

Date: March 8, 2018

From: Acting Deputy Senior Procurement Executive

Subj: Class Deviation from Various VA Acquisition Regulation Sections to Update Head of Contracting Activity Delegation and Redelegation Authorities; and Increase a Threshold for Review of Acquisition Plans (VAIQ 7870838)

To: VA Heads of Contracting Activities (HCA)

1. Purpose: To issue a Class Deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, Class Deviations, and Department of Veterans Affairs Acquisition Regulation (VAAR) 801.404, Class Deviations, to deviate from various VAAR sections to update HCA delegation and redelegation authorities; and to increase a dollar threshold for review of acquisition plans.

2. VAAR Sections Impacted: 801.602-71, 809.405, 809.405-1, 809.405-2, 811.103, 811.202, 814.407-3, 814.407-4, 832.201-1, and 832.501-2.

3. Effective Date: April 1, 2018.

4. Expiration Date: This class deviation will remain in effect until incorporated into the VAAR or the new VA Acquisition Manual (VAAM), or is otherwise rescinded.

5. Applicability: This deviation applies to all VA contracting activities.

6. Exception: None.

7. Background: In a continuing effort to conform with SECVA's delayering initiative and to streamline operational procurement decision-making, the Senior Procurement Executive grants additional HCA delegation and redelegation authorities within the VAAR, and increases a threshold for review of acquisition plans.

a. **Current VAAR Policy:** As prescribed within the VAAR sections impacted.

b. **Need for Deviation:** To allow more HCA flexibility and to streamline operational procurement decision-making throughout the VAAR.

c. **New VAAR Policy.** The HCA delegation and redelegation authorities are changed as summarized below:

801.602-71 Basic review requirements. Action (b) is revised to allow contracting officer/peer review of acquisition plans up to \$7 million. Actions (i) and (k) are added to Table 801.602-71 to reflect, 1) the HCA must approve, before award, contracts that include unusual contract financing; and, 2) for the approval of a contractor's request for unusual progress payments, the HCA may further delegate

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no lower than one level above the contracting officer, or a Director of Contracting for the Veterans Health Administration (VHA).

809.405 Effect of listing. The HCA authority is changed to redelegable.

809.405-1 Continuation of current contracts. The HCA authority is changed to redelegable.

809.405-2 Restrictions on subcontracting. The HCA authority is changed to redelegable.

811.103 Market acceptance(a). This section is added to the VAAR to reflect that the authority cited at FAR 11.103 is changed as delegated to the HCA and is redelegable to no level lower than Chief/Director of the contracting office.

811.202 Maintenance of Standardization Documents. The HCA authority is changed to redelegable to no level lower than Chief/Director of the contracting office.

814.407-3 Other mistakes disclosed before award. The authority is changed as delegated to the HCA, without power of redelegation.

814.407-4 Mistakes after award. The authority is changed as delegated to the HCA and redelegable to no level lower than Chief/Director of the contracting office.

832.202-1 Policy. The authority is changed as delegated to the HCA, and that the HCA must approve, before award, contracts that include unusual contract financing.

832.501-2 Unusual progress payments. This section is added to the VAAR to reflect that the HCA authority cited at FAR 32.501-2 is changed to redelegable to one level above the contracting officer, or a Director of Contracting for VHA.

8. Additional Information: Questions and concerns should be addressed to the Procurement, Policy and Warrant Management Service at (202) 632-5288 or email: va.procurement.policy@va.gov.

/s/

Thomas A. Burgess

Attachment: Class Deviation from VAAR to Update HCA Delegation and Redelegation Authorities and Increase a Threshold for Review of Acquisition Plans

**Class Deviation from VA Acquisition Regulation
to Update HCA Delegation and Redelelegation Authorities and Increase a Threshold
for Review of Acquisition Plans**

801.602-71 Basic review requirements.

Contracting officers must obtain a technical review and/or legal review in accordance with their respective HCA's contract review process. Table 801.602-71 also sets forth the review levels and approval thresholds required for the contracting actions listed in items (a) through (k).

Table 801.602-71

Action	Review Levels and Thresholds
(a) Interagency Acquisitions (Best Procurement Approach)	<ul style="list-style-type: none"> - ≤ \$5M: CO/Peer Review - >\$5M-\$50M: One level above the CO - >\$50M: HCA or Designee
(b) Acquisition Plans	<ul style="list-style-type: none"> - ≤ \$7M: CO/Peer Review - >\$7M-\$100M: One level above the CO - >\$100M: HCA or Designee
(c) Stop Work Orders – (Terminations)	<ul style="list-style-type: none"> - One Level above the CO for all Stop Work Orders - OGC Review
(d) Use of Letter Contracts	<ul style="list-style-type: none"> - One Level above the CO for all Letter Contracts - OGC Review

