

Date: March 26, 2020

From: Executive Director, Office of Acquisition and Logistics (003A), and  
Senior Procurement Executive

Subj: Class Deviation from VAAR Parts 802, 812, and 852 Regarding Gray Market and  
Counterfeit Medical and Information Technology Items (VIEWS 01246375)

To: Heads of the Contracting Activities (HCAs)

**1. Purpose.** To issue a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404 and Department of Veterans Affairs (VA) Acquisition Regulation (VAAR) 801.404 to add the definition of *gray market items*, and to add clauses for inclusion in solicitations and contracts for new medical supplies and equipment and new information technology (IT) equipment and maintenance of existing IT equipment.

**2. Effective Date.** March 31, 2020.

**3. Expiration Date.** This class deviation expires once incorporated into the VAAR or the VA Acquisition Manual (VAAM), or is otherwise rescinded.

**4. Applicability.** This class deviation applies to all Department of Veterans Affairs contracting activities.

**5. Need for a VAAR Class Deviation.** This deviation adds clauses to prevent the inadvertent acquisition of gray market and counterfeit medical equipment, medical supplies, and IT equipment.

**6. New VAAR Policy.** VAAR sections 802.101, 812.301 and 852.212 are revised to add the text in the attachments.

**7. Required Action.** All HCAs and their staff members shall comply with the requirements of this class deviation.

**8. Additional Information.** Direct questions or concerns to the Office of Acquisition and Logistics (003A), Procurement Policy and Warrant Management Service (003A2A), via email at [VA.Procurement.Policy@va.gov](mailto:VA.Procurement.Policy@va.gov) or (202) 632-5288.

/s/

Angela Billups, Ph.D.

Attachments – Class Deviations from VAAR Parts 802, 812, and 852

CLASS DEVIATION

VAAR PART 802 - ACQUISITION OF COMMERCIAL ITEMS  
(MAR 2020) (DEVIATION)

**802.101 Definitions.**

\* \* \* \* \*

*Gray market items* are original equipment manufacturer goods intentionally or unintentionally sold outside an authorized sales territory or sold by non-authorized dealers in an authorized sales territory.

\* \* \* \* \*

NOTE: \* \* \* \* \* denotes that the remaining definitions before and after the cited VAAR text are unchanged.

CLASS DEVIATION

VAAR PART 812—ACQUISITION OF COMMERCIAL ITEMS  
(MAR 2020) (DEVIATION)

**812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

\* \* \* \* \*

(g) Contracting officers shall insert the clause 852.212-72, Gray Market and Counterfeit Items, in solicitations and contracts for new medical supplies, new medical equipment, new information technology equipment, and maintenance of medical or information technology equipment that includes replacement parts if used, refurbished, or remanufactured parts are unacceptable, when the associated solicitation includes FAR provisions 52.212-1 Instruction to Offerors-Commercial Items, and 52.212-2, Evaluation-Commercial Items.

(h) Contracting officers shall insert the clause 852.212-73, Gray Market and Counterfeit Items – Information Technology (IT) Maintenance Allowing Other-than-New Parts, in solicitations and contracts for the maintenance of information technology equipment that includes replacement parts, if used, refurbished, or remanufactured parts are acceptable, when the associated solicitation includes FAR provisions 52.212-1, Instruction to Offerors-Commercial Items, and 52.212-2, Evaluation-Commercial Items.

NOTE: \* \* \* \* \* denotes that the remaining sections between the cited VAAR text are unchanged.

**CLASS DEVIATION**

**VAAR PART 852—SOLICITATION PROVISIONS AND CONTRACT  
CLAUSES  
(MAR 2020) (DEVIATION)**

**852.212-72 Gray Market and Counterfeit Items.**

As prescribed in 812.301(g), insert the following clause in solicitations and contracts for new medical and information technology equipment:

**GRAY MARKET AND COUNTERFEIT ITEMS (MAR 2020)**

(a) No used, refurbished, or remanufactured supplies or equipment/parts shall be provided. This procurement is for new Original Equipment Manufacturer (OEM) items only. No gray market items shall be provided. Gray market items are OEM goods intentionally or unintentionally sold outside an authorized sales territory or sold by non-authorized dealers in an authorized sales territory.

(b) No counterfeit supplies or equipment/parts shall be provided. Counterfeit items include unlawful or unauthorized reproductions, substitutions, or alterations that have been mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitutions include used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

(c) Vendor shall be an OEM, authorized dealer, authorized distributor or authorized reseller for the proposed equipment/system, verified by an authorization letter or other documents from the OEM. All software licensing, warranty and service associated with the equipment/system shall be in accordance with the OEM terms and conditions.

(End of clause)

**CLASS DEVIATION**

**VAAR PART 852—SOLICITATION PROVISIONS AND CONTRACT  
CLAUSES  
(MAR 2020) (DEVIATION)**

**852.212-73 Gray Market and Counterfeit Items – Information Technology  
(IT) Maintenance Allowing Other-than-New Parts.**

As prescribed in 812.301(h), insert the following clause in solicitations and contracts for the maintenance of information technology (IT) equipment that include replacement parts, if used, refurbished, or remanufactured parts are acceptable:

**GRAY MARKET AND COUNTERFEIT ITEMS – INFORMATION  
TECHNOLOGY MAINTENANCE ALLOWING OTHER-THAN-NEW PARTS  
(MAR 2020)**

(a) Used, refurbished, or remanufactured parts may be provided. No gray market supplies or equipment shall be provided. Gray market items are Original Equipment Manufacturer (OEM) goods intentionally or unintentionally sold outside an authorized sales territory or sold by non-authorized dealers in an authorized sales territory.

(b) No counterfeit supplies or equipment shall be provided. Counterfeit items include unlawful or unauthorized reproductions, substitutions, or alterations that have been mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitutions include used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

(c) Vendor shall be an OEM, authorized dealer, authorized distributor or authorized reseller for the proposed equipment/system, verified by an authorization letter or other documents from the OEM. All software licensing, warranty and service associated with the equipment/system shall be in accordance with the OEM terms and conditions.

(End of clause)