

RULE

**Office of the Governor
Division of Administration
Office of Contractual Review
and
Office of State Purchasing**

Small Entrepreneurship
(The Veteran Initiative)—Procurement
(LAC 19:IX.Chapters 11 and 13)

The Division of Administration, Office the Commissioner of Administration, in accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, adopts LAC 19:IX, Subpart 2, under the authority of R.S. 39:2177(F). The purpose of the promulgation is to provide for the establishment of rules governing procurements made as part of the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative), R.S. 39:2171 through 2179. These rules will allow for coordination of state procurement with the implementation of veteran and service-connected disabled veteran-owned small entrepreneurship certification procedures by the Department of Economic Development pursuant to LAC 19:IX, Subpart 1.

Title 19

CORPORATIONS AND BUSINESS

Part IX. Small Entrepreneurship

(The Veteran Initiative)

Subpart 2. Procurement

Chapter 11. General Provisions

§1101. Purpose

A. The Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative), hereinafter called LAVET, was created to provide additional opportunities for Louisiana-based veteran and service-connected disabled veteran-owned small entrepreneurship, hereinafter called VSE's and DVSE's, respectively, to participate in contracting and procurement with the State of Louisiana. By formalizing existing practices and implementing new procedures, the LAVET will allow the State of Louisiana to target more effectively certified VSE and DVSE participation and create opportunities relating to the state's contracting and procurement. Shown below are the key features of the LAVET.

B.1. The LAVET is a goal-oriented program, encouraging state agencies to contract with certified VSE's and DVSE's as well as encouraging contractors who receive contracts from the state to use good faith efforts to utilize certified VSE's. The

LAVET is a race and gender-neutral program. LAVET participation is restricted to Louisiana-based VSE's and DVSE's certified in accordance with rules promulgated by the Department of Economic Development.

a. The state will establish annual goals for both certified VSE and DVSE participation in state procurement and public contracts. Contract goals will vary based on contracting and subcontracting opportunities, availability of certified VSE's and DVSE's, and price competitiveness.

b. To participate, VSE's and DVSE's must be certified by the Department of Economic Development. Certification is based on a firm's gross revenues, number of employees, and other criteria as specified by Act 167 of the 2009 Regular Legislative Session.

c. The LAVET has guidelines for counting certified VSE and DVSE participation.

d. The LAVET incorporates several procedures to help implement the Initiative.

2. These procedures are designed to maximize the Initiative's success, including:

a. assisting certified VSE's and DVSE's and contractors by providing information, practical advice, and support;

b. strongly encouraging joint ventures and/or alliances among certified VSE's and DVSE's and larger firms;

c. assisting in developing a mentoring program for certified VSE's and DVSE's with appropriate private sector businesses and individuals;

d. requiring bidders and proposers to provide written assurance of certified VSE and/or DVSE participation in their bids and proposals;

e. providing workshops and training sessions to acquaint certified VSE's and DVSE's with state procurement and public contract proposal and bidding practices, including problems frequently encountered by certified VSE's and DVSE's during the proposal/bid process and generally while doing work for the state;

f. maintaining an updated certified VSE and DVSE directory and source list(s) on the internet to help identify qualified and available certified VSE's and DVSE's; and

g. making the state's central procurement website (LaPac) available for agencies to indicate that a particular procurement has been designated for VSE and/or DVSE participation.

3. For designated contracts, the LAVET requires good-faith efforts by contractors to use certified VSE's and/or DVSE's in contract performance. The LAVET has procedures in place to determine whether contractors are meeting this requirement of good-faith efforts. Contractors are

required to document their efforts to obtain certified VSE and/or DVSE participation. A contract award may be denied or an existing contract may be terminated if the state becomes aware that the contractor in fact failed to use good-faith efforts. The state recognizes that availability, subcontracting capabilities, and price competitiveness are relevant factors in determining whether a contractor has used good-faith efforts to subcontract with certified VSE's and/or DVSE's.

4. The state may impose sanctions on a contractor who fails to make good-faith efforts or on a VSE or DVSE that was found to be guilty of deception relating to certification. Sanctions may include a suspension from doing business with the state for up to 3 years. Procedures are in place to provide an opportunity for due process for any contractor, VSE, or DVSE prior to the suspension.

5. The LAVET is race and gender neutral. The LAVET shall not be used to discriminate against any person, company, or group of persons or companies. It is the policy of the state to prohibit discrimination based on race, gender, religion, national or ethnic origin, age, disability, or sexual orientation. Contractors, certified VSE's, and/or certified DVSE's that violate the state's non-discrimination mandate in the operations of the LAVET will be subject to sanctions.

