements, reinforced by programmatic controls like including subcontracting and vendor procurement plans into the scoring methodology, special award conditions, and audit standards for such contracting preference within the development of the State and Local Implementation grant program, and then similarly, as FirstNet moves forward into the procurement phase of the implementation, within FirstNet's RFP process. While it's understandable that BTOP and other ARRA funded quick-start projects did not have such enforceable standards because of time, budget, and human resource constraints during the formation of the various programs, it's clear that the general encouragement offered by

⁵ The **Veterans Entrepreneurship and Small Business Development Act of 1999** (Public Law 106-50) established an annual government-wide goal of not less than 3% of the total value of all prime contract and subcontract awards for participation by small business concerns owned and controlled by service-disabled veterans. On December 16, 2003, the **Veterans Benefits Act of 2003** (Public Law 108-183) was passed by Congress. Section 308 of the Act (Public Law 108-183) established a procurement program for Service-Disabled Veteran-Owned Small Business Concerns (SDVOSBC). This procurement program provides that federal contracting officers may restrict competition to SDVOSBCs and award a sole source or set-aside contract where certain criteria are met. **Executive Order 13360**—Providing Opportunities for Service-Disabled Veteran Businesses To Increase Their Federal Contracting and Subcontracting <http://www.vetbiz.gov/library/eosdvob.pdf>. **Executive Order 1350** was signed on August 26, 2010 to set up an Interagency Task Force on Veterans Small Business Development. According to the Executive Order, the President's goal is to coordinate the efforts of Federal agencies to improve capital, business development opportunities, and pre-established Federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans.

⁶ Department of Commerce Financial Assistance Standard Terms and Conditions, section J.50 code of conduct and subaward, contract, and subcontract provisions.05 Minority Owned Business Enterprise http://www2.ntia.doc.gov/files/award_docs/DOC-STCsMAR08Rev.pdf



the Department of Commerce Financial Assistance Standard Terms and Conditions, section J.50 to engage use Minority Owned Business Enterprise is insufficient to meet the objectives outlined in statute and executive order listed above. For the development of the State and Local Implementation grant program, and then similarly, as FirstNet moves forward into the procurement phase of the implementation, we suggest the following specific standards:

1. That NTIA provide written guidance on FirstNet veteran owned and SDVOSBC contracting preference and sub-contracting targets in the Notice of Fund Availability (NOFA) for the State and Local Implementation grant program, as well as in subsequent RFP(s) for the implementation.
2. That in the State and Local Implementation grant program, as well as the subsequent RFPs, that NTIA set an objective of at least 3% of the total value of all prime contract and subcontract awards for participation by small business concerns owned and controlled by service-disabled veterans, and a total of 10% of the total value of all prime contract and subcontract awards for participation by small business concerns owned and controlled by veterans generals, with the 10% being inclusive of the 3%. By way of example, SDVOSBCs could make up between 3% and 10% of the total contracts (grant and vendor contracts) allocated, with non-SDVOSBCs making up the balance of the 10%.
3. That in the case of the State and Local Implementation grant program:
 - a. That NTIA work to synchronize grantee vendor contracting requirements with the intent of the Federal Acquisition Regulation sub parts on veteran owned and service disabled veteran owned small business concerns.⁷
 - b. That grant applicants be required to communicate their subcontracting plan to satisfy this contracting and sub-contracting requirement outlined in 19(b)(2) above, and the evaluation of such a plan be included in the quantitative (or critical criteria) evaluation of the grant applications.
 - c. That this contracting and sub-contracting requirement outlined in 19 (b)(2) above be enforced through the use of a special award condition (SAC), be included in the program rules, and be included in the program audit guidance.
4. That in the case of subsequent implementation RFP(s) to industry, that the RFP provide for a sources sought evaluation for potential contract set asides as allowed under the Veterans Benefits Act of 2003, and then provide specific sub-contract targets to prime vendors along the lines of the targets outlined in the State and Local Implementation grant program above, inclusive of a quantitative analysis of the subcontracting plan as a criteria evaluating proposals, and a specific enforcement mechanism to enforce those targets post award.

⁷ See Appendix 1, of these comments



Appendix 1: Federal Acquisition Regulation on veteran owned small business concerns (VOSBC), and service disabled veteran owned small business concerns (SDVOSBC)

The Federal Acquisition Regulation (FAR) is the primary regulation for use by all federal executive agencies in their acquisition of supplies and services with appropriated funds.⁸ It was first implemented in 1984 and is issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration, under the broad policy guidelines of the Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

The Federal Acquisition Regulation requires contracting officers in federal executive agencies to consider VOSBC and SDVOSBC in the contracting and subcontracting award process. While the FAR does not mandate the specific award of federal contracting opportunities to VOSBC and SDVOSBC, the Veterans Benefit Act of 2003 provides additional complimentary guidance to the FAR in the treatment of service-disabled veteran-owned small businesses: if a federal 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. We believe that the FAR, along with the Veterans Benefit Act of 2003 provides instructive guidance for not direct federal procurement, but also for the procurement flow through requirements that should be programmatically enforced to grantees.