(e) BPAs for Supplies under Federal Supply Schedules (FSS) that are not issued by the National Acquisition Center (NAC).	- >\$50M: Business Clearance Review - >\$50M: OGC Review
(f) Use of Economic Price Adjustment (EPA) Clauses	-HCA or Designee for any use of EPA Clauses
(g) Use of Incentive Contracts	-HCA or Designee for any use of Incentive Contracts
(h) Option Year Contracts Exceeding 5 Years (VAAR 817.204)	-HCA or Designee for any use of Option Year Contracts Exceeding 5 Years
(i) Commercial Item Purchase Financing, Policy (VAAR 832.202-1)	-HCA must approve, before award, contracts that include unusual contract financing
(j) Commercial Interim or Advance Payment Terms (VAAR 832.402)	-HCA or Designee for any use of Commercial Interim or Advance Payment Terms
(k) Unusual Progress Payments (VAAR 832.501-2)	-HCA or Designee must approve contractor's request

809.405 Effect of listing.

The authority under [FAR 9.405\(a\)](#), [9.405\(d\)\(2\)](#), and [9.405\(d\)\(3\)](#) to determine whether to solicit from, evaluate bids or proposals from, or award contracts to contractors with active exclusions in the System for Award Management (SAM) is delegated to the Suspending and Debarring Official (SDO). The SDO further delegates this authority to the HCA or designee.

809.405-1 Continuation of current contracts.

(a) Notwithstanding the suspension, proposed debarment, or debarment of a contractor, VA may continue contracts or subcontracts in existence at the time the contractor was suspended, proposed for debarment, or debarred, unless the cognizant Head of the Contracting Activity (HCA) directs otherwise. Examples of factors to be considered include, but are not limited to, potential costs associated with a termination, possible disruption to VA program objectives, and integrity of VA acquisition programs.

(b) Authority to make the determinations under [FAR 9.405-1\(b\)](#) is delegated to the SDO. The SDO further delegates this authority to the HCA or designee. The HCA or designee must make a written determination of the compelling reasons in accordance with [FAR 9.405-1\(b\)](#). Compelling reasons for the purposes of [FAR 9.405-1\(b\)](#) include, but are not limited to, urgency of the need for new or continued work, lengthy time period to acquire the new work from other sources, and meeting estimated quantity for requirements contracts.

809.405-2 Restrictions on subcontracting.

Authority to make the written determination required under [FAR 9.405-2](#) consenting to a contractor's use of a subcontractor who is suspended, proposed for debarment, or debarred is delegated to the SDO. The SDO further delegates this authority to the HCA or designee.

811.103 Market acceptance.

- (a) The authority at 41 U.S.C. 3307(e) is delegated to the head of the contracting activity (HCA) who may further delegate this authority to no level lower than Chief/Director of the contracting office.

811.202 Maintenance of standardization documents.

(b) (3) Except as authorized in [Part 846](#), a contracting officer must not deviate from the specifications contained in Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, and the IMPS without prior approval from the HCA, who may further delegate this authority to no level lower than Chief/Director of the contracting office.

814.407-3 Other mistakes disclosed before award.

(a) In accordance with FAR 14.407-3(e), the authority of the Secretary to make the administrative determinations set forth in [FAR 14.407-3\(a\), \(b\), \(c\), and \(d\)](#) is delegated to the SPE and is further delegated, without power of redelegation, to the HCA. This delegation in no way impairs the delegations contained in Unpublished Decision of the Comptroller General B-122003 dated November 22, 1954.

(b) When a bidder alleges a mistake in his or her bid before award, after complying with the provisions of [FAR 14.407-3](#), the contracting officer must submit the complete file to the HCA for an administrative determination. Based upon the evidence submitted, the HCA shall determine the action the contracting officer is to take. The contracting officer may make no award until the HCA makes a determination.

814.407-4 Mistakes after award.

(a) When a contracting officer corrects a mistake in bid under [FAR 14.407-4\(a\)](#), the contracting officer must forward a copy of the contract amendment or supplemental agreement and a copy of the contracting officer's determination to the HCA or designee. The designee shall be no level lower than the Chief/Director of the contracting office.

(b) For mistakes in a bid alleged after award, the contracting officer's proposed determination, prepared in accordance with [FAR 14.407-4](#), must be forwarded to OGC through the HCA or designee, for legal coordination. The HCA or designee shall transmit the results of this coordination to the contracting officer, who will make the final determination on the alleged mistake in bid after award.

(c) The HCA or designee must maintain the agency records of mistakes in bids after award required by [FAR 14.407-4](#).

832.202-1 Policy.

(d) The contracting officer must obtain the approval of the HCA before awarding a contract with unusual contract financing terms. HCAs shall report, no later than December 31st of each calendar year, to the Senior Procurement Executive (SPE) and the DSPE, on the number of contracts for commercial items with unusual contract financing or with commercial interim or advance payments approved for the previous fiscal year. The report shall include the contract number and amount, the amount of the unusual contract financing or with commercial interim or advance payments approved, and the kind and amount of security obtained for the advance.

832.501-2 Unusual Progress Payments.

(a)(3) The contractor's request is approved by the HCA. The HCA may delegate this approval authority to no lower than one level above the contracting officer, or to a Director of Contracting for the Veterans Health Administration (VHA).