C. The state utilizes various purchasing methods to acquire goods and services, including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The state determines which purchasing method to use based upon statutes and regulations applicable to the nature of the procurement.

1. The state will monitor the progress of the LAVET, reviewing participation reports, community input, recommendations, and operational efficiency. Annual reports will be made to the House Committee on Appropriations and the Senate Committee on Finance addressing the number of contracts awarded to certified VSE's and DVSE's, the number of contracts that included a good faith VSE and/or DVSE subcontracting plan, and the dollar value of VSE and DVSE contracts.

2. Nothing in the LAVET should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:507 (March 2010).

§1103. Mission and Policy Statement

A. Act 167 of the 2009 Regular Legislative Session enacted R.S. 39:2171 et seq., creating the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative) for the State of Louisiana. As enacted, the LAVET is a goal-oriented program, encouraging the state to contract with certified VSE's and DVSE's as well as encouraging the state's contractors to use good-faith efforts to utilize Louisiana-based certified VSE's and DVSE's as subcontractors.

B. It is the mission of the state to promote trade and economic development. It is the state's policy to promote economic development and business opportunities for all sectors of our community. Certified VSE's and DVSE's need to be given an opportunity to participate in a fair portion of the total purchases and contracts for property, services, and construction for the state. Therefore, the state establishes the LAVET to ensure opportunities for certified VSE's and DVSE's to participate in the state's contracting and procurement opportunities and ultimately to enhance the stability of Louisiana's economy.

C. As a matter of policy, the state recognizes and requires competitive pricing, qualifications, and demonstrated competencies in the selection of contractors. The LAVET is designed to create opportunities, while requiring competitiveness and quality of work. As such, it allows the state to target more effectively and strive to increase certified VSE and DVSE participation in the state's contracting and procurement activities. In its operations, the LAVET will assist the state in its mission of promoting economic development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:508 (March 2010).

§1105. Scope

A. These procedures apply to all state departments, prime contractors, subcontractors, certified VSE's and certified DVSE's involved with LAVET contracts. These procedures do not apply to agency expenditures for amortization of debt, debt service, depreciation, employee benefits, per diem, relocation expenses, salaries, postage, and transfer of charges. These procedures do not apply to contracts for sole source items, contracts with other governmental entities, and those contracts that are prohibited by federal law from inclusion in these procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:508 (March 2010).

Chapter 13. Procedures

§1301. Operational Procedures

A. The procedures herein are established to govern the program components of the LAVET including, without limitation, program compliance, specific implementation measures, purchasing methods, reporting of certified VSE and DVSE participation, imposition of sanctions, and dispute resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:509 (March 2010).

§1303. Objectives

A. The overall objectives for this program are:

1. to implement the policy of the LAVET to promote economic development and business opportunities for all sectors throughout the state;

2. to ensure opportunities for certified VSE's and DVSE's to participate in all phases of the state's contracting activities;

3. to stimulate participation of Louisiana-based certified VSE's and DVSE's with the state and create opportunities through the state's contracting and procurement;

4. to encourage certified VSE's and DVSE's to seek work from prime contractors when qualified and work is available;

5. to formalize existing procurement and contracting practices and implement new procurement and contracting procedures to assist more effectively certified VSE and DVSE participation;

6. to carry out the mandate of the state as enacted by Act 167 of the 2009 Regular Legislative Session;

7. to ensure nondiscriminatory practices in the use of certified VSE's and DVSE's for state contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:509 (March 2010).

§1307. Reserved.

§1309. Overall Annual LAVET Goals and Agency Participation Levels

A. Overall Annual Goals. Overall annual goals for LAVET participation for the state will be set each

year by the Commissioner of Administration as a percentage increase based on prior year activity.

B. Individual Agency Participation Levels. The Commissioner of Administration will provide guidance on how agencies will determine participation levels. The criteria used to set individual agency participation levels may include but not be limited to certified VSE and DVSE capacities, certified VSE and DVSE availability, nature of the contract, past experiences with LAVET participation, recognized industry composition, and subcontracting opportunities. No quotas or set-asides will be used in implementing the LAVET.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:509 (March 2010).

§1311. Purchasing Methods

A. The state utilizes various purchasing methods to acquire goods, services, major repairs and public works including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The procurement method to be used is based upon statutes and regulations applicable to the nature of the procurement.