Definitions

A “veteran-owned small business concern” is defined as follows in the Federal Acquisition Regulation:⁹

1. Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) 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 veterans
2. The management and daily business operations of which are controlled by one or more veterans

A “service-disabled veteran” is a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service connected, as defined in 38 U.S.C. 101(16). A “service-disabled veteran-owned small business concern” is defined as follows in FAR:¹⁰

⁸ The full text of FAR is available at <https://www.acquisition.gov/far/>

⁹ Federal Acquisition Regulation, 2.1-14

¹⁰ Federal Acquisition Regulation, 2.1-12



1. Not 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
2. 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.

Opportunities for Veteran-Owned Small Businesses

The Federal Acquisition Regulation contains numerous guidelines to support veteran-owned small businesses in the acquisition of contracting and subcontracting opportunities. According to subpart 19.2:¹¹

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. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.

Furthermore, subpart 19.2 requires contracting officers to locate and solicit responses from veteran-owned small businesses whenever possible:¹²

The contracting officer must, to the extent practicable, encourage maximum participation by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in acquisitions. The contracting officer must encourage maximum response to solicitations by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concern.

In a similar vein, subpart 8.4 encourages officials to consider veteran-owned small businesses:¹³

Ordering activities may consider socio-economic status when identifying contractor(s) for consideration or competition for award of an order. At a minimum, ordering activities should consider, if available, at least one small business, veteran-owned small business, service disabled veteran-owned small business, HUBZone small business, women-owned small business, or small disadvantaged business schedule contractor(s).

Lastly, subpart 19.7 states the following:¹⁴

¹¹ Federal Acquisition Regulation, 19.2-1

¹² Federal Acquisition Regulation, 19.2-3

¹³ Federal Acquisition Regulation, 8.4-8

¹⁴ Federal Acquisition Regulation, 19.7-1



Any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

Service-Disabled Veteran-Owned Small Business Procurement Program

Part 19 of the FAR sets out the eligibility requirements for small business status and details federal socioeconomic programs. One such program, the Service-Disabled Veteran-Owned Small Business Procurement Program, is covered in subpart 19.14, and sets out specific contracting requirements for service-disabled veteran-owned small businesses.¹⁵

In order to set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, a contracting officer must have “a reasonable expectation” that:

1. Offers will be received from two or more service-disabled veteran-owned small business concerns
2. Award will be made at a fair market price

That being said, 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. If the contracting officer receives no acceptable offers from service-disabled veteran-owned small business concerns, the service-disabled veteran-owned set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate.

Furthermore, contracting officers are required to consider a contract award to a SDVOSB concern on a sole source basis before considering small business set-asides provided the following circumstances hold true:

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 \$6 million for a requirement within the NAICS codes for manufacturing or \$3.5 million for a requirement within any other NAICS code
3. The service-disabled veteran-owned small business concern has been determined to be a responsible contractor with respect to performance

¹⁵ Federal Acquisition Regulation, 19.14-1 through 19.14-2



TILSON
GOVERNMENT SERVICES

4. Award can be made at a fair and reasonable price.

However, the Small Business Administration has the right to appeal the contracting officer's decision not to make a service-disabled veteran-owned small business sole source award.

Subpart 18.116 Amendment

The stipulation of awarding sole source awards to service-disabled veteran-owned small businesses was the result of a recent amendment to subpart 18.116, which now explicitly reads "federal contracts may be awarded to service-disabled veteran-owned small business (SDVOSB) concerns on a sole source basis."¹⁶ The Obama Administration authorized this amendment on July 2, 2010, which applies even if there is more than one company that can perform the work.¹⁷ As stated in the previous section, the contracting officer can make the sole-source award to that SDVOSB, as long as the officer expects to receive no bids from another SDVOSBC.

The changes were based on a 2007 Government Accountability Office protest decision, when a small-business owner who is a service-disabled veteran objected to the U.S. Air Force's decision to award a small-business set-aside contract instead of a sole-source award to a small business owned by a service-disabled veteran. The Air Force chose the set-aside because one other firm owned by a service-disabled veteran could have performed the contract's work. The protester countered that the company didn't respond to the solicitation, and the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council determined thereafter that FAR needed an amendment to more closely mirror the Veterans Benefits Act of 2003 and lessen the possibility of misinterpretation.

¹⁶ Federal Acquisition Regulation, 18.1-2

¹⁷ <http://washingtontechnology.com/articles/2010/07/02/sole-source-awards-sdvosb.aspx>