

Applying the VA Rule of Two 38 U.S.C. 8127(d) Supplies and Services

**** 38 U.S.C. 8127(b)** Use of Noncompetitive Procedures for Certain Small Contracts. - For purposes of meeting the goals under subsection (a), and in accordance with this section, in entering into a contract with a small business concern owned and controlled by veterans for an amount less than the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)), a contracting officer of the Department may use procedures other than competitive procedures.

***38 U.S.C. 8127(c)** Sole Source Contracts for Contracts Above Simplified Acquisition Threshold. - For purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department may award a contract to a small business concern owned and controlled by veterans using procedures other than competitive procedures if - (1) such concern is determined to be a responsible source with respect to performance of such contract opportunity; (2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) but will not exceed \$5,000,000; and (3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

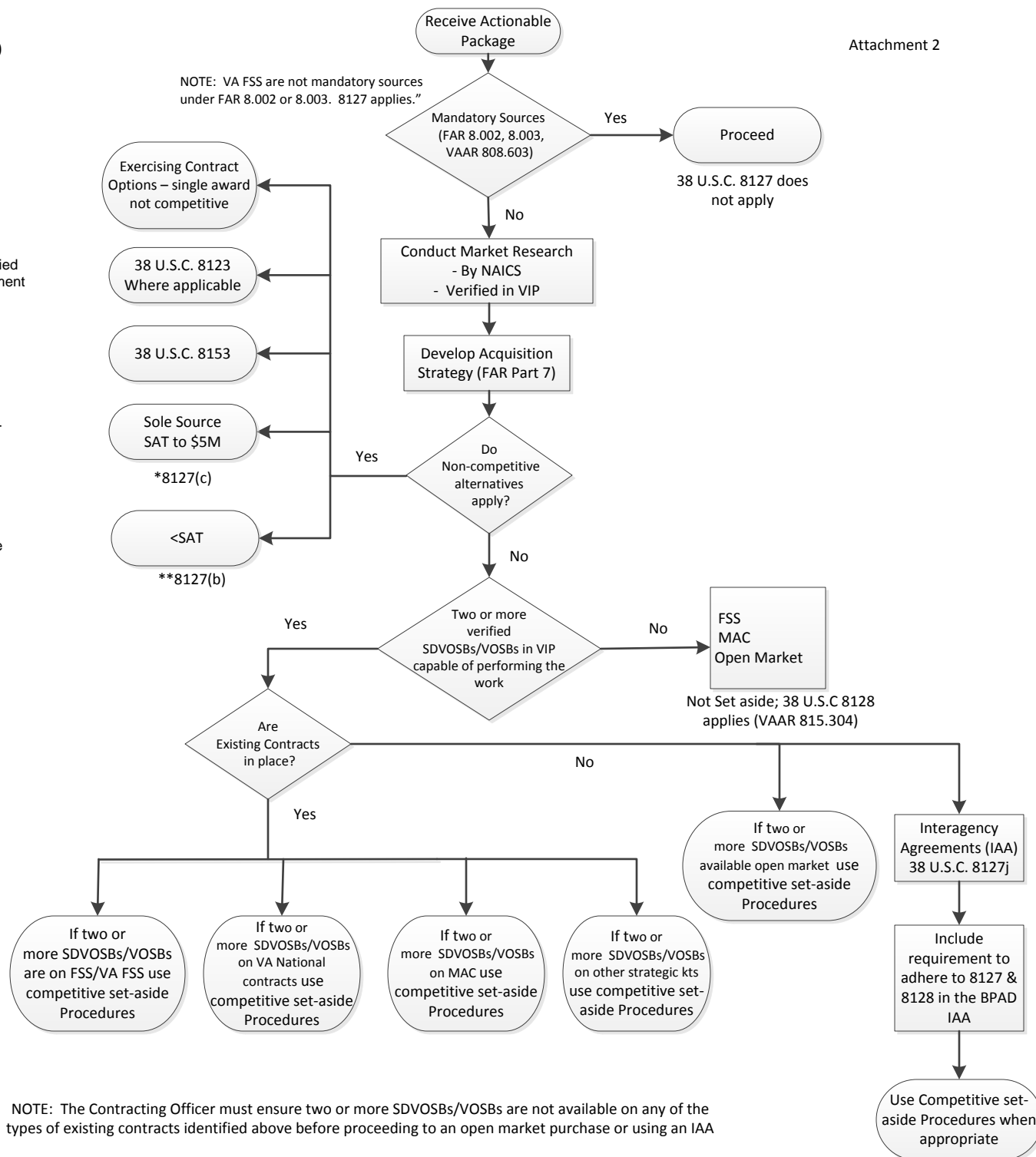
38 U.S.C. 8127(d) Use of Restricted Competition. - Except as provided in subsections (b) and (c), for purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.

38 U.S.C. 8127(j) Applicability of Requirements to Contracts. - (1) If after December 31, 2008, the Secretary enters into a contract, memorandum of understanding, agreement, or other arrangement with any governmental entity to acquire goods or services, the Secretary shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of this section in acquiring such goods or services. (2) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 et seq.).

38 U.S.C. 8128. "Small business concerns owned and controlled by veterans: contracting priority" (a) Contracting Priority. - In procuring goods and services pursuant to a contracting preference under this title or any other provision of law, the Secretary shall give priority to a small business concern owned and controlled by veterans, if such business concern also meets the requirements of that contracting preference.

The VA Form 2268 will be used to document set-aside decision.

NOTE: The non-manufacturer rule applies to 8127.



NOTE: The Contracting Officer must ensure two or more SDVOSBs/VOSBs are not available on any of the types of existing contracts identified above before proceeding to an open market purchase or using an IAA