

FEDERAL CONTRACTS PERSPECTIVE

Federal Acquisition Developments, Guidance, and Opinions

Vol. XX, No. 2

February 2019

VETERAN-OWNED SMALL BUSINESSES ELIGIBLE TO RECEIVE SURPLUS FEDERAL PROPERTY

Because of the partial government shutdown beginning in December 2018 and extending through most of January 2019, not much acquisition-related activity took place. Nevertheless, on January 3, 2019, just before the 115th Congress gave way to the 116th, the 115th Congress passed and President Trump signed Public Law 115-416, the Veterans Small Business Enhancement Act of 2018. The law directs the Small Business Administration (SBA), in coordination with the General Services Administration (GSA) and state surplus agencies, to allow veteran-owned small businesses to be eligible to receive surplus federal property.

CONTENTS	
VOSB Eligible for Surplus Federal Property	1
Restrictions Placed on Certain Magnets and Tungsten	2

SBA defines veteran-owned small businesses as those independently owned and operated by an honorably discharged veteran that meet the applicable size standard eligibility. Eligibility varies from industry to industry and is based on the average number of employees for the preceding twelve months or on the business' average gross revenue over the previous three-year period (for more information, see the Federal Acquisition Regulation (FAR) subpart 19.1, Size Standards, FAR subpart 19.14, Service-Disabled Veteran-Owned Small Business Procurement Program, and the SBA's regulations in Title 13 of the Code of Federal Regulations [CFR], Part 121 [13 CFR Part 121], Small Business Size Regulations, and 13 CFR Part 125, Government Contracting Programs).

GSA is responsible for the management and distribution of surplus federal personal property. Some of that property is transferred to state agencies for distribution to certain qualifying entities. The GSA surplus property program makes excess federal property, such as vehicles, computers, office equipment, tools, heavy construction equipment, and any property not considered "real property", available to non-profit organizations at no cost except shipping and handling. In Fiscal Year 2016, GSA facilitated the disposal of more than 160,000 personal property items. Because small businesses are for-profit organizations, they are not eligible to participate in the GSA surplus property program (see Title 40 of the U.S. Code, Section 549, Donation of Personal Property Through State Agencies [40 USC 549]).

Public Law 115-416 amends the Small Business Act (15 USC 657b, Veterans Programs), to direct the SBA's Office of Veterans Business Development to provide access to, and manage the distribution of, excess or surplus federal property to veteran-owned small businesses. However, it is not possible to simply add veterans-owned small businesses, as a group, to the list of eligible participants. Rather, the SBA's Office of Veterans Business Development must work with GSA and each state to establish a memorandum of agreement allowing eligible businesses to work with state agencies to acquire federal surplus property.

RESTRICTIONS PLACED ON CERTAIN MAGNETS AND TUNGSTEN

Kim Herrington, the acting principle director of Defense Pricing and Contracting, has issued a class deviation directing Department of Defense (DOD) contracting officers not to acquire any “covered material” melted or produced in any “covered country,” or any end item that contains a covered material manufactured in any covered country (with some exceptions). This deviation implements the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Public Law 115-232), Section 871, Prohibition on Acquisition of Sensitive Materials from Non-Allied Foreign Nations.

Section 871 defines “covered material” as: (1) samarium-cobalt magnets; (2) neodymium-iron-boron magnets; (3) tungsten metal powder; and (4) tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy. Section 871 goes on to define “covered country” as: (1) the Democratic People’s Republic of North Korea; (2) the People’s Republic of China; (3) the Russian Federation; and (4) the Islamic Republic of Iran.

The class deviation requires the inclusion of Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7978, Restriction on Acquisition of Certain Magnets and Tungsten. (DEVIATION 2019-O0006), in all solicitations and contracts, including those using the procedures in FAR part 12, Acquisition of Commercial Items, that exceed the simplified acquisition threshold (currently \$250,000). The clause mandates that “the contractor shall not deliver under this contract any covered material melted or produced in any covered country or any end item, manufactured in any covered country, that contains a covered material.”

There are some exceptions to this prohibition. The clause is not required in solicitations and contracts if (1) the items are being acquired outside the United States for use outside the United States; or (2) an authorized agency official (defined as the Under Secretary of Defense [Acquisition and Sustainment], the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, and the Director of the Defense Logistics Agency) has determined that that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price from a source other than a covered country.

In addition, the deviation does not apply to an end item that is: (1)(i) a commercially available off-the-shelf item, unless it is 50% or more tungsten by weight; or (ii) a tungsten heavy alloy mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that had not been incorporated into an end item, subsystem, assembly, or component; (2) an electronic device, unless otherwise specified in the contract; or (3) a neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

This class deviation remains in effect until it is incorporated into the DFARS or until it is rescinded.

