

Date: June 27, 2018

From: Acting Deputy Senior Procurement Executive

Subj: Class Deviation to VA Acquisition Regulation (VAAR) 819.72, 852.219-74, 852.219-75, and 852.219-76 (VIEWS 60265)

To: VA Heads of Contracting Activities

1. **Purpose.** To issue a Class Deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, Class Deviations, and VAAR 801.404, Class Deviations, to add VAAR 819.72, VA Subcontracting Compliance Review Program (SCRP), and new VAAR clauses at 852.219-74, Limitations on Subcontracting—Monitoring and Compliance, 852.219-75, Subcontracting Commitments Monitoring and Compliance, and 852.219-76, Subcontracting Plans Monitoring and Compliance. VAAR 819.72 will implement VA's SCRCP. This Class Deviation rescinds Information Letter (IL) 001AL-11-15, Subcontracting Compliance Review Program, dated June 8, 2011.

2. **VAAR Sections Impacted:** 819.72, 852.219-74 through 852.219-76.

3. **Effective Date:** July 16, 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will remain in effect until incorporated into the VAAR or the new VA Acquisition Manual (VAAM), or is otherwise rescinded.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.** IL 001AL-11-15, dated June 8, 2011, implemented VA's SCRCP, under the purview of the Office of Acquisition and Logistics (OAL), Risk Management and Compliance Service (RMCS). The SCRCP assesses contractor compliance with limitations on subcontracting requirements, subcontracting commitments, and subcontracting goals included in prime contracts with the VA. These assessments will be carried out by either VA or a third party contractor on behalf of the VA. The IL also announced the impending issuance of the SCRCP Manual, which set forth guidelines and procedures for conducting compliance reviews under the program. Additionally, the IL included required language to be used in solicitations and resultant contracts to allow third-party (support contractor) access to VA prime contractor records. Currently, the language as provided in the IL is listed in eCMS for contracting officer use. The SCRCP Manual was issued in February 2011 and revised in August 2016. The revised SCRCP Manual (2016) is available for download from the VA Center for Acquisition Resource Excellence (CARE) website at: <http://vaww.ecms.va.gov/CARE/> - under tools for

contracting officers. Since the issuances of IL 001AL-11-15 and the SCRP Manual, policies and procedures are in need of revision and conveyance to the VAAR.

A. Current VAAR 819.72 Policy: None.

B. Need for Deviation: The addition of 819.72, 852.219-74 through 852.219-76 are needed to implement updated policy and prescribed clauses for the VA SCRP.

C. New VAAR subpart 819.72—VA Subcontracting Compliance Review Program. The following section reflects a summary of the revisions, as set forth in the attached class deviation to VAAR 819.72 and affected clauses 852.219-74, 852.219-75, and 852.219-76:

Subpart 819.72, VA Subcontracting Compliance Review Program.

819.7200 General. This new subpart implements the VA's SCRP as set forth in rescinded IL 001AL-11-15. These reviews will be carried out by either VA or a third party contractor on behalf of the VA as established in this subpart.

819.7201 Scope of subcontracting compliance reviews. The new section addresses the SCRP scope and applicability to VOSBs as well as any small business receiving a preference and subject to the limitations on subcontracting requirement. Moreover, VA will assess contractors for compliance, regardless of their small business status, to ensure they are adhering to any subcontracting commitments included in VA contracts by virtue of VAAR clause 852.215-71. Prime contractors that are other than small business concerns will also be assessed for compliance with their subcontracting plans and small business commitments.

819.7202 Types of subcontracting compliance reviews. The new section specifies the three (3) types of compliance reviews, including follow-up reviews, which will be conducted under the SCRP. Additionally, this section addresses that compliance reviews may be conducted on-site, off-site, and/or by a third party, as appropriate.

819.7203 Contract clauses. The new section provides that in addition to other applicable clauses, contracting officers shall include new SCRP clauses in VA solicitations and contracts as prescribed in this section. These new VAAR clauses are currently listed in eCMS, and will be renumbered to those provided herein.

VAAR 852.219-74, Limitations on Subcontracting—Monitoring and Compliance. Currently, language for required use is listed in eCMS. This class deviation updates and properly conveys this language to the VAAR as a clause

prescribed in 819.7203. The clause allows for third-party (support contractor) access to the records of VA contractors.

VAAR 852.219-75, Subcontracting Commitments Monitoring and Compliance. Currently, language for required use is listed in eCMS. This class deviation updates and properly conveys this language to the VAAR as a clause prescribed in 819.7203. The clause allows for third-party (support contractor) access to the records of VA contractors.