B. Nothing in the LAVET should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

C. Agencies will participate in the program by using any or all of the following procurement methods:

1. purchasing directly from a certified VSE or DVSE within the agency's discretionary procurement authority for goods, operating services, major repairs, construction and personal, professional and consulting services;

2. issuing an order to a certified VSE or DVSE (prime contractor or distributor) on statewide contract;

3. using an ITB process to award a contract either to a certified VSE or DVSE or to a bidder who can demonstrate a good faith plan to use certified VSE's and/or DVSE's as subcontractors in performing the prime contract. To be responsive to the ITB the bidder must be either a certified VSE or DVSE or be able to demonstrate its good faith subcontracting plan.

a. Good Faith Subcontracting Plans in an Invitation to Bid

i. The ITB will require the bidder to certify that the bidder is either a certified VSE or DVSE or that the bidder has a good faith subcontracting plan.

ii. The following describes the process a non-certified VSE or DVSE bidder shall follow in order to comply with the requirement for a good faith subcontracting plan.

(a). The bidder has or will use the LAVET certification list maintained by the Department of Economic Development to provide notice of the potential subcontracting opportunities to three or more certified VSE's and/or DVSE's capable of performing the subcontract. Notification must be provided to the certified VSEs and/or DVSE's no less than five working days prior to the date of bid opening.

(b). Written notification is the preferred method to inform certified VSE's and/or DVSE's. This written notification may be transmitted via fax and/or e-mail.

(c). Written notification must include:

- (i). the scope of work;
- (ii). information regarding the location to review plans and specifications (if applicable);
- (iii). information about required qualifications and specifications;
- (iv). bonding and insurance information and/or requirements (if applicable);
- (v). contact person.

(d). The successful bidder must be able to provide written justification of the selection process if a certified VSE was not selected.

b. Post audits may be conducted. In the event that there is a question as to whether the low bidder's good faith subcontracting plan was complied with, the prime contractor must be able to provide supporting documentation to demonstrate its good faith subcontracting plan was actually followed (i.e., phone logs, fax transmittals, letters, e-mails). If it is at any time determined that the contractor did not in fact perform its good faith subcontracting plan, the contract award or the existing contract may be terminated.

4. using a request for proposals (RFP) process to award a contract to a certified VSE or DVSE or to a proposer demonstrating a good faith effort to use certified VSE's and/or DVSE's as subcontractors;

a. if an agency decides to issue an RFP to satisfy its LAVET goal, the procurement process will include either of the following:

i. require that each proposer either be a certified VSE or DVSE, or have made a good faith subcontracting effort in order to be responsive; or

ii. reserve ten percent of the total RFP evaluation points for otherwise responsive proposers who are themselves a certified as either a VSE or DVSE or who have made a good faith effort to use one or more VSEs and/or DVSE's in subcontracting.

b. In evaluating proposals, the evaluation committee will follow the scoring criteria set forth in the RFP. In its evaluation process, the evaluation committee will not give additional points for VSE or DVSE participation beyond the designated amount set forth in the RFP.

c. Good Faith Subcontracting in a Request for Proposal

i. Proposers alleging to have made a good faith subcontracting effort may be required in the RFP to verify their good faith subcontracting plan. A good faith effort can be evidenced by many things including those listed below.

(a). The proposer divided the contract work into reasonable lots or portions.

(b). The proposer used the LAVET certification list maintained by the Department of Economic Development to provide notice to three or more certified VSE's and/or DVSE's of the potential subcontracting opportunities available in performance of the prime subcontract. Notification must have been provided to the certified VSE's and/or DVSE's no less than five working days prior to the submission of the proposal.

(c). The notification from the Proposer was in writing. This written notification may have been transmitted via fax and/or e-mail.

(d). The written notification gave the VSEs and/or DVSE's complete information regarding the potential subcontract, including such things as:

- (i). the scope of work;
- (ii). information regarding the location to review plans and specifications (if applicable);
- (iii). information about required qualifications and specifications;
- (iv). bonding and insurance information and/or requirements (if applicable);
- (v). contact person.

ii. A RFP under LAC 19:IX.1311.C.4.a.i shall require all proposers who are not certified VSE's or DVSE's to certify they made a good faith subcontracting effort in their proposals.

iii. A RFP under LAC 19:IX.1311.C.4.a.ii may require that proposals include a proposed schedule of certified VSE and/or DVSE participation that lists the names of potential certified VSE and/or DVSE subcontractors, a description of the work each would perform, and the dollar value of each proposed certified VSE and/or DVSE subcontract.

iv. A RFP under LAC 19:IX.1311.C.4.a.ii may require that proposers provide documentation to demonstrate their good faith subcontracting effort (i.e.: phone logs, fax transmittal logs, letters, e-mails) in order to receive any reserved points.

v. Proposers responding to RFP's under either LAC 19:IX.1311.C.4.a.i or LAC 19:IX.1311.C.4.a.ii may be asked to provide written justification of the subcontractor selection process if a certified VSE or DVSE is not used as a subcontractor.

d. If at any time the state determines that the contractor did not in fact make a good faith effort, the contract award or the existing contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:509 (March 2010).

