1. **Purpose**: This class deviation includes changes to the Veterans Affairs Acquisition Regulation (VAAR) to amend the implementation of the Veterans First Contracting Program (VFCP) consistent with the decision of the United States Supreme Court in *Kingdomware Technologies, Inc. v. United States*, June 16, 2016. This revised class deviation amends Attachment 4 to Class Deviation (VFCP 2016) dated July 25, 2016, and revises VAAR 808.002, as set forth in the Attachment 4, Amendment 01.

2. **VAAR Sections Impacted**: VAAR 808.002, Priorities for use of mandatory Government sources

3. **Effective Date/Expiration Date**: Effective immediately and expires when incorporated in the VAAR, or the VA Acquisition Manual (VAAM), or is otherwise rescinded.

4. **Applicability**: This class deviation applies to all VA contracts (see definition of contract at FAR 2.101). Additionally, this deviation applies to contracts awarded by VA or on behalf of VA, using interagency acquisitions in accordance with FAR subpart 17.5, VAAR subpart 817.5, and FAR 8.404(b)(2), and any other arrangement with any governmental entity to acquire goods and services by contract on behalf of the VA.

5. **Background**: On December 22, 2006, Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006 (38 U.S.C. 8127 and 8128), was enacted. The legislation authorized a unique “Veterans First” approach specific to VA contracting. Implemented by interim regulation, effective June 20, 2007, this approach changed the small business hierarchy within VA, placing service-disabled veteran-owned small businesses (SDVOSB) and Veteran-owned small businesses (VOSB) first and second, respectively, in satisfying VA’s acquisition requirements. The final rule to codify the changes into the VAAR became effective January 7, 2010.
Class Deviation (Revised)—Implementation of the Veterans First Contracting Program (VFCP) as a Result of the U.S. Supreme Court Decision (Class Deviation—VFCP FEB 2017)

On April 28, 2010, VA Office of Acquisition and Logistics issued Information Letter (IL) 001AL-110-06, setting forth procedures for gaining approval to request new requirements to be placed on the AbilityOne Procurement List.

On June 16, 2016 the Supreme Court held that 38 U.S.C. § 8127(d) applies to all competitively-awarded contracts, including orders placed against Federal Supply Schedule (FSS) contracts. The Court also held the VA Rule of Two contracting procedures in section 8127(d) are not limited to those contracts necessary to fulfill the Secretary’s goals. The VA Rule of Two refers to the legislative requirement in § 8127(d) that “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.”

On July 25, 2016 a Class Deviation—Implementation of the Veterans First Contracting Program as a Result of the U.S. Supreme Court Decision (Class Deviation—Veterans First Contracting Program (VFCP 2016)), was issued to ensure full implementation of the Supreme Court’s decision.

6. **Need for Deviation**: This deviation amends “Attachment 4” of the previous deviation, VAAR 808.002, Priorities for use of mandatory government sources, in relation to the Veterans First Contracting Program, to provide further clarification, authority and guidance to contracting officers in relation to revised VAAR section 808.002.

7. **Current and New Policy**: The following provides highlights of current and new policy for affected VAAR parts and sections.

   a. **Current Policy**: As reflected in Attachment 4 to Class Deviation—Implementation of the Veterans First Contracting Program as a Result of the U.S. Supreme Court Decision (Class Deviation—Veterans First Contracting Program (VFCP 2016), dated July 25, 2016). Attachment 4 of the deviation added VAAR 808.002, 808.004-70, 808.405-70, 808.405-2 and 808.405-70 to fully implement the Veterans First Contracting Program as it relates to VAAR part 808, Required Sources of Supplies and Services, including the Federal Supply Schedules.
b. **New Policy**: The following reflects a summary of the revisions reflected in the Attachment 4 (Amendment 01), to the Class Deviation:

**808.002 Priorities for use of mandatory Government sources.** Clarifying language is added to paragraphs (a)(1)(iii), (iv), and (a)(2) to further define use of the VFCP VA Rule of Two when considering procuring supplies or services on the AbilityOne Procurement List.

8. Attachment: Attachment 4, Amendment 01 details the revisions to VAAR 808.002.

9. Additional Information: Direct questions regarding this class deviation to the Procurement Policy and Warrant Management Service via email at vacovaproc@va.gov or (202) 632-5288.

/s/
Phil W. Parker

Attachment: Attachment 4 (Amendment 01)—VAAR 808, Required Sources of Supplies and Service
PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

808.002 Priorities for use of mandatory Government sources.

(a)(1) Supplies.

(i) VA inventories including the VA supply stock program (41 CFR 101-26.704) and VA excess.

(ii) Excess from other agencies (see FAR subpart 8.1).

(iii) Federal Prison Industries, Inc. (see FAR subpart 8.6 and VAAR 808.603).

(iv) Supplies on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, known as AbilityOne (FAR subpart 8.7).

   (A) Supplies on the Procurement List are mandatory only if:

   (1) The supplies were added to the Procurement List prior to January 7, 2010, and the date the supplies were added is readily available; or

   (2) The supplies were added to the Procurement List on or after January 7, 2010, the VA Rule of Two (see VAAR Class Deviation 802.101 definition) was applied prior to the addition of the supplies to the Procurement List, and that information is readily available.

   (B) The VA Rule of Two must be applied prior to VA requesting addition of new supplies to the Procurement List. On or after January 7, 2010, if supplies were added to the Procurement List at the request of an agency other than the VA, the VA Rule of Two will be applied prior to VA purchasing the supplies from the Procurement List.

   (C) When the VA Rule of Two is not satisfied and award to eligible SDVOSBs/VOSBs (pursuant to VAAR subpart 819.70) will not occur, the priority use of AbilityOne in accordance with FAR 8.002 applies.

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), and military inventory control points.
(2) Services. Services on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled, known as AbilityOne (FAR subpart 8.7).

(A) Services on the Procurement List are mandatory only if:

(1) The services were added to the Procurement List prior to January 7, 2010 and the date the services were added is readily available; or

(2) The services were added to the Procurement List on or after January 7, 2010, the VA Rule of Two was applied prior to the addition of the services to the Procurement List, and that information is readily available.

(B) The VA Rule of Two must be applied prior to VA requesting addition of new services to the Procurement List. On or after January 7, 2010, if services were added to the Procurement List at the request of an agency other than the VA, the VA Rule of Two will be applied prior to VA purchasing the services from the Procurement List.

(C) When the VA Rule of Two is not satisfied and award to eligible SDVOSBs/VOSBs (pursuant to VAAR subpart 819.70) will not occur, the priority use of AbilityOne in accordance with FAR 8.002 applies.

(b) Unusual and compelling urgency. The contracting officer may use a source lower in priority than as specified in FAR 8.002 and VAAR 808.002 when the need for supplies or services is of an unusual and compelling urgency (see FAR 6.302-2 and FAR 8.405-6).

(c) The statutory obligation for Government agencies to satisfy their requirements for supplies or services available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supplies or services for Government use.