VAAR 852.219-76, Subcontracting Plans Monitoring and Compliance. Currently language for required use is listed in eCMS. This class deviation properly updates and conveys this language to the VAAR as a clause prescribed in 819.7203. The clause allows for third-party (support contractor) access to the records of VA contractors.

8. **Additional Information.** Direct any questions or comments to Procurement Policy and Warrant Management Services via email at vacovaproc@va.gov or via telephone at (202) 632-5288.

/s/
Sheila P. Darrell

Attachment: Class Deviation to 819.72, 852.219-74, 852.219-75, and 852.219-76

**Class Deviation to
VA Acquisition Regulation (VAAR)
819.72, VA Subcontracting Compliance Review Program,
852.219-74, Limitations on Subcontracting—Monitoring and Compliance,
852.219-75, Subcontracting Commitments Monitoring and Compliance, and
852.219-76, Subcontracting Plans Monitoring and Compliance**

Subpart 819.72—VA Subcontracting Compliance Review Program

819.7200 General.

- (a) The Department of Veterans Affairs (VA) is required by Pub. L. 109-461, Executive Order 13360, and the Small Business Act, to establish special acquisition methods to increase contracting and subcontracting opportunities for small businesses, and, in particular, SDVOSBs and VOSBs, while protecting access to the programs by their intended beneficiaries.
- (b) In an effort to maintain integrity of these programs, the VA has developed a Subcontracting Compliance Review Program (SCRP), which assesses contractor compliance with limitations on subcontracting requirements, subcontracting commitments, and subcontracting goals included in a VA prime contract.
- (c) These reviews will be conducted by either VA or a third party contractor on behalf of the VA as set forth in this subpart and the VA Subcontracting Compliance Review Program manual. The SCRП manual sets forth guidelines and procedures for conducting compliance reviews under the program.
- (d) Contracting officers shall notify prospective contractors that Risk Management and Compliance Service, and/or a third party (support contractor) will require access to VA contractor records, as needed, to assess contractor compliance as provided in paragraph (b) of this section, by incorporating the clauses at 819.7203 as applicable.

819.7201 Scope of subcontracting compliance reviews.

- (a) Any small business concern receiving a VA contract on a sole source or set aside basis or under a small business evaluation preference, will be subject to a review to ensure they are in compliance with the limitations on subcontracting requirement or percentage of work performance requirement provided in the appropriate set-aside/preference clause.
- (b) Moreover, VA will assess contractors for compliance, regardless of their size status, to ensure they are adhering to any subcontracting commitments included in VA contracts by virtue of VAAR clause 852.215-71.

(c) Prime contractors that are other than small business concerns will also be assessed for compliance with their subcontracting plans and small business commitments. In addition, as required by 38 USC 8127(a)(4), OSDDBU will review prime contractor's subcontracting plan reports to ensure only verified SDVOSB and VOSB firms are counted toward those plan goals.

819.7202 Types of subcontracting compliance reviews.

(a) There are three (3) types of subcontracting compliance reviews that will be conducted under the Subcontracting Compliance Review Program:

(1) Limitations on Subcontracting Compliance Review (LSCR) for small business set-aside sole source or evaluated contracts.

(2) Subcontracting Commitments Compliance Review (SCCR) contracts awarded on the basis of an evaluation preference.

(3) Subcontracting Plan Compliance Review (SPCR) for prime contractors subject to subcontracting plan submissions.

(b) Follow-up reviews will be conducted as required in the SCRP manual.

(c) Compliance reviews may be conducted on-site or off-site, as appropriate. For purposes of this program, on-site compliance reviews mean reviews conducted at VA contractors' sites or facilities. Off-site compliance reviews are conducted at either a Government location or another facility (e.g., at the support contractor's facility conducting the reviews on behalf of VA).

819.7203 Contract clauses.

In addition to other applicable clauses, contracting officers shall:

(a) Include clause 852.219-74 Limitations on Subcontracting—Monitoring and Compliance, in VA solicitations and contracts which are—

(1) Sole-source or set-aside for service-disabled veteran-owned small businesses or veteran-owned small businesses under subpart 819.70;

(2) Sole source or set-aside for other types of small business pursuant to FAR part 19 and/or which contain the clause at 52.219-14, Limitations on Subcontracting; or

(3) Awarded based on an evaluation preference for being a small business (e.g., FAR 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns).

(b) Include clause 852.219-75, Subcontracting Commitments Monitoring and Compliance, in VA solicitations and contracts which will be issued on a competitively negotiated basis, including RFQs for task/delivery orders or BPAs, which:

- (1) Require a statement of work,
- (2) Are not set-aside for SDVOSB/VOSB; and

(3) Include any evaluation criteria in addition to price, such as 852.215-70, SDVOSB/VOSB Evaluation Factors.