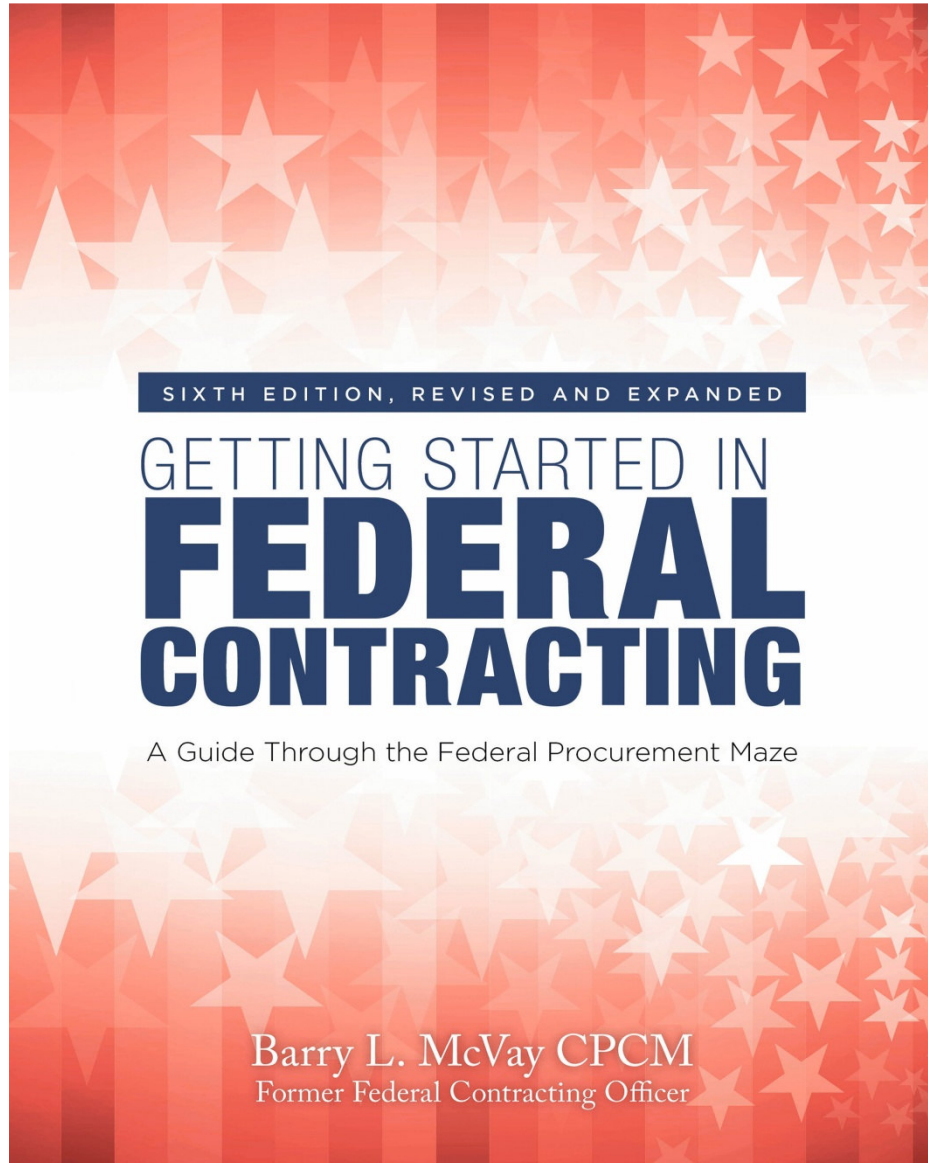
Visit <http://www.FedGovContracts.com>

Vivina McVay, Editor-in Chief

©2019 by Panoptic Enterprises. All rights reserved. Reproduction, photocopying, storage, or transmission by any means is prohibited by law without the express written permission of Panoptic Enterprises. Under no circumstances should the information contained in *Federal Contracts Perspective* be construed as legal or accounting advice. If a reader feels expert assistance is required, the services of a professional counselor should be retained.

The *Federal Contracts Perspective* is published monthly by Panoptic Enterprises, 6055 Ridge Ford Drive, Burke, VA 22015.

REVISED AND EXPANDED!



468 pages, 2017, ISBN: 978-0-912481-27-2, \$39.95
from Panoptic Enterprises (<http://www.FedGovContracts.com>) and
from Amazon.com

To see: Table of Contents, go to <http://www.FedGovContracts.com/Contents.pdf>
Index, go to <http://www.FedGovContracts.com/Index.pdf>

Sample Chapters:

Chapter 11, Small Business Programs, go to
<http://www.FedGovContracts.com/Chap11.pdf>
Chapter 13, Federal Supply Schedules, go to
<http://www.FedGovContracts.com/Chap13.pdf>