§1313. Procedures for Counting Small Entrepreneurship Participation

A. The state may count towards its LAVET goals the total dollar value of the contract awarded to the certified VSE or DVSE, if the certified VSE or DVSE is the prime contractor.

B. The state may count the total dollar value of a contract that is subcontracted to a certified VSE or a DVSE.

C. The state may count towards its LAVET goals the total dollar value of a contract awarded to a joint venture, of which a certified VSE or DVSE is a part. The joint venture must provide an affidavit stating the amount of work actually performed by the certified VSE or DVSE.

D. The state may count toward its LAVET goals the total dollar value of the contract if the RFP contemplated awarding ten percent of the total evaluation points to a proposer who demonstrated good faith efforts to use certified VSE's and/or DVSE's as subcontractors, but was unsuccessful in doing so.

E. The state may count toward its LAVET goals the total dollar value of those contracts in which the contractor has provided a good faith subcontracting plan as part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:510 (March 2010).

§1315. Certification Procedures

A. Certification procedures are in accordance with rules and regulations promulgated by the Department of Economic Development (LAC 19:VII.Subpart 1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of

Contractual Review and Office of State Purchasing, LR 36:510 (March 2010).

§1317. Implementation Procedures

A. In an effort to maximize the LAVET's success, the following procedures will be implemented to maximize opportunities for certified VSE and DVSE participation.

1. The Division of Administration and state departments/agencies are responsible for the direct operation and direct implementation of the LAVET.

2. Each department/agency of the state shall choose an initiative coordinator. The person chosen to be initiative coordinator shall be the person serving as the undersecretary of the department or the business manager for an agency. The initiative coordinator or his designee shall be responsible for acting as a business advisor to work directly with certified VSE's and DVSE's and contractors to provide information, assistance, and support. The Division of Administration and state departments/agencies will undertake various tasks to make the program workable, including the following:

a. provide information to certified VSE's and DVSE's on the state's organization and contractual needs and offer instructions on procurement policy, procedures, and general RFP/ITB requirements;

b. provide workshops and training sessions at least twice each year for certified VSE's and DVSE's on challenges frequently encountered by certified VSE's and DVSE's during bid/proposal process and generally when doing work for the state;

c. enhance the existing state's procurement and financial database to identify certified VSE's and DVSE's for historical and reporting purposes;

d. hold pre-bid and pre-proposal seminars to explain bid and proposal requirements, including an explanation of the forms that must be submitted with the response or proposal;

e. conduct outreach activities;

f. conduct internal information workshops to inform and acquaint the state employees responsible for state procurement and public contracts with the goals and objective of the state's LAVET initiative and to sensitize them to the problems of VSE's and DVSE's;

g. inform certified VSE's and DVSE's of ITB's and RFP's related to their capabilities by placing notices on the state's central procurement website, LaPac.

3. The state will encourage the formation of joint ventures/alliances among certified VSE's and DVSE's and larger firms to provide opportunities for certified VSE's and DVSE's to gain experience.

4. The state will encourage a mentoring program between large businesses and certified

VSE's and DVSE's to share information and experiences.

5. In RFP's requiring the compliance of a good faith subcontracting plan the state may require proposers to submit information on their business relationships and arrangements with certified VSE and/or DVSE subcontractors at the time of proposal review. Agreements between a proposer and a certified VSE or DVSE subcontractor in which the certified VSE or DVSE subcontractor promises not to provide subcontracting quotations to other proposers shall be prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:510 (March 2010).

§1319. Legal Remedies

A. Legal remedies will be in accordance with applicable procurement statutes including contract controversies, suspension and/or debarment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:511 (March 2010).

§1321. Reporting Procedures

A. The Commissioner of Administration is charged with the preparation of an annual report on the progress of the LAVET in the most recently ended fiscal year. The Commissioner must present the report to the House Committee on Appropriations and the Senate Committee on Finance by January 15 of each year. Therefore, information for the commissioner's report regarding an agency's achievement of LAVET goals must be submitted to the commissioner no later than October 1 of each year. Each agency is required to report for the preceding fiscal year:

1. total number and dollar value of all contracts awarded in whole or in part to certified VSE's and DVSE's;

2. number of contracts and the value of the contracts that included a good faith certified VSE and/or DVSE subcontracting plan; and

3. number of actual agency staff that attended Division of Administration training for LAVET and the number of certified VSE's and DVSE's that attended workshops and training sessions.

B. On-line forms for consistency in reporting will be provided on the commissioner's home page.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of

Contractual Review and Office of State Purchasing, LR 36:511 (March 2010).

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