(c) Include clause 852.219-76, Subcontracting Plans Monitoring and Compliance, in VA solicitations and contracts where FAR clause 52.219-9 and/or VAAR 852.219-9 are applicable.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

852.219-74 Limitations on Subcontracting—Monitoring and Compliance.

As prescribed in 819.7203(a) insert the following clause:

LIMITATIONS ON SUBCONTRACTING—MONITORING AND COMPLIANCE (JUL 2018)

(a) This solicitation includes _____
[Fill-in clause/provision]

[Note: Contracting Officers must fill-in the applicable clause required to be included in sole-source and/or set-aside acquisitions (e.g., VA Acquisition Regulation (VAAR) 852.219-10, VA Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside; FAR 52.219-6, Notice of Total Small Business Set-Aside).]

(b) Accordingly, any contract resulting from this solicitation is subject to the limitation on subcontracting requirements in 13 CFR 125.6, or the limitations on subcontracting requirements in the FAR clause, as applicable. The Contractor is advised that in performing contract administration functions, the Contracting Officer may use the services of a support contractor(s) retained by VA to assist in assessing the Contractor's compliance with the limitations on subcontracting or percentage of work performance requirements specified in the clause. To that end, the support contractor(s) may require access to Contractor's offices where the Contractor's business records or other proprietary data are retained and to review such business records regarding the Contractor's compliance with this requirement.

(c) All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the Contractor's business records or other proprietary data reviewed or obtained in

the course of assisting the Contracting Officer in assessing the Contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs.

(d) Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the Contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The Contractor is required to cooperate fully and make available any records as may be required to enable the Contracting Officer to assess the Contractor's compliance with the limitations on subcontracting or percentage of work performance requirement.

(End of clause)

852.219-75 Subcontracting Commitments Monitoring and Compliance.

As prescribed in 819.7203(b) insert the following:

SUBCONTRACTING COMMITMENTS MONITORING AND COMPLIANCE (JUL 2018)

(a) This solicitation includes the clause: 852.215-70 Service-disabled veteran-owned and veteran-owned small business evaluation factors. Accordingly, any contract resulting from this solicitation will include the clause 852.215-71 Evaluation factor commitments.

(b) The Contractor is advised that in performing contract administration functions, the Contracting Officer may use the services of a support contractor(s) to assist in assessing Contractor compliance with the subcontracting commitments incorporated into the contract. To that end, the support contractor(s) may require access to the Contractor's business records or other proprietary data to review such business records regarding contract compliance with this requirement.

(c) All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the Contractor's business records or other proprietary data reviewed or obtained in the course of assisting the Contracting Officer in assessing the Contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs.

(d) Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the Contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The Contractor is required to cooperate fully and make available any records as may be required to enable the Contracting Officer to assess the Contractor compliance with the subcontracting commitments.

(End of clause)

852.219-76 Subcontracting Plans Monitoring and Compliance.

As prescribed in 819.7203(c) insert the following clause:

SUBCONTRACTING PLANS MONITORING AND COMPLIANCE (JUL 2018)

(a) This solicitation includes FAR 52.219-9, Small Business Subcontracting Plan, and VAAR 852.219-9, VA Small Business Subcontracting Plan Minimum Requirement.

(b) Accordingly, any contract resulting from this solicitation will include these clauses, unless the contract is awarded to a small business concern. The Contractor is advised in performing contract administration functions, the Contracting Officer may use the services of a support contractor(s) to assist in assessing the Contractor's compliance with the plan, including reviewing the Contractor's accomplishments in achieving the subcontracting goals in the plan. To that end, the support contractor(s) may require access to the Contractor's business records or other proprietary data to review such business records regarding the Contractor's compliance with this requirement.

(c) All support contractors conducting this review on behalf of VA will be required to sign an "Information Protection and Non-Disclosure and Disclosure of Conflicts of Interest Agreement" to ensure the Contractor's business records or other proprietary data reviewed or obtained in the course of assisting the Contracting Officer in assessing the Contractor for compliance are protected to ensure information or data is not improperly disclosed or other impropriety occurs.

(d) Furthermore, if VA determines any services the support contractor(s) will perform in assessing compliance are advisory and assistance services as defined in FAR 2.101, Definitions, the support contractor(s) must also enter into an agreement with the Contractor to protect proprietary information as required by FAR 9.505-4, Obtaining access to proprietary information, paragraph (b). The Contractor is required to cooperate fully and make available any records as may be required to enable the Contracting Officer to assess the Contractor compliance with the subcontracting plan.

(End of clause)
