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 VAAR 836.213-70, Notice to proceed.

2. **VAAR Subsection Impacted.** VAAR 836.213-70(a).

3. **Effective Date.** November 26, 2018.

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deviation will remain in effect until incorporated into the VAAR or the VA Acquisition Manual (VAAM), or is otherwise rescinded.

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

6. **Exception.** None.

7. **Background.** FAR 28.102-1 enacts 40 U.S.C. 3131(b), the Bonds statute (formerly known as the Miller Act) and requires that for construction contracts exceeding $150,000; the contractor must furnish to the Government a performance bond and a payment bond before receiving a notice to proceed with the work or being allowed to start work. VAAR 836.213-70(a) currently allows a contracting officer to issue a notice to proceed on a construction contract before receiving the required performance bond and payment bond, in urgent situations.

   a. **Current VAAR 836.213-70(a) Policy:**

      **836.213-70 Notice to proceed.**

      (a) The contracting officer must provide construction contractors with a written notice to proceed for the work. A notice to proceed will normally be sent only after the contractor has provided performance and payment bonds or payment protection and the completed contract forms, where applicable, and the contracting officer has accepted them. If the urgency of the work or other proper reason requires the contractor to begin work immediately, the contracting officer may include in the award letter a notice to proceed, with the reservation that payments are contingent upon receipt and approval of the required bonds or payment protection.

   b. **Need for Deviation:** VAAR 836.213-70, paragraph (a) is being revised to comply with FAR 28.102-1(c) and 40 U.S.C. 3131(b), Bonds of contractors of public...
buildings or works, thereby removing the language that allows a contracting officer to issue a notice to proceed on a construction contract before receiving the required performance and payment bonds. Paragraphs (b) through (e) are unchanged.

c. New VAAR 836.213-70 Policy:

836.213-70 Notice to proceed. (DEVIATION) (OCT 2018)

(a) The contracting officer must provide construction contractors with a written notice to proceed for the work. A notice to proceed will be sent only after the contractor has provided performance and payment bonds or payment protection and the completed contract forms, where applicable, and the contracting officer has accepted them.

(b) If the contract provides for liquidated damages, the contracting officer must send the notice to proceed by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. The notice to proceed will advise the contractor that the work must be completed within _____ (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office or on the proof of delivery provided by the delivery service.

(c) If the contract does not provide for liquidated damages, certified mail is not required. In notices to proceed for these contracts, the contracting officer must establish a date for completion that takes into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, the contracting officer must furnish a copy to the resident engineer or the Chief, Engineering Service.

(e) The contracting officer must file a copy of the notice to proceed with copy A of the contract. When certified mail or other method of certified delivery is used, the contracting officer must attach the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service to the copy of the notice to proceed. The contracting officer must file copies of the notice to proceed with copies C and D of the contract after the date of receipt has been established and indicated on the notice to proceed.

8. Additional Information: Direct questions regarding this deviation to the Office of Acquisition and Logistics (003A), Procurement, Policy and Warrant Management Service (003A2A) via email at vacovaproc@va.gov or (202) 632-5288.

/s/
D. Edward Keller, Jr.
Class Deviation to VA Acquisition Regulation
836.213-70, Notice to proceed

Subpart 836.2—Special Aspects of Contracting for Construction

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836.213-70 Notice to proceed. (DEVIATION) (OCT 2018)

(a) The contracting officer must provide construction contractors with a written notice to proceed for the work. A notice to proceed will be sent only after the contractor has provided performance and payment bonds or payment protection and the completed contract forms, where applicable, and the contracting officer has accepted them.

(b) If the contract provides for liquidated damages, the contracting officer must send the notice to proceed by certified mail, return receipt requested, or any other method that provides signed evidence of receipt. The notice to proceed will advise the contractor that the work must be completed within _____ (insert contract time for completion) calendar days from the date of receipt shown on the certified mail receipt card returned by the post office or on the proof of delivery provided by the delivery service.

(c) If the contract does not provide for liquidated damages, certified mail is not required. In notices to proceed for these contracts, the contracting officer must establish a date for completion that takes into consideration the time required for the notice to arrive by regular mail.

(d) At the time the notice to proceed is sent to the contractor, the contracting officer must furnish a copy to the resident engineer or the Chief, Engineering Service.

(e) The contracting officer must file a copy of the notice to proceed with copy A of the contract. When certified mail or other method of certified delivery is used, the contracting officer must attach the certified mail receipt card returned by the post office or the proof of delivery provided by the delivery service to the copy of the notice to proceed. The contracting officer must file copies of the notice to proceed with copies C and D of the contract after the date of receipt has been established and indicated on the notice to proceed.

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